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CONTENT

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METHODOLOGICAL BASIS FOR DETERMINING THE LEGAL NATURE OF RELATIONS IN THE FIELD OF ADMINISTRATIVE PROCEEDINGS

Abstract. The article is devoted to the concept and content of legal relations in the field of administrative proceedings, the place of legal relations in the legal system.

It is determined that administrative justice is justice in the sphere of activity of executive bodies and local self-government, a kind of "administrative branch of justice". The purpose of administrative justice is the protection of violated rights and freedoms of citizens, ensuring general order and law and order, effective and lawful activities of public administration through the justice system. Legal relations in the field of administrative justice are defined by the interaction of the parties on the settlement of a dispute arising from the violation of the rights, freedoms and interests of non-governmental entities by a body of executive power or local self-government regulated by the norms of the Code of Administrative Procedure of Ukraine.

Principles of administrative proceedings are ideas that are enshrined in the rules of administrative procedural law and have a normative nature.

Key words: law, public relations, legal relations, administrative justice, administrative proceedings.

In all spheres of life of society and the state, social relations are constantly changing and ceasing. For the progressive development of society and negative social ties, the behavior of the participants in these relations is

regulated and regulated by law, which turns such social ties into legal ones. Since legal relations are a multifaceted category, it is important to explore its relationship with such categories as social relations and law, which will help to understand the nature and genesis of this phenomenon, will formulate a general concept and explore the basic elements of legal relations.

The problem of the theory of legal relations is one of the most complex and topical, theoretically and practically significant problems both in the theory of administrative law and in all legal science in general. Defining the concept of legal relations and understanding their essence as a general legal category is important, because it directs to a particular area of study of issues of direct interest to the researcher, promotes the use of appropriate research methods, eliminates the phenomenon of excessive debate among scientists. The topic and objectives of scientific research require such an approach to it that would provide an opportunity to clarify the positions of legal scholars on general issues of legal theory, compare different views, express understanding of these issues by the dissertation in order to further, based on the analysis of legal relations. connection of the theory of legal relations, the doctrine of administrative law and legal relations in the field of administrative justice. Therefore, first of all, there is a need to highlight the problem of defining the general concept of legal relations and establishing its essence.

Discussions about the concept of legal relations are sometimes terminological and sometimes methodological. In this regard, it is necessary to highlight the various methodological positions of individual studies.

T. Kolomoyets defines the general concept of justice as one of the spheres of administrative and political activity of the state, which covers the activities of judicial and executive bodies, aimed at resolving disputes, ensuring human rights and freedoms, protecting its interests, interests of enterprises, institutions, organizations and the state [1].

In the academic textbook on administrative law edited by VB Averyanov, administrative justice is defined as a system of judicial bodies (courts) that monitor compliance with the law in public administration by resolving in a separate procedural order of public disputes arising in connection with the appeal of individuals and legal entities to the executive authorities, local governments or their officials [2].

E. Kurinny offers his own definition of the concept of administrative justice: it is an institution of administrative law, a kind of administrative-legal protection, a form of governmental realization of public needs and interests, which is carried out through a legally defined court procedure for consider-

ing and resolving disputes between subjects of power-administrative relations [3].

Instead, I. Koliushko and R. Kuybida note that administrative justice is a judicial protection of the rights, freedoms and legal interests of participants in legal relations that arise in the field of management of the state and local government [4, p. 17; 5, p. 21].

Thus, the above views of scholars give reason to believe that administrative justice - is justice in the field of executive and local government, a kind of "administrative branch of justice." The purpose of administrative justice is the protection of violated rights and freedoms of citizens, ensuring general order and law and order, effective and lawful activities of public administration through the justice system.

According to Yu. Pedko, administrative justice performs human rights, law enforcement, control, law enforcement, preventive and jurisdictional functions, as well as the function of management.

Thus, we can state two points of view, two main approaches to understanding administrative justice:

- a narrow approach, when administrative justice is considered only as judicial protection (own administrative proceedings). Its main regulatory framework, respectively, is the Code of Administrative Procedure of Ukraine. This view is the most common and, therefore, the concepts of administrative justice and administrative justice are equated;
- a broader point of view, which includes not only the resolution of administrative disputes by courts (administrative proceedings), but also by other authorized state bodies (for example, appeals against administrative acts in an administrative manner). Given this approach, such a legal framework for administrative justice is supplemented by the Law of Ukraine of October 2, 1996 "On Citizens' Appeals" and relevant bylaws.

The basis of the controversy over the definition of the concept of legal relations are different types of legal understanding, namely the normative and so-called. wide. That is, in the process of studying legal relations there are two aspects: epistemological and ontological. The epistemological aspect of the theory of legal relations (positivist approach, normative understanding of law) involves the study of legal relations as a result of the regulation of social relations by law, respectively, the rule of law is a necessary legal prerequisite for legal relations. In the ontological aspect of the study (natural law

concept, broad legal understanding), the concept of law consists, in addition to the legal norm, of other legal phenomena, primarily legal relations. Some proponents of a broad understanding of law even interpret legal relations as an objective reality that exists independently of the consciousness of the people and the will of the state, and helps to reveal the connection of law with other phenomena and processes of public life. In the legal literature there is a view that legal relations may not necessarily arise on the basis of the rule of law - as "social relations that are transformed into legal, in connection with the natural-historical necessity, and not as a result of the influence of law» [6]. That is, social relations, regardless of legal norms, can carry a "legal essence", be "its legal essence", and arise before the advent of laws [7].

Legal relations are a phenomenon unique in its diversity and multifaceted nature. It is absolutely obvious that, formulating the concept of legal relations, it is impossible to abstract from the law, from its impact on public relations. It is worth noting that legal relations do not simply express the organic relationship of certain social relations with the law, but are the result of their regulation by the rules of law, a consequence of state-regulatory influence. This eliminates the possibility of a situation where legal relations operate outside their legal regulation [8].

The diversity of the concept of legal relations necessitates the characterization of administrative legal relations in this study at several levels, namely: at the level of general theory of law (general theoretical level); at the level of the theory of administrative law ("administrative-theoretical level"); at the level of application of a specific administrative law ("specific administrative level") [9; 10].

At the general theoretical level, legal relations are characterized in a universal, most abstract form. In this case, the administrative-legal relations, for the most part, are considered as social relations regulated by the administrative-legal norm, the participants of which have subjective rights and legal obligations [11, p. 99].

Given such judgments, it is difficult to determine the relationship between social relations, administrative law and administrative legal relations, as it is in the interaction of these three categories and reveals the essence of legal relations as a legal phenomenon [12].

After analyzing different, often opposite, mutually exclusive views expressed in the legal literature on the relationship of these concepts, the dissertation tends to interpret legal relations as a category that is not identical to the concept of social relations, is these concepts do not match completely

and have some differences. Public relations are a broader category than legal relations, they become legal when regulated by law.

R.J. Halfina noted that norms create the possibility or obligation of a particular behavior, and are correlated as abstract and concrete [13]. That is, the abstract prescription of the norm as a result of legal facts becomes an element of legal relations as a real social relationship [14]. Law regulates social relations, giving certain types of legal forms, the latter are the result of legal regulation of social relations. Thus, the value of the concept of "legal relationship" is, in particular, that it means specific real social relations, embodied in the legal form, which is the result of the implementation of the rule of law [7].

It is appropriate to emphasize that in the course of this study, administrative legal relations are considered, first of all, as a legal relationship between legal entities.

Given that administrative law is a branch of public law, and public relations are immediately considered to be subject to regulation by the legislator, the distinction between legal relations and public relations is not a priority of this study. In this regard, both can be perceived as identical, although these categories are related as general and special.

First of all, it should be noted that administrative law is a branch of public law, and the relations governed by it, in essence, are public relations.

Administrative legal relations arise, change and terminate only on the basis (subject to availability) of the rule of law. They exist only as legal and can not exist otherwise [15, p. 433].

There is a causal link between a legal norm and an administrative legal relationship. By itself, the norm of administrative law does not create specific administrative-legal relations. It is the basis of their emergence, when under certain circumstances, public relations acquire an administrative and legal shell [16, p. 55]. The administrative-legal norm indicates the composition of possible participants in the legal relationship, their rights and responsibilities, the conditions for the emergence and termination of legal relations. That is, a certain model of future legal relations is laid down, which should be formed on the basis of and in accordance with the legal requirements formed by the legislator.

Undoubtedly, the behavior of the participants in administrative and legal relations, their rights, responsibilities and interests are necessarily related to the practical implementation of their powers by the executive authorities, provided that not all such activities can be attributed to the sphere of

management. For example, administrative-legal relations concerning realization by the citizen of the subjective rights with participation of executive body or local government body (accrual of pension payments, privatization of the house) are not administrative relations, and their participants are not correlated as managing and managed sub ' objects.

Thus, the identification of administrative and legal relations with public administration relations is rather a stereotypical view of the Soviet period, which does not correspond to the scientific views of today. Analysis of scientific sources of the last decade confirms the opinion that in the field of administrative and legal regulation is quite common not only management but also non-management relations, and the latter are much more than management [17, p. 54]. In addition, it is difficult to agree with the point of view of domestic administrator O.V. Kuzmenko, who notes that "filing a lawsuit in an administrative court causes the emergence of original management relations: they are law enforcement and at the same time - horizontal, in which subjects oppose each other as equals parties" [18, p. 126]. In our opinion, the legal relations arising in the course of administrative proceedings do not in any way belong to the administrative ones.

Thus, administrative-legal relations are related to the exercise of public authority, the implementation and protection of subjective rights, freedoms and legitimate interests of legal entities, and are based on public interests. They are usually associated with the implementation of public tasks, ie those that belong to the exclusive competence of public administration.

In this regard, another feature of administrative-legal relations is also that one of their parties is always the executive body (public administration body).

And although various subjects (citizens, legal entities, public authorities) can take part in administrative legal relations, they always have an obligatory party - the bearer of state-power powers, without which such relations do not arise.

It is the state-power nature of the status of one of the subjects of administrative-legal relations that gives these relations a special meaning. The obligatory participant of such relations is the body of executive power (its official) or the body of local self-government, exercising its power functions and powers, acts on behalf of the state and represents the public interest [19, p. 20].

Administrative legal relations are characterized by primary inequality of their participants. In a particular legal relationship, for the most part, one

entity (individual or subordinate body) is subordinated to another entity endowed with power, and which has the right to determine for subordinates the procedure and grounds for exercising their rights (powers) and execution responsibilities.

The above study of methodological positions of scholars indicates that in modern legal science there is no unity in understanding the essence, features and properties of such a multifaceted category as administrative law, which complicates the formation of the doctrine of relations in administrative law and delimitation of their types.

The analysis of the content of scientific sources on this topic gives grounds to claim also about the terminological uncertainty of the concept of administrative legal relations, which finds its expression in different interpretations of this category.

Considering administrative legal relations as a complex multifaceted system, identifying its components and connections between them, we can identify patterns of development of relations in the field of administrative justice.

Abstracting from specific views, relations in the field of administrative justice can be represented as an organizational integrity - part (subsystem) of the entire system of administrative and legal relations. The following types of administrative legal relations are related to this subsystem: security (protective), specific, judicial-procedural. With the help of a systematic approach, a new, more optimal way of knowing the legal nature of relations in the field of administrative justice was created.

The jurisdiction of administrative courts extends to all public law disputes in the field of public administration. Any decisions, actions or omissions of subjects of power may be appealed to administrative courts, unless the current legislation establishes a different procedure for such decisions, actions or omissions [20].

The administrative-procedural activity of the court is based on the relevant initial provisions, which express its most important features and properties. Such provisions are called the principles of administrative justice, which are a "sample" around which the relevant procedural rules should be built. The principles of administrative justice are important, as they serve as a necessary condition for improving the activities of the judiciary, their strict observance and implementation is an important guarantee of protection of the rights, freedoms and interests of the individual. In the principles of administrative procedural law, the legislator's attention is focused

on the nature and content of modern proceedings during the consideration and resolution of administrative cases by courts. The principles of the administrative process are objective in their content. They are determined by the social circumstances that exist in society. They can be defined from two positions. First, as historical categories developed over the long development process as an element of human culture. Secondly, as ideas that are enshrined in the rules of administrative procedural law and have a normative nature.

Therefore, summarizing the above, we propose to define legal relations in the field of administrative justice as regulated by the Code of Administrative Procedure, the interaction of the parties to resolve a dispute arising from the violation of executive power or local government rights, freedoms and interests of non-governmental entities.

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"LEGAL SPACE OF THE STATE", "CONSTITUTIONAL SPACE OF THE STATE": LAW AND POLITIC

Abstract. The article deals with the features of the categories "legal space", "constitutional space". The author gives the thoughts of scientists involved in the study of this legal concept. By tying the category "legal space" to the constitutional law, a conclusion is drawn about the space as a constitutional category.

Key words: space, legal space, constitutional law, constitutional space, constitutional-legal reform, reformation of the constitutional system.

