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SOCIAL ENTREPRENEURSHIP IN THE MECHANISM OF IMPLEMENTATION OF THE SOCIAL FUNCTION OF THE MODERN STATE

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Annotation. This article is devoted to highlighting the main concepts of social protection of the population. In particular, in today's conditions in Ukraine, the social policy of the state, that is, its social functions, should have a significant impact on the social well-being of the population. We are talking about the analysis of the relationship between social entrepreneurship and the social function of the state.

It is indicated that the state's guarantee of well-being in the social sphere of the country's population is connected with the implementation of social entrepreneurship. The initiative of social entrepreneurship in any country is to create favorable conditions. Because the main goal is not to make a profit, but to solve social problems of society (overcoming poverty, protection of human rights, employment and support of socially vulnerable population groups).

It is noted that it is necessary to pay attention to the fact that the concept of social entrepreneurship is carried out within the social function of the state and solves a complex of problems of a private and public nature, in particular, access to financial resources of individuals.

Attention is focused on the fact that social entrepreneurship correlates with the functions of law, first of all, the economic function and the function of public consent, to solve the problems of the community and individual individuals.

It was concluded that social entrepreneurship has practically not yet found its place in Ukrainian legislation. However, this type of entrepreneurship functions quite successfully in Ukraine within the framework of small and medium-sized businesses, combining the social functions of the state. The activities of social enterprises began to be actualized in the conditions of a shortage of financial resources of the state, constantly growing needs of the social sphere, an increase in the level of unemployment and poverty of the population, when the authorities

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stopped coping with the volume of social problems that require immediate solutions. Social entrepreneurship found its development at the local level, focusing on solving social problems of the local community. So, there is no doubt that social entrepreneurship is society's response to modern social needs.

Key words: social function, rule of law, social protection, social entrepreneurship, function of law.

"Social entrepreneurship is a working business that is primarily focused on solving a specific social problem" ...
(from the Internet)

Formulation of the problem. The presence of a large number of social problems and vulnerable population groups in the country makes it necessary to look for new and innovative approaches to their solution. The use of commercial approaches in the social sphere is a global trend that has proven itself well in many countries, given its financial sustainability (independence from grant aid) and significant social effect. For a clear understanding of the concept of "social entrepreneurship", you need to use criteria that will allow you to clearly define and separate this type of business from the traditional one [9, c. 8].

Undoubtedly, social problems are a complex and multifaceted phenomenon that arises in the context of the development of society. In recent years, the quality of life of most people in Ukraine has significantly decreased. Analysis of social problems that concern Ukrainians according to sociologists, problems for the majority are high utility tariffs, corruption, medicine.

The criteria of social entrepreneurship are: social activity – focus on solving social problems; financial stability, implying independence from external financing; innovativeness – application of new approaches to solving social problems.

The state of development of this problem. To date, the phenomenon of social entrepreneurship, aspects of its functioning and conditions of development are being studied by many domestic and foreign scientists. Important contributions to the development of theoretical aspects (concepts, essences, classifications, models) were made by such scientists as: J. Say, J. Schumpeter, P. Drucker, B. Drayton, J. Mayr, I. Marty, A. P. J. .Murphy, J. McClurga. Researchers studying the problems of modern social entrepreneurship in Ukraine and world experience are: Z. Galushka, A. Kornetskyi, O. Kireeva, A. Kurylo, E. Nemkovich. O. Ovsyanyuk-Bernadine, Zh. Krysko, M. Kuts, A. Mokiy, M. Naumova, I. Saliy, O. Sandakova and a number of others.

The purpose of the article is to establish the relationship between the social function of the state and social entrepreneurship, to identify the main goal of social entrepreneurship in Ukraine.

Presenting main material. Social entrepreneurship is not a new phenomenon for Ukraine, as researchers believe that at the beginning of the 20th century, Metropolitan A. Sheptytskyi actively implemented the principles of social entrepreneurship in Western Ukraine. They also mention well-known entrepreneurs-philanthropists who invested a large part of their profits in the develop-

ment of Ukrainian education and culture and the social sphere. In 1991, the Law of Ukraine "On the Basics of Social Protection of the Disabled in Ukraine" was adopted [2]. Which enables organizations representing people with special needs to create businesses.

The main purpose of the activity is: providing disabled people with appropriate working conditions, housing, the possibility of recovery at a recreation center and creating conditions for social development.

Undoubtedly, a welfare state is a state with a high level of social protection of citizens, support for vulnerable segments of the population and provision of social services to them in accordance with international standards. Article 3 of the Constitution of Ukraine stipulates that "a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine (emphasis added). Human rights and freedoms and their guarantees determine the content and direction of state activity. The state is responsible to the people for its activities" [1].

According to the national scientist O.F. The horse of the concept of "social state" is a product of the 20th century. The social state (the state of social democracy) is a modern theory, where the word "social" emphasizes that the state takes care of the material well-being of citizens, performs the function of regulating the economy with mandatory consideration of environmental requirements, and ensures the protection of economic and social human rights [8].

