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THE DETERMINANTS OF CONTEMPORARY LAW AND ORDER

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Abstract. The research is devoted to the analysis of the essence of the shape determinants influencing the contemporary law and order. According to the authors, the following determinants influence the formation, development and state of law and order: the predominant basic values, the processes of constitutionalization and globalization, the ratio of political forces in the state during the period of its constituting, the legal culture of society, the level of economic development of the state, the social essence of the state.

The paper establishes that the change of the socio-historical epoch causes the change of social ideals, a person's goals and the goals of human society, and accordingly, the content of values, including the legal ones. The influence of constitutionalization on law and order is related to: the implementation of the basic values of state-organized society in the Fundamental Law, and then in the sectoral legislation; the formation of appropriate institutions that will ensure the realization of these values.

It is also emphasized that under democracy the correlation of political forces is manifested through the political compromise of the elites. From the axiological point of view, legal culture is manifested through the commitment of the elite and the general public to certain values. Economic progress in different countries has inevitably led to the strengthening of constitutionalism.

It is concluded that the above-mentioned factors are not stable, they change due to the dynamics of social reality. In addition, the constituting of law and order is influenced (with varying degrees of influence) not by individual factors, but by

their totality. Reflecting social reality, a set of factors does not mechanically act as the sum of them – under certain conditions, the factors can both strengthen each other's deterministic influence and weaken it through the effect of neutralization.

Key words: law and order, determinants, legal values, constitutionalization, globalization, legal culture, political forces, economic development of the state.

Introduction.

Law and order as a category of theoretical and legal science being constituted and undergoing development in a particular state, is not the result of accidental coincidence, it is determined by a number of factors, whose clarification is important for revealing the essence of this complex notion. In our opinion, the following factors influence the formation, development and state of law and order: the predominant basic values, the processes of constitutionalization and globalization, the ratio of political forces in the state during the period of its constituting, the legal culture of society, the level of economic development of the state, the social essence of the state.

The *aim of the work* of the article is to study and analyze the shaping determinants that affect the category of law and order in modern legal realities.

Methodologically, this work is based on the system of methods, scientific approaches, techniques and principles with the help of which the realization of the research aim is carried out. There have been applied universal, general scientific and special legal methods.

Presentation of research results.

The shaping determinants of contemporary law and order:

1. Legal values. At the present stage (XX – XXI century) we can observe an increasing scientific interest in the value aspects of law. This is explained by a number of reasons, in particular: 1) the relatively late formation and introduction of the notions of «values», «axiology», «legal axiology (axiology of law)», «axiosphere of law» into the scientific circulation; 2) the unstable character of the system of values of law, its variable nature. The value hierarchy is also of a specifically historic nature. The change of the socio-historic era leads to changing social ideals, goals for man and human society, and accordingly, the content of values, including the legal ones. In this case, there may occur the total replacement of certain value-legal components or transformation of their role and significance in the hierarchy of values, as well as the updating of the essence of the already established values [5, p. 98]. For instance, such values as equality, justice, freedom are the basis of modern law and order, although their essence is not stable.

2. The processes of constitutionalization and globalization. Constitutionalization, as the reflection of the tendency of juridification at the present stage, involves the active application of constitutional legal means in the system of public relations, so to say, «capturing» new spheres and industries, as well as increasing the importance of constitutional regulators for legal influence on them. The

reasons for this are rooted in the considerable complexity and differentiation (specialization) of social governance, the strengthening of relations between the state and the civil society, etc. The impact of constitutionalization on the formation of the legal system and the maintenance of the legal order results in: the formation of a mechanism of harmonious development of international and national legislation; the development of the current legislation in accordance with the Constitution; the achievement of unity of law-making and law-enforcement practices; the formation of a clear hierarchy of the current legislation by eliminating gaps and collisions in the normative legal tool; the improvement of dividing authority between the branches of power; the formation of legal consciousness and legal culture which are based on the supremacy of the constitution [8, p. 91].

Thus, the influence of constitutionalization on law and order is manifested in many aspects, but it is inevitably linked to: 1) the implementation of the basic values of a state-organized society (human rights, rule-of-law, justice) in the Fundamental Law, and further in the sectoral legislation; 2) the creation of appropriate institutions, whose activity is aimed at ensuring that these values are indeed implemented in the behavior of the subjects of public relations.

The constitutionalization of European values in the national legal space requires a clear understanding of the nature of international contemporary processes, one of which is globalization.

The essence of globalization, as a process that characterizes the modern stage of human development, is the formation of the common global economic, political and cultural space, which functions on the basis of universally recognized legal values and principles and is mediated by general organizational forms. The main impact of globalization on law is expressed in its universalization, which consists in the development of the common basic principles and institutions of law, the elimination of contradictions between national legal systems. Law in turn becomes an important instrument of globalization, since the absence of the sole legal field, the fact that it is insufficiently formed hamper globalization processes in various spheres of forming and functioning the world society [2, p. 403].

M. Savchyn points out that the mechanism of forming global law must combine the mechanisms of the implementation / transformation of international law and constitutionalization. On the one hand, it is necessary to provide the proper legitimate mechanism for delegating some of the sovereign powers of nation-states to supranational structures under condition of adhering to democratic standards of expressing the will of the people. In this context we speak of global popular sovereignty. On the other hand, the international legitimacy of the formation of global law is viewed through the prism of a certain algorithm, a sequence of steps taken to solve a number of problems which cannot be competently solved by national states today on the basis of constitutive and approximate legitimacy [7, p. 260].

The practice of EU functioning shows that in order to ensure national interests, more effective decision-making, the member states are ready to cede part of sovereign rights to the supranational level so that they might be dealt with there.

3. The correlation of political forces in the state during the period of its constituting. The civil society possesses a strong potential to establish and maintain sound legal order in society. Moreover, the influence of civil society on the legal ordering of public life is not limited to the functioning of specialized public institutions that promote the ensuring and protection of the rights of citizens, or those who directly participate in maintaining public order in settlements, while conducting civic actions and activities; this influence is manifested across the spectrum of establishing and maintaining legal order. Democracy and legal order are indicators of political and legal «health», the maturity of society, its political and legal culture, and in general – the level of civility, since the ability of society to live in the conditions of democracy and law makes the human community civilized [3, p. 42].

This factor is manifested, in particular, in the fact that the talk is not only about «political forces» in society, we mean the broader constituents of society –segments of the population, classes, social groups. In conditions of democracy (regardless of the degree of consolidation), the balance of political forces is expressed in the political compromise of the elites, the content of which is the harmonization of positions on the institutional component of law and order. It should be emphasized that the subject of political consensus is not static and the the development of Ukraine as a law-based state after 1991 convincingly proves it.

If the narrow approach is applied, it should be noted that in the modern state, the ratio of political forces is well obsereved in the distribution of party forces in the parliament – the quantitative ratio of deputy factions. In the context when plebiscitary ways of securing the institutional basis of law and order are gradually receding, the parliament is the main mechanism for finding political compromise.

4. Legal culture of society. The talk is about its broad understanding, which «includes law itself (objective and subjective), legal awareness, legal relations, the state of lawfulness, the level of perfection of law-making, law-enforcement and other legal activities», and yet this legal phenomenon «necessarily includes a person and his / her activities» [1, p. 33].

The comprehension of legal culture and legal order cannot but take into account the existence of negative legal phenomena in society – poor legislation, legal idealism, nihilism and cynicism, criminality, other offenses and non-legal regimes that undermine the quality of legal culture, reduce the level of legal order in society [3, p. 21].

The level of legal culture influences, in particular, the technology of building the institutional component of law and order, despite the fact whether consensus among elites has been reached or not. In Spain, in 1977, the Moncloa Pact

became the model of the identified legal culture of this country's elite and of the supportive attitude of this elite towards the democratization of law and order.

From the axiological point of view, legal culture is manifested in the commitment of the elite and the general public to certain values. For example, the reformation of law and order took place in countries that were preparing to join the European Union. The process of such changes in the state-legal sphere was caused by the necessity to implement the so-called «European standards», the commitment to which became the subject of consensus of the political elite of these countries. In other words, a situation when certain consensual values are within the non-confrontational political field of a particular state indicates a certain level of legal culture that directly effects law and order in the state as a whole.

5. The level of economic development of the state. This factor reflects the pattern that manifests itself over a long period of time. The essence of this pattern is that economic progress in certain states has inevitably led to the strengthening of institutions of parliamentarism, the self-restriction of the state, and the strengthening of constitutionalism in general. Yet, conversely, in economically less developed countries, absolutist forms of governance had historically remained for a longer time (for example, in Russia until 1905).

Today, in all economically developed countries, the institution of constitutionalism (separation of powers, parliamentarism) acts as a pivotal characteristic of law and order.

However, while analyzing economic factors that affect law and order, it is not enough to claim that private property is the economic basis of law and order, and only market economy is able to ensure its continuous improvement. It is unproductive either to relate directly the state of law and order to the existence of different forms of ownership, type and model of an economy. In order to achieve more significant results, it is necessary to decompose socio-economic factors into such components as the degree of openness of an economy, the level of trust and the volume of social capital, the differentiation of the population by the level of income, the index of development of human potential, indicators of upward and downward social mobility, etc., which are related to the issues of law and order functioning [6]. This approach, the analysis of individual aspects of the economic factor, will allow to objectively evaluate and receive a complete picture of the impact of the economy on law and order.

6. The social essence of the state. The political elite's understanding of the social essence of the state affects not only the determination of the priority directions of its activity (functions of the state), but also law and order as a whole. In domestic legal science «the social essence of the state» is defined as its «specific feature, which lies in the ability of the state in the process of its functioning and development to meet the basic needs of the whole society, as well as under certain historical circumstances to create the conditions for satisfying needs and

interests of separate individuals and their communities (national, socio-economic, demographic, religious, etc.)» [4, p. 16].

Admittedly, this factor influences law and order, however, not in such a straightforward way as the ones mentioned earlier. It should be emphasized that the mechanism of mutual influence of the social essence of the state and its form is manifested not only in the plane of the «functions of the state – the structure of the higher bodies of state power», but also in the interaction of the institutional and functional constituent of law and order with the necessity to actually ensure basic social values (human rights, political pluralism, etc.) enshrined in the constitution. For example, the presence of an ombudsman among the public authorities or the prerogatives of the courts to overturn the unlawful decision of any public authority on the grounds of human rights protection prove the validity of this approach.

To summarize, it can be stated that the social essence of the state affects law and order as far as the latter act as a mechanism for its practical implementation.

Conclusions.

Certainly, the aforementioned list of determinants of law and order is not exhaustive. On balance, a number of fundamental conclusions must be drawn.

First, the above factors are not permanent, and they change with the dynamics of social reality. Clarifying their essence at every historical stage in the development of law and order (national, supranational or international) will help to determine the legal nature of this notion. Law and order is a complex phenomenon of legal reality, whose methodology requires the use of an integrated approach in the analysis of the determinants of their functioning and development. Secondly, the constituting of law and order is influenced (with varying degrees of influence) not by individual factors, but by their totality. Reflecting social reality, a set of factors does not mechanically act as the sum of them – under certain conditions, the factors can both strengthen each other's deterministic influence and weaken it through the effect of neutralization. For instance, although in Ukraine the mediocre indicators of economic development and a seventy-year impact of the totalitarian system complicate the process of establishing constitutionalism, the geographical proximity to the European legal space partially offsets these factors.

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THEORETICAL AND PRACTICAL FEATURES OF COMMUNAL PROPERTY DISPOSAL: REGULATORY PRINCIPLES

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Summary. Theoretical and practical features of the management of communal property in accordance with the current legislation of Ukraine are studied. The position on the need to qualitatively expand the content of the existing principles of communal property management was supported. The author is of the opinion that the formation of effective local self-government as part of the goal of the administrative-territorial reform introduced in Ukraine requires, among other things, taking into account the general principles of economic activity, including greater dispositiveness in decision-making by local governments.

Gaps have been identified within the limits set by the current legislation for the management of communally owned property in correlation with approaches to the implementation of business relations in Ukraine.

An analysis of the current legal framework governing the boundaries and procedures for decision-making on the management of communal property revealed a lack of declarative rules that determine the prerequisites and procedures for the transfer of communal property from the common property of territorial communities in Ukraine. Author expressed an opinion that the existing procedure of managing objects of property rights of territorial communities, as an element of powers of the property owner, restrains the action of the principle of material and financial independence of local self-government enshrined in the Constitution of Ukraine.

It has been established that one of the key criteria that should be followed by entities empowered to manage communal property is social orientation in making any organizational and business decisions.

The idea of outsourcing as one of the most pragmatic ways to improve the efficiency of communal property management is supported given its wide range of optimization properties. The author also noted the possibility of delimitation of powers between local governments to manage the common property of territorial communities in the context of contractual relations established on the basis of voluntary cooperation and mutual responsibility.

Keywords: territorial community, local government, communal property, joint communal property

Formulation of the problem. As a result of the administrative-territorial reform initiated in Ukraine in 2015, the question arose about the future fate of the property owned by the disbanded territorial communities. Currently in Ukraine there is no single centralized procedure for the transfer of communal property rights between territorial communities, which would establish the basic principles for the disposal of communal property by subjects of power.

Analysis of recent research and publications. Given the significant number of domestic scientific papers that have studied the problems of effective management of communal property from both public and private law point of view, a significant number of theoretical and practical features related to the procedure for determining the actual and legal fate of objects of communal property law.

The purpose of the article. The aim of the article is to study the legal aspect of relations covering the process of disposal of communal property, as well as to determine the practical features of the implementation of derivative powers of representative local governments as entities acting in the interests of local communities.

Presenting main material. In the context of the introduction of administrative-territorial reform in Ukraine and the formation of new territorial communities, there is a need to resolve issues related to the future fate of property owned by one or more disbanded territorial communities in a way that would meet the interests of local people and the goal of reform, formed in the Concept of reforming local self-government and territorial organization of power in Ukraine as "defining directions, mechanisms and deadlines for effective local self-government and territorial organization of power to create and maintain a full living environment for citizens, providing high quality and affordable public services. institutions of direct democracy, satisfaction of the interests of citizens in all spheres of life in the relevant territory, coordination of the interests of the state and territorial communities" [1].

The basis for achieving the above goals can be the general principles of governance and local government in Ukraine, through the prism of which it is advisa-

ble to determine the principles of building effective property management of territorial communities, in particular, greater dispositiveness for local governments in exercising organizational and administrative powers. In particular, V. Golub, researching the experience of foreign countries, noted that the management of property of territorial communities should be based on the principles of:

- ensuring sufficient material infrastructure of local self-government to create a socially guaranteed standard of living and protect its interests as a consumer of services and products of enterprises and institutions of communal property;
- ensuring the management of communal property complex to increase its efficiency, competitiveness and stable operation [2].

At the same time, O.O. Voloshenko and Ye.O. Didenko, among others, set such areas for improving the efficiency of municipal property management as:

- updating methods of municipal property management: formation of an effective system for monitoring the processes of municipal property development, assessment and minimization of risks in management planning, analysis of the effectiveness of strategic planning of statistical and tax data; use of outsourcing mechanisms - transfer of performance of certain economic functions of local self-government bodies to state (municipal) institutions or private structures with granting them the right to use municipal property; use of real estate as an investment resource, as well as an incentive to attract investors to the economy of the municipality, the provision of state guarantees; land plots, municipal property for the implementation of promising investment projects;
- expanding the social orientation of the process of using municipal property. Creating conditions for strengthening the role of business in solving social problems, the formation of a competitive environment [3].

It should be noted that the outsourcing method is of particular practical value in the above areas, which reduces the workload of representative local governments in terms of implementing the necessary organizational and legal procedures with which current legislation links the movement of real estate in business. This method was implemented, in particular, by Zakarpattia, Lviv and Chernivtsi regional councils through the establishment of separate legal entities - utilities, which were delegated the authority to manage the common property of territorial communities of the respective regions, which in turn eliminated the sessional nature of local government a sign that prevented the timeliness of effective business decisions. At the same time, representative bodies of local self-government, as entities acting in the interests of the owner - the relevant territorial communities, retain the ability to determine the main goals and strategies of communal property management, compliance with which is a key condition for outsourced legal entities.

From the analysis of the above, it follows that one of the key criteria that should be guided by entities that have the authority to dispose of communal

property, is the social orientation in making any organizational and economic decisions.

Currently, the transfer of communal property between territorial communities in Ukraine is carried out in accordance with the Laws of Ukraine “On Local Self-Government in Ukraine” and “On the Transfer of Objects of State and Communal Property”. Article 4 of the Law of Ukraine “On Local Self-Government in Ukraine” defines material and financial independence as one of the basic principles of local self-government [4], which is directly consistent with Article 142 of the Constitution of Ukraine, which states that the material and financial basis of local self-government is , movable and immovable property [5]. However, some norms are contradictory regarding the foundations of local self-government. In particular, paragraph 10 of Section V “Final and Transitional Provisions” of the Law of Ukraine “On Local Self-Government in Ukraine”, paragraph 2 which defines the legal regime of property transferred to communal ownership of regions and districts as common property of territorial communities of villages, towns and cities. oblasts and rayons, as well as the procedure for disposing of such property that falls within the competence of the owner. However, paragraph 3 of the above paragraph establishes the imperative requirement that district and regional councils must make a positive decision on the transfer of objects from the common property of territorial communities to the ownership of territorial communities in which such objects are located and meet only the needs of specific territorial communities [4]. At the same time, among the prerequisites for making decisions on the transfer of common property of territorial communities, the legislator cites only the proposal of a separate territorial community and does not establish a procedure for determining a specific object of communal property as one that meets the needs of one territorial community.

It should be noted that despite the fact that Article 1 of the Law of Ukraine “On Transfer of Objects of State and Municipal Property” allows the application of this law to relations arising from the transfer of state or municipal property of other forms of law property (including communal) by the decision of the representative bodies of local self-government [6], today such a law is insufficiently detailed for its effective use in the relevant field. In particular, the list of communal property that may be subject to gratuitous transfer in accordance with Article 7 of the Law of Ukraine “On Transfer of State and Communal Property” is limited, as it contains information only about critical infrastructure or property, which was used to provide social, medical and educational functions of local government. Such a list is exhaustive and leaves no room for decision on the transfer of other, separately identified immovable property which, as is often the case in practice, has not been used for any purpose or has not been in use for a significant period of time. direct initial appointment is not possible. By establishing a mandatory condition for the use of gratuitously transferred property for its original purpose, the legislator restrains the principle of material and financial independence of

local self-government, as the territorial community that received the property unconditionally undertakes to adhere to the regime of targeted use of property. the transferred property does not meet the interests of the respective community, or the fulfillment of such a condition will involve significant budget expenditures. It is also worth noting the existing possibility of considering relations related to the transfer of communal property in the contractual area, in accordance with the principles of voluntariness, equality, mutual benefit and responsibility established by the Law of Ukraine "On Cooperation of Territorial Communities". This approach to regulation allows to determine the mutual obligations of the transferring entities, which in turn can create the necessary preconditions for the implementation of joint projects for the efficient use of communal property.

Conclusions. Based on the analysis of the theoretical and practical foundations of Ukrainian legislation governing the disposal of communal property, it can be argued that it is necessary to supplement existing regulations with more modern tools that can ensure compliance with the existing procedure for disposing of communal property. principles of communal property management are in line with the latest and most flexible management methods.

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LEGAL FEATURES OF SELF-DEFENSE AS A SUBJECTIVE RIGHT OF A PERSON. TEMPORAL ASPECT.

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Abstract. This article states that the commented special type of protection of rights is assumed not only when the victim has the opportunity to legitimately influence the offender through the use of specific remedies, but also as an alternative to judicial protection if it is more effective, rational and appropriate. For example, such acts of fact are most effective if they physically make it impossible to continue the violation. Therefore, the essence of self-defense is that, despite the possibility to apply to an authorized state body, protection is due to their own actions. It is determined that the definition of "self-defense" in civilization has a richer meaning than the term "necessary defense". This type of law enforcement activity of the holder of the relevant law as self-defense should be based on the general legal principles of reasonableness, good faith in exercising their rights, the principles of non-abuse of rights and compliance with their implementation, including in time. Self-defense is considered legal and allowed in the presence or obvious danger of violation of civil law, the existence of the actual ability to stop (prevent) violations on their own, the adequacy of measures the degree of danger that threatens the bearer of protected subjective rights. That is, when the wrongful encroachment or real threat began. And the relevant measure must stop when the encroachment is over. Otherwise, the illegal use of self-defense methods can be challenged in court. In this case, the statute of limitations must be calculated from the application of the measure.

Key words: self-defense measures, timeliness of protective actions.

The appeal of the entitled person to the competent authorities of the state with a request to protect the violated or disputed right is one of the most effec-

tive means of protection for holders of subjective civil rights. The possibility of law enforcement is part of the subjective substantive right to sue. The purpose of subjective law is that the subject could legally, within the powers granted to him by objective law to carry out actions aimed at meeting their own needs [1, p. 116]. However, judicial protection of violated civil rights is not the only option for exercising the right to protection. Moreover, the state cannot always promptly and in a way acceptable to society to ensure the enforcement of rights. That is why the statutory obligation of the state to exercise the protection of subjective rights of the individual does not preclude the use of other more mobile protection mechanisms. After violating the subjective civil law due to the person, he has the right to choose a judicial or non-judicial (non-jurisdictional) form of protection, the method of protection. This authority is a set of actions of the holder of the violated subjective civil law, aimed at stopping the violation or other protection without recourse to the competent authority. Powers covered by a non-jurisdictional method of legal protection are divided into the right to prompt influence over the offender and self-defense.