Problem statement. Development and confirmation of Ukraine's own path and place in the geopolitical environment, its inclusion to European and world integration processes are inextricably linked with the organization of regulatory and law enforcement activities of state authorities and local self-government, which would be in line with current trends of legal development and international standards in this area. New trends in the constitutional legal construction of the country, the formation of civil society institutions, the optimization and reformation of the system of public administration determine new conditions for the implementation of state power, an indispensable condition for the effective functioning of which is the unity of the legal space[1].

In the current complex situation of the constitutional system reformation, certain integration processes can also solve real problems of the modern constitutionalism. However, tendencies of legislation harmonization should

not be viewed only in the context of European and global constitutional development as unification processes also take place in the domestic law. So, peculiarities of the national legal system, according to T. Podorozhnia, require a unified approach to the coordination of the current legislation, the formation of a single legal space throughout the territory of Ukraine, since the existing contradictions between norms of the Constitution of Ukraine and the current legislation cause political, economic, and social crises[2]. [2, p. 12].

Distinguishing territorial legal systems, among which international, regional, national one are considered, lead to the understanding of their close interaction and even dependence on the spatial binding. Spatial identification of the legal system is an important methodological procedure, which essence is the content of a category "legal space" taking into account modern interpretations of the legal space.

Analysis of scientific publications. An important contribution to the development of the modern constitutionalism, its reformation, and also directly ensuring the unity of the legal framework, which constitutes a doctrinal foundation for the research, is made by both domestic and foreign scholars: V. Azizova, M. Baimuratov, Yu. Barabash, R. Baturenko, Yu. Bysaha, A. Kolodii, N. Kirichenko, N. Mialovytska, O. Martseliak, M. Orzikh, V. Pohorilko, O. Rohach, M. Savchyn, V. Serohin, O. Skrypniuk, L. Tatsii, Yu. Todyka, A. Filippov, V. Fedorenko, V. Shapoval, Yu. Shemshuchenko, and others.

Statement of the basic material. The spatial-temporal dimension of law as one of the main problems of general theoretical jurisprudence is related to not only temporal and territorial aspects of legal regulations. Spatial dimension is peculiar to the thinking of man and, accordingly, inseparable from its use in various situations. Thus, the bright field of operation of the category of space is legal relations and legal situations, which, according to O. Melnychuk, create an eventual background of law[3].

In this context, in the modern science of constitutional law, more and more attention is paid to the concept of legal space. The main issues considered in this case: how the legal space is organized, what are its main forms

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and specifying methods, what is its constitutional consolidation. At the same time, there is a situation when the concept of legal space is separated from real spaces, which are localized by means of legal relations and are specified in its special types: city, state, integrative, transnational, etc. [4].

French legal theorist J.-L. Bergel rightly notes: "...each legal system should regulate problems associated with space as an element of legal relations; now, we have to decide how space is manifested in legal relations even if the role of space in the legal system seems to have not yet been studied" [5].

The idea that all life of human society is closely interrelated with the perception of space corresponds to the current level of sounding of scientific knowledge of the nature of space in the theory of constitutionalism. According to it, space reflects cyclic processes in the material and ideal world being a condition for the coexistence, systems are developing, which include legal processes with their inherent space, which corresponds to their specific of legal activity. Spatial ties and relationships are objectively formed only on the basis of life, which is carried out among people. Aware of its contents leads to an understanding of the forms of being, one of which is the term "space" [6].

The specifics of physical space, according to T. Yuzhakova, should be distinguished from the social one, in which society exists and develops, together with the legal space. Its properties and currents depend on the forms of life of people and are characterized by their rhythms, cyclicality, the pace of flow, as well as the attitude of people to the social phenomenon, called space in the law[7].

Space – a special functional category of legal theory and practice. It displays the origin, expression, and boundaries of any legal action, process, norm, state, and event. In the space, legal relationships are regulated. Legal relationships are a specific form of the social interpenetration of subjects and objects of law in order to realize legitimate interests and achieve what is provided by the source of the current law. And, in turn, spatial relations are a definition that expresses the interaction between the length and sequence of

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legal processes and events[8].

Revealed spatial parameters interact with legal relations in the process of regulation of the behaviour of individuals in society. In this case, space provides right, stabilizes or restricts it. The spatial limits established by law can overcome themselves and be replaced by more progressive ones. They also at the same time form a certain limit, beyond which legal relations begin to develop[9].

In scientific papers devoted to the study of a legal basis for the category "space", the results of some studies of various spatial parameters in the law are given. In particular, French lawyer J.-L. Bergel, in the most general form, considers the problem of the relationship between the concepts of "space" and "law" in the following aspects: 1) devoted to the analysis of the law in a particular space; 2) analyses the same effect in legal systems[10].

In our opinion, interesting is the research of the concept of "space" given by I. Bartsyts. In his work, under the space, the scholar understands the physical reality, which is subject to the legal norms of the rule of law of the Constitution[11].

L. Hantseva notes the primacy of the formation of the category of "space" in the law, indicating that the space of material and social world is the objective reality of existence outside of a human and regardless of individual subjects of law. However, the objective component of the analysed term in the process of collision with the individual and his/her consciousness is refracted and transformed into subjective. Subjective and objective, interacting with each other, give rise to legal consciousness. And the latter, in turn, – the legal culture, influencing in general on the legal matter or, in other words, the norms of law and the social and legal life of society and the state[12].

In his scientific researches, D. Kerimov notes the fact that each law has an objective reality of action in space. This objective reality of the law in concrete historical conditions has its limits. Hence there is a need for adjusting the

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previously adopted legal norms and regulations in connection with the development of both objective laws and conditions of the legal matter in society[13].

V. Sukhanov fills up the term "space" with the meaning of "location" or "place of development", while the scholar emphasizes that the term "place" should not be considered only as a mere geographical or social phenomenon since in the legal sense it is the object itself, located in spatial forms[14].

Conclusions. Thus, in our opinion, *space as a constitutional legal category is a specific functional category of the science of the constitutional law that reflects certain spatial boundaries of the emergence and development of any constitutional-legal action, the very constitutional process, constitutional norm, state or event fixed in the Basic Law of the state.* Therefore, space is the spatial limits established by the Constitution, which can overcome themselves and be replaced by more progressive ones within the framework of the implementation of constitutional and legal reform. At the same time, they also form a certain limit, where constitutional relations begin to develop.

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Hlukhanych Olesia

POLYCULTURE PHENOMENON OF THE TRANSCARPATHIAN COMPOSERS' CREATIONS

At the stage of its formation in the 19th century, professional musical culture of Transcarpathia underwent significant cultural influence from different ethnic groups living in the region, adapting both Western and Eastern European professional music traditions. The musical culture of Transcarpathia has a strong influence of Hungarian, Slovak, Romanian, Polish, Czech, German, Gypsy ethnic groups. In order to understand the cultural and artistic features of the region, it is worth noting the multinational character of the cultural thesaurus of the region as a whole, and at the same time the individual characteristics of each ethnic group in particular and the intervolving and interconnection between them. At the same time, the interesting geographical position of the region (the presence of both mountainous, more isolated, and lowland areas) contributed to the specific cultural layers' formation, which sometimes differed significantly from each other. That is why "folk songs have more or less noticeable specific features in different localities, which gives grounds to isolate individual musical and dialectical regions within the region" [7, 248].

Late 19th and early 20th centuries gave then Pidkaspatska Rus a number of talented composers, musicians, authors of choral and instrumental works. Among them Ioan Bokshay, Petro Miloslavskyi, Olexander Kizym, Mykhailo Roshchakhivsky, Desideriy Zador, Mykhailo Goyer, Sion Silvay and others. Their creativity contributed to the music development in Transcarpathia. The diverse influence of folk-song intonations is traced in their works. It concerns both the melody construction peculiarities of musical works and the general musical and thematic material development direction, as well as the use of special development methods, specific musical forms inherent in folk creativity. All this gives ground to speak about their use of folklore

and mode and intonational thinking. The use of folklore elements gives the melody of the art work a pronounced folk colouring, even if the author does not directly quote folk songs. The individual interpretation of folk models by each individual composer creates their unique identity in their works. Poly-ethnic influences had a decisive effect on the musical traditions' formation of Transcarpathia. It is interesting to note that as a result of the synthesis of poly-ethnic influences and cultures of different ethnic groups, "a single Transcarpathian culture was formed, not just a quantitative summation of individual elements of different ethnic cultures, but a musical culture was formed, having ethno-cultural character as its core" [3, 186].

At the beginning of the Transcarpathian professional music formation, in the late nineteenth century, spiritual music, composed by such composer-priests as Emil Talapkovich, Sion Silvay, Emilian Zheltwei and many others, dominated. Among them, the figure of Father S. Sylvay should be highlighted. He was a conductor, musical instrument maker, poet, playwright, painter, and woodcarver. Along with spiritual music, he was one of the first to create secular choral works. These were mostly small single or double versed choir miniatures created on author's texts, often of a joking nature. The influence of folk intonations was clearly felt in these works' melody, although there is no direct quotation of folk tunes. Ethnographic folklore intonations are noticeable primarily in the diatonic, small range melodies with frequent use of the dotted and syncopated rhythm characteristic of Transcarpathian folk melodies.

A somewhat different approach to the folk intonations' use is observant in the choral work by I. Bokshay, a priest, composer and conductor, leader of the Uzhgorod Greek Catholic Cathedral choir. He was one of the first Transcarpathian composers to work in the genre of choral arrangement of folk songs. It is difficult to find at least two similar choral arrangements in the creative work of the composer, they all are original, varying not only in music and thematic material, but also in form, choral texture, musical and harmonious language, means of musical expression.

Two groups can be differentiated in the I. Bokshay's choral heritage. The first is his author's opuses, in which he individually interprets the folk songs' rhythm and intonation models, although he does not cite them.

Among them the following choral miniatures should be noted: "And so, my brother" (by O. Dukhnovich), "Our bells" (by D.Popovich), the choral play "Come to us" (by O. Dukhnovich).What is typical for the above mentioned compositions is that all of them are written for a mixed choir a capella,

have a secular character and contain folk-song intonations. So, in the choir miniature "Our Bells", the author uses his own theme, which in its intonation structure is similar to a folk wedding march song. As T. Rosul notes, "the composer has attempted to combine graphic imagery, illustrative elements with simple folk-song melody" in this work [Rosul, 108]. Such illustrative musical language makes it possible to fully and accurately reflect all the features of the literary text content. The work's harmonious language is simple, the author uses predominantly the T-D combination of harmonies, which creates a special solemn character of the wedding campaign. A similar principle is found in the comic play "Come To Us", which is of humorous nature. It is written for a soloist and a choir. The main theme of the work has a strong connection with the folk song, which can be traced in its intonation structure, reliance on the diatonicism, use of mode variability, which is characteristic of Transcarpathian songs. In this work, the author widely uses the variational principle of the thematic material development, which allows to convey the work's figurative content in the most complete and accurate way. The solo and choir parts interact closely, and the choir not only makes the solo part more prominent in a harmonious way, but it is an active participant in the development. If at the beginning of the work the soloist leads a simple lyrical story, the melody with its contours resembles a lyric folk song and the choir harmoniously makes it more prominent, then in the development process it transforms, acquires bright emotionally coloured romantic features. The author uses the sequential principle of development, consolidation of the choral texture, the use of supporting voices, and alternations of subdominant group chords.

The second more numerous group includes choral arrangements of Transcarpathian folk songs. In total, there are four so called 'vyazankas' created by the composer left to date. These are not separate choral works, but rather small cycles consisting of several songs, connected by a common content orientation and grouped by the musical contrast principle. The composer chose popular folk songs to create "Vyazankas". Using an authentic folk melody, the author tried to bring the choral form closer to the content of the song.

The peculiarity of the composer's creative style is that he did not limit his work on writing the folk song arrangement to merely harmonizing the melody. On the contrary, he very creatively interpreted the folklore material and created whole choral paintings based on it with vividly and perfectly elaborated details.

By tracing the stylistic changes from the first to the fourth "Vyazanka", the change of the composer's approach to the use of folk tunes can be clearly noticed. If in the first "Vyazanka" the author shows the folk songs in virtually unchanged presentation of the melody, arranging the choral texture, and the division into parts coincides with the division into songs (three parts – three songs "Over the High Mountain", "Two Doves Were Drinking Water", "Maramorosh Good Town"), then in the second "Vyazanka" the first and the second parts are represented by two similar melodies, the third part is the most interesting, it is built not even on the whole melody, but on the second intonation, which is varied by the texture of the choral presentation, tonality variability (D minor - G-minor), in fact , it plays the role of tone reprise of the work. That is, the author freely approaches the use of the folk theme, allowing for its modification, the theme's arranging concerns not only the harmonization of the unchanging melody, but a freer variational presentation, changes in interval structure, rhythm, textural presentation, etc.