In our opinion, the position of H. Tsakher is interesting – the social state is called upon to perform the function of an evaluating and transforming factor and guarantor in society, the purpose of which is to ensure a decent standard of living for every member of society, reduce differences in the level of well-being, and eliminate dependency relationships and establishment of appropriate control [5].

Note that Ukrainian legislation does not provide for a special organizational and legal form for social entrepreneurship. However, this does not mean that social entrepreneurship has no legal basis at all. Since, in particular, Article 62 of the Economic Code of Ukraine defines: "An enterprise is an independent economic entity, created by subjects to meet social and personal needs through the systematic implementation of production, research, trade, and other economic activities. Enterprises can be created both for entrepreneurship and for non-commercial economic activity."

The activity of a social enterprise, like any ordinary enterprise, must take place within the legislative framework of the country where it is established. The focus of society on the activities of such enterprises in view of their social goals requires such enterprises to be more transparent and accountable than ordinary businesses.

In international practice, there is no single approach to defining the legislative framework of social enterprises. Each country itself determines the legal forms, legal status, tax requirements, benefits (or decides on their absence) for the activities of social entrepreneurs.

At the same time, the analysis of the legislative aspects of the activities of social enterprises should be carried out in three dimensions:

1. International practice of legislative regulation of activities of social enterprises;

2. Ukrainian legal environment for the development of social entrepreneurship;

3. The main factors of choosing a certain legal form of a social enterprise.

Let's consider the first approach in more detail. As scientists note, "legislation in the field of social entrepreneurship is a growing industry." Currently, dozens of countries in Europe and the world have already adopted special laws regarding the activities of social enterprises. National approaches to the definition of social enterprises are very diverse in Europe and the world. Social enterprises take different legal forms and statuses:

1. Modern traditional legal forms, such as associations and public organizations, charitable funds, cooperatives, joint-stock companies;

2. Legal status granted to modern organizational forms, provided they meet a number of legally defined criteria;

3. New legal forms intended exclusively for the activity of social enterprises through adaptation or "adjustment" of existing forms;

4. New types of legal forms that allow traditional non-commercial organizations to carry out economic activities.

Despite the constant quantitative growth, legalized forms of social entrepreneurship (in those countries where this legalization took place) do not cover the entire spectrum of active social enterprises. De facto European social enterprises are often "hidden" among modern legal forms, first of all, among:

– public associations and charitable foundations with commercial activities (70% of European countries allow the use of this form for the activities of social enterprises);

– cooperatives that serve public or collective interests (50% of European countries allow the use of this form for the activities of social enterprises);

– joint-stock companies that set a clear social goal (60% of European countries allow the use of this form for the activity of social enterprises).

So, for example, in Denmark, an organization of any legal form can receive the status of "social enterprise" if it meets five criteria:

1. Social purpose of activity;

2. A significant commercial component in the activity;

3. Independence from the public sector;

4. Social distribution of profit;

5. Responsible corporate governance.

Only under democratic management is it possible to set clear social goals, and most importantly, to agree on the distribution of profits between reinvestment and social goals. This criterion is easily applied in social enterprises created by public organizations, the highest governing body of which is the general assembly.

Note that social entrepreneurship is not business in the social sphere. There is a misconception that companies that make money from social services are social enterprises. Example:

private medical centers and clinics, which have an overriding goal – to treat and take care of people's health;

preschool children's institutions (kindergartens), which strive for the child's development and preparation for school;

private educational institutions engaged in education and preparation for adult life;

private boarding houses for the elderly, which take care of comfortable living and care for the elderly;

private social services that offer very high quality social services to various sections of the population and many other similar examples.

A social enterprise primarily differs from other enterprises in that for it the social effect is a direct purposeful result.

In general, we can say that a social enterprise is a business whose profit is used for any good cause: the creation of new jobs or professional retraining, or for the benefit of the local community: socially vulnerable children, the elderly, public, artistic or sports institutions, etc. . Social enterprises are not charities, they operate in the same way as any other commercial business. They differ only in that the profit is invested in a good cause, and not only enriches the owner of this business.

At the same time, social enterprises play an important role in the development of the economy and civil society:

1. Contribute to the development of the economy and society, offering opportunities for the creation of jobs and new forms of entrepreneurship and employment;

2. They help to overcome social isolation (thanks to their activities, it is possible to find employment for people with limited physical and mental abilities; those who have been unemployed for a long time;

3. Activate the participation and voluntary work of citizens, thereby strengthening community unity;

Today, both in our country and abroad, social entrepreneurship is perceived as a certain step towards society and a step towards the development of civil society. Given this state of affairs, this phenomenon is extremely relevant for Ukraine, which gives reason to predict fairly positive prospects for it.

At the same time, we can state that the main problem of social entrepreneurship in Ukraine is insufficient state support. From the point of view of T.M. Hnatieva, for the development of entrepreneurship, the state should recognize socially responsible behavior as desirable and develop a set of incentives and measures to spread and popularize it in society; social entrepreneurship can cover various types of business, and only those social initiatives that are well aligned with the mission of the enterprise have a positive effect. A social enterprise is a type of activity that increases the level of public welfare of the population of Ukraine [10, c. 35].