There are some studies in civil law related to the implementation of non-jurisdictional methods of protection of violated substantive rights, and in particular, such as self-defense. Thus, the literature seriously discusses the problems of independent influence on the offender in order to stop the encroachment, which has already begun, without recourse to government agencies. At the same time, scientific research practically does not analyze the issue of deadlines for the implementation of these powers. Meanwhile, the line between proper self-defense and abuse is often the timeliness and, consequently, the adequacy of the creditor's actions. It should be noted that the temporal impact on the legal relations currently under consideration remains less studied, and a number of them continue to be controversial. Further analysis is needed, in particular, such as the classification of actions as timely, the proper determination of the legal nature of their focus on cessation of ongoing violations, and the exclusion from preventive measures. This work is aimed at researching this issue.

One of the independent ways of non-jurisdictional protection of the violated subjective right, along with the application of operational measures to influence the violator, is self-defense. It is possible to fully accept the existing thesis that self-defense is a non-state and non-jurisdictional form of protection, carried out by the holder of the violated civil law without recourse to state, administrative, public and other similar protective formations [2, p. 51]. The legal institute of self-defense is not an invention of the Ukrainian legislator. G. Dernburg pointed out that self-defense is the exercise of a certain right, which occurs, despite opposition, by the authorized person's own efforts without seeking help from the authorities [3, p. 342]. The definition of “self-defense” was used in the analysis of the provisions of the Russian Civil Code of 1910, although it had only terminological significance, as it was associated only with the lawful retention of another's

property to motivate the debtor to perform his duty. In the Russian pre-revolutionary legislation as self-defense of civil subjective rights the necessary defense, actions in a state of extreme necessity and allowed arbitrariness were considered [4, p. 184]. In this case, the permitted arbitrariness was defined as the right of self-help in order to restore the legal status [5, p. 185]. Norms on self-defense are currently contained in the civil legislation of Germany, the United States, Great Britain, Kyrgyzstan, Uzbekistan, etc.

Commented special type of protection of rights is assumed when the victim has the opportunity to legitimately influence the offender through the use of specific means of protection. However, O.A. Krasavchikov argued that self-defense is possible only against the existing encroachment in the case when the circumstances of the violation, taking into account the place and time exclude the possibility to seek protection from the jurisdiction [6, p. 98]. It is hardly possible to agree with such conclusions, given, first of all, the provision of the law that a person exercises his right to protection at his own discretion (Article 20 of the CCU). Pre-revolutionary researchers have repeatedly pointed out the independence of such a method of protection of law as self-defense. In particular, MP Pavlov-Silvansky noted that the right to defense is not created by the state, but only sanctioned by it. Recognition of this right is necessary precisely because defense complements the law enforcement activities of the state, which is deprived of the opportunity to fully guarantee citizens from any illegal attack on their rights and benefits [7, p. 949]. Thus, most scholars recognize self-defense as a separate and independent way of legal protection of violated substantive law.

Self-protection of civil rights are actions of the actual nature of the governed entity, aimed at protecting its property rights and interests [8, p. 117]. That is, these are acts of factual order, which physically make it impossible to continue the violation of the law. The authority of a person to self-defense arises at the time of the offense and gives its holder the opportunity to independently as a result of unilateral actions to restore the right or stop its violation. As we can see, similar to measures of operational influence, a positive effect is achieved by committing individual actions aimed at self-defense. In this case, the obligation of the debtor - the infringer of substantive law - is reduced to the need to tolerate these lawful acts. Therefore, here, too, the authority over the active actions of the creditor and the passive behavior of the obligated subject is the content of the relevant protection and legal relationship. This relationship is terminated if the goal of self-defense is achieved: cessation of the violation. When such a consequence has not occurred as a result of self-defense measures, the authorized person has the right to protect their substantive rights in other established ways, including by filing a lawsuit in court [9, p. 35]. Thus, the essence of self-defense is that, despite the possibility of applying to an authorized state body, protection is due to their own actions.

The existence and necessity of self-defense as an autonomous and equal way of exercising protective authority, as a rule, does not cause objections in the

doctrine. It is noted that the inclusion of such a method of legal protection of violated subjective rights in one line with judicial protection tools actually gives legal significance to the consequences of its application and makes it similar to the application of judicial protection [10, p. 30-31]. At the same time, the question of the nature of a person's actions to protect his right, the limits of the right to self-defense is not always unambiguously assessed. As a rule, law enforcement actions committed by the authorized person are identified with the implementation of actions in a state of self-defense. So, are the powers of protection limited to the necessary defenses? To answer this question, it is necessary to explore the scope of possible actions of the holder of the relevant right. Necessary defense as a natural human right to protection from illegal behavior was known in ancient Rome [11, p. 62], it was believed that all laws allow to repel force by force (vim enim vi defendere omnes leges omniague jura permittunt) [12]. According to Art. 36 of the Criminal Code of Ukraine, necessary defense is an act that has the characteristics of a crime, but is not a crime, because committed to protect the rights and interests of the protected person or another person, as well as public interests and state interests from socially dangerous encroachment by inflicting on the offender the damage necessary and sufficient in the circumstances to immediately avert or stop the encroachment, provided that the limits of self-defense have not been exceeded.

If we reduce the understanding of self-defense of civil rights only to cases of necessary defense, it should be concluded that necessary defense can take place only in cases where the offender commits acts with signs of crime, and not any actions that violate civil law. This is how the definition of necessary defense in Art. 1169 of the Civil Code of Ukraine. Therefore, the necessary defense, as one of the ways to protect the rights of the individual and self-defense of civil rights and interests - are different, albeit interrelated. Necessary defense is a way of protection against criminal encroachment and is permissible only in the presence of a real unlawful encroachment on substantive law, if such encroachment falls under the nature of the crime. Actions within the framework of self-defense also have the characteristics of a crime, but due to their compulsion and adequacy of encroachment, they become lawful. Self-defense (including those carried out in a state of self-defense) is a way of material and legal response to a civil offense by committing acts of counteraction to this violation.

Therefore, the definition of self-defense of civil rights as a kind of action in a state of self-defense, although taken into account by private law, obviously, does not fully suit him. Since the civil offense itself does not contain signs of a crime, of course, self-defense measures cannot have such signs either. In other words, a person's self-defense of his property, subjective rights and interests occurs without committing acts that have the characteristics of a crime, otherwise it can not be qualified as self-defense. Therefore, the definition of "self-defense" in civilization has a richer meaning than the term "necessary defense". However, certain

criteria for the legality of the conduct of the entitled person in the application of measures of self-defense of civil rights could be borrowed from the theory and case law concerning self-defense (Resolution of the Plenum of the Supreme Court of Ukraine № 1 of 26 April 2002). defense ").

The scientific literature has stated that in order to recognize actions committed in a state of self-defense, it is necessary that the attack was real, available and illegal. Such a set of circumstances is not always typical for cases of violation of civil law. For example, self-defense can be not only actions for the physical defense of the right that is violated by someone, but also preventive measures to prevent such violation [13, p. 24]. In general, the scope and nature of acts aimed at self-defense of substantive law may differ significantly from those that fall under the qualification of necessary defense. Therefore, it is urgent to determine the criteria for the necessary (possible) self-defense of civil rights, including the deadlines for certain actions. Self-defense as a way of protecting civil rights is the least prone to strict regulation of the law. It is necessary to agree with Ch.N. Azimov that the possibility of using self-defense as a physical influence on the offender does not depend on whether it is provided by specific rules of substantive law and thus determines the legal nature [14, p. 141]. It is only important that such a legal capacity is authorized by our legislation, and the means of its application should not directly contradict regulations [15, p. 156]. The self-defense of the violated subjective right is also not influenced by the rules of procedural law. This is due to the normative assumption of this type of law enforcement activity of the holder of the relevant law, which, in turn, should be based on the general legal principles of reasonableness, good faith in exercising their rights, principles of non-abuse and compliance.

Self-protective actions may be committed by the authorized person not only in case of unlawful actual attack of the violator (for example, seizure of a thing not transferred to fulfill the terms of the contract), but also in case of any other violation of his rights. This is clear. However, regarding the scope of such actions, their duration and remoteness in time from the moment of violation of unanimity among researchers is not observed. Of course, the actual act of the lessee is expedient and reasonable, which through physical obstacles does not allow the lessor to take away the property that is the subject of the lease until the end of the contract. However, it is quite controversial for the same landlord to defend his property rights by physically seizing the property after the end of the lease agreement, if the tenant did not return it voluntarily. The limits of self-defense of civil rights should be developed taking into account the case law, which is still small. This applies to the intensity of protective actions, their social weight, danger to third parties or the stability of civil circulation.

But one thing is for sure: the latest civil law has taken a number of steps to protect those who illegally own someone else's property. In particular, the law contains provisions according to which an illegal bona fide owner may have ad-

vantages over the owner of the property when considering a vindication claim, and Part 3 of Article 344 of the Civil Code of Ukraine deals with the possibility of an illegal owner not of his own volition. Finally, the very restoration of the legal institution of acquisitive prescription is in some way aimed at protecting the person who is not the owner of the property he owns. From this we can logically conclude that the actions of the owner of the actual (physical) order, aimed at returning to him the property, which without proper legal grounds is in other persons, can not be considered self-defense of civil rights, and such actions, regardless of whether it occurred in within the limits of the statute of limitations or acquisitions, or outside these limits, should be considered as inconsistent with applicable law.

Therefore, self-defense should not go beyond the scope and time of the necessary actions required to exercise this protective subjective right. Improper application of self-defense measures can be appealed in court, and the subject of appeal may be both the commission of certain actions and the limits of their implementation. In this case, the term of the claim - the statute of limitations for the relevant requirements should be taken into account not from the moment of the initial violation, but from the application of self-defense measures, taking into account, of course, the time when the applicant became aware. The introduction of this mechanism imposes on law enforcement agencies a serious task to establish in each case the boundaries of the protection law, based on the analysis of the ratio of eliminated and probable damage, the timeliness of response.

Self-defense is considered legal and allowed in the presence or obvious danger of violation of civil law, the existence of the actual ability to stop (prevent) violations on their own, the adequacy of measures the degree of danger that threatens the bearer of protected subjective rights. According to the rule of Art. 1169 of the CCU in the application of such measures in the case of unlawful encroachments, the violator may be harmed. In order to ensure that the specified actions related to the infliction of harm are not qualified as illegal, this norm establishes the relevant normative features: as a result of self-defense against unlawful encroachments, the limits of necessary defense were not exceeded. Therefore, to establish these criteria, we must again turn to the definitions provided for criminal law regulation, as only the latter contain the wording of the necessary defense. Of course, it is necessary to take into account the peculiarities of civil protection of the violated right, in particular the absence of elements of the crime in the most illegal act and the measure to counteract it.

Article 36 of the Criminal Code states that exceeding the limits of necessary defense is intentional infliction of grievous bodily harm to the offender, which clearly does not correspond to the danger of encroachment or the situation of protection. If we extrapolate this definition to civil law relations, which also use the concept of “necessary defense”, then in this context we get the following result: self-defense can occur by harming the offender, and it will be lawful if the

damage was adequate in nature and scope. The latter rule is now understood in civil law as the need for the factor that the damage caused to the offender should be less significant (or at most proportionate) than that caused or could have been caused to the authorized subject.

In our opinion, such an approach is very simplistic. After all, the consequences of two, sometimes different legal content, phenomena that led or should (could) lead to harm, are compared by arithmetic. We believe that a more balanced interpretation of this relationship is used in assessing the legality of self-defense actions in criminal law. Of course, there is also a general rule, according to which, if necessary, the defense is allowed to inflict only the damage that is necessary and sufficient in this particular situation to stop or prevent encroachment. But, as convincingly pointed out in the literature, it is not a question of mechanical equality between the result of defense and the means and nature of encroachment. The use of more serious means or the infliction of more serious harm or infliction of more significant harm than those that could objectively be considered adequate to terminate the violation if the person being defended could not correctly assess the circumstances of the attack and choose the appropriate means of defense [16, p. 58]. At the same time, the infliction of excessive damage obvious to the Commissioner in self-defense may be recognized as exceeding the limits, including the time limits within which he was to act, taking countermeasures.

Conclusions. As we can see, self-defense measures, both defensive and preventive, should be adequate to the extent of possible encroachment on subjective or actual law, should have clear boundaries of its implementation, while being the embodiment of law and order in society. Peculiarities of the offense, its danger to civil law determines the limit of application of self-defense measures. At the same time, in our opinion, the question of the limits of self-defense is not limited to the scope and legality of actual actions. There is another characteristic that determines the limits of self-defense, but not in the actual scope and public danger of the measures, but in the time during which self-defense is possible.

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MUSIC CODE OF FANTASY BY ALLA ROHASHKO

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Abstract. In this article the role of the musical code in the fantasy modeling of A. Rohashko's novels "Autumn Rondo of the Moonlight Night" and "Her Dress" is determined for the first time. It is defined the system of structural elements of the musical genre of rondo in the text of "Autumn Rondo of the Moonlight Night", as well as the originality of recurring fragments in the text of "Her Dress", which imitate the musical-ritual rhythm described in the novel.

The mythopoetics of analysed novels is the mosaic-type, it differs from the mythopoetic organization of most Ukrainian fantasy novels of the first decades of the XXI century, which is based on a linear-mosaic model. A feature of A. Rohashko's style is the formation in her works by variable repetition of elements of the text of the situationally mythological mosaic, which functions within this text and is the author's myth in its internal system. Interpretation of the musical component of A. Rohashko's novels allows to fully comprehend the mythopoetic subtext of her works. Music structurally encodes these novels. This coding of the work is significantly different from cases where the text simply contains descriptions of performance of a piece of music.

Key words: fantasy, music, rhythm, leitmotif, modeling.

The relevance of the research topic. The current literary process is characterized by the rapid spread of the fantasy meta-genre, which also directly stimulates the myth-making search of writers. Literary comparative studies provide optimal objective studies in modern national versions of myth-making. The current stage of development of this discipline is as complex as it is productive: polemical in this context is, the extreme assessment of S. Bassnett (Bassnett, 1993, p. 47), along with D. Damrosch's assertion about present prosperity of the comparative literature (Damrosch, 2020, p. 4)). According to general cultural tendencies and vectors of evolution of the humanities, the spectrum of inter-artistic research is a priority in modern comparative studies.

A special place in the system of such research is given to the development of dialogue between literature and music. This foreshortening is becoming more widespread in the modeling of the modern fantasy world, in particular against the background of its radical transformations of the end of the XX – the beginning of the XXI century, but the theory and practice of this genre modeling is almost not studied. This is all the more paradoxical in the context of the fact, that research attention is focused to the fantasy array today (F. Mendlesohn, C. Manlove, O. Kovtun, etc.); it is the opposite of the previous period, when the meta-genre was not fully perceived by sciences, in particular due to distortion of its theoretical principles (above all, the concept of "escapism").

The role of intermediality in the fantasy modeling of representative fantasy works of the first decades of the XXI century makes a significant scientific interest. In various national literatures can be mentioned here "Jonathan Strange & Mr Norrell" (2004) by S. Clarke, "Seven stones" (2015) by O. Shein and others. A striking example of this phenomenon (that not yet studied) in Ukrainian literature is Alla Rohashko's novels "Autumn Rondo of the Moonlight Night" and "Her Dress". The fantasy chronotope is formed in these works largely due to the dialogue of word and music, the study of which is important for understanding the trends of the modern meta-genre and is relevant in light of the above.

Analysis of recent research and publicatioms. Outlining the historical and theoretical basis for the study of literature in the system of arts, D. Nalyvayko notes a significant gap in the Ukrainian arsenal of that sphere due to lack of attention, especially the problem of "…transcoding literary texts into artistic metalanguage of other arts…" (Hundorova, Syvachenko, 2019, p. 20). Currently, the relevance of this scientific field is emphasized (Finger, 2013, p. 126), as well as the intermediate dominant of comparative literature (Zusman, 2013, c. 119).

It is worth noting that intermediate studies have not yet fully unleashed their potential due to unresolved questions of theoretical and practical nature. So, such research are hampered by the uncertainty of their object (Hundorova, Syvachenko, 2019, p. 39), by the polemical concept of intermediality (Titarenko, 2012, p. 367) and by the elusiveness of "possible intermediate forms and artistic practices" (Hundorova, Syvachenko, 2019, p. 76). That is, practical study in this area is complicated by the lack of unified theory and, accordingly, terminology. At the same time, productive historical and theoretical research belongs here to T. Hundorova (Hundorova, Syvachenko, 2019, p. 37–64), L. Berbenets (Hundorova, Syvachenko, 2019, p. 66–85) and some other scientists. The analysis of specific artistic texts was realized, in particular, by S. Matsenka (Matsenka, 2014), I. Zhodani (Zhodani, 2007), etc.

In artistic practice, we distinguish primarily two groups of works: the works with installed (as a description) musical element, which is able to perform a certain function in relation to the plot development, and also the works, which structurally imitate or written according to the principles of the one or the other

musical genre. Objectively, the texts of the first group are significantly outnumber, and the study of the musical component in them sometimes risks becoming descriptive.

Fantasy array of the beginning of the XXI century in the aspect of the interaction of word and music has not yet been systematically studied. The available publications mainly cover certain aspects of one or the other artistic work in the sense of dialogue of the word and paintings with a strong tendency to analyze texts similar to the works, which we outlined as the first group (exploration of T. Ryazantseva may be indicative here (Ryazantseva, 2016)). Based on the above, we can say that the study of a representative fantasy national work, which is structurally performed on the principle of a particular musical genre, is expedient and promising. And A. Rohashko's novels "Autumn Rondo of the Moonlight Night" (2011) and "Her Dress" (2013).belong such a small artistic array. It should be also emphasized that named works by A. Rohashko have not yet become objects of literary research, being satisfied with unit emotional and evaluative reviews (such as H. Pagutyak (Rohashko, 2015, p. 5–6)).

Formulation of the purpose and tasks of the article. The aim of our article is to determine for the first time the role of the musical code in the fantasy modeling of A. Rohashko's novels "Autumn Rondo of the Moonlight Night" and "Her Dress". This goal involves, in particular, tracing in the text of "Autumn Rondo of the Moonlight Night" the system of structural elements of the musical genre of rondo, as well as the originality of recurring fragments in the text of "Her Dress", which imitate the musical-ritual rhythm described in the novel.

Presentation of the main research material. According to the type of artistic structuring, the novels by A. Rohashko, that we analyze, along with some works by O. Pechorna and M. Smahina, tend in modern Ukrainian fantasy to the Kafkaesque type of myth-making, which is minimally studied in comparison with the dominant type of Joyce myth-making. A feature of A. Rohashko's works is her appeal to the intermediate principle as to a dominant in the formation of a fantasy picture of her artistic world. Music becomes a kind of code for understanding the world of the writer.

In contrast to fantasy texts with descriptive references to music ("Jonathan Strange and Mr. Norrell" by S. Clarke, "Seven Stones" by O. Shein, "Not People, People, Inhumans" by N. Lishchinska, etc.), in "Autumn Rondo of the Moonlight Night" and conceptually close to it "Her Dress" A. Rohashko we for the first time detect an author's way to recode the language of art word to the language of music. Respectively, we define the specifics of the Kafkaesque type of myth-modeling in A. Rohashko's prose.

The rhythmic organization "Autumn Rondo of the Moonlight Night" imitates the named musical form (rondo) in the sense of the number and transformation of repetitive elements. The parabolism of this novel is realized by a special order of placement, repetition and modification in the text of individual phrases

and sentences, which acquire the necessary symbolism and subtext in the given combination. That is, in this case we can talk, in particular, about "…verbal leitmotif, similar to… musical leitmotif" (Makhov, 2005, p. 165), based on the position about the ability of the novel as such to "properly transmit music" (Matsenka, 2014, p. 440). The supporting symbols of the "Autumn Rondo of the Moonlight Night" become occasional mythologemes of the text, acting as mystical pointers throughout the plot. Such original key mythologemes correspond to the four (basic) lexemes that make up the novel's title and are markers of its romantic entourage: autumn is a time of results through a return to memories of the past – one's own and someone else's; rondo – as a associated with a music work and specifically organized form of content realization through systematic and varied repetitions of the main theme and its situational attributes; lunar season – as the most romantic time associated with love and/or mystical experiences (Rohashko, 2015, p. 94), and the night – as a symbol of the mystery that the heroes need to understand. In interaction with the system of symbols of this novel, such a structural principle determines the mythopoetic effect, helps to overcome the linearity of time in the artistic work and brings the events of the novel in a fantasy, polytime, plane.

In the novel, the love story of one tragically lost couple (Sofia and Stepan) is bizarrely reflected in the life of another (Lyubka and Lubomyr), as in reincarnation (Rohashko, 2015, p. 186), which confirms the indestructible power of love. In a beginning of the story – "From the Conversation of Two Angels" – the coordinates of artistic modeling are stated: the trinity He and She and Music form the eternally recurring Autumn Rondo of the moonlight night, which is opposed by "… unknown bizarre force" (Rohashko, 2015, p. 9). This power appears in the form of a mysterious woman in black. The combination of the fates of two couples in love – from the old and the new Lviv – is artistically played, in particular, in the form of bizarre memories, deja vu, premonitions of heroes. The temporal and spatial attributes of both stories resonate, providing recognizability and appropriate systematic reminders in the text, and these stories themselves contain internal logical schemes. For example, Lyubka's meeting with her sweetheart takes place in the spring, and a temporary break – in the fall, the same symbolism is maintained during the meeting and separation of lovers in the old Lviv.

Numerous accentuated images and microimages and related scenes are mentioned (the appearance of a mysterious woman in black who got lost in time, the romantic wingedness of the heroine (Sofia (Rohashko, 2015, p. 18, 44) and Lyubka (Rohashko, 2015, p. 74)), "pale flowers" on the trees (Rohashko, 2015, p. 65, 136) and anxious behavior of crows, spring similar to autumn (Rohashko, 2015, p. 10, 64–65, 104), etc.) in their recurrence form a network of symbolic echoes, that are perceived as a system of mystical signs. That system focuses on the disturbing development of action, suggests the cyclical and relativity of time, promotes retardation and universalization of depicted events and, finally, allows

to qualify the novel as a kind of urban fantasy with a retro slant (against the background of the popular in modern Ukrainian literature "Lviv" text).