The author went even further in the fourth "Vyazanka", where his author's interpretation of the song origins reached its maximum. Here 6 folk songs were used: "Oh, am I in the meadow", "Oh, fly the coocoo", "Without you, Olenko", " Through the Meadow I Go ", "We were taken to recruits", "Oh, jigun, jigun". All of them are presented in the form of an expositional stanza, the content unfolding is complete, continuous, with no pauses in the sounding, one song logically flowing into another. Their melodic-harmonic and intonational affinity contributes to it. The author mainly uses the presentation of the melody by parallel thirds, which is characteristic of folk songs. The use of a high IV degree, each song's unison cadences enhance the folk colouring. The plot development continuity (call for troops, farewell to the girl, recruiting) is reinforced by the complexity of musical development. The lyric and somewhat sad beginning of the "Vyazanka" (a four-part presentation) is transformed into an energetic and fun theme ("Through the Meadow I Go"), presented in a soprano part with a harmonious complement of other choral parts. It is replaced by bright and incendiary recruiting songs, the use of a clear marching rhythm, enhanced by a chordal texture presentation, contrasting dynamic hues and accentuating beats, create a vivid image of youthful passion and unrestrained energy.

So, as we can see, the author has created a coherent composition with a continuous development of the content and artistic background on the basis of six folk themes.

A slightly different approach to the use of folk songs was demonstrated in the work by another prominent Transcarpathian musician, choirmas-

ter, composer Petro Miloslavskyi. His creative heritage is limited only to his choral works, mainly the Transcarpathian folk songs arrangements. While working with folk songs, P. Miloslavskyi used a more conservative approach than I. Bokshai. He kept the melodic, rhythmic and mode features of each song, varying the choral presentation by opposing the soloist and the chorus, using different texture types - homophonic and harmonic, polyphonic supporting voice, polyphonic imitation, chord (with the dominant theme of one of the parts), register and timbre possibilities of the choral part. In many of the arrangements, the author does not limit himself to the verse structure of the song's authentic version, but significantly extends it by referring to the verse-variational form.

Among the arrangements created by P.P. Miloslavskyi, the famous Transcarpathian folk song "Over the High Mountain" is one of the best examples of his work. The lyric and monologic nature of the song, in which the girl mourns her unhappy fate, is subtly transmitted in a continuous flow of melodic movement, whimsical syncopated rhythm, sometimes imitating "sobbing". The metro-rhythm of this work in particular is complex, two-part - 4/4, note values with dots are encountered quite often, there is also syncope, which is characteristic of folk songs of Transcarpathia and it reflects the Hungarian folklore influence with its extremely elastic syncopated rhythm. There are no pauses in the melodic line throughout the song. It conveys a monotonous, continuous movement of the melody, which is connected with the psychological state of the unfortunate girl, who no longer has the strength to fight for her happiness, but simply states the facts of her life.

The Transcarpathian folk song "Over the Mountain High" arrangement is written for a mixed choir in a simple two-part couplet reprise form, which in turn consists of two periods and reprise. The key of the work is unchanged - E-flat major with the "Andante" tempo. Instead of the traditional chorus inherent in folk songs, the third and fourth stanzas of the couplet are repeated twice here — it is the part where the girl remembers her troubles.

Accordingly, the very presentation of musical thought (texture) changes. If the first two stanzas are performed by all choral parts at the same time (S A T B), then in the third stanza - women parts (S A) begin, and they are followed by men ones (T B) on the third beat. Moreover, T and B repeat the text of the S and A, and in the tenor part this dubbing takes place on one sound with equal eights values (quaver) – as 'Schicksals-Motiv'.

As we can see, the author has a careful approach to the use of the folk song, making only minimal changes to its presentation. At the same time, this work traces the poly-ethnic influences of other cultures, which is reflected in the metrorhythmic organization of the melody.

Other representatives of the Transcarpathian Composing School, such as Mykhailo Roshchakhivskyi and Alexander Kizyma, have followed similar traditional approaches to choral arrangements of Transcarpathian folk songs. They used unchanged folk tunes as a basis for their choral arrangements, basically harmonizing them. This is especially evident in the work of A. Kizyma. He wrote small arrangements of popular folk songs and romance songs of that time. The vast majority of his works were compiled into a collection of "Podkarpackie Songs for Choruses", which was published in 1921. As the researchers note, this way the composer "tried to fill the repertoire vacuum with the arrangements of local folk songs and romance songs popular at that time in the region" [8, p.121]. With simple and accessible means of expression, simple harmonies, reliance on diatonicism, the use of a simple four-tone homophonic harmonic texture with elements of polyphonic supporting voices, A. Kizyma tried to disclose the artistic and figurative content of folk songs and make them accessible to as many people as possible. This approach is followed in the works of M.Roshchakhivskyi.

We find similar creative attitude to the use of folk-song intonations in the works of other Transcarpathian composers such as Mykola Popenko, Mykhailo Krechko, Igor Polyanskiy.

We notice both approaches to the use of folk-song intonations in the M.Popenko's creative work. On the one hand, the composer wrote a large number of choral arrangements of folk songs, in which he uses unchanged folk melodies, arranging their textures. On the other hand, he is the author of a number of his own choral works, in which the folk song intonations are integrated into the work's musical canvas, as a result of which the work acquires a characteristic colour typical for the folk songs of Transcarpathia.

Choral arrangements of Ukrainian and Transcarpathian folk songs represent the most significant part of Mykhailo Krechko's creative heritage. He especially carefully approached the arrangement writing, trying not to disturb the folk song's originality and distinctiveness. The most significant part of Mykhailo Krechko's creative heritage is the choral arrangements of Ukrainian and Transcarpathian folk songs.

The influence of Hungarian folk song is noticeable in the works of the young composer and choirmaster I. Polyanskiy. He often refers to the arrangements of Hungarian folk songs.

A detailed analysis of the choral creative heritage of the Transcarpathian composers showed that the folk song was decisive in shaping their creative style. Almost all Transcarpathian composers worked in the genre of folk song arrangement, and their approach to the folk material's use and arrangement differed significantly. Some authors (P.Myoslavskyi, O.Kizyma) took an unchanged folk song and wrote choral arrangements based on it, suitable for both professional and amateur choir performance. Other authors (I.Bokshay, M.Roshchakhivsky, M.Popenko, M.Krechko, I.Polyansky) demonstrated a more creative approach to the Transcarpathian folk songs arrangement, substantially elaborating the folklore material, bringing in the characteristic features of their creative style. Some authors (S.Silvay, D.Zador) creatively interpreted folk intonations, rejecting their direct quotation and creating their own original melodies on their basis resembling the folk song sounding as close as possible.

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HARMONIZATION OF EU LEGISLATION IN THE ASPECT OF ENFORCING THE CONSTITUTIONAL OBLIGATION OF TAX PAYMENT (ON THE EXAMPLE OF VALUE ADDED TAX)

Abstract. The article deals with the problem of harmonization of tax legislation in the European Union as a necessary condition for ensuring compliance with the constitutional obligation to pay taxes. It is noted that the harmonization of tax legislation determines the overall strategy of countries in the field of taxation and coordination of their tax policies. Emphasis is placed on efforts to harmonize the legislation governing the payment of value added tax, the enforcement of which is of paramount importance. It is pointed out that the regulation of value added tax in the European Union is carried out in accordance with Directive 2006/112 / EC of 28.11.2006, which provides for harmonization of the system of value added tax in accordance with the main elements of the tax mechanism. The range of VAT payers as well as the main countermeasures to tax evasion at the stage of their registration are identified. Attention is drawn to different approaches to the feasibility of prior preventive control of business entities at the stage of their registration as VAT payers in order to limit the possible risks of tax evasion and fraud in the future. It is substantiated that in determining the tax base, one of the most effective mechanisms of enforcing the tax obligation in many cases is ensuring the compliance of the tax base with the market value in the case of supply of goods or services.

Special attention is paid to the issue of determining VAT tax rates as one of the main elements of the tax mechanism. To ensure proper tax compliance, the EU Directive sets a minimum base rate and outlines criteria and approaches for applying differentiated rates. The experience of some countries in the application of differentiated VAT rates on individual goods is described, and the main advantages and disadvantages of this approach are indicated. The criteria for the possibility of using this experience to improve Ukrainian legislation are singled out.

The main approaches of the EU legislation in determining tax benefits, establishing countermeasures to tax evasion are clarified.

It is concluded that in the conditions of further integration of Ukraine and the EU work on the harmonization of legislation is necessary, taking into account the measures that will ensure full and strict fulfillment of the constitutional obligation of tax payment.

Key words: constitutional obligation, tax, value added tax, harmonization of legislation, tax rates, benefits.

Formulation of the problem. Ukraine has defined its foreign policy vector in the direction of gradual integration into the European Union. Implementation of this course is a very complex and long process. It is primarily about bringing our political, economic, social and other standards in line with EU standards. An important factor is the systematic work on reforms in key areas of public administration, economy and public life. They are impossible without proper legislative support, which should be focused on EU standards and principles. One of the important areas of integration is the harmonization of tax legislation. To ensure this, it is important to understand the processes that have taken place and are taking place in the EU itself in the direction of harmonization of tax policy. Coordination of efforts is particularly important to ensure that taxes are properly enforced and that abuses in this area are combated.

Analysis of recent research and publications. The study of the problems of harmonization of EU tax legislation, in particular on the regulation of value added tax, was the attention of such scientists as Volkanov V., Gretsa Y., Demchuk N., Karpenko S., Pomuleva V., Rumyantseva E., Yurchenko V.

Formulation of the purpose of the article. The purpose of this study is to identify the main areas of harmonization of EU legislation to ensure the obligation to pay taxes on the example of VAT.

Presenting main material. In today's reality, the pace of development of cross-border cooperation is significantly ahead of the work of states and international organizations to harmonize their tax laws, to define common rules of the game. The expansion of cross-border cooperation has not led to the unification of tax systems. The difference in the tax burden is actively used in the implementation of tax planning [1, p.252]. Therefore, it is important to work towards harmonizing the tax policy of different states. EU member states are working most hard to solve this problem.

With the creation of the European Union (Maastricht Treaty, signed in 1992 and entered into force in 1993), the deepening of European econom-

ic integration naturally led to the development of the concept of interstate tax harmonization (from the Greek "harmonia" - harmonization). It provides for the development of a general strategy of countries in the field of taxation at the appropriate stage of integration, coordination of tax policy, systematization and unification of individual taxes and tax systems of countries that are members of international regional associations. The Maastricht Treaty also defines the main provisions of the EU on the unification of indirect taxes: VAT paid in the country of origin, the unity of the basic VAT rate (at least 15%) and preferential (at least 5%), a limited range of goods that can be exempt from VAT (mainly for social purposes) [2].

At present, the regulation of value added tax in the EU is carried out in accordance with Directive 2006/112 / EC of 28.11.2006, which provides for the harmonization of the value added tax system on the main elements of the tax mechanism, so, in our opinion, further harmonization of value added tax value in Ukraine with EU legislation should be carried out in these areas.

According to Article 9 of Directive 2006/112 / EC, a VAT payer is any person who independently carries out any business activity anywhere, whatever the purpose or results of such activity. In addition, a taxable person shall be deemed to be any person who, on an irregular basis, supplies a new vehicle which is shipped or transported to the customer by the seller or customer or on behalf of the seller or customer to a destination outside the Member State but within the Community. . In this case, Article 213 of the Directive provides for the need to identify the taxpayer with the assignment of an individual number [3].

In international practice, there are different approaches to the feasibility of introducing prior preventive control of business entities at the stage of registration as a VAT payer in order to limit the possible risks of tax violations and abuse in the future. Identifying risky taxpayers during the VAT registration process is the norm for many European countries. For example, Irish taxpayers selectively visit registered taxpayers, compare the results with registration data and other information, and UK and Lithuanian taxpayers have the authority to obtain additional information from the taxpayer if the VAT application contains questionable information. Sweden uses information obtained from third parties. In Ukraine, the audit of registration of business entities is not provided by current legislation, in particular, the relevant provisions proposed to be included in the Tax Code have not been adopted [4].

The VAT tax base is very broad and covers the cost of goods and services supplied within the country. When importing, the taxable turnover is the

customs value of the imported goods. As defined in Article 73 of the Directive, the tax base includes everything that is remuneration received or expected to be received by the supplier in exchange for delivery from the customer or a third party, including subsidies directly related to the delivery price. However, discounts and rebates are not included in the tax base. It is interesting to note that in order to prevent tax evasion or avoidance, Member States may, in certain specified cases, take measures to ensure that the tax base corresponds to the market value in the case of supplies of goods or services using family or other close personal ties. , property, membership, financial or legal relations defined by the Member State, that is, it is in fact permissible to determine tax liabilities by analogy with "normal prices".

The provisions of Directive 2006/112 / EC stipulate that, as a general rule, the date of occurrence of tax liabilities is the date of delivery of goods or services. However, it is stipulated that if the payment is to be made to the account before the supply of goods or services, the VAT liability arises after receipt of payment. Thus, as we see, the rule of the "first event" is actually applied, which is valid today in Ukraine [3].