Conclusions. Thus, we can conclude that social entrepreneurship has practically not yet found its place in Ukrainian legislation. However, this type of entrepreneurship functions quite successfully in Ukraine within the framework of small and medium-sized businesses, combining the social functions of the state. The activities of social enterprises began to be actualized in the conditions of a shortage of financial resources of the state, constantly growing needs of the

social sphere, an increase in the level of unemployment and poverty of the population, when the authorities stopped coping with the volume of social problems that require immediate solutions. Social entrepreneurship found its development at the local level, focusing on solving social problems of the local community. So, there is no doubt that social entrepreneurship is society's response to modern social needs.

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THE FIGHT AGAINST CYBERCRIME IN THE CONDITIONS OF THE WAR IN UKRAINE

Bodnar-Petrovska Olha[1]

Annotation. The article is a study of the peculiarities of the fight against cybercrime in the conditions of war in Ukraine. In particular, it was found out that cybercrime should be understood as a set of crimes committed in virtual space with the help of computer systems or by using computer networks and other means of access to virtual space, within, as well as against computer systems, computer networks and computer data. The concept of "cybercrime" covers the range of criminal offenses in the virtual environment, and its use is provided for by international law. It was determined that, in this connection, the old models of fighting crime need to be improved. Due to the fact that cybercrime is a transnational and cross-border phenomenon, international cooperation, development and implementation of international legal instruments play a decisive role in the fight against it. Since the beginning of the full-scale war of the Russian Federation against Ukraine, in order to prevent the growth of the level of cybercrime, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving the Effectiveness of Combating Cybercrime in Martial Law", which entered into force on March 24, 2022.

The changes made to the Criminal Code of Ukraine strengthened the liability for unauthorized interference in the operation of electronic systems, depending on their consequences. It has been studied that the cyber war unleashed by Russia against Ukraine showed the importance of uniting the international community to counter aggression in cyberspace. Joining forces with partners has become one of the pillars of successfully countering enemy cyberattacks. This experience should be disseminated and become the basis for the formation of a collective system of cyber protection of the democratic world. International acts promote joint actions to combat cybercrime and make the exchange of experience and information about cyber incidents faster and more effective. It is also worth mentioning the following fact: currently, cybercrime is directed at specific economic goods (money, securities, etc). Therefore, society definitely needs protection against cybercrime, because any person can become a victim of criminals under any circumstances of life.

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Key words: cyberspace, cybercrime, digital technologies, virtual space, electronic systems.

The relevance of the researched problem. An indispensable attribute of modern globalization processes is rapid scientific and technical progress, digitization of social relations, the entry of humanity into cyberspace and the penetration of the virtual world into all spheres of life, which together form endless opportunities for the latest development of the information society. However, along with the development of positive components, technological progress leads to the emergence of new challenges and threats, in particular, regarding the balance of security interests at the national and international levels. Over the past decades, the threat of violating the interests of people, the state, and society as a whole in cyberspace has turned from potential and hypothetical to quite real, and countering their spread has become a priority task of national governments and the international community.

Cybercrime is the biggest threat to any company in the world and one of the biggest problems of humanity, over the last decades, the number of cybercrimes in the world has increased many times, the motives and goals of cybercriminals change with the development of technology, and the danger of committed crimes increases every year. The use of the latest computer and technical equipment and the latest achievements in the field of information technology by cybercriminals significantly complicates the activities of law enforcement agencies, as a result of which the latter need to constantly expand their capabilities to fight this modern and rapidly progressing type of crime.

Analysis of recent research and publications. Since cybercrime has not been considered as a separate object of research for a long time, scientific work on this topic is only in the process of development. Various aspects of cybercrimes were studied by V. Bolgov, O. Kopatin, Ye. Skulyshyn, O. V. Tavolzhanskyy and others.

The purpose of the study is to analyze the peculiarities of fight against cybercrime in the conditions of war in Ukraine.

The object of the study is cybercrime in Ukraine.

The subject of the study is the fight against cybercrime in the conditions of war.

Presenting main material. The development and spread of computer technologies and computer equipment, the use of telecommunication networks in almost all spheres of human life, on the one hand, facilitated the possibility of information transmission, creating a number of problems related to the creation of safe conditions for the use of virtual space, and on the other hand, led to the creation of conditions for the implementation of completely new schemes and methods of criminal activity.

The level of opportunities available to criminals and the tendency to increase the number of crimes in the field of computer information technologies pose a threat not only to the democratic transformation and development of the information society in Ukraine, but also to national security in general. One of the serious problems of our society is the growth of cybercrime, which negatively affects the internal economic and social stability of the state.