"Her Dress" is based on the motives of "soul travels" and genetic memory, and the key (that repeated three times) leitmotif is also a description of the feelings of lovers, graded according to the plot. Like in "Autumn Rondo of the Moonlight Night", the mystical force is plotted here, but if in the first novel it is not named and has a vector of evil, then in "Her Dress" it is associated with the goddess Hecate and favorable to the heroes. Due to the connection between the fates of different generations in "Her Dress", the repetitions are "explained" accordingly and they take place against the background of accentuated ancient musical and ritual rhythm. This rhythm accompanies a "sacred" ancestral dance of a woman. The main means of synthesis of word and music in "Her Dress" is also naturally (Zhodani, 2007, p. 36) a rhythm expressed by different levels of repetition. The generational dialogue is directly demonstrated by the characteristic combination during the development of the plot of the corresponding old and new rhythms: "Suddenly, the memory was torn by bizarre rhythms that knocked by her feet during the magical-sacred rite of her great-grandmother. Those rhythms have crossed another one now… The rhythms were the same!!!" (Rohashko, 2017, p. 81).

Through memory – personal ("Autumn Rondo of the Moonlight Night"), personal and national ("Her Dress") – the fates of the depicted couples of different generations are combined in the novels by A. Rohashko into a single whole, and the formal bridges between these fates are premonitions, remembering characters, etc. In combination with these systems of leitmotifs, the depicted stories acquire a kind of artistic vibration and are mythologized. The symbiosis of myth and music in these A. Rohashko's texts is obviously not accidental, because, according to K. Levi-Strauss, "…music and mythology need time only to deny it" (Levi-Stros, 1999, p. 24). Both novels emphasize the power of love as a harmony that can overcome any obstacles. It is not in vain that the heroine of "Her Dress" emphasizes the feeling of security and freedom during the performance of a pagan dance ("…the body became weightless, began to rise, soar like a bird…" (Rohashko, 2017, p. 121)).

Among the recurring text fragments of "Autumn Rondo of the Moonlight Night", those related to the leading theme are especially important. It is main in the plot the question "What time is it?", which is asked the heroes by a mysterious woman in black (the number of repetitions of this phrase exceeds the symbolic number three), whose age varies: if Sofia sees "a tall beautiful lady in her thirties" (Rohashko, 2015, p. 21) or the "old grandmother in worn faded clothes" (Rohashko, 2015, p. 65), then before Lyubka there is only "a tall old grandmother in her nineties" (Rohashko, 2015, p. 78). "...Some continuous embodiment of evil..." – Lubomyr aptly characterizes this figure (Rohashko, 2015, p. 189). The repeating fragments of the text related to that woman in black are significant in

volume and varied. It is correspond to the principle of rondo; they are a kind of refrain of the novel, probably reflecting the dynamics of the plot.

A similar principle of repetition to imitate another musical genre – mantra is used by V. Hranetska in "Mantra-deception" ("Mantra-omana"), but one of the leading in the context of her book is the motif of "Dreamcatcher" by S. King; that's why "Mantra-Omana" refers to Joyce's type of myth-making. The formal reasons for such similarity between "Autumn Rondo of the Moonlight Night" and "Mantra-deception" are due to the parameters of the "genre" forms chosen by the writers (respectively rondo and mantra); if the combinatorial mythopoetics of V. Hranetska's novel is supplemented by these repetitions, then for A. Rohashko's novels such repetitions are structure-forming. Less obvious are the similarities between "Autumn Rondo of the Moonlight Night" and "Evil" by L. Bahrat, in which individual textual repetitions also form a ring composition and mystical signs make the expected outcome. Moreover, Margo in "Evil", like Lubka, finds a loved one in a dream and goes through similar trials.

The appeal to the "technique of leitmotives" as a feature of the mythology of the novel is noted in the XX century (Meletinskiy, 2012, p. 259), but the peculiarity of using this method by A. Rohashko is that it focuses on the codification of her text according to the canons of musical rondo ("Autumn Rondo of the Moonlight Night") and of abstract ritual dance ("Her Dress"). Fantasy-arranged memories of the Holodomor in Ukraine, installed in the text of "Her Dress", introduce this novel to a meta-genre corpus with interpretation of socio-political national realities, along with "The House in Which Time Has Lost" by V. Hranetska, A. Nikulina and M. Odnorog, "Not People, People, Inhumans" by N. Lishchynska, "Empire 'V'" and "Batman Apollo" by V. Pelevin, "Half-Life" by S. Green and others.

Popular in the Ukrainian urban fantasy of the XXI century the creation (mostly) by heroine a work of art or writing a book about her experiences, has been modified in the "Autumn Rondo of the Moonlight Night": here "Stepan dreamed of writing a book", and Lubomyr will write such a book (Rohashko, 2015, p. 198).

In "Autumn Rondo of the Moonlight Night" the role of vibrants is played by the image of a woman lost in time in black of varying ages, "pale flowers" on trees, and so on. In "Her Dress", the characters feel: "They have changed. It is as if a sharp warm river has spilled inside their souls, which will never flow from there, because a spring is flowing at the bottom…" (Rohashko, 2017, p. 62); in the second case, this experience changes only slightly: "They have changed. They felt so close to each other that it was as if a warm river had flowed inside their souls. and at the bottom the spring…" (Rohashko, 2017, p. 80), and in the finale they were already "looking at each other and feeling how the river that overflowed in their souls even then, before, is now pouring out of its banks…" (Rohashko, 2015, p. 189).

We note also the role of the ambiguity of the metaphors in stereoscopic perception of the "Autumn Rondo of the Moonlight Night", in particular, the im-

portant role of the associative complex of water. As a flow of time and memory, the so-called reincarnation of the story of the first couple in love in the life of the second couple is shown. The tragedy of the death of Sofia and Stepan is plot-related to the historical "dressing" of the Poltva River in stone – in parallel with such a "burial" in nothingness (symbolic bottomlessness of water) it is shown a prohibition of love of Sofia and Stepan. It is with the liquid Stepan's love experiences are associated: "Those meetings were like drops of the life-giving elixir he drank..." (Rohashko, 2015, p. 48); Lyubka is filled with the energy of the beloved "...like nectar, to the very crown..." (Rohashko, 2015, p. 130); in the hours of reunion of Lyubka and Lubomyr "...tenderness, passion and thirst spilled out with sweet exhaustion" (Rohashko, 2015, p. 198), etc.

Like water, music overflows in this novel, the role of this symbol (especially the melodies of F. Chopin, L. van Beethoven) is emphasized in the lives of the characters. F. Chopin, apparently, was chosen by writer as the author of a number of rondos.

If in the first story of the novel Sofia plays the piano, in the second story this is Lubomir; "magic music" "...was an integral part of Lubomyr's life. [...] His heart listened to it carefully and understood. Music shaped his worldview, perception of life" (Rohashko, 2015, p. 111–112). During the long-awaited reunion of the couple of modern Lviv, Lubomyr plays for Lyubka the "Moonlight Sonata" by L. van Beethoven (Rohashko, 2015, p. 173), which is symbolic in the context of the events and atmosphere of the novel. This book also contains the "Symphony of the Old City" of Lviv (Rohashko, 2015, p. 87).

We must say, that in the first group of artistic works we mentioned at the beginning of our article, the role of the musical component is also important, but it is expressed much more simply – inscribed in the text. However, music is still involved in modeling of the fantasy world. For example, in "Jonathan Strange & Mr Norrell" by S. Clarke and "Senen Stones" by O. Shein, the interpretation of the musical component is principled for the objective interpretation of the national, gender and some others imperatives expressed in these novels.

In the named English novel, music is expressed on two levels of artistic organization: direct plot and intentional. Speaking of the first method of installing a musical element, we note: it accompanies all manifestations of the magical, which corresponds to the general provisions of the theory of mythology. First of all, the music is connected with the key figure of the novel – the fairy; he, as a natural spirit, is allowed to address directly (in singing) the nature (Clarke, 2017, p. 604). Combined with a pantheistic motif, the musical component is integral to modeling the fantasy atmosphere of "Jonathan Strange and Mr. Norrell"; in addition, it serves as a means of separation "real" life in alternative England from the parallel world of half-forgotten paganism.

On the other hand, in Shein's Belarusian "Seven Stones", belonging to the subgenre of Christian fantasy, the music marks a turning point in the hero's world-

view, when he is concerned with the Christian faith (Shein, 2015, p. 404). In contrast to the English novel, in Slavic work "heavenly" music is connected and associated exclusively with Christian doctrine, although it is also opposed to the depicted everyday life.

In particular, thanks to music, the novels by S. Clarke and O. Shein emphasize the same (though caused by different reasons) gender bias – the dominance of the masculine principle, which is at odds with the system of gender intentions, such as in modern Ukrainian or American fantasy.

Conclusion. The mythopoetics of analysed novels by A. Rohashko is the mosaic-type, it differs from the mythopoetic organization of most Ukrainian fantasy novels of the first decades of the XXI century, which is based on a linear-mosaic model and where the "formula" of the plot prevails (for example, "Evil" by L. Bahrat or "Mantra- deception" by V. Hranetska). A specific feature of A. Rohashko's style is the formation in her artistic works by variable repetition of elements of the text of the situationally mythological (author's) mosaic, which functions within this text and is the author's myth exclusively in its internal system. The musical component of A. Rohashko's novels corresponds to the structural features of the musical genres indicated by us; its objective interpretation allows us to fully comprehend the mythopoetic subtext of the works. That is, it can be argued that music structurally encodes A. Rohashko's novels, and they contain a special musical code. This coding of the work is significantly different from cases where the text simply contains descriptions of performance of a piece of music.

Further study of the internal dialogue of words and music in Ukrainian and world fantasy is relevant and promising, especially in the comparative aspect. Our article can be part of such a study, be expanded and supplemented. Optimization of the study of this area can be reached due clarify the terminological apparatus of the actual meta-genre of fantasy, and of the intermediality field.

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EDUCATIONAL PROCESSES AS THE BASIS FOR THE FORMATION OF LEGAL CONSCIOUSNESS IN THE FIRST CZECHOSLOVAK REPUBLIC (1918-1938).

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Abstract. The purpose of the paper is to clarify the place and role of religious and secular education in the process of intercultural dialogue in the formation of the legal culture of the transitional period in the state, in particular the period of activity of the First Czechoslovak Republic. Methodological basis - the basis of the methodology of the research is the general theoretical methods, principles and approaches to the definition of the constitutionally-legal consolidation of the state and church status in the First Czechoslovak Republic. In particular, the formal-logical method was used to study the conceptual apparatus defined by the article's theme. Functional and comparative legal methods are used for comparative analysis of legal culture and legal consciousness in the First Czechoslovak Republic. In the process of studying legal culture and legal awareness as an element of culture in the state a structural and functional method was used. The most important is the historical-retrospective method. This method has allowed to specify the previously mentioned methodological principle of historicism and to know the laws of the genesis of legal culture and legal consciousness in the First Czechoslovak Republic. Scientific novelty consists in the systematic analysis of the factors that influence the cultural and educational process in the formation of a citizens' sense of justice. At the same time, it was first established that the main factor of the historical and cultural process in the First Czechoslovak Republic, the formation of legal culture and legal consciousness was Catholicism. It was he who also influenced the constitutionally-legal consolidation of the right to education and upbringing, a change in the educational ideal took place: the spiritual life of man became the subject of in-depth study and acquired the highest priority of

religious significance. Conclusions. In the First Czechoslovak Republic, the cultural-educational process served as a paradigm of intercultural dialogue for people of different ethnic, linguistic and religious backgrounds. The role of education in this context is defined as a strategic resource for improving the well-being of individuals in the formation of tolerance and mutual respect in the process of observance of fundamental rights and freedoms of citizens. Intercultural dialogue, in this case, is a combination of components, in particular spiritual and secular education, in shaping a person's respect for language, religion, culture, and world outlook.

Key words: religious education, secular education, intercultural dialogue, cultural and educational process, legal culture.

Today, scientists are forced to recognize the fact that from ancient times the education and upbringing of the younger generation was and is a sphere of social life, where the interests of the state and the church intersect [1, p. 49]. In building modern church-state relations, believers and non-believers are concerned with the existence, on the one hand, of forms of optimal interaction between secular and religious education and upbringing, on the other - acceptable limits of religious education on the educational process in secular schools. These problems were relevant in the period of the First Czechoslovak Republic [2, p. 86].

Analysis of recent research. The problem raised by the author has not yet been the subject of a separate study in both domestic and foreign historiography. Analyzing scientific works on this topic, we note that only a small number of scientists have studied its individual aspects in the context of the study of broader thematic blocks. Thus, the problem is partially revealed in the works of scholars who studied the religious policy of Czechoslovakia in the interwar period and its impact on state-church relations. In particular, these issues were considered by Czech and Slovak scientists I. Byte, F. Vashecka, I. Vanat, T. Masaryk, M. Pehr, J. Shebek, M. Schmid, M. Sidor, K. Pavlik, L. Skula, M. Chaplikova, as well as Ukrainian - M. Boldizhar, V. Bondarenko, Y. Bisaga, V. Bed, V. Burega, A. Voloshin, Y. Gadzhega, A. Gain, V. Gaeva, M. Delegan, O. Dekhtereva , V. Yelensky, L. Kompaniets, V. Lubsky, M. Onishchenko, M. Palinchak, E. Sabov, G. Sergienko, O. Stoyka, S. Fentsyk, P. Yarotsky, L. Yarmol.

Presenting main material. Religious education is, first of all, an activity carried out by professionally trained persons (clergy, religious teachers), which is designed to transmit religious doctrines, religious experience, liturgical practice, as well as to train teachers for the system of religious education. Among the most important functions inherent in religious education, we can highlight the following: 1) the natural reproduction of religiosity; 2) involvement through religious education and education of new believers in a particular denomination; 3) socialization of the believer's personality throughout his life; formation and development of spiritual and moral culture of believers, influence on the culture of

non-religious people, first of all - their moral and patriotic positions; 4) improvement of specialized religious education, which would be based on the positive experience of the past and modern scientific and methodological achievements, in order to prepare worthy candidates for pastoral ministry [3, p. 80].

Religious education is one of the fundamental principles of religious freedom. The right to teach religion in Western European countries includes the right to establish private schools controlled by one church or another, and the right to study religion in public schools. It should be noted that the right to teach religion is enshrined in the constitutions of many European countries (Italy, Spain, Germany, Poland, etc.), as well as the right to establish private schools. The freedom to teach religion is confirmed by Art. 2 of the First Protocol to the European Convention on Human Rights [2, p. 87].

T. Aquinas, a famous theologian and philosopher, notes that man achieves freedom as he makes free choice, perceives values that he has learned to define. Constantly confronted with situations of specific choice between good and evil develops the habit of moving towards a certain good. The habit of giving preference to good develops virtue in a person, as a result of which the choice becomes easy, creative and satisfying. If this process is joined by an act of faith that provides support and enlightenment by God's grace, then creative activity becomes an act of virtue blessed by God. Thus, according to T. Aquinas, the habit of virtue develops freedom of choice and inner freedom of a mature person [4, p. 93].

Based on this, the process of intercultural dialogue in a situation of interaction of people with different ethnic, linguistic, religious and cultural heritage is quite appropriate. This important determinant is a strategic resource in ensuring the national interests of citizens in the transition period, and strengthening the authority of the state as a whole.

It should be noted that in Ukraine the scale of discussions on this issue is due to the following factors:

1) Ukrainian society in the period of democratic transformations has not avoided the negative phenomena associated with the devaluation of individual, family and social morality based on universal values. Moral values such as justice, mutual respect, honesty, solidarity, decency, dignity often give way to inherently inhumane mass culture. Under such conditions, religious institutions tend to act as correlators of the situation, referring to the fact that they are the bearers of spirituality, to which they are ready to involve Ukrainians through the education system;

2) churches and denominations throughout the history of their existence have always been engaged in pedagogical activities. The Holy Dormition Kyiv-Pechersk and Pochaiv Lavra, Vydubychi Monastery, Lviv and Kyiv Orthodox Brotherhoods (since its founding) were distinguished not only by their religious activities, but also by significant cultural, educational centers, and carriers of intellectual potential. At their initiative, well-known schools, colleges, and academies (Os-

troh Academy, Kyiv-Mohyla Academy) were founded and functioned throughout Europe at that time. Based on historical tradition, religious organizations at the beginning of the third millennium want to launch a full-scale educational work;

3) Ukraine's European choice imposes a number of specific requirements. One of them is the establishment of the principle of worldview pluralism. In fact, we are talking about the implementation in practice of the requirements of an open society. In a democratic society, denominations, like other civil society actors, have the right to participate in the development of the education system in order to educate the spiritually mature generation. Thus, the process of religious awakening continues in Ukraine: the institutional network of denominations is expanding, the authority of churches in society is growing, their international activities are intensifying, which strengthens parents' desire to raise their children according to their religious beliefs. Therefore, the legal field for the implementation of the prospects of such education needs serious refinement [5, p. 132].

Examining the issues of cultural and educational processes in the First Czechoslovak Republic, it should be noted that the factor of historical and cultural process was Catholicism. He also influenced education and upbringing. There was a change in the educational ideal: the spiritual life of man became the subject of deep study and acquired paramount religious significance. The leading place in the national and cultural life of the Ukrainians of Transcarpathia was occupied by the Greek Catholic Church. The school became a valuable treasure of the Greek Catholic Church. Emphasizing the merits of O. Dukhnovych, O. Pavlovych, I. Silvai, M. Luchkai and other conscious Greek Catholic priests in the development of national culture, including schools, the church often acted as a defender of national culture [6, p. 62] According to Law № 11/1918, Slovak laws and regulations in school education from 1868 and 1891 applied to Slovakia. According to the original levels, the school structure was divided into state, municipal, church and private. In particular, church schools accounted for almost 80% of all primary schools and formed the majority of general public primary education in the former Austro-Hungarian Empire. The most noticeable in the region were the successes in the development of national education [7, p. 575]. This contributed to the economic and cultural development of society.

Today, the issue of state and legal regulation of the formation of national education in the Czechoslovak Republic in the interwar period (1919-1938) remains poorly studied. The cultural heritage preserved from the Austro-Hungarian Empire in Transcarpathia proved to be difficult. The issue of clergy lessons in schools and the status of theological faculties caused major problems. Immediately after November 25, 1918, the Ministry of Education issued an order introducing voluntary participation of students in church lessons. However, some school principals have interpreted this order in their own way and have banned pre-school prayer in many schools. Such actions, which restricted church (spiritual) freedom, caused interpellations of people's representatives in parliament. According to the

law № 226 of July 13, 1922. children were exempted from religious lessons in schools at the written request of their parents [8, p. 535].

The next component in the cultural and educational process is language. In this context, education has not the least role, because language is usually an obstacle to intercultural dialogue. Using an intercultural approach, the value of languages used by different national groups is determined. The importance of learning a language is to enrich one's knowledge by analyzing the social and cultural identity of others, as well as to be able to relate to the citizens of the country where the person is for a certain period of time.

It should be noted that during the First Czechoslovak Republic this obstacle did occur, as two important trends were evident at the lower level of education: the steady decline of church schools and the significant growth of Czech-speaking ones. Researchers often call this process the "Czechization" of education and point out that these actions were a deliberate and deliberate step by the Czechoslovak government. This was especially influenced by the decision of the Supreme Administrative Court of the Czechoslovak Republic of June 28, 1925 to recognize the Ukrainian language "foreign" to the population of Transcarpathia, after which the attack on Ukrainian schools began [9, p. 51]. As for church-parish schools, the situation was the same, from 1922 to 1938 their number decreased significantly, while the number of Czech-speaking ones increased. Schools were managed primarily by the state.

At that time, the law № 38 of 1868 continued to apply in Transcarpathia, paragraph 10 of which allowed schools, except for the state, to be maintained by rural communities, churches, and individuals. However, despite accusations of excessive "Czechization", the Czechoslovak government allocated a lot of money for the construction and repair of schools, so in the first decade for the repair, modernization and construction of new (built 52 schools) Czechoslovak government allocated more than 41 million crowns [4, with. 50]. According to the source of funding, schools were divided into public, church (Roman Catholic, Greek Catholic, Evangelical, Jewish), public and private. Everyone went to "their" schools on religious or national grounds. In addition to public (primary) schools, the education system of the Czechoslovak period (1919-1938) included secondary schools (gymnasiums, seminaries, schools), a trade academy, boarding schools, county schools, children's (preschool) institutions, specialized educational courses and civic. incomplete secondary) schools. The Czechoslovak government did not stay away from the debate between Ukrainophile, Russophile and Ruthenian orientations. He provided support to each of them in turn, stopping in the mid-30's of the twentieth century. on the latter, as the first two posed a threat to the territorial integrity of Czechoslovakia. Under this policy, the political and cultural development of Transcarpathia took place mainly within the boundaries between Czechoslovak centralism and local autonomy [10, p.28]. A whole system of government was created for the management of parish schools. The school church apparatus

performed its functions independently. The Minister of Education had the right only to general supervision of church schools. The Greek Catholic Diocese of Mukachevo had a school department, which was to ensure that religion was taught at the appropriate level in church schools. In 1922, the so-called "Small School Law" № 226 was adopted, the main tasks of which were carried out by the Ministry of Education and Public Education of the Czechoslovak Republic. Education and schooling in Transcarpathia was managed by the Department of Schools and Public Education with its center in Uzhhorod. The Small School Act introduced compulsory eight-year education, and children of non-denominational parents or children whose parents were in non-state denominations between the ages of 7 and 14 were exempted from compulsory study, subject to their written application. But this law was valid only in the Czech Republic and Moravia. Civic education lessons have been introduced as a new compulsory subject. However, if the educational process in the primary grades was gradually developing, then in the territory of Subcarpathian Russia after the rule of the Austro-Hungarian government remained a significant part of the illiterate adult population. To address this gap, the Czechoslovak government has introduced so-called adult courses for the region.