The provisions of Article 97 of Directive 2006/112 / EC stipulate that the basic VAT rate must not be less than 15 percent. It is allowed to use one or two reduced rates, the amount of which must be not less than 5 percent. Member States may also apply a reduced rate to the supply of natural gas, electricity or district heating, provided that there is no risk of distortion of competition. The reduced rate can also be applied to the import of works of art, collectibles and antiques [3].

Today, the highest VAT rates are in Hungary - 27% (from January 1, 2012 the Hungarian government raised the basic VAT rate from 25% to 27%, which made the country the leader in this indicator among EU countries), in Denmark, Sweden - 25% . The lowest - in Cyprus, Luxembourg - 15%, in Spain and Malta - 18%. The average rate in the EU is 20.7% [4].

The introduction of a standard VAT rate of 15-18% (as set out in Article 12 of the EU Directive) will reduce the tax burden on consumers of goods and services. In addition, as confirmed by the practice of using VAT in different countries, for the effective use of this tax is enough to set it at 10-15% [6, p. 132]. However, in our opinion, the introduction of a basic VAT rate at such a low level in Ukraine would be unjustified and would lead to significant budget losses.

Meanwhile, in the EU countries (except Denmark) in order to reduce the tax burden on the income of the least protected consumers, the practice of

applying differentiated rates is widespread. Thus, EU countries attach importance to the social-regulatory function of VAT, using one or more reduced rates, mostly on basic goods and services [7, p. 256].

Using the practice of introducing reduced rates in EU member states, it is possible to apply reduced rates to such goods and services as: food and animal feed; pharmaceutical products; medical equipment; public transport services; books, magazines, newspapers; theatrical and concert performances, museum services, radio and television performances; housing and communal services; accommodation in hotels, campsites, etc .; supply of goods and services by charitable organizations and social assistance organizations; medical and dental services (excluding tax-exempt); street cleaning, garbage collection, waste recycling, etc. The number of reduced rates should not be numerical [8, p. 148].

One of the arguments against the application of differentiated VAT is the complexity of administration. However, modern technologies significantly simplify the administration of VAT, especially for those procedures that are technical in nature. That is, most of the problems that arise in the administration of VAT are related to the technical organization of the administration process, which is constantly being improved. Based on this, claims about the catastrophic imperfection of the VAT collection mechanism in Ukraine are unfounded. The processes of VAT reform (as well as the tax system as a whole) in Ukraine require not only chaotic copying of European (or other) experience, but also taking into account the peculiarities of its adaptation in Ukraine. First of all, it should be borne in mind that the European experience is not focused on frequent chaotic changes in the tax system (even if it is only an adjustment of rates) during the year. According to the European Commission, changes occur on average no more than once every five years. This makes it possible to assess the impact of tax reforms and make an informed decision about the need for further changes in taxation [9].

With regard to tax benefits, the exemption of certain transactions from VAT is provided for in Section IX of Directive 2006/112 / EC. Tax benefits, depending on whether the transaction takes place in the territory of the Member State or beyond its borders, are divided into those that do not provide for the right to reduce tax liabilities, and those under which such a right is granted [10, p. 182].

Exemption from taxation is allowed provided that the correct and transparent application of benefits, avoidance of all possible cases of evasion, avoidance or abuse. First of all, the exemption from VAT is carried out taking

into account the public interest. To this end, there are, in particular, exemptions from taxation on the supply of public postal services, the provision of certain medical services, the supply of goods and services related to social security and social protection, education of children and youth, non-profit services, sports and physical education, cultural services, etc. Another category of transactions that are exempt from VAT are financial services, such as insurance and reinsurance, loans, guarantees, deposits, current account maintenance, payments. In addition, VAT exemptions for lottery transactions, delivery at par value of postage stamps, delivery of the building and the land plot on which it is located, management of investment funds, etc. are allowed.

According to Directive 2006/112 / EC, a mechanism for reducing the tax liability (similar to the Ukrainian tax credit) is provided. The document confirming the right to reduce liabilities is an invoice (invoice) issued in accordance with certain requirements [3].

Conclusion. The above analysis of VAT administration in the European Union shows that, given the process of European integration of Ukraine, any attempts to abolish VAT or replace it with sales tax seem inappropriate, as VAT is one of the most important elements of EU tax systems, and its collection is provided relevant directives. However, given the many problems that remain in the administration of VAT in Ukraine, the legal regulation of VAT needs to be changed in order to improve it, as well as to harmonize with EU legislation, as it was and remains a necessary condition for European integration and objective need through entry, in the long run, into a single economic space. Improving VAT administration is possible by expanding the tax base, abolishing unjustified tax benefits and simplifying the administration process.

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MANAGEMENT IN HIGHER EDUCATION: SOME ASPECTS

Abstract. The article is devoted to highlighting certain features ensuring the proper functioning of institutions of higher education. Attention is paid to the specific features of the application of modern management in higher education. Attention is focused on the problematic aspects and doctrinal positions possible solutions.

Key words: education, education system, higher education, management.

Higher education is a unique social phenomenon that has a significant impact on all aspects of life and activity of the country, society, human civilization in general. In the modern scientific, technological and information revolution, higher education functions as a complex socio-economic organism that plays a major role in the social progress of mankind. It is one of the most important areas of work and cognitive life. The current stage of development of the higher education system of Ukraine is characterized by its reform, the search for ways to bring the content in line with the personal needs of students, world standards. The crisis phenomena of higher education that are observed today are related to the formation of Ukraine as an independent state, the nature of social relations, the reform of political and economic systems on a fundamentally new basis. Adapted in recent years to a rigidly regulated environment, higher education today has come into conflict with the new, more flexible and constantly transforming requirements of Ukrainian society - with a market economy [1].

L. Gajewska singles out the problems that challenge the education system as a whole:

- the tendency to design two cultures, two educations "closed", serving the elite, and "open" - for mass consumption, balanced by the laws of the market;
- extinction of the former role of education in public policy and privatization of this area;
- discrepancy between the requirements of the information industry and "traditional" education.

According to the scientist, further development of the education system can take place in one of two "scenarios":

1) pragmatization and mainly professional orientation of education, which reduce its essence to operational knowledge. In this case, the mutual understanding between people is destroyed, who are forced to move "after" the changes that occur, passively adapting to them;

2) human-centered approach to education, which focuses on the choice of content and methods of teaching on the interests of man as a person and as an active subject of various activities [2].

At the same time, the development of the education system in the second scenario, according to K. Kunzel, involves (in addition to a number of social and economic decisions) a set of scientific research, the topics of which include issues such as: market and basic competence issues; education as a value in a society of social uncertainty; institutional aspects of education (program financing, marketing, etc.); learning and interaction problems; comparative analysis of educational systems (cross-cultural research).

It should be noted that the research of Ukrainian scientists has recorded universal external and internal system-forming factors (attractors) that significantly affect the formation of educational systems. In particular, external factors include the presence of a common, unifying territory, a certain socio-economic system, a sufficient level of cultural development, the Ukrainian language as an accepted and understandable means of communication and social adaptation. Internal factors of development of educational systems, in turn, are crisis unstable states, which cause their transition to a new round of development, or lead to decline [3, p. 45].

The current stage of development of the national system of higher education is characterized by its reform, the search for ways to bring the content in line with the personal needs of students and world standards, to the requirements for higher education. New realities make new demands on the quality of higher education, in particular, the universality of training graduates of higher education, their adaptation to social conditions,

personal orientation of the educational process, its informatization, the importance of higher education in ensuring sustainable human development [4, p. 26].

The basic category of our study is management. Despite the variety of definitions of the concept of management, we can identify three points of view: 1) management - is an activity or process; 2) management is a purposeful influence of the subject on the object, which involves the presence of a structure or system; 3) management is the interaction of subjects, therefore, the personal aspect of management comes to the fore. Regarding the researched problem, we will note that we will consider the subjects of management of the participants of the educational process in higher education, and the objects - systems, procedures, a set of documents, etc.

Understanding the management of higher education as an activity and process necessitates the separation of its purpose and objectives, stages, procedures. This is the first area of scientific research. The second direction will reveal the content of specific managerial influences and criteria by which you can determine the result in achieving the quality of higher education. The third direction will focus on the interaction of participants in the educational process in higher education and emphasize the personal component in quality assurance.

The systems approach is the basis for determining the relevant management structures and their components. The main components of management: the subject - the control subsystem; object - managed subsystem; means of interconnection - influence or interaction; goal. The educational process and the means that provide it (personnel, educational and methodical programs, material and technical support, normative-legal base, etc.) act as a managed subsystem in the field of higher education. The control subsystem includes a number of officials and collegial bodies, whose activities are aimed at organizing and regulating the educational process in order to obtain its optimal results [5, p. 15].

The system methodology of higher education management has been further developed in the works of modern scientists, who argue that a systematic approach to management in an educational organization is the most acceptable and one that meets the requirements of today. Thus, a higher education institution, as an educational organization, meets the basic properties of the system: purposefulness (goals in the field of quality), complexity (many structural units and the complexity of their relationship), divisibility (educational, research, teaching, economic activities)), integrity (the direction of action of structural units is subject to common goals), structure (interdependence between units according to hierarchical levels) [6, p. 28].

The problem of the process approach to the management of the educational process in higher education is covered in the dissertation research of N. Matveeva. From the researcher's point of view, the process approach to quality management of the educational process facilitates the transition of the learner from the position of the object to the position of the subject of the educational process, which provides a clear record of educational outcomes, ways to assess their achievement and inform students.

But at the same time, she argues that despite the fact that this approach is widely used in the quality management of education, it has certain limitations related to the specifics of the educational process. Among the latter - the impossibility of appointing a single owner of the process, determining unambiguous results, parameters and resources of the process. To manage this specific process, it is necessary to develop tools that will: turn the student into a subject of study; specify the minimum set of educational outcomes in the form of mastering professional skills; develop a single way to measure educational outcomes; formulate requirements for the parameters and resources of the process necessary to achieve these results [7, p. 45].

The activity approach presupposes the understanding of management as a purposeful active interaction of subjects: leaders, the public and other participants of the pedagogical process, aimed at its organization and transfer to a higher quality level, and ensures the desired result in the best case.

Thus, in the context of our research under the management of higher education, we propose to understand the purposeful process of interaction of two subsystems of higher education (managerial and subordinate), aimed at achieving the quality of student learning.

Thus, as we have seen from the above, the management of higher education institutions is based on the provisions of management theory. Its main components are certain trends, corresponding patterns and related principles of management of higher education institutions. Trends in the development of management of higher education institutions are determined by the development and functioning of public administration, social and economic processes in society. But the main factor influencing the management processes in higher education is the education system of Ukraine, which reflects all the phenomena occurring in the country and abroad [1].

Trends inherent in modern education in Ukraine can be identified only by analyzing the processes taking place in the country as a complex socio-economic system, as well as in unity with the development of the international educational sphere. Trends in the development of the education system

affect all subsystems, including management, which in turn affects its patterns. Considering the determining factors in the development of management of higher secondary education, they can be systematized as follows: economic, social, political, market, technological, international [1].

The main trends in the functioning and development of the higher education system in Ukraine, which affect the patterns of management of higher education institutions, regardless of their type and form of ownership, are: 1) the priority of universal values and humanistic orientation; 2) intensification of public and state efforts to bring higher education to the level of international standards and achievements in this field; 3) the formation of national-patriotic morality; 4) development of higher education on the basis of the latest psychological and pedagogical technologies; 5) departure from the principles of authoritarian, ideological pedagogy, leveling the natural individual characteristics of all students; 6) radical restructuring of the management of higher education through its democratization, decentralization, creation of regional management systems of educational institutions; 7) development of non-state forms of ownership of higher education institutions.

These most general tendencies in education of Ukraine give rise to the corresponding derivative tendencies in all its subsystems: organizational-administrative, scientific, educational, upbringing, special-pedagogical, professional-technical, etc. They, reflecting the general problems of higher education in Ukraine, are at the same time specific due to the peculiarities and conditions of their activities. The most significant trends that characterize the functioning of higher education institutions in modern conditions are: 1) the desire to expand the variability of the content of educational programs, a certain profiling if necessary to comply with state standards of higher education; 2) efforts of the management of higher educational institutions to create complexes: secondary and higher educational institutions, united by a common strategic educational goal and traditional ties, corresponding to the general goal of building the organization and methodology of the learning process; 3) competition of higher education institutions of different types and forms of ownership based on the improvement of educational services; 4) penetration and implementation in the educational process of foreign pedagogical technologies (especially in the field of teaching subjects of the humanities); 5) expansion of bilateral contacts between groups of students, educational institutions of different countries; 6) implementation of the distance system of higher education at all its levels; 7) the spread of computer technology in the learning process [1].

One of the tasks of managing the higher education system is to form a new vision of educational problems by all its participants. After all, today higher education has ceased to be one of the branches of the national economy, a state agency; it really becomes a form of social practice, a special sphere that all acquires its own interests, goals, values and policies. The analysis of normative-legislative documents on education, elaboration of scientific and organizational-methodical literature, acquaintance with the best experience of management of educational institutions allow to allocate two directions of management of higher education: traditional (modern) and innovative (perspective for the future) [8, p. 107].