At the current stage of development, the fight against cybercrime should become one of the main tasks of law enforcement agencies. Since this type of crime is considered transnational, the countries of the world should step up international cooperation in this area. One of the most serious steps aimed at solving this problem is the adoption by the Council of Europe on November 23, 2001 of the Convention on Cybercrime (entered into force on July 1, 2004). The document was signed by 29 states, including Ukraine (ratified on September 7, 2005). The Convention on Cybercrime is the first international treaty in the field of combating crimes committed through computer networks [5, p. 108].

What exactly is cybercrime? The opinions of scientists on this matter differ. For example, O. Kopatin and E. Skulyshyn define cybercrimes as crimes related to the use of cybernetic computer systems and crimes in cyberspace [19].

In accordance with the Law of Ukraine "On the Basic Principles of Ensuring Cyber Security of Ukraine", the concept of cybercrime (computer crime) is defined as a socially dangerous criminal act in cyberspace and (or) with its use, responsibility for which is provided by the Law of Ukraine on Criminal Liability and (or) which is recognized as a crime by international treaties of Ukraine (paragraph 8 of article 1) [17].

Cybercrime is crime commited in the so-called "virtual space". Virtual space can be defined as a computer-simulated space in which there is information about persons, objects, facts, events, phenomena and processes, represented in mathematical, symbolic or any other form and movements in the process, over local and global computer networks, or information stored in the memory of any physical or virtual device, as well as other media specially designed for their storage, processing and transmission [8, p. 54].

Reasons for the development of cybercrime:

1. The main reason for the development of cybercrime is high profitability. Criminals receive huge amounts of money as a result of individual cybercrimes, and if we talk about small scams with small amounts of money, they happen almost every moment. Research by foreign scientists shows that cybercrime ranks third after arms and drug trafficking in terms of enrichment. Therefore, for example, according to estimates of the Accounting Chamber of the United States of America, the annual income of criminals only from thefts and frauds committed using computer technologies via the Internet reaches 5 billion dollars.

2. Technological reasons are those that are manifested in the technical simplicity of committing cybercrimes. Even with general knowledge of system administration or programming, one can gain access to weakly protected computer networks. Highly professional hackers can bypass any protection and mask all traces of an intrusion. A negative trend is also the spread of the viral software market on the Internet, which gives the opportunity to commit crimes to those persons who do not even have computer knowledge.

3. Social factors are the basis for the functioning and development of cybercrime. First, these are changes in social life caused by scientific and technical progress, associated with the comprehensive computerization of society, as well as with the formation of an information space based on the use of computers. In this regard, many spheres of social activity are moving into virtual space, which,

in turn, creates new problems, that is, various crimes with the use of electronic computing equipment. Moreover, there is a need to regulate these problems by appropriate legislation.

4. Political reasons, which are manifested in insufficient awareness of the country's government regarding the possible social consequences of cybercrime. As a result, budget funding for works on creating a legal, organizational and technical basis for state information security, as well as for protecting the rights and freedoms of citizens and their interests in the Internet space, is being reduced. In addition, quite little attention is paid to the legal regulation of the computer sphere, which, against the background of brutal and uncontrolled development, leads to the degradation of legal norms regarding the needs of society in the Internet space [1, p. 247].

Another important factor in the development of cybercrime is psychological, caused by the features of the virtual space mechanism. In ordinary everyday life, there are some deterrent tools, but in the virtual world, criminals do not see their victims, whom they have chosen to attack. That is why it is much easier to steal from those you cannot see, whom you do not need to touch or use illegal actions in the form of physical harm, bloodshed or other dangerous actions. Cybercrimes are crimes at a distance. In this regard, guilty persons have a certain confidence in anonymity and the absence of immediate danger of detection and prosecution.

Cybercrime provides methods to capture information, and the damage they can cause is determined by the price of that information. Since modern society cannot do without electronic carriers of information and digital methods of its storage and processing, cybercrime represents one of the greatest threats to the existence and regulation of social processes [4, p. 89].

The main types of cybercrimes faced by modern society:

1. Carding (fraudulent transactions with credit cards (credit card details), which are not approved by the cardholder);
2. Phishing (fraudulent actions aimed at luring the details of the card from its owner);
3. Vishing (fraudsters use phone calls to extort card details);
4. Skimming (copying payment card data using a special device (skimmer);
5. Shimming (fraudsters use an almost invisible device that is placed inside the card reader. In this way, credit card data is copied imperceptibly);
6. Online fraud (fake online auctions, online stores, websites and telecommunications);
7. Piracy (illegal distribution of intellectual property objects on the Internet);
8. Malware (creation and distribution of viruses and malware);
9. Illegal content (content that promotes extremism, terrorism, drug addiction, pornography, cult of cruelty and violence);
10. Refiling (illegal switching of telephone traffic);
11. Fraud using ECT (the owner of an electronic wallet gives fraudsters access to his accounts and they transfer tens of thousands of dollars to another wallet) [10].

Ensuring cyber security is one of the priorities in the national security system of Ukraine, especially in the conditions of military aggression by the Russian Federation. Its implementation is carried out thanks to the strengthening of the capabilities of the national cyber security system against cyber threats and cyber crime in the modern security environment [18].