Considering the period during which Transcarpathia was part of the First Czechoslovak Republic and analyzing the educational process of 1919-1938, we can conclude that the Government of the Czechoslovak Republic provided favorable conditions for training of different nationalities of Subcarpathian Russia. In its policy, the government sought to ensure secular education by reducing the number of church schools and increasing public schools. However, a significant shortcoming of education was that in Subcarpathian Russia in the period of the 1920s and 1930s, education developed under the influence of the Russophile trend, which was intensified by Russian emigrants living in Transcarpathia. As for religious education, it should be said that the Orthodox lagged behind Catholics and Greek Catholics, as most schools where they had the opportunity to teach religion were subordinated to them [14, p. 27]. As for the cultural and educational sphere in general, the cooperation between the Czechoslovak authorities and the leaders of Subcarpathian Russia developed more dynamically. At least in this area there were far fewer contradictions than in the political sphere. The first steps of the new government were aimed at ensuring the loyalty of the population by ensuring its rights and communication. First of all, it is a language problem. Prior to that, the Hungarian language was officially used, but the Czechoslovak authorities refused it in principle. As for local dialects, there were many, so the problem of language became acute on December 4, 1919. The Ministry of Education and National Education of Subcarpathian Russia convened a "special meeting of members of the Czech Academy of Sciences. These recommendations are reduced to the following provisions: 1) to decide on the literary language of a nation or tribe belongs primarily to its members; 2) to create an artificially new literary language for the Slavic population of Carpathian

Russia would be not only very difficult, but also quite dubious, and from a political point of view - an undesirable task; 3) given that the local "Ruthenian" dialect in Carpathian Russia is definitely a dialect of Ukrainian ("Little Russian"), it is necessary to recognize the literary language for the local population Ukrainian ("Little Russian") literary language used by its closest neighbors and fellow tribesmen. , ie "Galician Ukrainian language"; 4) in order for the inhabitants of Carpathian Russia not to lose consciousness of the fact that, like the Ukrainians, they belong to the great Russian people, it is recommended to study Russian in secondary schools as well; 5) for scientific and political reasons, it is necessary that specialists analyze and evaluate literary attempts to create a separate literary language for the Carpatho-Russian people [13, p. 27]. Taking into account the recommendations of specialists, the new Minister of Education K. Croft sent to the command of Subcarpathian Russia the recommendations of scientists. This gave some scholars the opportunity to talk about the pro-Ukrainian national policy of Czechoslovakia [14, p. 211]. However, in our opinion, the situation was not so clear-cut, as the language recommendations were quite contradictory. It was recommended to introduce the Ukrainian literary language, but with an etymological spelling that has not been used anywhere, and at the same time it was proposed to evaluate attempts to create a separate literary language - that is, in principle, the possibility of such a language was allowed. The local population was recognized as part of the Ukrainian nation, but, as shown in the recommendations, "Ukrainians were part of the great Russian people" [15, p. 91]. According to Ladjun Yu.Yu. this situation illustrates the emergence of three possible vectors of Czechoslovak national policy: 1) focus on supporting the Ukrainian national and cultural vector; 2) focus on supporting the "all-Russian" (Russophile) national-cultural vector; 3) an attempt to form a separate identity in the population, not related to the first two vectors and focused on kinship and commonwealth with the Czechs and Slovaks [15, p. 92].

Conclusions. Thus, as we see in the First Czechoslovak Republic, the educational and cultural process served as a paradigm of intercultural dialogue of people with different ethnic, linguistic and religious backgrounds. The role of education in this context is defined as a strategic resource for improving the well-being of individuals in the formation of tolerance and mutual respect in the process of respect for fundamental rights and freedoms of citizens. Intercultural dialogue, in this case, is a set of components, including spiritual and secular education, in the formation of human respect for the language, religion, culture and worldview of others.

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RESPONSIBILITIES OF HUMANS AND CITIZENS IN THE EUROPEAN UNION: SOURCES, PRINCIPLES AND THEIR IMPLEMENTATION BY EU MEMBER STATES

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The article examines the legal regulation of human and civil responsibilities in the European Union. The works of constitutional scholars, scholars of EU law, sources of European Union law are analyzed. It is emphasized that the law of the European Union is based on the constitutional traditions of the EU member states and the EU law has an impact on the constitutional and legal regulation of human and civil responsibilities in the member states of the European Union. The range of sources that regulate the responsibilities of man and citizen in the European Union: 1) the founding treaties; 2) international (additional) EU agreements on human and civil rights and responsibilities with international organizations, states; 3) regulations, directives, recommendations and conclusions on human and civil rights and responsibilities issued by the Council of Ministers and the European Commission; 4) decisions, conclusions of the Court of Justice of the EU, principles developed by it. The range of sources of European Union law on the responsibilities of man and citizen in the European Union, which are mandatory for implementation by EU member states in national legislation: regulations, directives, decisions of the Council of Ministers and the European Commission. The features of the regulations on the rights and obligations of man and citizen of the European Union, the directive, the decision of the Council of Ministers and the European Commission have been established. Attention is drawn to the fact that if the regulations do not establish general rules - it can be reclassified as a “hidden decision”. It is argued that the sources of European Union law include those agreements on human rights and obligations with international organizations, agreements with other states, which: 1) concluded by the European Union as an independent subject of law; 2) ratified

by all member states of the European Union. It is emphasized that those agreements on human and civil rights and obligations concluded by individual member states of the European Union with states that are not members of the European Union are recognized as sources of European Union law in exceptional cases.

Key words: constitutional traditions, responsibilities of man and citizen, European Union, sources of EU law, principles of EU law, national legislation, implementation.

Formulation of the problem. The urgency of the issue of sources of legal regulation of human and civil responsibilities in the European Union is due to both the theoretical inefficiency of this issue and the practical necessity. Yes, the responsibilities of man and citizen are at the heart of an individual's legal status, along with his or her rights. It is well known that EU law is based on the constitutional traditions of the EU member states, including the issue of legal regulation of human and civil responsibilities in the European Union. At the same time, EU law influences the constitutional and legal regulation of human and civil responsibilities in the EU member states, as the primary EU law is binding on its member states and must be implemented in their national legislation. In this regard, there are current theoretical issues such as the range of responsibilities of EU citizens and third-country nationals, the relationship between the rights of EU citizens and citizens of EU member states, the nature of EU citizenship and the nature of citizenship, human responsibilities in multiple citizenship, in particular with regard to military service or in the case of declaring mobilization in one of the EU member states, the question of whether EU soft law should be implemented in the legislation of EU member states, etc.

For Ukraine, the theoretical and practical significance of the study of the legal regulation of human and civil responsibilities in the European Union is due to the consolidation of the foreign policy vector for full membership in the EU. This, in turn, necessitates not only the adaptation of Ukrainian legislation to EU law on human and citizen responsibilities, but also a change in the scientific paradigm of citizenship, human and citizen responsibilities.

Analysis of recent research and publications. The issue of legal regulation of human and civil rights and responsibilities in the European Union has been studied in the works of the following constitutional scholars: D. Belov [7], Y. Bisaga [3; 8], O. Vasilchenko [5], V. Volkov [9; 10], L. Deshko [4; 11; 12], R. Petrov [16] and others, the issue of human responsibilities and the responsibilities of the state - in the works of Y. Bisaga [3], S. Buletsa [1; 2], L. Deshko [11], V. Zaborovsky [2], O. Radyshevskaya [4] and others. At the same time, the question of the sources of EU law that regulate public relations arising from the performance of human and civil responsibilities in the European Union has not been comprehensively studied by scholars.

The purpose of this article is to identify the range of sources that regulate the responsibilities of man and citizen in the European Union, as well as the range of sources whose rules are mandatory for implementation by EU member states.

Presenting main material. As O. Sovgiria and N. Shuklina notes, "in constitutional law, the source of law is a normative act that contains constitutional and legal norms. Sometimes this concept is called a form of law, but the concept of "source of law" is more convenient to use and traditional for world jurisprudence ... "[17, p. 28]. Issues of sources of EU law are of great practical and scientific interest. "Hence, as L. Tymchenko and V. Kononenko emphasize, the need for unified approaches in solving them is clear. In paragraph 1 of Art. Article 38 of the Charter of the International Court of Justice establishes a general provision on sources of international law: "A court which is obliged to settle disputes referred to it under international law shall apply: a) b) international custom as evidence of common practice recognized as a rule of law, c) general principles of law recognized by civilized nations, d) subject to Article 59, judgments and doctrines of the most qualified public law professionals different nations as an aid to the determination of legal norms "[18]. It can be used as a basis for considering the sources of EU law, which contain legal rules governing the relationship between a person and a citizen of the EU and the EU in connection with the performance of their obligations under EU law.

R. Petrov identifies the following sources of EU law: 1) founding treaties (so-called "primary legislation"); 2) international (additional) agreements with international organizations and other countries; 3) regulations, directives, recommendations and conclusions (the so-called "secondary legislation"; 4) decisions, conclusions of the ECP, as well as general principles developed by the ECP [16, p. 30].

The founding treaties establish the foundations of the EU legal order and are the primary sources of EU law. Thus, the issue of the responsibilities of a person and an EU citizen is addressed in Art. 20, item 1 of Art. 157 of the Treaty on the Functioning of the EU [14]. Also, the responsibilities of a person and a citizen of the EU are referred to in Part 2 of Art. 18 of Part 2 "Citizenship of the Union and non-discrimination" of the Consolidated Version of the Treaty on the Functioning of the European Union [15], Preamble and Art. 1, 14, 32 of the EU Charter of Fundamental Rights [19], which after the entry into force of the Lisbon Treaty in 2009 [12] came into force with the same legal force as the EU treaties. If the rules governing the relationship between the EU and a person and / or EU citizen in the performance of their duties, the primary sources of EU law contradict the rules of law contained in international ("additional") agreements, the predominant the norms of the institutions of contracts have force.

In addition to primary sources of EU law, EU sources of law include treaties with international organizations as well as treaties with other countries. It is well known that they are an integral part of EU law. At the same time, the full sources of EU law are only agreements on the rights and obligations of man and citizen of the EU, which: 1) concluded by the EU as an independent subject of law; 2) ratified by all EU member states. Agreements on human and civil rights and obligations concluded by individual EU Member States with non-EU countries are recognized as sources of EU law in exceptional cases.

Sources of EU law also include secondary EU legislation. The Council of Ministers and the European Commission have the power to issue on the rights and responsibilities of the EU citizen and citizen: 1) regulations; 2) directives; 3) provide recommendations; 4) provide conclusions. Regulations on human and civil rights and responsibilities of the EU have the following features: 1) issuing entities - the Council of Ministers, the European Commission; 2) establish general rules; 3) are uniformly applied in all EU member states; 4) are mandatory in their entirety. R. Petrov rightly emphasizes that "this means that they have legal force without further implementation in the national legislation of the Member States, and individuals can refer to them in national courts, defending their subjective rights" [16, p. 30]. Thus, regulations on the rights and responsibilities of the EU citizen and citizen have legal force without their implementation in the national legislation of the EU Member States.

The EU directives on human and civil rights and responsibilities are binding on the end result they (the directives) are intended to achieve, as well as on the Member States to which these directives are addressed. EU Member States / EU Member States are given a choice: forms of implementation (legislation; administrative regulations); methods of implementation. In order to take legal effect, EU directives on human and civil rights and responsibilities require implementation into the national law of the EU Member States. However, there are exceptions to this rule: under certain conditions, directives can have direct effect.

Decisions of the Council of Ministers and the European Commission on human and civil rights and responsibilities of the EU are individual legal acts addressed to a specific person (s). The circle of these persons is: individuals; entities; state. Concerning the addressee Decisions on the rights and responsibilities of the EU citizen and citizen are binding in their entirety and do not require further implementation by the State (s) to which they are addressed. Recommendations and conclusions on the rights and responsibilities of the individual and the citizen of the EU are for guidance only - they are not binding. At the same time, as rightly emphasized by R. Petrov and L. Deshko, Y. Bisaga in their research - they are not completely devoid of legal significance [16, p. 30; 3; 6] "Judges of national courts should take these recommendations into account when considering cases, especially if they facilitate the interpretation of national or Community law. … In fact, the formal definition of an act as a regulation, directive or decision can often be misleading. … Regulations that do not establish general rules can be reclassified as a "hidden decision", says R. Petrov [16, p. 30].

The Court's judgments in so far as the provisions of the EU's founding treaties, its conclusions and the general principles developed are also sources of EU law. Domestic scholars rightly emphasize that the general principles of EU law are the general principles of international law, general legal principles shared by all EU member states [16, p. 30].

Conclusions.

1. The range of sources that regulate the responsibilities of man and citizen in the European Union: 1) the founding treaties; 2) international (additional) EU agreements on human and civil rights and responsibilities with international organizations and states; 3) regulations, directives, recommendations and conclusions on human and civil rights and responsibilities issued by the Council of Ministers and the European Commission; 4) decisions, conclusions of the Court of Justice of the EU, principles developed by it.

2. The range of EU sources of human and civil law in the European Union that are mandatory for implementation by EU member states in national legislation: regulations, directives, decisions of the Council of Ministers and the European Commission. Regulations on human and civil rights and responsibilities of the EU have the following features: 1) issuing entities - the Council of Ministers, the European Commission; 2) establish general rules; 3) are uniformly applied in all EU member states; 4) are binding in their entirety - have legal force without their implementation in the national legislation of the EU Member States. The features of the directive are: 1) binding on the end result it is to achieve; 2) the binding nature of the directive in respect of those EU Member States to which it is addressed; 3) the addressee has the opportunity to choose the forms of implementation (legislation; administrative regulations); implementation methods; 4) need to be implemented in the national legislation of the EU member states, but under certain conditions may have direct effect. Decisions of the Council of Ministers and the European Commission on human and civil rights and responsibilities of the EU have the following features: 1) are individual legal acts; 2) the circle of addressees is: individuals; entities; state; 3) are obligatory in their entirety, do not require further implementation by the state / states to which they are addressed.

3. It is argued that the range of sources of EU law includes those agreements on human rights and obligations with international organizations, agreements with other states, which: 1) concluded by the EU as an independent legal entity; 2) ratified by all EU member states. It is emphasized that those agreements on human and civil rights and obligations concluded by individual EU member states with non-EU states are recognized as sources of EU law in exceptional cases.

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THE HISTORY OF THE FORMATION OF SOCIOLOGY OF LAW OF THE CZECH REPUBLIC

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Abstract. The scientific article is devoted to the discovery and analysis of the historical preconditions for the occurrence and formation of the Czech School of Sociology of Law. It explores basic sociological and legal theories and conceptions of T. Masaryk, E. Khalupny, I.A. Blahy , V. Kubesh and others, works of which have historical and legal significance for the development of the sociology of law as a science and the establishment of its independent status.

Key words: Sociology, Sociology of Law, Czech Republic, History of Sociology of Law of the Czech Republic, Sociological and Legal Conceptions, T. Masaryk, I.A. Blaha, E. Khalupny, V. Kubesh.

Introduction.

Investigation of the basic social and legal theories in the territory of the Czech Republic, from the nineteenth century to the present has historical and legal significance for the development of the sociology of law as a science and

asserting its independent status. Social factors and social conditionality of rights have been the subject of research by many Czech scholars in the field of general sociology and sociology of law.

At the same time, the *aim of the work* is to study the historical and legal significance for the development of the sociology of law as a science and asserting its independent status.

The *methodological basis of the study* was the worldview dialectical, general scientific and specific scientific methods of cognition of the History of the Formation of Sociology of Law of the Czech Republic.

Presentation of research results.

Tomash Masaryk (1850-1937) is considered to be the founder of Czech sociology. He was a Czechoslovak statesman, philosopher, sociologist and educator, the first president of the Czechoslovak Republic. His theoretical work was devoted to a deep analysis and resolution of issues of contemporary society at the time: the problems of democracy and humanism, justice, morality and politics, the rights of nations to self-determination, the role and place of «small» peoples and states in the world. Well-known works of the scientist in the field of sociology are «Sketch of Sociological Analysis» (1886), «The Hand of Sociology», «The Essence and The Method» (1900-1901), «Natural and Historical Law» (1900) and others.

Masaryk defines sociology as «the science of the organization and development of human society, its natural consensus and conditions of existence, the laws of social movement and historical development». Two factors are important to society - statics and dynamics. Static means are forces that support society (the impact of nature on society, family circumstances, etc.). Dynamics also means the progress and development of social actors (law, religion, morality, science). The scientist emphasizes social statics and emphasizes that only those who deny the existence of laws in public life are against sociology. In his writings Masaryk often refers to the concept of «nature», which he understands as a law that is part of all key concepts. Politics, too, is a natural phenomenon, so it must set goals that will be natural to both people and society. The components of «human nature» are the mind and the will: society consists of gifted by nature, so social progress depends on conditional development, will and mood, harmony of theoretical and practical aspects of society. All these elements collectively form the so-called order, and social progress can only occur on the basis of this order. [9, p. 58-59]

Masaryk was a supporter of sociological critical realism, which is based on the assertion that there is no pre-formed knowledge about the nature of social reality in advance. Only patience, systematic observation and critical analysis are prerequisites for understanding and perceiving social reality. According to the scientist, «justice» provides order in a state where every citizen has a specific task, by virtue of which he takes his position in society. Masaryk's progressive views have had a significant impact on both Czech and Slovak sociologists. He was the

founder of the first sociological seminar in Czechoslovakia, and his scientific work has left a significant contribution to the development of a number of sociological and political theories of Europe and the USA.

The sociological and legal concepts of Masaryk were continued by **Emmanuel Khalupny** (1879-1958). He studied the relationship between sociology, philosophy and law, sought to create accurate sociological terminology and sociological methodology. He was a co-founder of the Institute of Sociology (1942), co-founder, and later chairman of the Sociological Society of Masaryk (1925), a member and vice-president of the International Institute of Sociology in Paris (1934-1935). Khalupny is the author of such works as «Sociology» (9 volumes), «The Fates of Czech Sociology» (1918), «Sociology and Philosophy of Rights and Morals» (1929), and «Sociology for All» (1948).

The studies of the scientist in the field of sociology of law are based on Austrian and Czechoslovak law, laws and other normative documents, legal logic and practice, in particular, and case law, which make it possible to study directly the facts of life and circumstances. He emphasized that anyone who wants to know the right must «live, feel, suffer, and create».

Khalupny saw the distinction between law and morality, which is merely a form of objectification of law, paid considerable attention to trade-offs in the legal sphere, which depend on the formal nature of law and are formed directly in the process of becoming law under the influence of political processes or in various conflict situations.

The above provisions were reflected in the work of Halupna's Sociology and Philosophy of Law and Morality, which is the first monographic work of Czech sociology of law and includes more than 196 examples of civil, criminal and administrative law jurisprudence. [2]

The scientist studied the discrepancy between law and morality, and between legal justice and moral aspirations. Abuses generated by the right of the dominant class show how the law achieves formal, not real, perfect justice. Moral principles can only be applied by law if the law allows it.

There is no strong link between law and morality and it is necessary to distinguish between the two categories, since some elements of law can have a purely unethical, immoral meaning. The right can be moral only when the law directly refers to morality, or turns to «justice», in to the synthesis of moral and legal elements. [1, p. 63]

Khalupny developed the theory of the absence of purely legal phenomena, since they are always mixed with other phenomena (political, economic, etc.), investigated the influence of subjective sentiments on objective law.

In his view, the purpose of the law is to ensure peace, security and the protection of a complex and volatile society that enables it to function properly. Law is the product of civilization (culture). This definition is based on a scientist's view of sociology as a science of civilization or culture.

The main features of the law are reduced (different laws are used in each state), form (the proportion of which is used by compromise), straightforward and rational (the law tries to use the real, using schemes to regulate relations that require use).

While the law acts externally, morality acts on the person internally, influences his conscience, motives. The law soothes, creating legal certainty and worrying about morality.

As one of the few leading Czech sociologists of his time, Khalupny was well-known in the international arena, and a number of his works have been translated and published in English, French and other languages.

Inocentii Arnosht Blaga (1879–1960) - a leading sociologist, philosopher, educator, psychologist, political scientist and cultural scientist, editor of the «Sociological Review» magazine, founder of the Brno Sociological School. His major works are «City: Sociological Research» (1914), «The Philosophy of Morality» (1922), «Ethics as Science» (1947), and «Sociology» (1968).

The scientist understood sociology as the science of social phenomena. Social phenomena are a manifestation of the human community under the pressure of collective needs. This pressure causes the so-called «orderly functioning», which is the result of a common need for the coexistence of the human community [3, p. 216].

Blaga considers law to be a social phenomenon and one of the most influential means of social order. It is supported by organized authority and sanctions which, where appropriate, may be enforced by the use of coercive physical means.

Law has individual and social roots. Individual roots are contained in the most anthropological essence of people, and social emerge in the result of the needs of human coexistence. Law is determined by the social environment - population growth, economic level, division of labor, politics, public opinion, etc.). At the same time, public opinion performs not only political but also legal, judicial and moral functions, which force the authorities and the right to listen to it. The legal condemnation of the offender is followed by social condemnation, which makes legal punishment much more difficult, since being in the center of negative social attention is more unbearable than being deprived of liberty and benefits.

Blaga imitated the critical realism of Masaryk, and his teachings and influence led to the emergence of the Brno School of Sociology, whose representatives viewed the sociology of law as a relationship between society and law, representing the process of their interaction. The main elements that were studied in the framework of the school were the mutual relations between law and society, the mechanism of law enforcement and the role of law in society. [9, p. 62]

Vladimir Kubesh (1908-1988) - Czech scientist, sociologist, lawyer, professor at the Department of Civil Law and Philosophy of Law, Dean of the Law Faculty of Masaryk University in Brno.