The purpose of traditional public administration is to ensure the optimal functioning of the object-subject components of the higher education system. Innovation management (management) involves the transfer of the educational system, its content and object-potential potential to a higher quality level, ensuring the development and renewal, compliance of higher education with modern requirements. Innovative management means the managerial influence of the state to change the factors that determine the production of goods and services, including educational, in order to increase the efficiency of the educational organization [9, p. 45].

Integrating into the European and world educational space, Ukraine must take into account the developments specific to the management of the industry in other countries. Some of them can be considered not only as an example to study, but also as an example to follow, of course, given the national characteristics of the Ukrainian higher education system and the priorities on which it focuses. Such consideration should not provide for blind copying of foreign experience, but should assist in the development of a national system of higher education management, ensure its transition to the state and public level.

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ARTIFICIAL INTELLIGENCE'S INFLUENCE ON HUMAN RIGHTS

Abstract. The present article is devoted to the analysis of the key positive and negative issues regarding the consequences of artificial intelligence (hereinafter – AI) technologies to the insurance and exercise of human rights. Article establishes the fundamental human rights, prescribed by the Convention For the Protection of Human Rights and Fundamental Freedoms, the enjoyment of which today is influenced by new technologies. The findings, provided in the present article can serve the supporting instrument during the process of draft national legislation of the countries and develop of a regulation for the main areas of public relations that will be significantly affected by AI in the future. As well, as during the analysis of the main threats and preventive mechanisms to prevent disproportionate and illegal restrictions on human rights due to the application of AI. The author also analyzes the need and mechanisms aimed at insurance the principle of proportionality between the restriction of the rights of developers and manufacturers of artificial technologies on the one hand, and the insurance of the fundamental rights of individuals, on the other hand. The article covers the review of different scholars' approaches as regards needs of consideration controversial legal and moral issues during the developments of legislation and regulations of AI. Another aspect of the analysis is the overview of the legislation of the European Union in the sphere at stake. The article observes the main legal acts of European Union, which are designed to regulate the development, use and operation of AI technologies in view of their impact on the protection of fundamental human rights. There is also the outlining statement on the problem of the low number of legal acts in Ukraine in the field in stake. Given the trends of rapid introduction of AI technologies in public life, there is an overview of European Court's of Human Rights cases, dealing with the violation of

fundamental human rights by the use of AI technologies. In addition to highlighting the changes and developments in the legal framework of the European Union, the article provides the overview of general principles and prospects for legal regulation at the international level and its potential impact on domestic legislation. In particular, it provides the analysis of moral, ethical and legal requirements of the Commission for Civil Law Regulation of the European Parliament in the field of robotics in relation to developers and manufacturers of AI.

Keywords: artificial intelligence, human rights, European Union, legal regulation, Recommendations of the Parliamentary Assembly of the Council of Europe.

Problem determination: Nowadays, the key issue of many countries is the lack of a proper scientific, legal and legislative framework for regulating relations with the use of AI. On the other hand, this is a problematic issue at the international level, as this field cannot concern only particular countries, but needs to be considered and resolved by the joint efforts of all players in the international level. For example, the developed approaches, principles and common practice of the European Union countries, enshrined in international conventions and regulations will be further implemented in the national legislation of the European Union member states. Such a system will prevent different approaches to regulating the activities of companies and systems using AI in different countries, which is very important, as this area of relations is globalized and requires common approaches to regulation.

Purpose of the article – to conduct a research of backgrounds and consuquences of the application of AI technologies for human rights.

Analysis of the recent researches and publications. The issues of influence of AI technologies on human rights were examined by such schoolars as Van Est R., Gerritsen J., Kool L., etc.

The main body of the article. According to paragraph 6 of the Preamble to Regulation No 2016/679 of the European Parliament and of the Council of 27 April 2016 "On the protection of natural persons with regard to the processing of personal data and on the free movement of such data", and repealing Directive 95/46/EC (General Data Protection Regulation), rapid development of technologies, as well as globalization have created new challenges to the protection of personal data.[15]

[15] Regulation of the European Parliament and of the Council of Europe No. 2016/679 of 27.04.2016 URL:https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679

The human right to privacy is one of the most important human rights recognized and guaranteed both at the international and national level.

Many AI technologies are based on the use of large amounts of data, which also include personal information, including the most confidential one, such as medical secrecy. AI technologies can be used to collect and analyze vast amounts of personal information for a variety of purposes, from analyzing consumer behavior patterns to monitoring the effectiveness of trading platforms.

The European Economic and Social Committee in its document of 31 August 2017 "Artificial intelligence - the consequences of the use of AI in the digital single market, in production, consumption, employment and society" noted that the confidentiality of AI is under question. Despite the fact that many consumer goods already have built-in AI, such as cars or smartphones. And even if confidentiality is guaranteed, the unlawful trade of personal data, which, accordingly, does not remain with the manufacturer, but is transferred to third parties, is currently developing quite rapidly.[16]

In this case, the violation of the human right to privacy (in particular - the confidentiality of personal information, when using AI is not always associated with obviously improper actions of its operator or the achievement of illegal goals, it can be a side effect in achieving important goals,

Van Est R., Gerritsen J., Kool L. propose two potentially new human rights in the context of protecting the right to privacy: the right not to be subjected to psychological measurement or analysis (the right to avoid activities (implemented mainly by the state, but also by private corporations) to monitor the people with the help of cameras and the Internet, as well as with the help of AI technologies in the processing of data; the right to meaningful contact with people, for example, in the context of health care and care for the elderly, where all tasks should not be transferred entirely to AI systems in such a way that the person will lose contact with other people.[17]

Some schoolars point out that the problems of AI use may be particularly relevant from the point of view of one of the concepts within the right to pri-

[16] European Economic and Social Committee Document of 31 August 2017 «Artificial intelligence - the consequences of the use of AI in the digital single market, in production, consumption, employment and society". URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016IE5369

[17] Van Est R., Gerritsen J., Kool L. Human rights in the robot age: Challenges arising from the use of robotics, artificial intelligence, and virtual and augmented reality

vacy - the "right to be forgotten." The right to be forgotten implies the right of an individual to request the deletion of his data collected by others.

Thus, the following aspects can be highlighted in the light of their possible lead to a violation of the human right to privacy: the collection and use of personal data of individuals, mainly on the Internet and by surveillance of individuals in traditionally closed from external surveillance places. Thus, AI, used in the field of economics, has wide access to the data of individuals, but individuals themselves remain isolated from the achievements from the development of their data. Accordingly, in order to address this asymmetry, there is a fundamental need for individuals to be able to identify, access and manage their personal data. Thus, there is a need to find a proper balance between ensuring the protection of this right to privacy and the benefits of using innovative technologies. [18]

In paragraph 4 of the preamble to Regulation of the European Parliament and of the Council of Europe No. 2016/679 of 27.04.2016 "On the protection of individuals with regard to the processing of personal data and on the free movement of such data and the repeal of Directive 95/46 / EC" states that the processing of personal data must be used for human needs and that the right to protection of personal data is not an absolute and it should be considered in terms of its functions in society and through the balance with other fundamental rights, in accordance with the principle of proportionality. [19]

In addition, historically, the balance between the use of personal data and privacy was based on the concept of data anonymization. Thus, if the data cannot be linked to a specific individual, its use is presumed such as not harmful for the individual.

Therefore, it is possible that legislation in this area should be developed by creating a basis for improving data anonymization mechanisms.

Another example of the hidden and unregulated impact of AI on human rights is e-trainers. People use e-trainers to better manage their lives. These systems are often used by integrated AI. In this case, data on registered users are collected with voluntary consent. However, technology developers who provide advice on a person's lifestyle must ensure access to the collection and

[18] Artificial intelligence and machine learning in financial services: Market developments and financial stability implications. URL: https://www.fsb.org/wp-content/uploads/P011117.pdf

[19] Regulation of the European Parliament and of the Council of Europe No. 2016/679 of 27.04.2016 URL:https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679

processing of users' data, as well as transparency of mechanisms, influencing human behavior by processing user's behavior data. There is also the use of care robots that are designed to provide care for vulnerable groups such as children, the elderly or people with disabilities. Such technologies can be used both for the benefit and for the detriment of human autonomy and self-determination. They can deter the elderly from certain actions when their developers have programmed them to do so. How unlimited can be coercion by a robot, for example, when it reminds someone to take medicine? What could be his actions if someone refuses to take medication? Many researchers talk about the danger of "undesirable paternalism." In this case, robotic technology will force users to take certain actions based on how the developers have programmed them and what they think is best for those users.

Some scholars argue that the degree of robot intervention will affect users' freedom, which can create "authoritarian robots." All such robotics work with the help of AI, which helps to improve the interaction between such robots and people. Robots are capitalized by the ability to acquire human form, traits, emotions and intentions. Robotics uses this ability to develop social robots so that they interact with people on an emotional level. Engineers can use this powerful social psychological phenomenon to build compelling technologies. But what are the limits within which this phenomenon can be used? To what level do we want to develop the emotional connection between people and machines? And how do we make sure that there is no abuse of trust that is artificially built between people and machines? People can be addicted to their cell phone, or to a virtual girlfriend, it is quite conceivable that people can develop strong feelings for socially intelligent artifacts like social robots. With this in mind, technologies, or rather their developers, must refrain from controlling human life and must remain "ancillary" to their autonomy. In this regard, there is a high risk of violating the right to respect for confidentiality.

The impact of AI technology on right to property is also unexplored. For example, under Article 1 of Protocol No. 1 to the Convention For the Protection of Human Rights and Fundamental Freedoms, no one may be deprived of his or her property except in the manner provided for by law. This article directly protects the owner from violations and interference by the state and obliges the state to protect the owner from interference in the peaceful possession of property. The right to property includes all types of objects, including intangible goods, intellectual property, reputation, contractual rights to property and virtual assets, such as, for example, domain names.

However, how does the concept of property transform in the technological age?

There are two main features in relation to property. First, objects that people own - such as their home or land plot can become a part of virtual reality. That is, if you own your own land plot, do you also own a virtual space around it that could be created by others? Secondly, the question of determining the right of ownership arises in connection with the use of an object that works with AI technology, such as a robotic car or a smartphone. To begin with, these devices are part of the Internet (robotics), and therefore connected to networks. This allows subjects, in addition to the user of the device, to have control over the device, effectively interfering in its use. If the device was purchased by a new buyer, is it possible for the buyer to enjoy possession of his property when, for example, the manufacturer or previous owner can turn off or control the device? In addition, the object, as part of the Internet network, registers data on the network without notifying the new owner of the purpose of collecting such data. This is especially true, for example, for a robotic vehicle that requires the registration of such data in order to operate safely. Does the user of the device have data that can be regarded as personal, and does the data protection policy, such as personal information protection laws, apply in this case?

The uniqueness of modern data processing is that it does not try to reproduce the human model of cognition, but creates contextual statistics based on data, but without any guarantee of erroneous autocorrelations. Moreover, there is a real risk that the algorithm may provide discriminatory conclusions. An example is the software COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) - a product of the commercial company "Northpointe". This program assesses the risk of re-offending by a person against whom a judge shall pass sentence. It is the most widely used program in the US criminal justice system. COMPAS is based on data obtained from 137 questionnaires answered by the defendants, or in case of refusal, the information is taken from his file. Data are divided into dynamic, which are changeable such as drug addiction, environment, professional status, and statistical, which can not change and are more decisive for the conclusion - age, gender, criminal history, criminal status at the time of the first crime. Thus, the judge renders a verdict based on such a risk assessment. The American non-governmental organization ProPublica found a breach of ethics by the algorithms used in COMPAS, namely racial bias: the algorithm was twice as likely to label black defendants as recidivists, while whites were

identified as low-risk individuals. The estimate was unreliable in forecasting, as only 20% of blacks out of the estimated 40% actually committed a repeat offense.[20]

In view of the above, we consider it appropriate to provide an overview of the case law of the European Court of Human Rights (hereinafter - ECHR) as a living instrument of the European Convention Mechanism for the Protection of Human Rights. One of the most undefined question is about the status of a judge. Convention enshrines the right to independent and impartial court. However, neither Article 6 nor official guides explicitly prohibit the use of AI and does not state that justice is administered only by a human judge. Another actual issue if the protection of the right to privacy in terms of collection of biological samples and DNA profiles of persons, suspected or convicted of offenses. The ECHR has clearly stated that the use of modern scientific methods cannot be allowed at any cost and without carefully balancing the potential benefits from widespread use of such methods and important privacy interests. In Marper v. The United Kingdom case (§ 112) the Court stated that any state, that claims to be a pioneer in the development of new technologies has an increased responsibility to strike the right balance in this regard. Given the rapid pace of development in the field of genetics and information technology, it should not be ruled out that in the future the interests of private life may be adversely affected, which cannot be accurately predicted today. The Court considers a person's concerns about the possible continued use of privately held information to be legitimate and considers that they should be taken into account when deciding whether there is a state interference in the exercise of Convention rights. Indeed, given the rapid development of genetics and information technology, the Court cannot rule out the possibility that in the future state interference in private life will be possible by using genetic information in new ways or in ways that cannot be accurately predicted today. The Court also upheld the finding that the information in question was coded and could not be understood without the use of computer technology, and could only be interpreted by a limited number of people (§ 71).[21]

In Szabo and Vissy v. Hungary case (§ 68), concerning mass surveillance of reports, the Court recognized that this was a natural consequence of the

[20] Artificial Intelligence in Jurisprudence. URL: https://cedem.org.ua/analytics/shtuchnyj-intelekt-pravosuddia/

[21] ECHR Judgment in case of Marper v. The United Kingdom. URL: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Marper%20v.%20The%20United%20Kingdom%22],%22itemid%22:[%22001-90051%22]}

forms adopted by modern terrorism, that governments would refer to advanced technologies, including mass monitoring of communications, to prevent imminent attacks. In this case, the Court ruled that legislation allowing mass surveillance did not provide the necessary safeguards against abuse, as new technologies made it easier for the authorities to intercept large amounts of data concerning even people who did not belong to the primary target.[22]

To sum up, nowadays the speedy development of new technologies, including those which equipped with AI concuer with the low speed of the development of legislation and courts practice. At the time, when there is a rising amount of violations of human rights by unlawful, non-regulated and disproportion use of AI, we need really well developed of a high quality legislation, approaches and methods. The actions must be taken both on the national and international level. In addition, it should be mentioned, as defined in the articles rights such as right to privacy, to fair trial and to property are the most vulnerable before the threaths of the technologies, they should be discussed as the priority concern.