From the beginning of the war, it became known about a huge number of cyber attacks on Ukrainian resources. The attack of Russian hackers on Ukraine began just a few minutes before the full-scale invasion of the army. According to Reuters, the United States, Great Britain and the European Union officially accused the Russian Federation of a large-scale cyber attack that disrupted the operation of the Viasat satellite Internet service an hour before the start of the war, on February 24, 2022. This caused the destruction of tens of thousands of satellite terminals [3].

It is actively noted that this attack also affected European Internet users and some wind power plants, in addition, the Ukrainian military and several hundred civilian customers were affected. According to specific data from MIT Technology Review, the attack by Russian hackers on the Viasat platform is the largest known and most painful hack during the war. This was emphasized by Juan Andres Guerrero-Saade. He is a well-known cyber threat researcher with SentinelOne. This hack is one of the first live examples of how cyberattacks can be targeted and precisely timed to strengthen the enemy's armed forces on our territory, by disrupting and even completely destroying advanced technologies.

In the course of this cyberattack, on February 24, 2022, the highly malicious software AcidRain was launched. It wiped all the data on Viasat's modems and routers, causing them to all go offline. In this way, thousands of terminals were destroyed. Previous software of Russian hackers was narrowly targeted and highly damaging to the system. However, AcidRaid is more of a universal weapon [13].

In addition, the State Special Communications Service was informed that Ukrainian users received new dangerous e-mails with the subject "№ 1275 of 04.07.2022", opening of which leads to hackers gaining full control over your computer and threatens with theft and damage of computer data.

It should also be added that the users were warned about the distribution of e-mails with the title "Military criminals of the Russian Federation. htm", opening which leads to attackers gaining remote access to the victim's computer.

On a daily basis, Russia engages in cyberattacks of various scales and levels and operates mainly in three ways.

First, cybercriminals contribute to the conduct of battle and the deployment of military conflict by carrying out attacks on critical infrastructure at the state and regional levels, including banks, power plants, mass media, servers of large corporations, and so on.

In addition, Russia uses cyberattacks as one of the methods of hybrid warfare, which allow, without developing an open conflict with the West, the European Union or NATO, to exert indirect influence on target countries (especially in combination with disinformation campaigns and political moves). Cyber war has a constant character and in most cases takes place even in peacetime.

Another method of cyber manipulation is point-signal threatening cybercrimes, which are a kind of addition to classical diplomacy.

No matter what the cyber attack is, no matter what time it takes place and on what scale, the goal remains unshakable – the destruction of the community, organizations or mechanisms. Only the context changes: a hybrid war under the guise of diplomacy or open military operations. However, the result is only one – innocent people suffer, the masses lose confidence in the governing bodies, and a kind of regression occurs due to damage, theft or change of information resources [9].

The legal basis of cyber security of Ukraine is based on the following normative legal acts: the Constitution of Ukraine, the Criminal Code of Ukraine, the laws of Ukraine "On the basic principles of ensuring cyber security of Ukraine", "On information", "On the protection of information in information and telecommunication systems", "On the foundations of national security" and other laws, the Information Security Doctrine of Ukraine, the Convention of Europe Council on Cybercrime, and other international treaties, the neccesity of which was agreed by the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine.

International treaties on cybercrime provide for the harmonization of national legislation or, at least, the promotion of cooperation at the European and international levels in order to strengthen the means of combating this phenomenon [7].

Nowadays, a war in the information space can cause no less damage than a war on the battlefield. Understanding this, in the first month of the war, the Verkhovna Rada of Ukraine promptly optimized criminal and procedural legislation, improving the grounds and procedural mechanisms for bringing cybercriminals to criminal responsibility. Changes are concentrated in two laws:

1. "On Amendments to the Criminal Procedural Code of Ukraine and the Law of Ukraine "On Electronic Communications" regarding increasing the effectiveness of pre-trial investigation "on hot pursuit" and countering cyberattacks" № 2137-IX of 15.03.2022 [16];
2. "On Amendments to the Criminal Code of Ukraine to Increase the Effectiveness of Combating Cybercrime in the Conditions of Martial Law" № 2149-IX of 24.03.2022 [15].

Liability for cybercrimes is provided for in Chapter XVI of the Criminal Code, specifically two norms from this chapter have undergone changes in accordance with the new Law 2149-IX.

The purpose of the new Law 2149-IX is to:

– strengthen the capabilities and optimize the national cyber security system to counter cyber threats;
– implement the effective criminal and legal mechanisms for combating cybercrime;
– ensure the reliability and safety of the use of digital services.

In the identified changes, there is a certain change in terminology. In accordance with the Law of Ukraine "On Electronic Communications" and the requirements of other legislation of Ukraine in the field of cyber security, the term

"electronic computing machines (computers), automated systems, computer networks or telecommunication networks" has been replaced by "information (automated) , electronic communication, information and communication systems, electronic communication networks". Corresponding changes are now formalized in Art. 361 of the Civil Code.