Kubesh was a supporter of the normative-legal theory, and in his creative work there is a considerable number of scientific treatises on philosophy and sociology of law. The scientist understood the sociology of law as the basic application of sociological methods in jurisprudence [13, p. 302].

The main tasks of the sociology of law, the scientist attributes: the study of the main causes and factors that cause the emergence of new legal rules, the study of the effects of new legal rules on public life, the reaction of people's behavior on legal rules; study of economic and social component of existing rule of law, study of the connection between economy and law; study of the real law and order; solving the problem of justice thorough sociological studies of legal certainty, legal efficiency and human freedom. [13, p. 291-299].

Based on the specification of the main tasks of legal sociology, Kubesh gives the following definition of the sociology of law - a science that examines the economic, social and political factors of the emergence of general and individual legal norms, peculiarities of the influence of economic factors on the law; social and political sphere, changes in social functions of legal institutions, examines the existing law and order, its effectiveness and ability to solve problems of justice, security and freedom; explores the dialectical synthesis of ideas that constitute the quintessence of the «legal» in the social understanding of the community of people, where the motivational and educational role of the law acts. [13, p.301]

During the communist regime, Czech sociology was proclaimed a bourgeois science and its institutional basis was abolished. Only in the 60-ies of the twentieth century begins restoration of sociological thinking.

In the 1970s, some topics on the sociology of law at the Faculty of Law in Brno began, and in the early 1990s sociology began to be taught as a core subject. [5]

The lecturers of Brno faculty of Masaryk **Milosz Vechera** and **Martina Urbanova** published a joint textbook «The Basics of Sociology» and a collection «Lectures on the Sociology of Law» in the mid-1990s.

In 1996, the work of Associate Professor at the Law Faculty of **Yiri Prieban** of Charles University, «The Sociology of Law: A System-Theoretical Approach to Modern Law», was published.

Significant contributions to the development of contemporary Czech sociology of law and its historical background have been made by **Pavel Hungr**, **Karin Kuhn** and **Stanislav Balyk**. Their materials relate to the analysis of contemporary sociological jurisprudence and its historical part, in particular the legal practice of Khalupny.

Conclusion.

The Czech School of Sociology of Law underwent a long process of institutionalization, formed as a separate scientific direction and undoubtedly established itself as an independent discipline and created its own paradigm. It obtained the status of compulsory academic discipline, which is included in the curricula of state educational institutions.

At the present stage, sociological and legal studies are conducted within the framework of the Czech Sociological Association in the form of periodic interdisciplinary seminars and conferences. The main scientific developments in the sociology of law are published in «The Sociological Journal» (Sociologický časopis), professional legal publications.

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The realization of the requirement of the rapid investigation of the circumstances of the case at the stage of the institution ofthe criminal cause

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Abstract. The requirements of the rapid investigation of the circumstances of the cause at the stage of the institution of the proper criminal cause have been analyzed in the article. The authors emphasize that the criminal proceedingsshould be the effective tool of the state protection of the rights and the legitimate interests of citizens and legal entities when the tasks of the rapid and the complete disclosure of the crimes are properly implemented by gradually implementation of the tasks of each stage. At the same time, any institution of lawfulness, rights and legitimate interests of the individuals and the legal entities are inadmissible, and institution of lawfulness cannot be justified by the link to the fact that it is necessary to fight against crime.

Key words: prejudicial proceedings; crime; criminal cause; criminal proceedings; criminal procedural legislation.

Statement of the problem. The political and the socio-economic changes, the way of the transformation where Ukraine has stood, require the new approaches to the reform of the Ukrainian criminal procedural legislation. At the same time, its change assumes the wide use of the achievements of the legal science, taking into account the social realities, awareness and estimation of the positive and the negative Ukrainian and the foreign experience of the criminal procedural practice.

The important modern task of the legal science, rule-making and legal practice is the real securityof the legal protection of the person, fuller and deeper strengthening and the development of the guarantees of the rights and the freedoms of every citizen, the legitimate interests of the state and the society as a whole. The significant role in security of these regulations is given to the realization of the present criminal procedural tasks as for the rapid and the complete disclosure of the crimes. Legislative securityof the realization of the tasks of rapid and full disclosure of crimes should be optimal and based on the correct correlation of interests of the state and the individual.

Analysis of recent research and publications. The studied problem has been highlighted in the works of such scientists as S. Bazhanov (Bazhanov, 1995, pp. 51-54), A. Huliaiev (Huliaiev, 1976, 135 p.), V. Zelenetskyi (Zelenetskyi, 1998, 340 p.), N. Kovtun (Kovtun, 1991, pp. 91-99), D. Pismennyi (Pismennyi, 1980, p. 19) and others. The state and the logic of the previous scientific research, the modern investigating practice, the requirements of the Constitution of Ukraine and international-legal acts, the regulations of the Concept of Judicial Reform in Ukraine require the new approaches to security of qualitative investigation and, ultimately, to the rapid and the full disclosure of crime.

All afore-said led to the choice of the theme of scientific research, which is actual and has the scientific and the practical meaning.

Methodologyof research. Choosing the methodsof the research, the authors took into account their compliance with such criteria as efficiency and reliability. The number of the approaches has been usedduring the research: dialectical, descriptive, formal-legal and comparative-legal.

Purpose of the article is to reveal the concept and the essence of the rapid and the complete disclosure of the crime, to determine their unity, relationship, interdependence, the role in the implementation of other tasks of the criminal process and the installation of the truth in the cause at the stage of institution of criminal cause.

Presentation of the main material. The initial stage of criminal proceedings is limited with thedetermined time frame. As a rule, the conclusionabout the institution of a criminal cause or the denialin its institution must be made no later than three days, and if it is necessary, the inspection of the declaration or the notification about the crimemust be within a period not exceeding ten days. The installedterms are, on the one hand, the means of security of efficiency in the fight against crime, and on the other it is as a guarantee of the protection of the state, the public and the personal interests of the citizens. The installation of the time period in the law is necessary because of the speed of the proceedings won't excessive and it won't turn into unjustified haste, because of time limits allow realizing assigned tasks to its. So, the compliance with the term of the conclusion of notificationabout the crime or event which have been received by the competent authority, always contributes not only the fight against red tape, but also security

of the effectiveness of proceedings, the protection of rights of the personality. At the same time, untimely institution of the criminal causecan lead to non-disclosure of the crime.

One of the reasons of the institution of the terms in the initial stage of the criminal process is the imperfection of the legal nature of the proceedings of checking action. In practice, the time limits of this stage are often unspecified. The destruction of the limits of the stage is caused, in our opinion, with the imperfection of the legal formulation of such mentioned cause in the law as the direct exposure of the signs of the crime, and on the other hand as the expanded interpretation of "sufficient data" indicating the signs of the crime. Such ground as the direct exposure of the signs of the crime, firstly, has no legally fixed form; secondly, its installation is preceded by non-procedural activities.

The timeliness of the adaption of the conclusion at the stage of the institution of the criminal cause depends directly on the interpretation of the concept of "sufficient data indicating signs of the crime". This concept is evaluative, which causes difficulties duringthe installation of the grounds to the institution of the cause.

Within 10 days, the significant part of the notificationssolves which has entered the authorities of Internal Affairs about the bodily injuries, the severity and the criminal nature which have not yet been determined. The victim can be hospitalized for some time, and if during this time to wait for the end of the medical examination without institution ofthe criminal cause, the person who has caused the injury, has the opportunity to do everything to avoid the possible responsibility (to destroy traces of the event, the evidence, to create an alibi, etc.).

Very often in such cases, there is the necessitytoinstitutethe criminal cause, because eventually it turns out that the victim is suffered with the moderate or the severe injuries. In the practice, there have been cases where victims have died from received injuries after long-term treatment. The investigation in such cases was significantly complicated due to the untimely institution of criminal cause, and then it led to the impossibility of proving the culpability of the person in committing ofthe criminal act. When, after treatment, the minor injuries are detected, not all victims refuse to file a complaint or to reconcile with the individuals who have done it. As a result, the judge must institutethe criminal cause.

As it is known from the practical experience that according to the report of the operatives or the district inspectors, the head of the bodies ofinquest continues the deadline (10 days) ofthe checking materials. Such practice is not based on the law and it exists, in our opinion, for the following reasons:

1. Lack of knowledge of some heads that the law does not assume the possibility of continuation of the term of the checking of declarations and notifications of the crimes;

2. Insufficient exactingness of the heads of the authorities of internal affairs to the executors of the initial checking of the materials as soon as possible.

If the checking is not completed within ten days, it should not be continued, but theconclusionabout the institution or about the denialaboutthe institution of the criminal cause should be made. So, 10-day of checking is final and cannot be subject to continue, it is about in the order of the Prosecutor General of the USSR of № 8 of 5.02.1985 "About the tasks of prosecutor's office of the monitoring of the implementation of legislationaimed at further increase of efficiency of work of bodies of inquest, preliminary investigation and court". We will dwell in detail on the deadlines of the solution ofdeclaration and notification of the crimes where it is necessary to carry out checking actions. There are several opinions about these termsin the literature. Some authors have spoken for the preservation of existing terms. Other authors consider it is necessary to change them.

The supporters of the following view, based on the fact that "it is impractical to continue the existing termof checking for all cases, because the predomination part of declarations are considered in installed term", propose to give the prosecutor the right in exceptional cases to continue the 10-day term of the consideration of declarationsand notifications about crime. This proposal is supported by A. Huliaiev (Huliaiev, 1976). M. Yakubov, supporting the same position, also points out the limits to which it would be possible to continue the term,it is up to one month (Yakubov, 1969, p. 8, 16). Some authors, speaking for allotment the right ofthe prosecutor to continue these terms, point out that "it is expedient to foresee in law the right of the prosecutor to set the term of the additional checking within ten days" during abolition of the resolution about denial in the institution of the criminal cause, which is issued by the bodies of inquest or interrogator on incomplete, insufficiently tested materials.

S. Bazhanov does not agree with this proposal, because its realization, the author considers, would contribute to red tape, which goes against this principle of criminal legislation as the inevitability of responsibility. The scientist speaks against conducting of investigative inspection, noting that the checking actions at the stage of institution of the criminal causeconstitutes an anachronism of the criminal procedural legislation, which is reduced to meaningless red tape and the excessive reinsurance (Bazhanov, 1995, pp. 52-53).

It is impossible to agree with this proposal. It is obvious that conducting of the investigative actions, aimed at installation of the presence or the absence of the signs of the crime, can lead to arbitrariness, narrowing or institution of the rights of the personality. In the literature, in our opinion, it has been rightly noted that the institution of the criminal cause on the primary materials, if it does not need to carry out checking actions, should be carried out immediatelyentrance of these materials. The main problem in the solution of the question of the timeliness of the institution of the criminal cause is due to the impossibility without carrying outof certain procedural actions to collect in some cases sufficient data which are indicated the signs of the crime. One of the means of the collection of the factual data without institution ofthe criminal cause is the demand of the necessary documents.

The demand of the necessary documents, as practice shows, is not always the effective ways of the collection of such data. One of the reasons of this is that the documents are submitted in an unreasonably long time, and the law has not provided the real means for the acceleration of this. This is due to the fact that at the stage of the investigation of the checking, thecompetent authorities do not have the possibility of the application of the measures of the criminal procedural compulsion in its order. In our opinion, the criminal cause regarding accidents, fires, explosions and other events should be instituted immediately, because only as the result of the investigative actions it is possible to identify fully all the circumstances of the accident, explosion, fire, to provide real measures for the elimination of the reasons which have caused them. In these cases, the conclusion about immediately institution ofthe criminal cause is valid, because the consequences testify the institution of the rules of labor protection and safety measures.

One of the actual problems at the stage of the institution of the criminal cause is the security of the timely solution of the declarations and the notifications about missing citizens. As V. Zelenetskyi notes, latelymissingcitizens have become very widespread (Zelenetskyi, 1998, p. 120). The large number of missing individuals are victims of crimes, especially the elder people, children and women. Suchregulationsare largely explained by the fact that the established orderof the consideration of thedeclaration and the notification of the disappearances arebroken.

In our opinion, the approximate list of the circumstances of the crimeshould be made in the Criminal Procedure Code of Ukraine which are most common, in the presence of which it is necessary to instituteimmediately the criminal cause: the juvenile and old age of the missing person; the absence of information about the intention to leave; theabsence of disease that can cause sudden death, memory loss; availability of personal documents at the place of residence; availability of personal clothing in which the missing person has to be; the availability of prolonged conflicts in the family; the availability of criminal connections, threats against the missing person, contradictory explanations and illogical behavior of those who have come into contact with the missing person; the availability of traces that testify the commission of the crime in the apartment, in the car; when it can be foreseen the specific suspects from the explanations of the interviewees.

These circumstances were discussed in the General Instructions of the General Prosecutor's Office of the USSR, the Ministry of Internal Affairs and the Ministry of Health of № 101/15/18 of 03.11.1986 "About measures of the security of lawfulness of the solution of the declarations and the notifications about the missing citizens, timely disclosure of the crimes" and also in the General Instructions of the Prosecutor General's Office, the Ministry of Internal Affairs and the Ministry of Health of Ukraine of № 15/110 of 28.07.1993, of № 6 of 30.06.1993 "About consideration of the declaration and the notifications about missing in-

dividuals, timely institutionof the criminal cause at the articles of the Criminal Code and realization of detection". These circumstances are too important for the determination: under what criminal or other influence a person has disappeared. However, for the lawfulness of the provision of the decision of the bodies of inquest and investigation, as rightly V. Zelenetskyi notes, it is necessary to establish the signs of the specific crime (Zelenetskyi, 1998, p. 123).

The speed of adoption of the legal conclusion at the initial stage of the criminal process also depends on the timeliness consideration of the complaints about the denialin the institution of the criminal cause. According to Article 99-1 of the Criminal Procedure Code of Ukraine, the interested person has the right to file the complaint to the relevant prosecutor against the provision of the investigator and the bodies of inquestabout the denial of the institution of the criminal cause for seven days of receiving of the copy of the provision (Criminal Procedure Code of Ukraine, 2013). Having checked the complaint, the prosecutor can refuse in abrogation of this provision. After that, the interested person has the right to file a complaint to the court, where it is considered for 10 days from the date of entrance (Criminal Procedure Code of Ukraine, 2013). The court can decide to cancel the provisionabout thedenial of the institution of the criminal cause and return the materials to the competent authority for therealization of the additional checking. This means that the task of timely and lawful solution of information about the crime has not been carried outby the bodies of inquest or the investigator.

From the analysis of the content of Article 99-1 of the Criminal Procedure Code of Ukraine, it can be come to the conclusion that the procedure of checking of the lawfulness of the adaption ofdecision about denial of the institution of the criminal cause has the significant duration, which does not meet the requirements of rapid disclosure of the crime (Criminal Procedure Code of Ukraine, 2013). We consider that Article 99-1 of the CPC must be brought inaccordance with Article 55 of the Constitution of Ukraine, which guarantees everyone the right to appeal decisions of authorities and officials directly in the court (Constitution of Ukraine, 1996). Each person, interested in abrogation of the provision of the investigator or bodies of in questabout the denial in the institution of the criminal cause, must have the right to go directly to court, bypassing the prosecutor.

The question about the term of the realization of the additional checking is actual after the judge has decided to cancel the provision about the denial of the institution of the criminal cause. In our opinion, in each case of adaption of this decision, the term of such checking, as it seems, it will be correct to set a judge who realizes the judicial control of the observance of lawfulness at the stage of the institution of the criminal cause.

However, the investigator's activity begins not from the moment of the institution of the criminal cause, but from the moment of receiving of information about the crime by him. A. Huliaiev draws attention to this circumstance, who

considers it is expedient in the legislative order to give the investigator the right to instruct the bodies ofinquestabout realization ofthe actions of the checkingof the existence of grounds tothe institution of the criminal cause. In his opinion, the investigator does not always have the opportunity to quickly switch to the implementation of the checking actions in the proceedings of who the criminal causeis, which leads to loss of efficiency at the stage of the institution of the criminal cause, and as a result it is the loss of opportunity of receiving ofevidence, continuing of criminal activity, etc. (Huliaiev, 1976, p. 32).

D. Pismennyi approaches this question differently. In his opinion, the right to charge with missions and instructions to the bodies of inquestabout the realization of the checking and the search actions should be given to the head of the investigative subdivision (Pismennyi, 1980, p. 18). In our opinion, the investigator must not be engaged in the implementation of checking activities that take a long time. And the modern practice goes this way. If the investigator during the day from the date of entranceof the declaration or the notification about the crime has not established the availabilityof the grounds for the institution of the criminal cause, the absence of circumstances including its institution, he must have the right to send materials to the bodies ofinquest for conducting of the investigation. In order to prevent red tape on the part of individualsconsidering the current information, it is recommended to fix in the law interdict of the bodies of inquest to transfer to the investigator declaration, letters, notifications that require preliminary checking.

The law currently inforcedoes not oblige the bodiesof inquest to inform the investigator about the entranceof thedeclaration or the notificationabout the crime. Absolutely, timely receiving of such information would be a precondition of the rapid inclusion of the investigator in the consideration of suchdeclaration or notification. In this regard, the proceduralists propose to supplement the criminal procedural law with a regulationabout the obligation of the bodies of inquestduring a day to inform about the detected crime of the investigator to whom it is sent. According to A. Huliaiev, “such information is appropriate from two points of view:

firstly, it contributes the earlier inclusion of the investigator in the examination of thedeclaration or the notificationabout the crime;

secondly, it allows the investigator to distribute his working time more systematically” (Huliaiev, 1976, p. 32).

It is noteworthy opinion of the scientists about that with the purpose of timely exposure and elimination of admitted institution of the law, it will be appropriate to foresee a rule that obliges the bodies of inquest and investigator to reportimmediately the prosecutor about the declaration or the notificationabout the crime which has been received (Pismennyi, 1980, pp. 18-19). The correct and timely reaction to each declaration and notification about the crime which has been received by the authorities of Internal Affairs, provides the successful

solution of the tasks of disclosure, quality and rapid investigation of crimes. The wrong, and also untimely decision on the declaration and the notification, insufficiently deep checking of the declaration and the notification aboutthe crime, and even more hiding them from accounting,undermines the foundations of the fight against crimes, the principle of inevitability of responsibility for each crime and it generates in criminals the notion about impunity, weakness of government agencies in the fight against crimes.

Conclusions and perspectives of further research. The reserves of the increase of the efficiency of the reaction to the signals about the crimes are in further improvement of the criminal procedural legislation. In the interests of the theory and the practice of the fight against the crimes, the normshould be includedto the Criminal Procedure Code of Ukraine that will regulate the task of rapid and complete disclosure of the crimes, which will provide the optimal correlation of the protection of the interests of the society and the interests of the personality in the criminal proceedings. The rapid disclosure of the crime means the activity of the bodies of preliminary investigation, aimed at reduction of the time from the moment of the perpetrationof the crime (receiving of information about the crime) to the institution of the criminal cause, and in further proceedings, it is before the establishment of all circumstances of the crime and the personalities who havecommittedthem which is expedient only, when it does not interfere with the comprehensiveness, completeness and objectivity, the achievement of the purpose of the proceedings, and also does not institute the rights and the legitimate interests of the subjects of the process.

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AN INTERACTIVE TEXTBOOK AS A BASIS FOR THE EFFICIENT ORGANIZATION OF STUDENTS' INDEPENDENT WORK

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Abstract. The issues of modern papers considering the problem of the use of information technologies and electronic textbooks in the organization of independent work of students are researched. The advantages and disadvantages of using information technologies in the organization of independent work of students are generalized. The authors' interactive textbook is presented: the scheme of the organization of independent work of students with use of the authors' interactive textbook, its content and structure are proposed. The structure of the menu of the "MTEP" educational site is given. The possibilities of using the authors' interactive textbook for both students and lecturers are considered. The criteria for checking the efficiency of the implementation of an interactive textbook in the organization of the independent work of students and the appropriate levels are determined. The results of pedagogical experiment on confirmation of the efficiency of its introduction in the organization of independent work of students are given.

Key words: information-communication technologies, electronic textbook, interactive textbook, independent work

INTRODUCTION

Problem statement. Every year, the socio-economic situation in Ukraine increasingly determines the excess of supply over demand in the labor market. As a result, there are a number of new requirements for the professional competences of future professionals and educational institutions training them. It is a priority of professional education to create conditions to accelerate the procedure of adaptation of the educational process to modern requirements of the labor market. Higher education institutions are not only to impart knowledge, but also to create a lasting motivation to learn, to encourage students to self-education related to the development of their creative and critical thinking. The requirement of the organization of the process of self-education of students is for the educational institution to create environment that goes beyond the classroom and is freely available in space and time. Such an environment can be created only with the use of information and communication technologies and the Internet.

Information and communication technologies play a leading role in the organization of independent work of students, they promote the development of analytical and creative thinking; implementation of personality-oriented learning; intensification of training; expansion of information flows through the use of the Internet; increase of motivation and cognitive activity; objective assessment of abilities and level of knowledge acquisition; the maximum approximation of the learning process to real professional activity; intensification of creative mental activity; formation of interest and emotional and holistic attitude of students to the future profession; personal potential development.

The independent work of students with the use of means of information and communication technologies can be organized by means of an educational site, a distance course or an interactive textbook.

The purpose of the study is to substantiate the feasibility of using an interactive textbook as a basis for organizing independent work of students

The analysis of the recent research and publications. The growing requirements for the level of training of a modern competitive specialist lead to an increase in the role of information and communication technologies in the educational process of the educational institution. This is due to a change in the format of the organization of the production process in enterprises and firms, i.e. a partial or complete transition of production activities to the mode of "distant work". This trend requires higher education institutions to create conditions for the acquisition and improvement of digital competence of future professionals in the organization of independent work.