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HUMAN RIGHTS FOR LIFE: POLITIC, LAW AND RELIGIOUS

Abstract. The article reveals the peculiarities of the normative and legal consolidation of the human right to life. The authors pay attention to the provisions of the decisions of the Constitutional Court of Ukraine that carry out the interpretation of the human right to life.

Key words: human rights, human rights, decisions of the CCU, criminal-legal relations.

Problem statement. According to Article 3 of the Constitution of Ukraine, man, his life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value[23]. Human life serves as the object of legal protection because it is the state that should create mechanisms that would maximally protect life from any encroachment.

Life is the greatest and most important social and legal benefit of a personality. As N. Matuzov notes, "the right to life is the first fundamental natural right of a person, without which all other rights lose meaning."[24]

[24] Матузов Н. И. Право на жизнь в свете российских и международных стандартов / Н.И.Матузов // Правоведение. - 1998. - № 1. – p. 26

Agreeing with the above-mentioned opinion, S. Chernychenko claims that "without the provision of the right to life, the question of observance of other rights and freedoms becomes a senseless."[25].

Analysis of scientific publications. The right of a person to life is very important in order to attract the attention of scientists. Such an aspect of the right to life as a death penalty is reflected in the works of A. Meziaiev, A. Malko, A. Nikyforov, V. Kartashkin, B. Tuzmukhamedov, T. Fomichenko, and other scholars. Works by A. Abashydze, Yu. Antonian, B. Ashavskyi, M. Biriukov, H. Veliaminov, S. Yehorov, B. Zymnenko, A. Kapustin, A. Kovalov, A. Kolodkin, V. Kotliar, A. Moiseiev, I. Lukashuk, Ye. Liakhov, N. Matuzov, Yu. Romashov, Yu. Rybakov, O. Khlestov, S. Chernychenko are devoted to the international legal aspect of the right to life. In the modern Ukrainian science, the following scholars devoted their papers to certain aspects of the right to life: M. Buromenskyi, V. Yevintov, V. Denysov, L. Zablotska and others.

Statement of the basic material. Regulations of the Criminal Code of Ukraine (hereinafter – CC of Ukraine)[26] on 05.04.2001 № 2341-III (as amended) do not contain provisions on the mandatory consideration of decisions and legal positions of the Constitutional Court of Ukraine in the course of criminal proceedings. However, part 1 of Article 3 of the CC of Ukraine notes: legislation of Ukraine on criminal responsibility is the Criminal Code of Ukraine that is based on the Constitution of Ukraine and generally accepted principles and norms of international law.

One of the most important judgments in the practice of the Constitutional Court of Ukraine for criminal legal relations is Judgment on 29 December 1999 N 11-рп/99 known as Judgment on Death Penalty. In particular, in the operative part of the judgment, the Court ruled that the provisions of Article 24 of the General Part and the provisions of sanctions of articles of the Special Part of the Criminal Code of Ukraine, which provide for the death penalty as a form of punishment, shall be regarded as not in conformity with the Constitution of Ukraine (are unconstitutional)[27]. The mentioned decision

[25] Черниченко С.В. Еще раз о международной правосубъектности индивида / С.В.Черниченко // Московский журнал международного права, 2005. – № 4. – С. 16

[26] Кримінальний кодекс України від 05.04.2001 року № 2341-III (із змінами та доповненнями) // (Відомості Верховної Ради України (ВВР), 2001, № 25-26, ст.131)

[27] Рішення Конституційного суду України у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції

N 11-рп/99 not only influenced criminal legal relations but also, in general, the status of Ukraine as a state moving towards recognizing and implementing the ideas of humanism.

On this occasion, it is important to draw attention to the legal substantiation and positions of the Constitutional Court of Ukraine, which are indicated in the above-mentioned judgment.

Consequently, the Court emphasizes that the Constitution of Ukraine recognizes the person, his/her life and health, honour and dignity, inviolability and safety as the highest social value (part one of Article 3), and the establishment and assurance of human rights and freedoms – the main responsibility of the state (part two of Article 3).

Interpretation of provisions of parts one and two of Article 27 of the Constitution of Ukraine in the context of all other provisions of the Constitution of Ukraine as a single holistic document gives grounds for asserting that they do not impose the death penalty as a form of punishment. In favour of such a conclusion, the tendency of the application of the Convention for the Protection of Human Rights and Fundamental Freedoms on the 1950 year ratified by the Verkhovna Rada of Ukraine (Law of Ukraine "On Ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms, 1950, First Protocol and Protocols N 2, 4, 7 and 11 to the Convention" on 17 July 1997, as amended by the Law of Ukraine on 24 March 1999, in particular, the provisions of Article 3 of the Convention) is evidenced[28].

The key to recognizing the human right to life under the Constitution of Ukraine is the provision, according to which this right is inalienable (part one of Article 27), indefeasible, and inviolable (Article 21). The right to life belongs to a person from birth and is protected by the state.

The Constitution of Ukraine declares that constitutional rights and freedoms, in particular, the right to life, are guaranteed and cannot be abolished (part 2 of Article 22), which prohibits any changes to the Constitution of Ukraine if they provide for the abolition of human rights and freedoms (part one of Arti-

України (конституційності) положень статей 24, 58, 59, 60, 93, 190-1 Кримінального кодексу України в частині, що передбачає смертну кару як вид покарання (справа про смертну кару) [Електронний ресурс] – Режим доступу : http://zakon3.rada.gov.ua/laws/show/v011p710-99

[28] Про ратифікацію Конвенції про захист прав і основних свобод людини 1950 року, Першого протоколу та протоколів N 2, 4, 7 та 11 до Конвенції: Закон України від 17 липня 1997 року із змінами, внесеними Законом України від 24 березня 1999 року [Електронний ресурс] – Режим доступу: http://zakon2.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80

cle 157). It is also not allowed to narrow the content and scope of existing rights and freedoms, including the inalienable right to life, in the event of adoption of new ones or amendments to existing laws (part three of Article 22).

Consequently, in its content, the provisions of part 2 of Article 22 of the Constitution of Ukraine provide, on the one hand, the duty of the state to guarantee constitutional rights and freedoms, first of all, the right to life, and, on the other hand, to abstain from the adoption of any acts that would lead to the abolition of constitutional rights and freedoms, and hence – human rights to life. Proceeding from the provisions of part two of Article 8 of the Constitution of Ukraine, the norm of part two of Article 22 shall be taken into account when adopting laws and other normative legal acts aimed at regulating the relevant social relations. The deprivation of a person's life by the state as a result of the use of the death penalty as a form of punishment, even within the limits set by the law, is the abolition of the inalienable human right to life, which does not correspond to the Constitution of Ukraine.

Therefore, the relevant provisions of the Criminal Code of Ukraine, which provide for the use of the death penalty, contradict the aforementioned provisions of the Constitution of Ukraine.

According to Article 23 of the Constitution of Ukraine, each person has a right to free personal development, provided that the rights and freedoms of other people are not violated. The Constitution of Ukraine, which enshrines the inalienable right to life of every person (part one of Article 27) and protects this right from cancellation (part two of Article 22), establishes at the same time the provision that everyone has the right to protect their lives and health, life and health of other people from unlawful encroachment (part three of Article 27). In accordance with the provision of part 5 of Article 55 of the Constitution of Ukraine, everyone has the right, by any means not prohibited by law, to protect their rights and freedoms from violations and unlawful encroachments.

The Constitution of Ukraine does not contain any provisions on the possibility of using the death penalty as an exception to the provisions of part one of Article 27 of the Constitution of Ukraine on the inalienable right to life of every person. Thus, the death penalty as a form of punishment provided for in the relevant provisions of the Criminal Code of Ukraine cannot be considered an exception to the inalienable right to life of every person enshrined in the Constitution of Ukraine. Provisions of the Criminal Code of Ukraine on the use of death penalty as a form of punishment should be considered as not provided by the Constitution of Ukraine restrictions on the inalienable

right to life of every person and should be recognized as inconsistent with the Constitution of Ukraine (unconstitutional).

Expanding the content of the inalienable right to life of every person, enshrined in part one of Article 27 of the Constitution of Ukraine, one should also take into account the non-compliance of the death penalty with the purposes of punishment and the possibility of a miscarriage of justice, when execution of a sentence against a person sentenced to death does not make it possible to correct its consequences, which is not in accordance with the constitutional guarantees of the protection of human rights and freedoms (Article 55 of the Constitution of Ukraine).

Given the fact that Ukraine is a social, democratic, and legal state (Article 1 of the Constitution of Ukraine), in which life and health, honour and dignity, inviolability and human security are recognized as the highest social value (Article 3 of the Constitution of Ukraine), the death penalty as a type of punishment should be considered as such, which does not comply with the specified provisions of the Constitution of Ukraine.

With regard to the provisions of Article 25 of the Criminal Code of Ukraine regarding the replacement of the death penalty with another form of punishment, this issue is subject to a decision in the legislative process (paragraph 14 of part one of Article 92 of the Constitution of Ukraine).

The arguments put forward in its Judgment on Death Penalty, the Constitutional Court of Ukraine is an example of the Court's ability to use the gains from all possible sources (legal doctrine, political and legal representations, principles of constructing the modern world, international legal documents, moral principles, etc.) in order to substantiate its decision.

In the practice of courts of general jurisdiction, this Judgment No. 11-рп/99 and its legal positions are still used in our time. This is evidenced in particular by the decision of the High Specialized Court of Ukraine for Civil and Criminal Cases on 17 March 2016[29].

In criminal cases on review of newly discovered circumstances, convicted persons and their representatives use the Judgment of the Constitutional Court of Ukraine No. 11-рп/99 as arguments about the possibility of revision of decisions on condemnation, expressed in the motive parts of decisions of courts of general jurisdiction, in particular, in acts of higher courts, one can refer to the judgment of the High Specialized Court for Civil and Criminal

[29] Ухвала Вищого спеціалізованого суду із розгляду цивільних та кримінальних справ від 17 березня 2016 року [Електронний ресурс] // Режим доступу до ресурсу: http://www.reyestr.court.gov.ua/Review/56552340

Cases on 24 July 2015[30], the judgment of the High Specialized Court for Civil and Criminal Cases on 14 April 2015[31], the judgment of the High Specialized Court for Civil and Criminal Cases on 13 November 2014[32].

In this category of cases, in particular, those specified in the decision of the High Specialized Court for Civil and Criminal Cases on 13 November 2014, sentenced to life imprisonment, individuals apply to the courts of appeals with an application for review of the sentence for newly discovered circumstances, in which they raise the issue of the replacement of the imposed punishment for imprisonment for a specified period. In the justification of the above, it is noted that at the time of the commission of a crime in 1999, the sanction of Art. 93 of the CC of Ukraine (1960) provided for alternative sentences in the form of imprisonment for a term from 8 to 15 years or death penalty; by Judgment of the Constitutional Court of Ukraine No. 11-рп/99 on 29 December 1999, the provisions of the sanctions of the Special Part of the Criminal Code of Ukraine (1960), which provided for the death penalty as a form of punishment, were declared unconstitutional, and the punishment in the form of life imprisonment was established only on the basis of the Law of Ukraine on 22 February 2000, № 1483-III, which entered into force on 4 April 2000. Based on the above, in the opinion of the convict, only the punishment in the form of imprisonment for a term up to 15 years was applied to him as such as envisaged by the sanction of Art. 93 of the CC of Ukraine (1960) as of 31 March 2000, that is, on the day of the sentence.