In addition to terminological ones, Part 1 of Art. 361 of the CCU also underwent constructive changes. The formal structure was replaced by the material one. From now on, in order to qualify actions as criminal according to this norm, it is enough for a person to commit an action (unauthorized intervention), and no consequences (such as leakage, loss, forgery, blocking of information) are required. This simplification is at the same time the criminalization of acts for which there was no criminal liability before. On the other hand, sanctions for "simplified composition" have also become noticeably softer.

The main scientific and expert department of the Apparatus of the VRU expressed this remark, indicating the absence of the necessary level of public danger in an action without consequences. We believe that such wording meets the requirements of the current situation, because unauthorized intervention already involves a sufficient level of threat, and the consequences may not manifest or not be realized for reasons beyond the control of the perpetrator. In addition, it simplifies the implementation of proceedings, as the list of circumstances to be proven in the process is reduced.

The qualified legal components of the crime under Art. 361 of the Civil Code are identified and extended. The new version of the article provides for both old and new qualified legal structures.

The old ones include:

1. Unauthorized interference, committed repeatedly or with a prior conspiracy by a group of persons (Part 2 of Article 361 of the Criminal Code).
2. Unauthorized intervention that caused significant damage (partly, Part 4 of Article 361 of the Criminal Code).

In the new edition, the following qualifications are added to the previous ones:

1. The actions provided for in the first or second part of this article, if they led to the leakage, loss, forgery, blocking of information, distortion of the information processing process or violation of the established order of its routing (part 3 of article 361 of the Criminal Code of Ukraine, new qualified composition, however in the previous version, the disposition belonged to the description of the main content);
2. Actions provided for in the first or second part of this article, if they (...) created the danger of serious technological accidents or ecological disasters, death or mass illness of the population or other serious consequences (Part 4 of Article 361 of the Criminal Code);
3. Actions provided for by the third or fourth part of this article, committed during martial law (Part 5 of Article 361 of the Criminal Code).

It is interesting that such a feature as the commission of a crime under martial law is qualifying only for qualified formations (Parts 3, 4 of Article 361 of the Criminal Code). Therefore, the commission of actions provided for in Part 1 or

Part 2 of Art. 361 of the Criminal Code during the period of martial law, the qualification under part 5 of this article is not subject, although this will be considered as a circumstance aggravating the punishment in accordance with Art. 67 of the Criminal Code [2].

The changes made to the Criminal Code of Ukraine strengthened the liability for unauthorized interference in the operation of electronic systems, depending on their consequences. Thus, since the entry into force of this Law, unauthorized interference in the operation of information (automated), electronic communication, information and communication systems and electronic communication networks (hereinafter – cybercrime) is punishable by a fine from 17 thousand hryvnias to 51 thousand hryvnias or restriction of freedom for up to three years. The same actions, committed repeatedly or with a prior conspiracy by a group of persons, are punishable by a fine from 51,000 hryvnias to 119,000 hryvnias, or restriction of freedom for a period of two to five years, or imprisonment for the same period.

If such interference led to the leakage, loss, forgery, blocking of information, distortion of the information processing process or violation of the established order of its routing, then it is punishable by a fine from 119 thousand hryvnias to 170 thousand hryvnias or imprisonment for a term of three to eight years, with deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years or without such.

Causing damage recognized as significant damage or creating a danger of serious technological accidents or environmental disasters, death or mass illness of the population or other serious consequences is punishable by imprisonment for a term of eight to twelve years with deprivation of the right to hold certain positions or engage in certain activities on a term of up to three years or without it.

The law introduces punishment for cybercrimes during martial law: if they lead to serious consequences, the criminal faces from ten to fifteen years in prison.

The law specifies that hacking electronic systems while searching for and identifying potential vulnerabilities of such systems or networks is not considered a crime (unauthorized interference with the operation of information (automated), electronic communication, information and communication systems, electronic communication networks) [14].

Exemption from criminal liability:

1. In the case of committing an act provided for in Part 1 of Art. 361 of the Criminal Code, the court is obliged to release a person from criminal liability if he:

– after committing a criminal offense, he sincerely repented, actively contributed to the disclosure of the criminal offense and fully compensated for the damages caused by him or eliminated the damage caused (Article 45 of the Criminal Code); or

– committed this act for the first time, reconciled with the victim and compensated for the damage caused by him or eliminated the damage caused (Article 46 of the Criminal Code).

2. In case of committing the acts provided for in Part 2 of Art. 361, parts 1 and 2 of Art. 361-1 of the Criminal Code, the court may exempt a person from criminal liability:

– with the transfer of the person as a surety to the team of an enterprise, institution or organization at their request, if he has committed such an act for the first time and on the condition that within a year from the date of his transfer to the surety, he will justify the trust of the team, will not evade measures of an educational nature and will not violate public order (Article 47 of the Criminal Code); or

– if he committed such an act for the first time and during the criminal proceedings, as a result of a change in the situation, this act lost its social danger or this person ceased to be a social danger (Article 48 of the Criminal Code) [6].