Scientists and educators-practitioners have always paid great attention to the study of various aspects related to independent work. In the papers of V. Bur-

iak, B. Yesypova, A. Ivasyshyn, V. Lutsenko, P. Pidkasystyi and others, the essence of the concept of independent work, the principles of its organization were studied, different classifications were considered, methods, forms, means of organizing independent work were analyzed, the methods of its planning, organization and control were developed.

The problem of organizing independent work of students was researched by M. Harunov, O. Yevdokymov, S. Zaskalieta, I. Shaidur et al. The papers by K. Babenko, O. Moroz, V. Teslenko and others reflect the peculiarities of the organization of independent work of students in the junior years of study at HEI. L. Klymenko, V. Shpak and others dealt with the issues of managing students' independent work in extracurricular time. A. Loshak, O. Kozak, M. Krasnytskyi and others researched the problem of teaching students the ability to plan their cognitive activity. A systematic approach to the organization of independent work of students was studied in the papers by H. Hnytetska, L. Zaiakyna et al.

The scientists consider two meanings of the concept of "independent work": 1) an active cognitive creative activity of the student, which is present in any type of study; 2) one of the types of training under the guidance of a lecturer, but without his/her personal participation.

P. Pidkasystyi suggests distinguishing between independent work and independent activity of students. By independent work, he understands "didactic teaching aids, artificial pedagogical construction" [6], by means of which the lecturer organizes the activities of the subjects of study both in class and during homework. In addition, the subjects of learning participate in the multilevel processes of educational cognition during the performance of independent work. Thus, independent work is "a means of organizing and performing certain cognitive activities by students" [6]. Independent activity is considered by the author as "a purposeful process that is organized and performed in the structure of education to expand specific educational tasks" [6].

Modern approaches to learning, improving the quality of professional education require significant changes in the construction of the educational process, in particular the use of modern information and communication technologies in the organization of independent work, which enhances students' mental activity, development of their intellectual skills and digital literacy.

The study of scientific and pedagogical literature on the above problem allows us to state the fact that information technology plays a key role in organizing an effective educational process. The attention of scientists was focused on various aspects of informatization of education, namely: the creation and implementation of ICT tools were studied by M. Shyshkina, ICT as a means of managing educational and cognitive activities was studied by O. Spivakovskyi, M. Zhaldak; A. Shchukin was involved in the use of ICT in creating interdisciplinary links; V. Bykov studied the formation of a single educational information space; the creation of a virtual learning environment was studied by N. Wagner, W. Bowen,

R. Mendenhall; S. Sysoieva was involved in the creation of a global international educational environment; information technology as a part of pedagogical technology was researched by N. Apatova; T. Poiasok studied media education.

The use of information and communication technologies for visualization of educational material, during independent work of students, enables making it more accessible and easy to understand, systematized, visual, which is achieved through the use of interactive, dynamic and multimedia tools in its presentation. N. Boiko considered a fundamentally new approach to the organization of independent work by means of information and communication technologies, determined the features of using different types of means of information and communication technologies, revealed the pedagogic conditions for the efficient organization of independent work by means of ICT, analyzed the state of students' readiness to use ICT in independent work [2].

An important condition for the organization of independent work, in our opinion, is the use of interactive teaching methods. "The essence of interactive teaching methods is that learning takes place through the interaction of all those who learn and teach. This is co-learning (learning in interaction and cooperation), in which both the lecturer and students are subjects of learning" says O. Pometun [7].

Interactive teaching methods, implemented by means of information and communication technologies, fundamentally change the scheme of interaction of participants in the educational process.

The basic principle of interaction is constant interaction of students with each other, their cooperation, in contrast to active and "passive" methods, when a student and a lecturer communicate. The lecturer in this model of learning is only the organizer and coordinator of interactive activity, in contrast to active teaching methods, which are based on one-way interaction (it is organized and constantly stimulated by the lecturer).

An interactive textbook can be an example of the implementation of an interactive method of teaching in the organization of independent work of students.

The use of interactive textbooks in the process of organizing independent work of students promotes: the development of personal reflection; awareness of inclusion in the overall work; formation of an active subjective position in educational activities; development of communication skills on the Internet; increasing cognitive activity and interest; formation of a study group as a group community; development of skills of analysis and self-analysis; formation of motivational readiness for interpersonal interaction.

The problem of determining the effective format of the textbook under the conditions of informatization of education, the creation of electronic and interactive textbooks was considered by O. Balykina, N. Kononets, V. Hasov, O. Hrytsenchuk, O. Hurkova, T. Yakovenko, V. Yasynskyi, David Wiley, Aimee Denoyelles; research of introduction into the educational process in higher education: Lane Fischer, Kuo-Liang Huang.

Summing up the analysis of research in the modern pedagogical literature on the problems of using interactive methods by means of information and communication technologies in the organization of independent work of students, we can conclude the following:

– independent work is student's activity organized by the lecturer, which is carried out without the constant participation of the lecturer;
– the use of interactive teaching methods promotes constant interaction between students, their cooperation, communication, collaboration;
– creating conditions for effective organization of independent work of students through the use of information and communication technologies as one of the important tools of methodological, content and organizational restructuring of the education system;
– a promising tool for effective organization of independent work of students is an interactive textbook, which is an educational environment unlimited in space and time.

RESEARCH METHODS

The research presented in the paper contains the analysis of pedagogical scientific literature for clarification of features of the use of information and communication educational technologies, electronic textbooks in the organization of independent work of HEI students. To check the effectiveness and feasibility of using the authors' interactive textbook in the organization of independent work of students a pedagogical experiment was conducted. In order to diagnose the level of effectiveness of the interactive textbook, the following methods and techniques were used: questionnaires; methods ("Attitude to learning" by H.M. Kazantseva, "Focus on the acquisition of knowledge" by E.P. Iliin, N.A. Kurdiukova, "Assessment of the effectiveness of students' learning activities" (by I.S. Todorova)); tests to control knowledge; methods of mathematical statistics; comparison, systematization, generalization for analysis and determination of statistical significance of the results of the pedagogical experiment.

RESULTS AND DISCUSSION

An important way to organize learning, which contributes to the activation of cognitive activity of students, by performing a certain educational task without the direct participation of the lecturer, is independent work. For its effective organization it is necessary to search for new ways and means of their implementation.

One of such ways, in our opinion, is the authors' interactive textbook on the subject "Modern technologies in the educational process". The interactive textbook implements a comprehensive approach to the use of information technology in the process of organizing independent work of students and is a combination of online and offline learning tools, which creates conditions for obtaining the most optimal educational results.

Implementation of a comprehensive approach to the use of information

technology in the organization of independent learning by means of interactive textbook bases on the following principles:

- regularities – stable and significant links between the structural components of the interactive textbook, due to which effective results are achieved in the formation of the future teacher;
- purposefulness – all structural components are subordinated to the general purpose of formation of the future competitive specialist;
- consistency – the structural components of an interactive textbook have a clear sequence in the organization of independent work – from theory to assessment;
- systematization – all structural components of the interactive textbook are combined and interconnected by means of a web-site.

In our opinion, the peculiarities of such a combination should include:

- free access to theoretical material with the use of video lectures;
- assessment of knowledge by means of online testing;
- additional information implemented through web-resources;
- feedback by means of Internet communications.

The organization of independent work of students on the use of the authors' interactive textbook (by an example of discipline "Modern technologies in educational process") is carried out by means of online and offline means that is shown in Fig. 1.

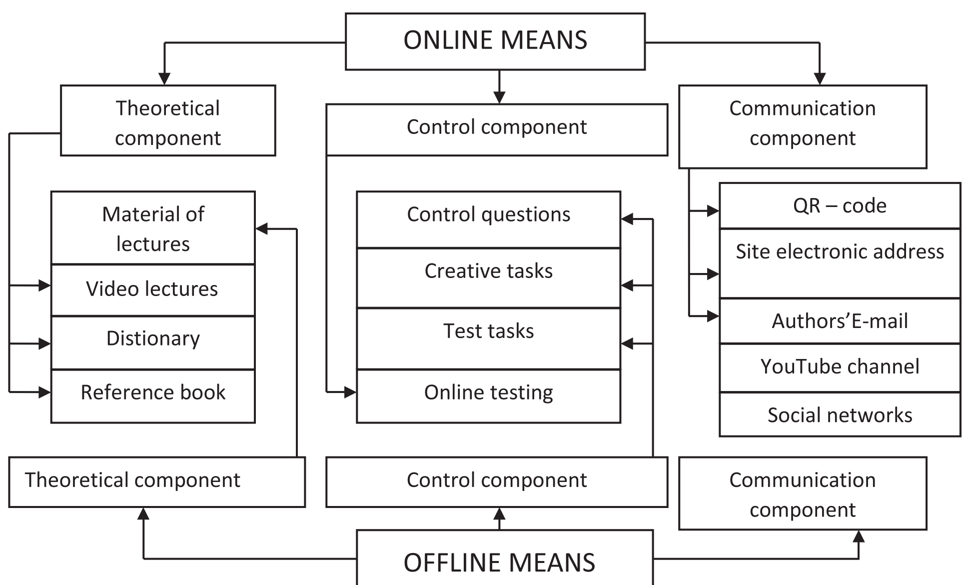


Fig. 1. The scheme of organization of independent work of students by means of the authors' interactive textbook.

The interactive textbook, which is designed to organize independent work of students in the discipline “Modern technologies in the educational process”, has two forms:

1) a printed form – a textbook,
2) an electronic form – an educational site.

The printed form of the interactive textbook contains the following elements developed by the authors: lecture material, test questions, control questions and creative tasks.

Consider in more detail the content and structure of the printed form of the interactive textbook (offline form) table 1.

The material of short theoretical information of the printed form of the interactive textbook corresponds to the curriculum of the discipline “Modern technologies in educational process” and is aimed at transmitting educational information to the student, teach him/her to use the book, arouse interest in the subject.

The results of the tests contained in the interactive textbook are an indicator of the relationship between the goal of learning and the achieved results. In the process of the check, tests provide an opportunity for lecturers to assess students’ knowledge and skills and influence the results and course of the educational process. For students, in turn, the tests create conditions for the implementation and improvement of self-esteem, self-control, self-criticism and self-improvement.

Control questions are provided at the end of each topic. This form of questioning makes it possible not only to test and assess students’ knowledge, to determine the level of knowledge acquisition, but also to encourage students to make efforts to achieve new success in academic work.

Creative tasks allow interrelation between cognitive and mental activity of students. They create conditions for students to apply previously acquired knowledge and skills in a new situation, their combination and transformation, vision of a new problem in a traditional situation.

Table 1. – Content and structure
of the printed form of the interactive textbook

Content	Structure
Introduction	1. Discipline characteristic 2. Summary of the curriculum of the discipline 3. Expected results of learning the discipline
1. Technological approach to the implementation of educational activities in higher education	1. Basic concepts and provision 2. Lecture material according to the list of questions

2. Classification of educational technologies 3. Educational technologies focused on the subject 4. Educational technologies focused on the personality 5. Interactions in educational technologies 6. Information and communicative technologies of education 7. Distant learning as an educational technology 8. Open educational technologies of learning 9. Heuristic learning as an educational technology 10. Imitation in educational technologies	3. Tasks for independent work 3.1. Test tasks 3.2. Creative tasks 3.3 Control tasks
Literature	1. Basic 2. Additional 3. Electronic resources

In the online format, the interactive textbook is a learning site developed by the authors of the paper. The structure and design of the site corresponds to the e-book and has an authors' domain (mtep.co.ua). It contains the following authors' developments: video lectures, online tests, reference book and adictionary. The structure and content of the electronic form of the interactive textbook is reflected in the Menu of the "MTEP" site (Table 2).

The structural components of the online form of the interactive textbook have certain features.

Video lectures were created to visualize the lecture material, which is a means of improving the efficiency of perception. The advantages of video lectures are the ability to listen at a comfortable pace and repeat the training material in accordance with personal needs; students better remember the movements, actions, processes, tables, diagrams and other accompanying visual material, as well as verbal and non-verbal means that are present in the video lecture frame; the ability to predict and/or model students' attitudes, positive or negative reactions.

Table 2. –The structure of the Menu of the "MTEP" educational site

Menu	Structural components
Main page	– image of the printed form of the interactive textbook (offline form) – content of the interactive textbook (online form)

Menu	Structural components
Video lectures	– list of video lectures – links to authors' video lectures on YouTube channel
Tests	– list of test task names that correspond to the topics of the offline form of the interactive textbook – links to online testing on the Internet
Refer-ence book	– list of researchers' SNP – researchers' photos – researchers' biographies – link to a source of information about the researchers
Dictio-nary	– list of the terms – definition of terms – source of information – link to the source
Program syllabus	– discipline "Modern technologies in educational process"
About the au-thors	– information about the authors of the interactive textbook – links to online resources of the authors
Feedback	– electronic correspondence – social networks

To systematize the video lectures of the "MTEP" interactive textbook, a channel was created on YouTube video hosting at the e-mail address https://www.youtube.com/channel/UC4LOB3dlc3cOKD1DUSVGd1A/ . The library of video lectures is a dynamic component, so it is constantly updated and supplemented.

An important role in the structure of the interactive textbook is played by online tests that duplicate the tests of the printed form of the interactive textbook. A feature of online control is personalized access, indicating the group and the name of the student. After passing the test, the student immediately receives the result, and the lecturer receives a report with the results of all students in the form of a table.

In order to implement personality-oriented learning, to provide a variety of combinations of assessment for online tasks, students receive their grade in the form of a percentage.

Such a method of control makes it possible:

<u>for the student:</u>

– to assess his/her own knowledge;
– to identify gaps in the studied learning material;
– to learn to realistically assess their capabilities;
– to feel the need to achieve better results, self-education and self-improvement;

<u>for the lecturer:</u>

– to assess students' knowledge online;
– to reduce the time spent on student assessment;
– to increase the level of motivation to learn;
– to identify gifted students and students who need additional individual lessons.

In addition, this type of control provides feedback, which makes it possible to identify shortcomings in the presentation of educational material and enables the lecturer to improve existing technologies and search for new ones for effective teaching of the discipline.

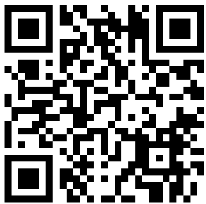
The reference book contains information about scientists whose work is referenced in the textbook. The reference book contains information about 42 well-known scientists, educators and psychologists. The information includes photos, a brief biography and links to electronic sources from which the information was used during the creation of an interactive textbook on the subject "Modern technologies in the educational process".

The dictionary contains interpretations of terms, concepts and provisions used in the textbook. The dictionary promotes deeper mastering by students of basic terms and concepts of the specified discipline.

The organization of effective self-study of students requires the interaction of the lecturer and the students, i.e. feedback. Authors' technology realizes the possibility of discussing issues that arise during the independent study of the discipline "Modern technologies in the educational process" through interactive communication. Interactive communication is realized through the use of e-mail and the creation of groups in the social network Viber. This form of feedback allows the lecturer and the students to share information, listen to audio files, watch videos and photos, which helps to organize effective self-study.

There is a connection between the two forms of the interactive textbook (offline and online) (Fig. 1), which is realized due to the symbols, which are shown in Table 3.

It should be noted that the interactive textbook "Modern technologies in the educational process" contains a QR - code that provides quick access to the site from any mobile device with a camera and special software.



The main online tool of this interactive textbook in the organization of independent work is a training site that performs the following functions:

1) educational and developmental one, which contributes to the systematization of knowledge, the formation of independence and the development of cognitive activity of students;
2) cognitive-practical, which encourages students to work systematically, achieve better results, overcome gaps in knowledge;
3) profession-oriented one, which contributes to the purposeful development of students' abilities, the growth of their skills that will be needed in the process of future professional activity;
4) control one, which is designed to identify, measure and assess the results of educational and cognitive activities of students;
5) communicative one, which helps to provide feedback between the lecturer and the student.

Table 3. –Symbols of the interactive textbook

Symbol	Name	Purpose
	Dictionary	Contains the interpretation of terms, concepts and provisions used in the textbook
	Reference book	Contains information about scientists whose work is referenced in the textbook
	Online test	Online test control of students' knowledge of the textbook topics
You Tube Watch us on YouTube	Video lessons	Video lectures on the textbook topics

The relationship between the functions of the training site with its structural components is shown in Figure 2.

According to the criteria and indicators, three levels of efficiency were established: low, medium and high ones and the appropriate methods for determining the effectiveness of the use of an interactive textbook in the organization of independent work of students were selected. The experimental research was organized and performed in three stages: stating, forming, control-generalizing.

Experimental work was carried out within the organization of independent work of future specialists in the discipline "Modern technologies in the educational process".

The experiment was attended by second year students of the master course (60 people: 30 people – experimental group, 30 – control group).

During the stating stage of the experimental research, based on the results of the questionnaire, testing and observation, the general level of independent work of future specialists in control and experimental groups at the beginning of the experiment was clarified and it was determined that students' understanding of the importance of independent work and the need for it is quite low. 50% of students believe that independent work is a control of the acquired knowledge; for 35% it is the process of performing independent written tasks; for 15% it is educational work that is performed without the direct assistance and guidance of a lecturer.

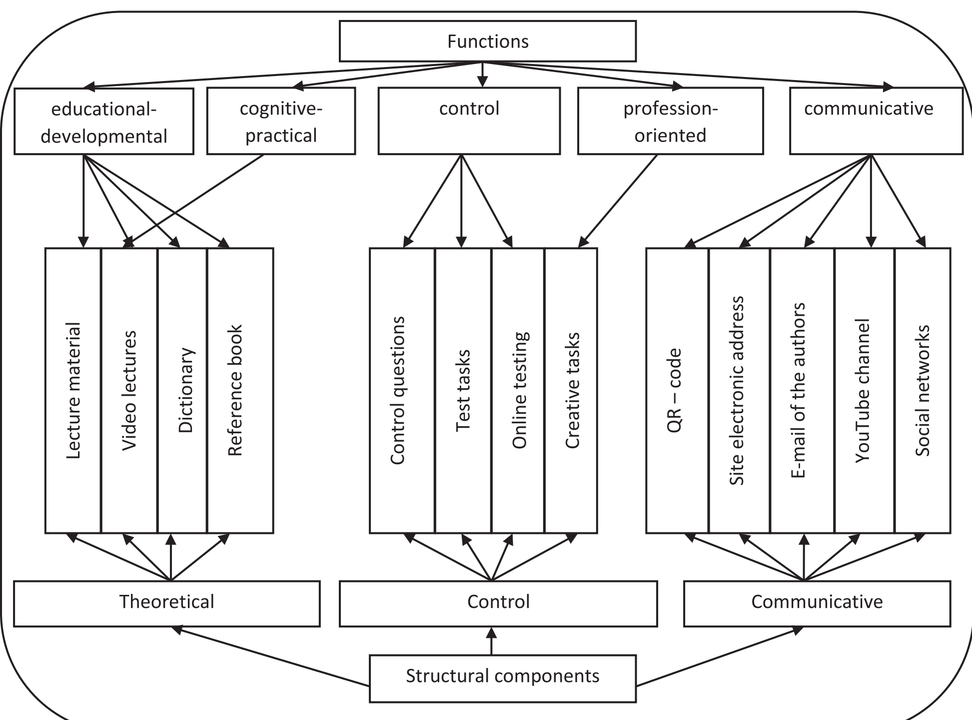


Fig. 2. – Relationship of site functions with its structural components

83.33% of students believe that independent work in the educational process is necessary, 5.56% deny the need for independent work, and 11.11% think that it has no impact on the educational process at all.

61.11% of students agreed with the fact that independent work contributes to the acquisition of practical skills in the discipline, and 38.89% deny this statement.

50% of students believe that independent work helps to improve skills; the other 50% oppose this assumption.

The results of student questioning (according to H. Kazantseva) showed that the experimental and control groups have the same hierarchy of motives, which indicate a low level of interest in independent learning. This is confirmed by the results of assessing the level of orientation of students to acquire knowledge, according to the method of E. Iliin, N. Kurdiukova.

Determining the level of formation of the cognitive component of the interactive textbook in the organization of independent work of future teachers made it possible to state that the level of knowledge of students in the subject is low. The computer literacy is also not at a sufficient level, given the current requirements for lecturers, this is an important indicator. The results of the research on the basis of professional activity indicate a low level of acquired knowledge, skills and formed abilities in solving professional problems independently.

Table 4. – Possibilities of using the authors' interactive textbook

Structural components of the technology	**Possibilities of the use**	
	For students	**For lecturers**
1	**2**	**3**
Theoretical material	– study of theoretical educational material in a free individual mode; – acquiring skills of independent work; – development of practical skills in using computer equipment and software	visualization of educational material; simplification of presentation of tables, figures; placement of large amounts of necessary information; saving time working with gifted students and students who need additional classes
Video lectures	– visualization of educational material that improves its assimilation; – viewing material individually; – opportunity for self-education	opportunity to demonstrate practical material and real professional working conditions; improving the quality of learning theoretical material; increasing motivation to learn

Online test control	– assessment of their knowledge and identification of gaps in the studied educational material; – promoting a realistic assessment of their capabilities; – increasing motivation to achieve better results; – providing conditions for self-education and self-improvement	– assessment of students' knowledge online; – assessment of the level of motivation to study; – identification of gifted students and students who need additional individual lessons; – identification and elimination of shortcomings in the presentation of theoretical material
Communication (Internet-communication)	– acquisition and improvement of skills of work with means of Internet communications; – communication with the lecturer and other students online; – gaining communication skills in social networks	– simplification of the communication process; – the ability to observe the independent activities of many students simultaneously without direct participation; – the ability to assess the performance of students without personal communication

During the forming stage of the experimental research, an interactive textbook was introduced into the educational process, educational and methodological support was developed (lecture notes, video lectures, control tasks, dictionary, reference book), an educational site on the subject "Modern technologies in educational process" (MTEP) was created and a methodical seminar for students on the topic "Content of independent work" was worked out and performed.