Thus, we believe that despite the contradiction in the current state of understanding of the concept of "legal positions of the Constitutional Court of Ukraine" by the scientific doctrine of constitutional law, they play a significant role in the establishment and consolidation of the rule of law and correct legal understanding in order to protect the rights and freedoms of man and citizen in Ukraine. The consistency of legal positions of the Constitutional Court of Ukraine is an important sign of ensuring the operation of principles of the constitutional jurisdiction body and principles of the Constitution of

[30] Ухвала Вищого спеціалізованого суду із розгляду цивільних та кримінальних справ від 24 липня 2015 року[Електронний ресурс] // Режим доступу до ресурсу: http://www.reyestr.court.gov.ua/Review/47465255

[31] Ухвала Вищого спеціалізованого суду із розгляду цивільних та кримінальних справ від 14 квітня 2015 року [Електронний ресурс] // Режим доступу до ресурсу: http://www.reyestr.court.gov.ua/Review/43626016

[32] Ухвала Вищого спеціалізованого суду із розгляду цивільних та кримінальних справ від 13 листопада 2014 року [Електронний ресурс] // Режим доступу до ресурсу: http://www.reyestr.court.gov.ua/Review/42766411

Ukraine, in particular, the need to ensure a unified legal understanding and methodological basis for the justification of a decision in one or another case, especially in the field of work of courts of general jurisdiction. The analysis of the rule-making activity of the decisions of the CCU gives grounds to say that the CCU in its decisions analyses only the signs and elements of the constitutional human right to life.

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ANALYSIS OF THE MAIN INDICATORS OF THE ENTERPRISE JSC "UKRZALIZNYTSIA" 2010-2019

Abstract. Interest to the analysis of activity of the enterprise in our country increased rapidly with the beginning of economic reforms and transformations.

The analysis of the enterprise performance helps to establish and assess the financial condition of the enterprise, timely detect and correct deficiencies in management and financial performance, to find the right management decisions, reserves for optimization of the company's financial condition and its solvency, as well as serves to continuously and constantly development and growth of the enterprise and the elimination of all the "weaknesses" of the company. The main purpose of the analysis is to detect in time and as soon as possible to eliminate all the deficiencies that hinder the full, high-quality and profitable operation of the enterprise, to find reserves to improve the performance of the organization.

Continuous growth of the country's economy largely depends on the sustainable development of various components of the economic system and their effective interaction between each other. The transport industry as a whole, and Ukrzaliznytsia in particular, has one of the key values for the national economy. And the main indicators of JSC "Ukrzaliznytsia" performance can generally indicate the social and economic development of the country. Today Ukrzaliznytsia performs 82% of cargo and goods transportation between certain territories, and its passenger traffic is 50%, thus providing both internal and external relations of the country. The development of Ukrzaliznytsia is a necessary condition for the functioning of the economy of Ukraine. For further effective development of Ukrzaliznytsia and for improvement of transportation services demanded by consumers today, it is necessary to analyze the company's performance in recent years.

The article presents the results of the author's research of the dynamics and structure of the main indicators, which help to form conclusions about the current condition of the railway industry of Ukraine: volume of transportation, cargo turnover, volume of passenger transportation, passenger turnover, cost of transportation, transport capacity, the ratio of passenger and cargo transportation. The analysis of these indicators was carried out for 2010-2019 years of company activity.

Keywords: analysis, traffic, cargo turnover, the volume of passenger transportation, passenger turnover, cost of transportation, railway transport, JSC Ukrzaliznytsia.

Setting the problem in a general way and its connection with important scientific or practical tasks. Railway transport plays a special role in the economy of Ukraine, it is able to meet the production and non-production needs of enterprises and the population in almost all types of transportation. The main enterprise for railway transportation in Ukraine is JSC "Ukrzaliznytsia". The analysis of the main indicators of the enterprise gives an opportunity for further improvement of work and functioning of the company, and also allows potential investors to clearly see the condition of the enterprise in different years of development of the Ukrainian economy.

Analysis of recent researches and publications in which the solution of this problem is grounded. The theoretical ground for the creation of this article was laid by such scientists: I.M. Goykhman, Y.F. Kulaev, L.V. Skorniak and others. Such scientists devoted their works to the analysis of the transport industry of Ukraine: M.V. Makarenko, E.S. Chuprin, O.V. Kalinichenko and others.

Forming the objectives of the article (setting the task). The objective of the article is to research the dynamics of development of the enterprise "Ukrzaliznytsia" in different years of economic development of Ukraine, in order to identify its economically risky and problematic places in the activity, as well as the impact of economic development of the country on the activity of the company.

Presentation of the main material of the research. Efficient work of railway transport and stable work of JSC "Ukrzaliznytsia", which owns 82% of transport and almost 50% of passenger transportation is one of the main components of the country's economic development. The railway industry is an intermediary between the production and service spheres. The distinctive feature of rail transport is that it does not create any products, and its activity in the

sphere of cargo and passenger transportation services, provides opportunities for the development of connections and interaction between enterprises, industries, regions and even countries. The effective functioning of the railway transport within Ukraine and its productive cooperation with railway structures of other countries, contribute to an increase in the volume of domestic and foreign transportation and increase the competitiveness of the company JSC "Ukrzaliznytsia".

To evaluate the performance of the Ukrainian railway, we can use as criteria the main indicators of its work, such as: volume of cargo transportation, cargo turnover, volume of passenger transportation, passenger turnover, cost of transportation, transport capacity, the ratio of passenger and cargo transportation in the economy of the country. Let us consider these criteria.

The volume of transportation is a logistical measurement unit of the amount of transported cargo. Table 1 shows the dynamics of cargo transportation by the railway company of Ukraine JSC "Ukrzaliznytsia" during 2010 - 2019.

Table 1

Dynamics of cargo transportation by railway transport in Ukraine 2010–2019

	Years									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Railway transport	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons	vol. mln tons
	% to 2009	% to 2010	% to 2011	% to 2012	% to 2013	% to 2014	% to 2015	% to 2016	% to 2017	% to 2018
JSC «Ukrzaliznytsia»	432,5	468,4	457,5	441,8	387,0	350,0	343,0	339,0	322,0	313,0
	110,6	108,3	97,7	96,6	87,6	90,44	98,0	98,83	94,98	97,20

Since 2012 JSC "Ukrzaliznytsia" demonstrates a decrease in the volume of transportation, in comparison with 2010 and 2011, where there was an increase. This situation is caused by the fact that the last decade is identified by various kinds of instability, which affected the economy of the world as

a whole, each country and enterprises. So in 2012 the global economic crisis began, and in 2014, in addition to the difficult economic situation in Ukraine, a difficult political situation was added as well annexation of the Crimean Peninsula and hostilities in the East of the country, which led to an almost halving of exports of minerals such as iron and manganese ores, ferrous metals and chemical products. There was a devaluation of the national currency, the rate of inflation rose rapidly to 43%, against this background began the outflow of foreign investment, worsened conditions for long-term loans, all these events were negative factors that affected the formation of the cargo flow of the Ukrainian railway and led to its reduction.

If we consider cargo transportation by type of transportation, we can see the following picture (Table 2)

Table 2

Dynamics of railway transportation by type of cargo in 2013-2019

Types of cargo, mln tons	2013	2015	2016	2017	2018	2019	
						2019	% to 2013
Coal	119	73	73	67	65	59	49,6
Coke	12	8	8	6	6	5	41,7
Petroleum and petroleum products	23	17	15	14	12	12	52,0
Ferrous metals (including scrap)	39	29	29	26	25	24	61,5
Timber	5	5	4	4	3	1	20,0
Cereal products	23	29	32	37	34	40	173,9
Ore	88	85	77	70	71	75	85,2
Cement	6	6	6	6	6	6	100,0

Chemical and mineral fertilizers	11	10	11	12	9	9	81,8
Other cargoes	116	88	88	97	91	82	70,7

Since 2013, there has been a decrease in almost all cargo types. If in 2019 JSC "Ukrzaliznytsia" transported 313 mln tons, which is less than in 2013 by almost 29%. There was a significant decrease in transportation of coal (by 50.4%), coke (by 58.3%), petroleum and petroleum products (by 48%), ferrous metals (by 38.5%), timber cargo (by 80%), ore (by 14.8%), chemical and mineral fertilizers (by 29.3%). At the same time, transportation of cereals increased almost 1.7 times (by 73.9%), and transportation of cement remained stable.

The indicators in the tables above indicate a deterioration in the economic situation of the country, and the need for government intervention to regulate and stabilize the socio-economic situation of the country.

1. Cargo turnover is the total volume of cargo transportation work, which is equal to the sum of the products of the transported cargo on the distance of transportation for each batch of cargo. Dynamics of changes in cargo turnover of railway transport of Ukraine for 2010 - 2019 is shown in Table 3.

Table 3

Dynamics of changes in cargo turnover of railway transport of Ukraine for 2010 - 2019

Type of transport	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm	bln tkm
	% to 2009	% to 2010	% to 2011	% to 2012	% to 2013	% to 2014	% to 2015	% to 2016	% to 2017	% to 2018
Railway JSC «Ukrzaliznytsia»	218,1	243,6	237,3	224,0	209,6	195,1	187,6	191,9	186,3	181,1
	111,3	111,7	97,4	94,4	93,6	93,1	96,1	102,3	97,1	97,6

Similarly, as for the volume of transportation, for cargo turnover, since 2012 there is a non-achievement of cargo turnover to the level of previous years of the research period, the exception is 2017.

We can conclude that the economic downturn of the country had a negative impact on the economic situation of the railway industry of Ukraine.

2. The volume of passenger transportation is the number of passengers transported by the railway enterprise JSC "Ukrzaliznytsia". The movement of passengers is characterized by such an indicator as transport mobility of the population, which reflects the degree of urbanization, the level of migration and the dynamics of movement. Transport mobility of the p opulation is a complex social and economic phenomenon, behind which there is a whole complex of factors of cultural, political and demographic nature. Dynamics of the volume of passenger transportation by railway transport of Ukraine in 2010 - 2019 is shown in Table 4.

Table 4

Dynamics of the volume of passenger transportation by railway transport of Ukraine in 2010 - 2019

Type of transport	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2019
	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	mln. pass	% to 2017
	% до 2009	% до 2010	% до 2011	% до 2012	% до 2013	% до 2014	% до 2015	% до 2016	% до 2017	% до 2018	
Railway JSC «Ukrzaliznytsia»	427	430	429	425	389	390	389	165	158	155	93,9
	100,2	100,7	99,8	99,0	91,5	100,3	99,7	42,4	95,8	98,1	

From a review of Table 4, we can conclude that the volume of passenger transportation began to decline slightly since 2012, from 2012-2016 the number of passenger transportation by railway from 429 million passengers in 2012 to 389 million passengers in 2016, i.e. by 9%. In 2017, the trend of a relative decline of almost 2.5 times in the number of passengers transported compared to 2016 has continued. But here we need to take into account the fact that since 2017 the enterprise JSC "Ukrzaliznytsia" has changed the procedure for accounting transportation of passengers by railway on suburban

routes, who use the benefits of free transportation. Therefore, it will not be quite correct to compare previous years. But based on the data in Table 4 and comparing 2017 to 2019, we can still see a continued trend of a decrease in passenger transportation volumes. Thus, the volume of passenger transportation in 2019 decreased by 6.1% compared to 2017.

3. Passenger turnover is the total volume of passenger work, which is equal to the sum of the products of the number of passengers transported by the distance of their transportation. Dynamics of passenger turnover of railway transport of Ukraine in 2010-2019 is shown in Table 5.

Table 5

Dynamics of passenger turnover of railway transport of Ukraine in 2010-2019

Type of transport	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2019
	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	bln pass. km	% to 2010
	% to 2009	% to 2010	% to 2011	% to 2012	% to 2013	% to 2014	% to 2015	% to 2016	% to 2017	% to 2018	
Railway JSC «Ukrzaliznytsia»	50,2	50,6	49,4	49,0	35,9	35,4	36,8	28,1	28,7	28,7	57,2
	103,9	100,8	97,6	99,2	73,3	98,6	103,9	76,3	102,1	100,0	

Despite a slight increase in railway passenger turnover in 2019 - 28.7 bln. pass. km compared to 2017 - 28.1 bln. pass. km, the overall picture shows a 1.7-fold drop in passenger turnover from 2012 to 2019.

The economic situation in the country, delayed structural reforms, inefficient system of industry management, outdated financial model and tariff setting system, only partial, not complete modernization of infrastructure and rolling stock, changing directions of passenger traffic, etc. have a negative impact on the volume of passenger transportation by railway transport in Ukraine.

The cost of transportation, which depends on the nature of the cargo, market conditions. Calculations for the services provided by JSC "Ukrzali-

znytsia" are made by means of transport tariffs. Cargo transportation for a certain distance is carried out for a certain tariff fee. The price of the cost of transportation usually includes: the cost of transportation, a certain rate of return, investment costs, fees and other expenses.

As an economic category, transport tariffs are a form of price for transport services. Their establishment should provide: for the railway - compensation of costs for transportation and profit, for the customer of transport services - expediency of use of these transport services.