Among the main measures to combat computer crime there are:

– creation of a unified strategy for combating cybercrime, according to which the functions of law enforcement agencies are clearly distributed and coordinated by the state;

– creation of a common center for monitoring cyber-terrorism threats and developing rapid response measures;

– the organization of high-quality protection of material and technical objects that make up the physical basis of information infrastructure, primarily critical;

– development of technologies for detecting influences on information and protecting it from unauthorized access, distortion or destruction;

– continuous training of information systems personnel for effective resistance to various variants of terrorist actions;

– development of interstate cooperation in the fight against cybercrime.

In the conditions of martial law, the protection of information resources of every citizen and the state as a whole is one of the leading tasks of the National Police unit, namely the cyber police.

The main tasks of the cyber police include:

1. Implementation of state policy in the field of combating cybercrime;
2. Informing the population in advance about the emergence of the latest cybercrimes;
3. Implementation of software tools for systematization and analysis of information about cyber incidents, cyber threats and cyber crimes;
4. Responding to requests from foreign partners received through the channels of the National 24-hour network of contact points;
5. Participation in improving the qualifications of police officers regarding the use of computer technologies in the fight against crime;
6. Participation in international operations and cooperation in real time;
7. Ensuring the operation of a network of contact points between 90 countries of the world;
8. Combating cybercrimes in the field of using payment systems [12].

The cyber police of Ukraine is equipped with modern special equipment and software. At the beginning of 2017, it received 194 units of special equipment to counter cyber threats. In addition, as part of the project "Building the capabilities of the cyber police" in March 2017, international donors transferred about 130 positions of information and communication technologies to the Department of Cyber Police [11]. The commission of cybercrimes in Ukraine has spread signifi-

cantly in a short period since the beginning of the war between the Russian Federation and Ukraine [2].

Among the specified self-serving cybercrimes that existed earlier, but spread with the beginning of the Russian aggression against Ukraine, the following are the most noticeable: skimming, cash trapping, carding, phishing, online fraud, social engineering.

Combating cybercrimes by the Cyber Police of Ukraine is possible through the implementation of operational investigative activities to detect, uncover, prevent certain types of cybercrimes, as well as bring them to justice, using special criminological measures.

Therefore, in today's conditions, understanding the actual informational and legal issues of combating cybercrime and the possibilities of its reduction will increase the effectiveness of the investigation of cybercrimes by law enforcement agencies of Ukraine.

Conclusions. Thus, cybercrime should be understood as a socio-legal phenomenon that manifests itself in the subject activity of a part of the population using computers, telecommunications systems, computer networks and communication prohibited by the law on criminal liability; the fight against crime in the field of the use of computer technologies is possible under the condition of further improvement of legal, organizational and scientific support. In today's innovative world, the urgency of countering cybercrime increases depending on the evolution of digital technologies and the transition to a new world order.

To combat cybercrime, fresh approaches are needed, based on the widespread use of scientific and technical achievements, as well as the training of a new generation of employees who have excellent computer technology and computer programming skills. In the conditions of a full-scale invasion of the Russian Federation, the Verkhovna Rada of Ukraine laid the foundations of legislative mechanisms for effective cyber protection and the fight against cybercrime. It is worth noting that the new law expands the limits of the activities of law enforcement agencies regarding the investigation of cybercrimes, provided for in Articles 361, 3611 of the Criminal Code. Strengthening sanctions and additional criminalization of certain acts can partially deter potential criminals from committing new crimes. The introduction of responsibility for crimes committed during wartime is also justified. Such severe sanctions for their commission are dictated by the current situation in the country, because a person, who harms the national interests of Ukraine or Ukrainians in cyberspace, thereby helping the aggressor in this war, cannot bear less responsibility than war criminals.

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SOCIAL ENTREPRENEURSHIP AS A MODERN INSTITUTE OF BUSINESS AND HUMAN INTERACTION

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Annotation. The article is devoted to the consideration of the concept and legal nature of social business through the prism of the mechanism of realization of the constitutional rights and freedoms of a person and a citizen and the peculiarities of the implementation of social business models in Ukraine. The article analyzes successful social entrepreneurship projects that built their model taking into account two factors: the business component and the social component.

Problematic issues caused by the introduction of martial law in Ukraine and aggression by the Russian Federation in the sphere of the realization of constitutional rights, in particular the right to social protection, to work in conditions of war, are outlined. Taking into account the large number of internally displaced persons, destroyed enterprises, persons who need additional financial support and deficit in the budget, the importance of social entrepreneurship is substantiated.

It is noted that local communities around the world play an increasingly important role in solving social problems. Ukraine is also following the path of decentralization, and it is really working. Due to the desire of a certain target group to take responsibility and the will of the center to give it, new initiatives arise that can change the world.

In the course of the study, the authors come to the conclusion that social entrepreneurship can symbolize the departure of Ukrainian society from collectivism and the transition to individualism, where legal entities and natural persons-entrepreneurs, through their activities on their own initiative, create decent conditions for the life of socially vulnerable segments of the population.