At the control-generalizing stage of the experiment, the effectiveness of the application of the interactive textbook in the organization of independent work of students was confirmed by the positive dynamics of all indicators of criteria in the experimental group. An increase in the following indicators was noted: the level of motivation to study increased by 0.35%; the level of students' focus on acquiring knowledge – by 0.26%; level of computer literacy of students – by 10.56%; the level of motivation – by 3.85%; the activity and focus of students' educational activity – by 2.85%; the quantitative and qualitative characteristics of information support of educational activity, its professional orientation, systematization, accessibility for mastering – by 4.92%; the general level of efficiency of educational activity – by 18.87%, the level of knowledge of students – by 5.99%; the level of practical and professional readiness of students in the experimental group increased by 11.35%.

CONCLUSIONS.

The use of the authors' interactive textbook on the subject "Modern technologies in the educational process" transforms the students' independent work

into intellectual activity, which he/she carries out independently, gaining knowledge during the lecture, laboratory and practical classes, extracurricular activities, i.e. all educational work associated with the search for knowledge. Improvement and development of independent work of students due to the application of interactive textbooks is one of the main aspects of effective learning at higher education institutions.

Properly organized independent work helps to activate the cognitive activity of students, increase their motivation for the learning process, self-education and self-improvement, development of creative abilities, gaining strong knowledge, skills and abilities.

In the process of organizing independent work of students it is advisable to use interactive textbooks, as it enables one to create the most effective conditions for students to obtain the necessary competences that meet the criteria for qualification certification of graduates; to form a modern competitive specialist, able to solve professional problems independently, using modern computer technologies; think critically and analyze his/her activities, independently improve his/her skills throughout life.

The efficiency of the introduction of an interactive textbook in the process of organizing independent work of students of higher education is determined by motivational, cognitive and professional criteria, and the levels of its efficiency are high, sufficient and low.

The results of the experimental study confirmed the efficiency of using the interactive textbook as a means of organizing independent work of students of higher education. Students' positive motivation to work independently in the process of studying the discipline increased by 3.85%; the level of computer literacy increased by 10.56%; the level of students' focus on acquiring knowledge increased by 0.26%; quantitative and qualitative characteristics of information support of educational activity increased by 4.92%; the level of knowledge and practical readiness of students increased by 11.35%.

Thus, the use of the authors' interactive textbook on the subject "Modern technologies in the educational process" creates conditions for effective organization of independent work of students, which promotes the development of personal reflection; awareness of inclusion in the general work; formation of an active subjective position in educational activities; development of communication skills on the Internet; increasing cognitive activity and interest in the discipline; formation of a study group as a group community; development of skills of analysis and self-analysis; formation of motivational readiness for interpersonal interaction.

The implementation of this research does not cover all aspects of the above problem. Promising areas of research are the search for ways to develop the IC-competence of lecturers of higher education institutions and the design of an interactive learning environment at HEI.

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PROFESSIONAL TRAINING OF A TEACHER'S ASSISTANT IN THE TIME OF TIME OF COVID-19

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Abstract. Closure of educational institutions leads to a change in the usual form of distance learning. Distance learning, also known by various names such as distance education, e-learning, mobile learning, or online learning, is a form of education where there is physical separation of teachers from students during the instruction and learning process. The minimum technological requirements for successful distance learning include the acquisition of a computer or a mobile device and a stable internet connection. The article is devoted to the study of the introduction of distance learning for future teacher's assistants during quarantine in connection with COVID - 19. Based on the analysis of questionnaires of students who acquired the profession of teacher's assistant, the implementation of the learning process while distance learning, features of student assessment, positive and negative aspects of distance learning are described.

Keywords: inclusive education, COVID-19, teacher's assistants, children with special needs.

The Introduction

Two years ago, our world was shaken by a terrible disease that not only changed us and our way of life but took the lives of millions of people. On December 31, 2019 the China Country Office was informed of cases of pneumonia of

unknown etiology detected in Wuhan City, Hubei Province of China. The outbreak began in a seafood and poultry market in Wuhan, a city of 11 million in central China. Like SARS-CoV and MERS-CoV, the newly detected coronavirus (SARS CoV-2) has a zoonotic source, however, human to human transmission has been confirmed. Coronaviruses are a large family of viruses that may cause a range of illnesses in humans, from the common cold to SARS. Viruses of this family also cause a number of animal diseases. On March 11, 2020 the WHO declared COVID-19 viral disease a pandemic (Coronavirus (COVID-19), 2021).

Lockdown and staying home strategies have been put in place as the needed action to flatten the curve and control the transmission of the disease (Sintema, 2020). That is why most Governments around the world have temporarily closed educational institutions to control the spread of the Covid-19 pandemic. With an increasing number of states, provinces and even whole countries closing institutions of learning and over 91% of the world's student population are not attending schools, colleges and universities (UNESCO,2020).

With the closure of educational institutions, the need for a rapid transition from physical learning to the digital sphere of learning emerged (Kapasia, 2020). Online learning has been observed as a possible alternative to conventional learning (Adnan and Anwar 2020). The COVID-19 pandemic has provided us with an opportunity to pave the way for introducing digital learning (Dhawan, 2020). To improve the e-learning experience, the education institutions are required to comply with the guidelines and recommendations by government agencies, while keeping students encouraged to continue learning remotely in this tough environment (Aucejo, 2020).

As schools have been closed to cope with the global pandemic, students, parents and educators around the globe have felt the unexpected ripple effect of the COVID-19 pandemic. While governments, frontline workers and health officials are doing their best slowing down the outbreak, education systems are trying to continue imparting quality education for all during these difficult times. Many students at home/living space have undergone psychological and emotional distress and have been unable to engage productively. The best practices for online homeschooling are yet to be explored (Petrie, 2020).

The closure of educational institutions and the introduction of distance learning have dramatically changed education. Students who obtain a future profession are left without practical training. The education of teachers, in particular the training of teacher's assistants as well as others is carried out online. It became clear that humanity moved to a new stage of development, where distance learning will play a great role. Therefore, it is important to analyze the results of the remote educational process and identify priority ways to develop online education.

Aim and Tasks

The purpose of the article is to analyze the learning outcomes of students of future assistants during the lockdown.

The following tasks are set in the research process:

1) to conduct a theoretical analysis of the study of the problem of implementing distance learning in connection with the pandemic of coronavirus;

2) to investigate the practical implementation of online education in the process of training of a Teacher's Assistant;

3) based on the results of the analysis to determine the quality of the introduction of distance learning.

Material and methods

The participants in the study were 33 students of the Department of Primary Education. The research was conducted on the basis of Ivan Franko National University of Lviv. The students of groups FPS-41, FPS-42,- specializing in Teacher's Assistants participated in the research. The anonymous profile was created using a Google form. The respondents were supposed to answer 9 test questions and 1 one descriptive question.

1. How do teachers test your knowledge during distance learning?
2. How do teachers implement distance learning?
3. What difficulties did you face during distance learning during the quarantine?
4. Do you have enough information to organize distance learning at home?
5. How do you assess the distance learning that is conducted in your specialty?
6. Do you have a computer or tablet for distance use during distance learning?
7. What tools do your teachers use for distance learning?
8. What do you think are the positive aspects of distance learning?
9. What do you think are the negative aspects of distance learning?
10. Your advice and wishes for the effective organization of distance learning during the quarantine.

4. Results

Lockdown and social distancing measures due to the COVID-19 pandemic have led to temporary closures of schools, training institutes and higher education establishments in most countries. There is a paradigm shift in the way educators deliver quality education—through various online platforms. The online learning, distance and continuing education have become a panacea for this unprecedented global pandemic, despite the challenges posed to both educators and the learners. Transitioning from traditional face-to-face learning to online learning can be an entirely different experience for the learners and the educators, which they must adapt to with little or no other alternatives available. The education system and the educators have adopted "Education in Emergency" through various online platforms and are compelled to adopt a system that they are not prepared for. E-learning tools have played a crucial role during this pan-

demic, helping schools and universities to facilitate student's learning during the closure of universities and schools (Subedi, 2020).

The review of scientific resources has shown various conceptual approaches to the definition of the concept of distance learning. It can be termed as a tool that can make the teaching–learning process more student-centered, more innovative, and even more flexible. Online learning is defined as "learning experiences in synchronous or asynchronous environments using different devices (e.g., mobile phones, laptops, etc.) with the internet access. In these environments, students can be anywhere (independent) to learn and interact with instructors and other students" (Singh and Thurman, 2019).

Online learning is the best solution during this crisis. Online learning is a learning environment that takes place over the Internet. It is often referred to as e-learning. An online educator compensates for the lack of physical presence in the virtual classroom by creating a supportive environment where all students feel comfortable to participate in online classes (Joshua). It plays a significant role in transforming our lives to the digital world by providing flexible places, class timings and quality contents. It provides a way to the development of humanity at the time of physical isolation due to pandemics. Online learning is beneficial because it is instantly accessible and offers flexible scheduling. In this system, learners use the Internet technology to communicate virtually with their teachers and fellow learners through E-mail, WhatsApp, Videoconferencing, Instant messaging or using other tools. However, Videoconferencing may be effectively used in online learning to enhance group collaboration with a sense of community between learners which may replace face to face classroom learning to some extent. In the past, students of rural areas were missing many of the opportunities that their urban and suburban peers took for granted. Connecting these rural students in online learning via video conferencing can dramatically improve the quality of their learning experience. This enables the rural/disadvantaged learners to both attend school/college from home and gives them access to the experts. Videoconferencing is a synchronous model for interactive voice, video and data transfer between two or more groups/people (Wiesemas and Wang, 2010).

Distance learning for students is not very different from the usual one: teachers send assignments for processing, set a deadline. The student sends a messenger or e-mail to the teacher for verification.

In general, scheduled Ukrainian universities and consultations are conducted by video conferencing using external platforms for video conferencing: Microsoft Teams, Zoom, BigBlueButton, Skype, Google Classroom, etc. For video conferencing, each teacher independently creates a virtual room (classroom) on the appropriate platform and invites students to participate in it. In addition, Ukrainian students use the opportunity of open quarantine available to educational platforms and services from around the world.

Investigating the issue of teacher's assistant training, we conducted a survey among the students who will be future assistants (Fig. 1). A total of 33 first-year part-time and full-time students were covered. The following answers were given to the question of "How do you evaluate distance learning?, How do you conduct your specialty?":

9.1% - very good;
27.3% - satisfactory;
57.6% - good;
3% - no answer;
3% - bad.

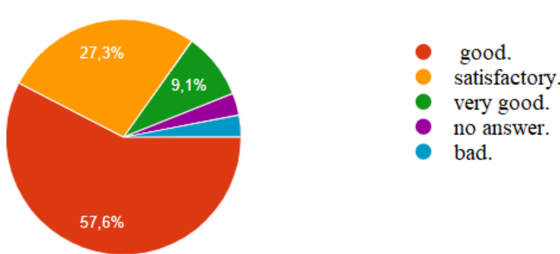


Fig. 1

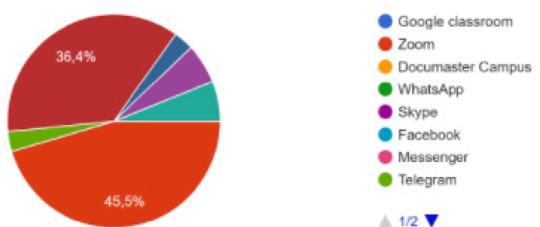
57.6% (19 respondents) have a good attitude to the introduction of distance learning during the quarantine. This indicates a qualitative positive change towards a change in the form of education.

27.3 (9 respondents) less than half of students are satisfied with a new form of learning, such as online. This allows us to assume that there were some difficulties in the learning process.

9.1% (3 respondents) have a very good attitude to innovations, in particular changes in the form of education from classical learning to distance one. Only 3% of respondents, namely 1 respondent, have a negative attitude towards online education, and 3% of respondents abstained and did not answer this question. Thus, the positive attitude of the majority of respondents indicates a positive trend in the introduction of distance education in the process of teacher's assistants training.

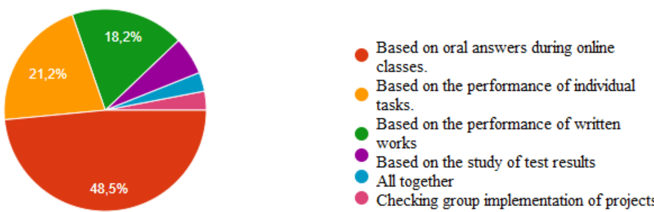
The next question was "What tools help your teachers to implement distance learning?". 45.5% (15 respondents) chose the most effective time distance learning - distance platform Zoom. Much of it 36.4% (12 respondents) preferred the Microsoft Teams platform. Other messengers and platforms received less than 6%.

What tools help your teachers to implement distance learning?



For a more detailed analysis of online education for teacher's assistants at Ivan Franko National University of Lviv, we asked respondents such questions as "How do teachers test your knowledge during distance learning?".

How do teachers test your knowledge during distance learning?



48.5% (16 respondents) state that they receive grades based on oral answers during online classes. We claim that this approach to the assessment of students during online classes is a great motive for students not to miss classes, because then there is no opportunity to get a score.

21.2% (7 respondents) Less than half of students have the opportunity to receive positive grades based on the performance of individual tasks.

Only 6 respondents, 18.2%, consider it the best opportunity to assess their knowledge on the basis of written work.

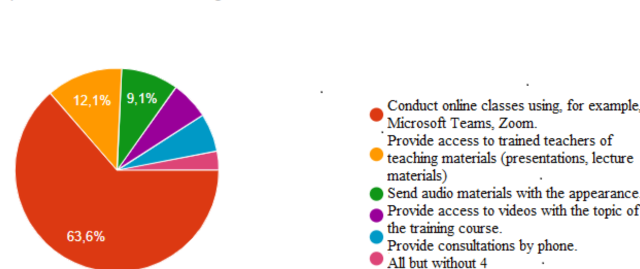
6.1% (2 respondents) say that the assessment is based on the study of test results.

3% (1 respondent) do everything together and thus get an assessment of their own knowledge.

3% (1 respondent) choose the answer to check the group implementation of projects.

The following question reveals the essence of how teachers implement the learning process remotely. When asked, more than half, namely 63.6% 21 respondents answered that teachers conduct online classes using, for example, Microsoft Teams, Zoom. It disciplines students before attending lectures.

How do teachers implement distance learning?



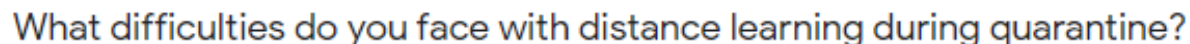
4 respondents, which is 12.1%, claim that teachers provide access to the training materials prepared by them (presentations, lecture materials). 9.1% (3 respondents) choose the answer that teachers send audio materials. 2 respondents, which is 6.1%, answered that teachers provide access to video materials with the appearance of the topic of the training course, and 2 respondents of 6.1% answered that teachers provide consultations by phone. And only 1 respondent is 3% answered that teachers in most cases conduct distraction classes, providing access to the materials specified in the question, in addition to the answer which states that teachers consult by phone.

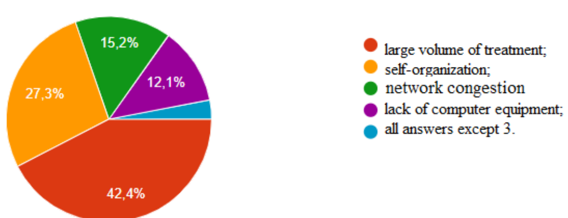
Thus, the answers to this question give grounds to conclude that teachers use educational platforms in the process of training of teacher's assistants, as well as additionally send information materials for a more detailed study of the issue.

Interesting question was "What difficulties do you face with distance learning during quarantine?".

42.2% (14 respondents) encountered a large amount of tasks in the learning process. Because, each teacher required proper preparation for the studied discipline, which together made it difficult for students in a large number of all tasks.

27.3% (9 respondents) had difficulties with self-organization. The usual rhythm of life has changed, each of the students has independently organized the learning process for themselves and you need to have great willpower and motivation to learn in order to avoid temptation.





15.2% (5 respondents) had problems with network congestion, poor communication, and absence of power supply.

12.1% (4 respondents) faced the problem of lack of their own computer equipment, which made it possible to conduct a quality learning process;

3% (1 respondent) faced all the problems together at once.

Thus, summarizing our own experience, we note the main difficulties encountered during distance learning in the specified period - is the accumulation of a large amount of all tasks, the lack of proper technical support (functional devices on modern platforms and stable access to high speed internet). Quality online learning is not possible without the right level of IT infrastructure, which in turn requires significant financial investment. In addition, it is important for teachers to gain experience in implementing online learning tools. But most importantly - not all students are capable of self-organization, self-discipline and self-control, which are mandatory for distance learning.

To the question "Do you have enough information to organize distance learning at home?" respondents gave the following answers:

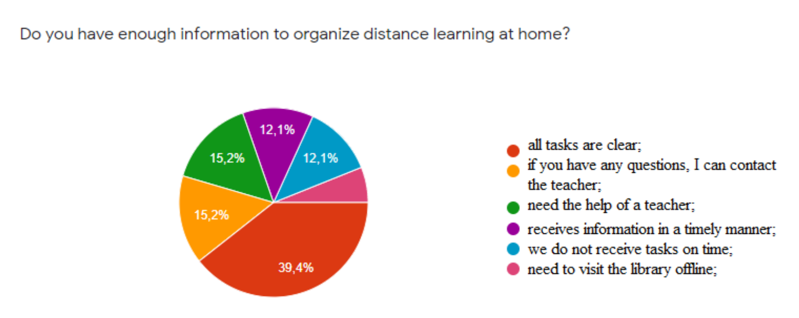
For 13 respondents (39.4%) all tasks are clear; 5 surveyed respondents (15.2%) if they have questions, they can contact with the teacher;

15.2% of the surveyed respondents need the help of a teacher;

12.2% (4 respondents) state that they receive information on time, which makes it possible to perform tasks in accordance with the requirements;

12.2% claim that they do not receive information on time;

6.1% (2 respondents) need to visit the library offline, for a more detailed and thorough analysis and study of issues on a particular topic.



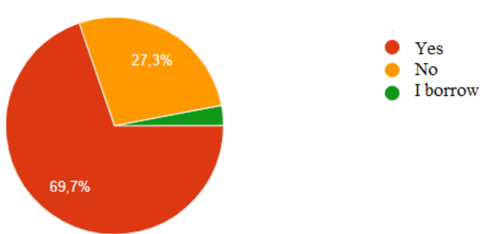
Summing up the students' answers, we can say that for less than half of the students all the tasks are clear and the information was received on time. Some students could not find the information they needed on the Internet, so they needed to visit the library online. Also, students could not complete the task without the help of the teacher or received materials out of time.

The next question allows us to understand whether the difficulties in learning are related to the lack of computer equipment in their own use, as during the quarantine period, all family members were at home and parents also worked remotely.

69.7% of the 23 respondents have a computer in their own use, which allows them to attend and conduct classes online. 27.3% (9 respondents) do not have computer equipment, which is followed by a number of difficulties faced by the future assistant in the training process.

3% of students chose the third answer, which indicates that they also do not have in their own use of computer equipment, based on the situation they borrow.

Do you have a computer for your own use, do you plan on distance learning?



It is easy to understand that the quality and level of knowledge of students who could not fully study remotely and interact with the teacher online will be different from future assistants who had such an opportunity.

The following question: What are the positive aspects of distance learning? provided different answer options.

33.3% of all surveyed students believe that the most positive aspect of distance learning is that they have more time to develop their interests independently. That is, it suits 11 respondents that they themselves manage the time and planning of the day, taking into account training, self-development and their own interests.

30.3% (10 respondents) choose the answer: No need to spend time on coomuting to the educational institution. Since not all students live in the city, most of them come from the countryside, the opportunity to study online is an excellent opportunity to save time and money spent on transportation.

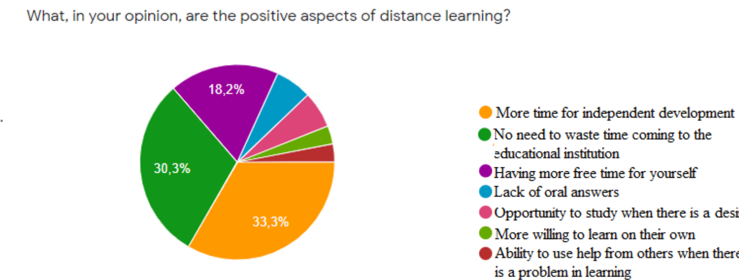
18.2% and 6 of the surveyed respondents had the opportunity to spend more free time for themselves.

6.1% (2 respondents) consider the lack of oral answers to be positive in the study.

6.1% (2 respondents) consider a positive learning opportunity to study when there is a desire. This applies to the moment when students have all the necessary materials for processing and only the term of its implementation depends on them.

3% (1 respondent) More willing to study independently.

3% (1 respondent) consider positive in learning The possibility of using help from others when there is a problem in learning.



24.2% (8 respondents) consider the large number of tasks received for processing to be the most negative aspect in distance learning;

18.2% (6 respondents) believe that the difficulty is that the study material needs to be constantly developed independently;

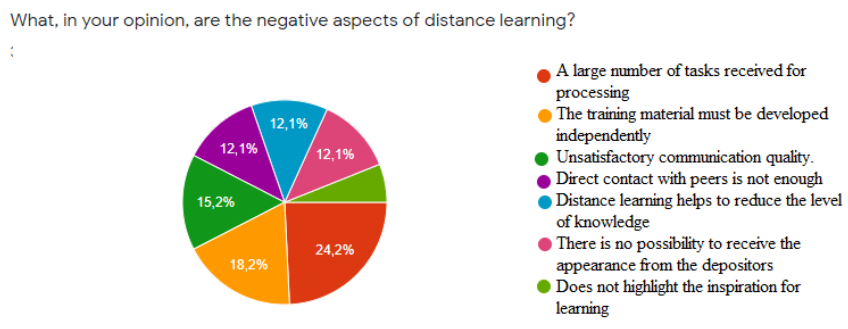
15.2% (5 respondents) have unsatisfactory communication quality.