We can conclude that the cost of the economy for transportation is the income that the railway transport receives at systematically increasing tariffs.

4. Transport capacity is the ratio of cargo turnover to a unit of gross domestic product (GDP).

Transport capacity of GDP is the value of particular costs of transport work per one UAH of gross product, that is an integral indicator of the effectiveness of service of the railway transport of the national economy. In this case it is advisable to take into account only the unit, which is served by cargo transport.

The coefficient of railway transport capacity of GDP, which is calculated by the average values of dynamic lines of the research period (2010-2019 years) is 0.096 tkm/UAH. This means that for one UAH of the gross domestic product there is 0.096 tkm of railway transport work. Although, if we calculate the coefficient of transport capacity of GDP by year for the last five years, 2015-2019, its figure is constantly decreasing. Thus, in 2015 the railway transport capacity of GDP was 0.099 tkm/UAH, in 2016 - 0.079 tkm/ UAH, in 2017 - 0.064 tkm/ UAH, in 2018. - 0.052 tkm/ UAH, in 2019 - 0.046 tkm/UAH. This difference is explained by the deterioration of the economic situation in the country - the devaluation of the UAH contributes to the growth of GDP in actual prices, and the decline in the physical volume of production, which is transported by railway transport, on the contrary, leads to an overall decrease in cargo turnover of tariff tkm.

5. The ratio of passenger and cargo transportation at the enterprise JSC "Ukrzaliznytsia". An important typological criterion that reflects the transport paradigm of the economic system of the company is the ratio of cargo and passenger transportation. The ratio of cargo and passenger transportation for the railway of Ukraine, which is calculated by the average values of the dynamic lines during the research period (2010-2019 years) is 5.3, that is the absolute size of the total cargo turnover in 5.3 times exceeds the total

passenger turnover. The development of the country's economy and tourism has a significant impact on this indicator..

Summary of this research. Ukrzaliznytsia today remains the main segment of the transport system of Ukraine, holding significant transit potential, as it has one of the most developed among European countries network of railroads. This analysis can serve as a basis for a comprehensive assessment of the effectiveness of cargo and passenger transportation, identifying major trends, developing a strategy and forecasts of development of JSC "Ukrzaliznytsia" for the perspective. Statistical information, which is given in the article, is an effective indicator for analyzing not only the structure of the railway transport operation, but can also be used for planning the operating fleet of rolling stock of the enterprise.

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CERTAIN ASPECTS OF LABOR LEGAL RELATIONS IN DISTANCE WORK

Abstract. The article is devoted to the analysis of some aspects of labor relations when using remote performance of labor duties. We have analyzed the scientific opinions of domestic scientists and the legislative practice of using remote work in labor relations. Despite the fact that domestic scholars have studied a lot in this area, national labor law still lacks a holistic view of the issue of telework, which would reflect the real state of affairs and contribute to the effective protection of the rights of the parties to labor relations. However, some experts, on the contrary, have a number of comments on this way of working, arguing that employers can take advantage of this situation and will avoid formalizing it, thus removing a number of responsibilities and easing their situation. As for employees, instead they remain completely self-help in the organization of labor processes. Therefore, the legislator faces an urgent question regarding the definition and recognition of new forms of labor relations, given the current processes of formation of a new digital society, which should certainly facilitate labor processes and open new opportunities for people to realize their potential and knowledge for themselves and the state as a whole.

Key words: labor law, labor law, form of labor law, individual labor law, labor contract.

Despite the fact that the number of employees working outside the premises is growing every day, the number of questions regarding remote employment and they certainly need further study. They remain relevant today, especially during the current pandemic. It is necessary to conduct large-scale research in the formation of the national legislative field, which would regulate the procedure for remote work. Both lawyers and economists talk

about such studies, but the legislator pays occasional attention to this problem. Thus, the term "remote work" is not mentioned in any law of Ukraine, while in several places it is about work at home, which is one of the types of remote work (Part 8 of Article 179 of the Labor Code of Ukraine) (hereinafter - the Labor Code of Ukraine). Article 18 of the Law of Ukraine "On the basis of social protection of the disabled in Ukraine", etc.).

Considering this or that phenomenon, it is necessary first of all, to define characteristic signs. Having research in existing scientific papers, many scientists suggest that remote work is understood as "a form of employee performance of work duties, which is carried out outside the employer with the use of communication with management and colleagues of information technology" [1, p.133]. From here it is possible to allocate also the following signs of the investigated phenomenon: a) work is carried out of premises of the employer; b) information technologies are used to communicate with management and colleagues.

That is, we have the fact that the workplace of the employee who performs work remotely should be outside the organizational influence of the employer: electricity, etc. In this case, the responsibilities of the employer in relation to the workplace of such an employee are reduced to compliance with Art. 29 of the Labor Code of Ukraine, which states that "before the start of work under the employment contract, the owner or his authorized body is obliged, among other things, to determine the employee's workplace."

The next issue, which logically should be considered from what has already been said, is to provide the employee with the necessary means to work (such an obligation is also enshrined in Article 29 of the Labor Code of Ukraine). Here we also see a narrowing of the employer's organizational responsibilities, as the main burden of remote employment rests with the employee. However, more and more often there are situations when the employer provides the employee with the necessary licensed computer programs, or personal computers and communications, which is aimed both at the performance of direct duties and to ensure the protection of information during its transfer. .

Of course, not every remote application of labor should be attributed to the employment relationship. As well as with usual ways of employment of persons, existence and civil legal relations is possible.

With regard to the rights of persons working remotely, it should be noted the attempts of employers to avoid regulating the relevant labor relations. The argument for such behavior, among other things, is the inability of the

employee to comply with the rules of internal labor regulations, which is one of the responsibilities of the latter in accordance with the provisions of Part 1 of Art. 21 of the Labor Code of Ukraine. This raises the question of narrowing the organizational element in the relationship of remote labor and it is one of the key when it comes to the attribution or non-attribution of legal relations with remote workers in the field of regulation to labor law.

According to scientists, the development of labor rights in the XXI century. There is a tendency such as "increasing flexibility (differentiation and individualization) in the legal regulation of labor relations in combination with guarantees of labor rights", and therefore labor law should develop by increasing the contractual freedom of the parties, but within the limits of public labor law . This is not about deregulating atypical employment, but about finding new methods of regulation. A similar conclusion is held by O. Motsna, who notes that the differentiation of legal regulation of labor by such factors as the location of the place of work outside the location of the employer, the performance of work outside the staff, the establishment of a mobile workplace (remote work) and employment in part-time regime, may not be grounds for exclusion of these relations from the scope of labor law. [2, p. 26]

The essence of remote employment is clearly revealed by A. Kolot as a non-standard form of employment, which is applied to the flexible social and labor relations between employee and employer and takes place in a virtual environment using information and communication technologies [3].

Therefore, remote employment is defined as a non-standard form of employment that provides flexible social and labor relations between employee and employer directly in a virtual environment using information and communication technologies. As for the non-standard nature of this form of employment, it is due to the "non-stationary" workplace, irregular working hours, instability of labor relations. Regarding the virtual environment of remote employment, it provides an opportunity for widespread use of information and communication technologies, work through information networks, work at home and in special centers, spatially remote from the main office of the company [4, p. 283].

Regarding the advantages of this form of labor organization, they are obvious. These include reducing the employer's costs for rent and organization of jobs; significant savings of time, energy and resources of the employee due to the lack of transport problems; there is also an increase in productivity in the organization in accordance with individual requests in a more comfortable home environment; as a result, environmental pollution

is reduced due to reduced traffic flows, etc. Accordingly, the possibility of remote employment helps to increase business activity and employment, and therefore some segments of the population (people with disabilities, women with young children, etc.) thanks to new technologies are able to work without leaving their homes, and employers thus have the ability to attract employees without providing the latter with a job.

The practice of economically developed countries has shown that remote employment increases the flexibility of the employee's performance of their functions, as it can optimize the ratio of working time and time spent on business trips. At the same time, the opinion of most scientists and employees is that the spread of this form of non-standard employment in Ukraine is a real threat. They believe that such employment is based on low wages, leads to violations of occupational safety, closes the way to further education, professional and career growth, leads not only to deteriorating working conditions and lower wages, strained relations between employees, but also negatively affects their unity and prevents them from joining trade unions [5].

The new hierarchy of factors of economic development, intensive introduction of information and communication technologies increasingly determine the transformation of forms of employment. In highly developed countries, innovative virtual enterprises based on e-mail and the Internet are being created quite intensively [5].

However, remote mode cannot be used by people whose work is based on customer contact. Employees who, for example, deal with cash, for example, cannot perform their duties remotely. Restrictions may also apply to the handling of personal data, as the employee is obliged to ensure the protection of information. The use of remote employment is possible in the following forms. First, it can be the main form of employment in the organization. Remote work with a convenient and unburdensome side is suitable for such professions as: artists, IT specialists, designers, copywriters, photographers, journalists, editors and proofreaders, translators, etc.

Under conditions of teleworking as the main form of employment, it is also necessary to comply with certain requirements for the organization of labor. The nature of these relations between the subjects of the labor market in remote employment directly depends on the way in which these relations are formalized. This is one way of securing such rights and responsibilities as an employment contract. An employee who has signed a standard employment contract with an employer does not perform his or her duties on the employer's premises, but at home or in another place convenient to him or her.

As we know, the relationship between the employee and the employer is regulated by the employment contract, so the employer has the right to demand compliance with the established mode of work (for example, the presence of the employee at a certain time "at work" at the computer or phone). If the work is one-time or seasonal, the employer may enter into a fixed-term employment contract with the employee [7].

When concluding such a contract, the employee acts as a performer, and the relationship between the parties is governed not by labor but by civil law. Of course, in this case, the employee is not entitled to rely on social guarantees provided by the Labor Code (payment of temporary disability benefits, annual and study leave, compensation for damage to health, etc.). But concluding a civil contract is not the worst option for a bona fide employee, because in case of breach of contract, he can still seek protection of his rights in court. Unfortunately, in the case of remote employment, the third variant of registration of relations has become widespread. Oral or "virtual" agreement. Under such an agreement, the interaction between the employer and the employee takes place in a non-legal field. The main reason for the employer's reluctance to formalize the relationship with the employee is the desire to reduce the costs associated with hiring labor. Without concluding an employment contract with an employee, the employer has no obligations to the employee involved. The number of employees is not growing, which leads to an understatement of the payroll and tax base for determining some taxes and fees. Zero levels and costs associated with terminating an employee's contract. The employer also saves on personnel work - registration of employment contracts, calculation and accrual of wages and other benefits, maintaining all documentation. [7].

As for the realities of today, we now have the opportunity to review existing legislation and some rules governing employment. It should be noted that lawyers and scholars have recently introduced a bill "On Amendments to Certain Legislative Acts to Improve the Legal Regulation of Telework" [8]

The main provisions of this bill include the following theses:

- it is proposed to introduce two independent types (forms) of work - remote and home;
- to secure for the employer the right to obtain information on the place of residence or other place of his choice where the labor function will be performed (for the purpose of proper registration of the employee for remote work) when concluding an employment contract for remote or home work;

- provide an opportunity to acquaint the employee with the rules of internal labor regulations, collective agreement, local regulations of the employer, notices and other documents, which the employee must read in writing, by exchanging electronic documents;
- to provide the possibility of remote acquaintance of the employee with the requirements for labor protection through the use of modern information and communication technologies, in particular video communication;
- to provide employees with the opportunity to combine remote work with the performance of work in the normal mode at workplaces on the premises or on the territory of the employer;
- impose on the owner or his authorized body the obligation to ensure safe and harmless working conditions at workplaces on the territory and in the premises of the owner.

Thus, we can hope that the current situation created by the pandemic will help labor relations to gain a new milestone in development and revise labor legislation in general. In practice, we have situations where our legislation is outdated to the challenges of modern times and new life situations in general and is not able to properly ensure the sustainable and economic development of any relationship, taking into account not only the legal sphere.

In general, the development of remote employment is a step towards greater labor market flexibility, which is an objective trend for both countries with economies in transition and countries with developed market systems. However, the use of modern technologies facilitates the transition from a system of traditional stable employment to part-time and part-time employment, which is not always in the interests of workers. The main distinguishing features of labor relations in terms of remote employment are remote workplace, the ability to choose working hours, increasing staff flexibility, and others. However, the virtualization of the workplace prevents the unification of workers and reduce the cohesion of the team, can lead to isolation and separation of workers, as well as insufficient level of social guarantees from employers, can lead to excessive working hours.

The differences we analyzed do not indicate the non-labor nature of distance relations, but are only a reflection of the changes taking place in the field of labor relations: increasing the contractual freedom of the parties; strengthening flexibility (differentiation and individualization) in the legal regulation of labor relations in combination with the provision of guarantees of labor rights. Therefore, one of the important tasks of the science of

labor law is to develop a holistic concept of understanding the phenomenon of telework, which will serve as a basis for appropriate legislative changes in this area.

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