12.2%, which is 4 respondents do not have enough direct contact with peers

12.2% (4 respondents) believe that distance learning contributes to lower knowledge

12.2% (4 respondents) choose the answer: There is no possibility to receive help from depositors

6.1% 2 respondents do not highlight the inspiration for learning



The last question of our questionnaire "Your tips and advice about how to effectively organize distance learning during quarantine" had arbitrary answers. Analyzing them we come to the conclusion that most of students would like to reduce the number of homework, improve the quality of communication during lectures, to moderate the tasks, to get clear and logical explanation of the topic and tasks for practical lessons. Some students believe that the introduction of distance learning is the best opportunity to learn and do not have any objections.

Discussion

Forced distance learning in Ukraine during March-June 2020 allowed us to look at the education system in a completely different perspective, analyze its main shortcomings and understand what needs to be worked on in the near future. After all, priorities change in modern education. Yes, it is important to prepare a well-developed personality of a teacher's assistant. However, knowledge itself, without the skills of their practical implementation, loses its meaning.

Lectures for students of the specialty 016 "Special Education" (teacher's assistant) were held live through the use of various platforms. For the organizer and participants, such videoconferences did not involve the use of sophisticated equipment or special equipment. An ordinary smartphone, PC or laptop and stable access to the Internet are enough to connect. Since such a system was not used before quarantine, the first inclusions were held in test mode to study the functionality. In the future the connection was fast, there were no difficulties.

Thus, the analysis of questionnaires suggests that practicing educators during the forced transition to distance learning during quarantine in 2020 often had to study the functionality of platforms for distance learning, often using the "trial and error method", without sound theoretical knowledge , and thus immediately in practice choose more convenient, effective and, most importantly, free options. All this required considerable time, which could not but affect the quality of the organization of the educational process. On the other hand, this situation has allowed us to gain valuable practical experience, which in the future will significantly improve the quality of education.

The scientific research has shown that Online Learning is encouraged due to the following reasons of the lockdown period for Covid-19. 1. One can acquire knowledge by staying at home and can maintain social distancing. 2. Outbreak of Covid-19 can be minimised due to social distancing. 3. It offers highly effective learning environments. 4. It offers complementary interactive support that allows students to study 24/7 and work at their own pace. 5. It is available in any location, with an internet connection and students can attend using their devices (mobile, computers, tablets, etc.). 6. Deals with real-time student monitoring as well as reporting. 7. Improves the image of institutions by offering technological solutions that solve real problems. 8. It offers flexible scheduling.

More important is the development of future professionals' self-discipline, adaptability, the need for cognition, independent learning throughout life and ability to apply knowledge in atypical situations. Distance education is the future. Digital technologies allow improving the quality of teacher's work, but do not replace it. The question is in which platforms the study will be implemented in practice, and if professionals will be ready to work online using distance learning tools.

Conclusion

The 21st century has brought to humanity not only cultural, scientific and technological achievements, but also many challenges, including the struggle for

physical survival. Social exclusion measures responded to the COVID-19 pandemic, which could block training for several months. Of course, the problem of the COVID-19 pandemic is primarily a matter of the health care system, and mitigation depends directly on the actions of scientists and pharmaceutical manufacturers in the development of vaccines and other drugs for the prevention and treatment of COVID-19 infection. Social distancing has also affected education at all levels and will modulate it for some time to come, as learners and teachers cannot physically meet during the learning process. Under such conditions, every step in the educational space was affected by the coronavirus pandemic.

Summing up, we believe that for each teacher of the department and his course the most important thing was to create a learning environment that would allow future assistants to realize the goals, pace, method of learning, while fulfilling the program results of the learning process. Motivational materials for learning new material and diagnostic testing became relevant. Lectures and seminars were held in ZOOM or Microsoft Teams, using "Skype-conference", "Google Classroom'', "Google Suite / Docs ``,''Moodle ``,''Office 365" and others. Distance learning has greatly updated the library's online resources. Lecture material with text messages in which the most important information was highlighted with a marker was also sent to the group via email, and the course was supplemented with presentations in the PowerPoint editor. Individual express surveys on relevant topics, testing of tests and documents proved to be useful. The tasks developed by teachers contributed not only to the assimilation of theoretical material, but also to the development of practical skills.

The introduction of distance learning for students, the future assistants has changed the way, forms and methods of studying disciplines. There are both positive and negative aspects of the introduction of distance learning. On the plus side, we consider saving time on the way to the university, and more free time for self-development and self-realization. The negative aspects include a large number of tasks for self-study, without the practical help of a teacher, problems with the quality of the network connection and the lack of some students' own computer equipment.

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CONSTITUTIONAL PRINCIPLE OF JUSTICE AS A BASIS FOR ATTRACTING FOREIGN INVESTMENTS IN UKRAINE

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Abstract. The COVID-19 coronavirus pandemic has worsened Ukraine's economy, which was quite weak even without quarantine restrictions. The economic crisis leads to the bankruptcy of enterprises, to rising unemployment in the country. In such difficult conditions today it is advisable to attract foreign investment to improve the economic situation in the country. An obstacle to the work of foreign investors is the violation of the principle of justice in Ukraine. Therefore, the author of the article set himself the task to investigate the issue of compliance with the principle of justice in relations between the state and foreign investors in Ukraine, as there is a significant outflow of foreign investment from the state. Given the current situation, the topic of this article is particularly relevant. The author provides his suggestions for improving the investment climate in Ukraine. He emphasizes that foreign investment plays an important role in improving the economic situation. Therefore, it is necessary to create favorable conditions for foreign investors to work in the country. The positive experience of the member states of the European Union in order to implement it in domestic legislation is studied.

The aim of the work is to conduct a scientific study of the implementation of the constitutional principle of justice in relations with foreign investors in Ukraine. The author set himself the following tasks: 1) to identify the reasons that cause the outflow of foreign investment from Ukraine; 2) to improve the investment climate in Ukraine to study the positive foreign experience of EU member states in order to implement it in domestic legislation; 3) provide their own proposals for

the approval of the constitutional principle of justice in Ukraine's relations with foreign investors.

The methodological basis of the article is a set of methods and techniques of scientific knowledge. Their use is determined by a systematic approach, which makes it possible to explore problems in the unity of their social content and legal form. With the help of the formal-legal method the problems of realization of the constitutional principle of justice in the relations between the state and foreign investors are investigated. The method of observation made it possible to summarize the knowledge to solve the problems mentioned in the article. The method of analysis helped to identify the impact of the principle of justice on public relations in attracting foreign investment in Ukraine. Using the method of synthesis, the relationship between the facts is traced, the reasons for the outflow of investments from Ukraine are clarified. The use of the comparative law method allowed for an objective assessment of the place and role of the experience of EU member states in solving problems in Ukraine. The dialectical method provided an opportunity to reveal the contradictions between the principle of fairness and the real conditions in which investors find themselves in Ukraine. The synergetic method made it possible to establish the influence of social and economic factors on the implementation of the constitutional principle of justice and the prohibition of discrimination against foreign investors. The systematic method was used in the analysis of the implementation of European standards in national legislation. Methods of modeling and abstraction were used in the process of formulating proposals to the current legislation of Ukraine.

Key words: justice, foreign investments, foreign investors, justice, court, European Union, Ukraine.

Introduction.

In the context of the COVID-19 coronavirus pandemic, the war in Eastern Ukraine, and the difficult economic situation, there is an outflow of foreign investment. The attraction of foreign investments is negatively affected by imperfection and constant changes in the legislation of Ukraine, significant tax pressure, dishonesty of counterparties, etc.

We believe that the subject of this article is a particularly relevant issue today given the difficult economic situation, the budget deficit. After all, in such a financial crisis, it is foreign investors who will help improve the situation. In our opinion, in order for a foreign investor to be willing to invest in the Ukrainian economy, he must be protected by the state.

In addition, the issue of implementation of the constitutional principle of justice in all spheres of public life is important, because it is justice that marks the line between what is allowed and what is not allowed. The Constitution of Ukraine enshrines the principle of justice, but in Ukraine it is only guaranteed, not implemented, which is one of the reasons for the outflow of foreign investment.

Ensuring the principle of justice on the part of the state is the basis for attracting foreign investment to Ukraine.

It should be noted that such scientists as O. Baranovsky, O. Gosteva, M. Dykha, M. Klyuchkovsky, S. Kovalenko, D. Pokryshka, M. Soldatenko, K. Khrimli studied the above topics. Under the general editorship of V. Ustymenko, the monograph «Legal Enforcement of the Principle of Justice in Economic Management» was published, which states that tax policy is one of the areas of economic policy of the state and significantly affects the investment attractiveness of the state. At present, Ukraine's tax policy is not conducive to economic growth and is characterized by fiscal orientation. This state of affairs does not create a favorable investment image for Ukraine (Ustymenko, p.7).

Investment climate in Ukraine.

E. Mordan rightly notes: «Today, foreign direct investment is the most necessary and relevant form of investment for countries with developing economies, because they provide an opportunity to implement large-scale projects. In addition, new technologies, new models of corporate governance and other modern practical experience are gradually being introduced in the country where such investments are attracted» (Mordan, 2017, p. 36).

The Law of Ukraine «On the Foreign Investment Regime» established equal conditions for a foreign investor in Ukraine with a domestic investor. The state provides guarantees to foreign investors to protect their investments. Foreign investments are not subject to nationalization (Law of Ukraine «On the Foreign Investment Regime», 2006).

In order for a foreign investor to work in Ukraine, it is necessary to improve the investment climate. Then our state will receive some benefit. This includes improving the economy, increasing incomes, increasing the number of jobs, sharing experiences, obtaining modern technologies and increasing demand for Ukrainian products on the world market (Mordan, 2017, p. 36).

Foreign investment is a driving force for improving the financial situation in the country. However, the investor must have guarantees to carry out its activities. Such a guarantee, in our opinion, is the right to a fair trial. Although in Ukraine foreigners have the same rights as citizens of Ukraine and stateless persons, the problem in practice is the corruption of Ukrainian courts. That is why it is quite difficult to achieve fair, honest justice in Ukraine. In addition, foreign investors are under pressure from the Ukrainian authorities. In practice, we often witness how government officials, such as tax authorities and customs authorities, violate the rights of foreign investors. Ineffective judicial protection of national courts leads to the fact that foreign investors turn to international courts and this is not a positive indicator for Ukraine.

T. Razina notes that «…the main integration process for Ukraine, which directly affects its investment climate, is the process of European integration. The task of public administration in this process is not only to harmonize national

legislation in the field of investment activities with European Union law, but also to protect national interests in order to attract maximum investment in high-tech production of high value-added products» (Razina, 2020, p.11).

In general, it is quite difficult to talk about justice in Ukraine. In addition to the coronavirus pandemic, the problem is further complicated by the fact that corruption has permeated all spheres of Ukrainian life. Legal nihilism prevails among the population. Attracting foreign investment will be facilitated by a fair trial with the participation of a foreign investor. After all, very often foreign investors need to be protected from the bureaucracy of the state, which is the main «raider» in the state. The protection of the rights of individuals and legal entities from violations by the subjects of power is carried out by administrative courts. However, as practice shows, they are under considerable political pressure, as one of the parties in the case is always the state. This state of affairs leads to an outflow of foreign investment, which has a detrimental effect on Ukraine's economy. Every investor strives to work where there is respect for the law, where justice prevails.

Attracting foreign investment in Ukraine's economy is the key to successful development of the state. At such a difficult time, there is an outflow of foreign investment due to the unstable situation in Ukraine. In order for an investor to work successfully in a foreign country, he needs guarantees – guarantees of state protection. At the World Economic Forum in Davos, the President of Ukraine stated that investors who invest more than $ 100 million in Ukraine's economy will be protected by the state. The state will provide a manager – investment nanny, who will speak 5 languages and 24/7 this manager will solve all the problems that an investor in Ukraine will have (Echo of Davos. Three questions to the president about the fairness of benefits for investors).

In our opinion, such a statement by the President of Ukraine is expedient, but not entirely fair given the principle of equality of all before the law. After all, it is necessary not only to provide investment nanny to large investors, but also to small ones, which also have a positive impact on the economy of Ukraine. Exemptions from income taxes, which Volodymyr Zelensky also spoke about, should apply to small investors as well, not just large ones. It is necessary to create equal conditions for all investors, ensure a favorable investment climate and an effective system of investor protection.

The Law of Ukraine «On State Support of Investment Projects with Significant Investments in Ukraine» guarantees that from January 1, 2022, investors will receive state support if they implement large projects in Ukraine. (Law of Ukraine «On state support of investment projects with significant investments in Ukraine», 2020). However, it should be noted that «regulations governing the taxation of investment activities in Ukraine remain complex, unstable, contradictory, which negatively affects the activities of business structures, reduces the attractiveness of the national economy for investors» (Ustimenko, p. 17). As V. Ustymenko notes: «The principle of fair taxation should be the basis for a favorable

investment climate in Ukraine. What is meant here is the principle of fair taxation of economic activity, due to which a balance of interests of public (state, public) and private (investors) will be created in Ukraine» (Ustymenko, p. 21).

Implementation of the principle of justice in constitutional and legal relations.

Ukraine aspires to become a full member of the European Union. To do this, it is necessary to adopt the positive experience of the Member States of the European Union in order to implement it into national law. Consider the experience of such developed European countries as Poland and Austria.

K. Khrimli writes: «It should be noted that in Poland, foreign investors are guaranteed free access to domestic markets and are allowed to participate in the privatization process. There is also a system of customs benefits in Poland: under Polish law, foreign investors are exempt from paying duties on equipment purchased abroad for three years of investment activity. In order to encourage foreign investment, the Polish local government can exempt the investor from paying real estate tax, provide benefits to pay for electricity, prepare the basis for business activities at a reduced price» (Khrimli, 2019, p. 59).

According to O. Gavrilyuk, S. Sidenko, B. Aragau, «when carrying out investment activities in Austria, the most attractive for foreign investors are the tax benefits on income received as a result of participation in the activities of another company. If an Austrian company receives dividends from a foreign company, then, according to national law, they are not subject to income tax subject to the following conditions: the legal form of the foreign company must comply with Austrian counterparts; the share of investments of the Austrian enterprise should make not less than 25% of their total volume; investments must be made within 12 months; the share of investments in other similar companies should not exceed 25% of the total activity of a foreign enterprise (except for companies that own a bank). Austrian law exempts from taxation profits those companies from which dividends are received in their countries of origin. Exemption of foreign investments from taxes also applies to hidden profits» (Gavrilyuk, Sydenko, Aragau, p. 17).

According to V. Ustymenko, «fairness of taxation should be based on a harmonious combination of financial interests of the state, society and taxpayers. The tax incentive has a clear direction – to encourage investment that meets the financial interests of the state, society, and therefore is fair to the state. It is worth noting that in the case of attracting investment in the economy of Ukraine, it will have a positive impact on the economy of Ukraine as a whole, and therefore all businesses will be able to take advantage of these benefits. This indicates that for other business entities that are not related to investment activities, a preferential tax regime for investors will be fair» (Ustimenko, 2017, p. 31).

As O. Zeldin and V. Hryshko rightly point out: «Investors seek to invest in enterprises located on the territory of large industrial sites. Small places remain unattrac-

tive for investment, potential investors are reluctant to invest in their development. Therefore, the task of the state is to offer the investor such incentives that could compensate for the problems and inconveniences associated with investing in small places. This will allow investors to solve the problems facing the state and society.

Moreover, incentives should be provided to investors for a clearly defined time, which will allow the investor to start production and solve other problems associated with the start of investment activities» (Zeldina; Hryshko, 2017, pp. 69-70). However, not only the favorable tax policy of the state plays a significant role in attracting foreign investment. Courts and law enforcement agencies also influence the investment climate in Ukraine.

M. Klyuchkovsky, M. Soldatenko note: «The spread of coronavirus can lead to certain violations in the judicial and law enforcement systems and, as a consequence, weaken their ability to protect the rights of investors at the appropriate level.

For example, law enforcement agencies, which may be overburdened with quarantine functions, are still required to do everything possible to protect investments from illegal actions by third parties (such as raiding), otherwise there is a risk of violating Ukraine's international obligations.

Quarantine measures also affect the functioning of the judiciary, creating delays in proceedings, and the effectiveness of judicial protection may decline. It can also theoretically lead to a violation of investors' rights» (Klyuchkovsky; Soldatenko).

An important role in the implementation of the principle of fairness is played by administrative courts, which protect the rights of investors from the arbitrariness of tax, customs and more.

However, this principle is embodied not only in the administration of justice, but also in the execution of court decisions. It is thanks to the actual execution of the court's decision that justice makes sense. The problematic issue in practice is that the enforcement of administrative court decisions is a complex category of enforcement proceedings. Therefore, it is necessary to strengthen judicial control over the implementation of this category of cases, as in Ukraine about 80 percent of court decisions are not enforced.

As M. Klyuchkovsky and M. Soldatenko rightly point out: «Investment agreements also require a fair and equal attitude of the state to foreign investments. Prohibitions that are disproportionate to the aim pursued, discriminatory and arbitrary are also prohibited. Therefore, it cannot be ruled out that quarantine measures that unduly interfere with or discriminate against foreign business compared to domestic business may create potential grounds for claims by foreign investors.

To date, all the restrictive measures taken by the Ukrainian authorities, as well as the steps taken to support business in difficult conditions, do not diversify between Ukrainian and international business and apply equally to all. But if, for example, the government decides to compensate for losses or provide other state aid to national businesses to overcome the negative effects of the pan-

demic, investment agreements may require similar support to foreign investors. Otherwise, investors will have a chance to demand appropriate compensation through arbitration. This will also apply to those situations when the authorities allow the activities of Ukrainian enterprises, while extending the ban on foreign business» (Klyuchkovsky; Soldatenko).

In practice, we often witness how government officials, such as tax authorities and customs authorities, violate the rights of foreign investors. Ineffective judicial protection of national courts leads to the fact that foreign investors turn to international courts and this is not a positive indicator for Ukraine. Attracting foreign investment will be facilitated by a fair trial with the participation of a foreign investor. After all, very often foreign investors need to be protected from the bureaucracy of the state, which is the main «raider» in the state. We believe that in Ukraine it would be expedient to establish the Supreme Court on Foreign Investments, which would consider disputes between foreign investors and the state authorities of Ukraine and implement the principle of fairness in life.

However, it is necessary to give such a court the right to monitor the implementation of its decisions. After all, the problem in Ukraine is the non-enforcement of court decisions. About 80% of court decisions are not enforced or are enforced improperly. This is a significant obstacle to Ukraine's accession to the European Union. Tax burdens, corruption, imperfect and contradictory legislation lead to investors refusing to invest in those sectors of the economy that require government assistance. The situation in attracting foreign investment is also negatively affected by the war in eastern Ukraine, as it creates uncertainty for foreign investors.

Therefore, as rightly noted in the monograph «Legal support for the principle of fairness in economic management»: «Therefore, the level of investment activity in Ukraine is directly affected by tax incentives. The main tax incentives for attracting investment into the economy of Ukraine can be: investment tax credits; differentiated rates from corporate income tax, VAT (depending on the sectors of the economy); benefits for reinvestment of profits; depreciation preferences for businesses that use new technologies; simplification of tax reporting for investors» (Ustymenko, p. 32).

In order to improve the investment climate, it is necessary to provide the investor with fair taxation. E. Mordan and A. Gushcha note: «The mechanism of tax stimulation of investment activity is imperfect, declarative, not stable, and therefore does not allow to support the investor at the appropriate level and to promote investment in the economy of Ukraine. To increase investment attractiveness and solve economic problems that exist in Ukraine, it is necessary to provide a differentiated system of tax incentives, using international experience, adapting it to the specifics of the Ukrainian economy, which will gradually increase investment capital inflows into Ukraine's economy. The main tax incentives for attracting investment into the economy of Ukraine can be: investment tax credits; differentiated rates from corporate income tax, VAT (depending on the sectors of the economy); benefits for

reinvestment of profits; depreciation preferences for businesses that use new technologies; simplification of tax reporting for investors» (Mordan, Gushcha, p. 34).

Conclusions.

With the introduction of restrictive measures through COVID-19, the war in eastern Ukraine, political and economic instability, the issue of implementing the principle of justice in all spheres of public life to protect the rights of foreign investors in Ukraine has become a topical issue today.

The situation in which Ukraine finds itself is not the best for foreign investors. Given the current economic situation in our country, effective measures are needed to attract foreign investment. It is necessary to create a favorable investment climate and assist foreign investors in carrying out their activities by easing tax pressures and ensuring the stability of Ukrainian legislation. Both large and small investors in order to implement the principle of fairness must provide a manager – invest nanny and exempt all investors from income tax. In addition, it is necessary to adopt the positive experience of the Member States of the European Union.

Effective judicial protection is needed to protect the violated rights of foreign investors. It would be appropriate to establish a Supreme Court for Foreign Investment. A problematic issue in practice is the issue of actual implementation of court decisions, including decisions of the European Court of Human Rights. Unfortunately, in Ukraine most court decisions are not enforced. Therefore, it is necessary for the court to monitor the implementation of its decisions and to amend the legislation to increase the debtor's liability for non-compliance with the court decision. It is important to implement the constitutional principle of justice, to ensure equal treatment of both investors and Ukrainian businessmen, the absence of any discrimination.

The COVID-19 coronavirus pandemic has worsened Ukraine's economy, which was quite weak even without quarantine restrictions. The economic crisis leads to bankruptcy, unemployment.

The positive consequence of the pandemic is that it has caused a demand for a just society, by which we mean a society in which each of its members has an equal chance in the economy. Therefore, to ensure justice in the economy, a necessary step for the state is to build an effective judicial system.

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