Key words: social entrepreneurship, human rights, war, social protection, social business.

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A human development scenario where business focuses only on profits while ignoring ecology and humanity will be catastrophic. Therefore, the sociality of business will be a competitive advantage in the new economy.
(from the Internet)

Formulation of the problem. The topic of social entrepreneurship generates thousands of scientific studies annually, it is taught in the world's leading business schools, and Forbes USA devotes a separate section to it. But the main thing is that there are thousands of enterprises that work in a different way. They arise from the desire to change the world, create social or environmental value, generate a positive impact. But they do not refuse to earn money.

A representative of the so-called of the lost generation, outstanding German writer E.M. Remarque, recalling the war, said: "War is a slaughterhouse where there are no lofty ideals, only death." Indeed, war is a quagmire in which human lives, guaranteed rights, legal mechanisms, and normal legal consciousness disappear. In times when the state is unable to fully guarantee the protection of social rights, it is important to activate civil society and its institutions, social entrepreneurship. Considering the increase in the number of people who need additional social guarantees, we believe that social entrepreneurship itself can become an effective mechanism for the protection and implementation of constitutional rights in the modern conditions in which our state found itself after the military invasion of the russian federation.

The state of development of this issue is still insufficient today, because social entrepreneurship, as a new institution, is in the process of formation in Ukraine. At the same time, scientists such as N.V. worked on researching the legal nature of social entrepreneurship. Kolenda, A. M. Kolosok, A. O. Cherchyk, L. M. Cherchyk, V. Smal, V. Kokot, and others.

The purpose of the article is a critical review of the features of social entrepreneurship in Ukraine through the prism of the implementation of constitutional rights and human freedoms.

Presenting main material. The growth of the budget deficit, the level of financial independence of the regions in the conditions of decentralization lead to a change in priorities in the distribution of income of individual administrative entities and the state in general. Given the complexity of the economic and political situation, it can be assumed that spending on social policy will be reduced. At the same time, the population in need of additional social protection and social benefits will grow. As a result, the level of social security of the population will decrease. In order to prevent the growth of social tension in the country and the aggravation of the social crisis, it is necessary to look for new methods and tools for the implementation of social policy and the formation of social security of the population. One of them can be the activation of social entrepreneurship both at the regional and national level, because in this case the main part of the costs for the social protection of the population will fall on the shoulders of subjects of economic activity [1, p. 25].

Social entrepreneurship is guided by the well-known Triple Bottom Line approach, i.e. Profit-People-Planet (profit, people, planet). In addition to environ-

mental problems, this approach allows working with problems of poverty, inequality, lack of access to education and medicine.

By its very nature, social entrepreneurship balances commercial and non-commercial activities. That is, to be a social enterprise requires a business model, as well as some measurable social (or environmental) value. This theme is ideal for those who have a hard time deciding who to play for: for good deeds or for money. Fortunately, this choice is optional, as an army of social entrepreneurs is showing that this hybrid approach works. It also works in Ukraine, as there are such as Urban Space 100 (and 500), Horihovy Dim, Manivtsi, Yasna Rich, InvaFishki, Woodluck, Good Bread from Good People, Tretya after midnight and many others. These businesses exist to solve common problems, but do so in business-like ways, making money.

It should be noted that the term "social business" was first used by Nobel laureate M. Yunus. Among the seven principles of social business described by M. Yunus, one can single out the fight against poverty, return of investments without dividends, environmental awareness and improvement of working conditions. According to M. Yunus, social business should be the leading model of future capitalism with a human face.

Grameen Bank, founded by M. Yunus himself, can be called an example of a social business. This bank issued micro-loans to poor residents of Indian villages. A series of Adidas sneakers for people with musculoskeletal problems, a batch of cheap vitaminized Danone yogurts for Asia, cheap BASF mosquito nets, etc. can also be considered a social business [2, p. 112].

Currently, social entrepreneurship as a social practice is just beginning to develop in Ukraine. The number of really active social enterprises is small, and often they do not even perceive themselves as such. There is still no public support and state measures. There is nothing surprising in the fact that social entrepreneurship in Ukraine is in its infancy. In the USSR, the social sphere was monopolized by the state, so transferring part of its functions to someone else was out of the question. The specificity is the fact that social entrepreneurship is not institutionalized – in the legislation of this concept [3, p. 27].

Regarding the historical aspects of the development and popularization of social entrepreneurship in Ukraine, in 2006, the project "Public Action Network in Ukraine" (UCAN), funded by the USA, was implemented. American experts conducted trainings for representatives of public organizations. Later, the American government provided grants for the creation of social enterprises based on the results of a business plan competition. In 2010–2013, there was another initiative. The consortium "Promoting social entrepreneurship in Ukraine" included the British Council, the "Eastern Europe" and "Renaissance" funds, the auditing company Pricewaterhouse Coopers, and "Erste Bank". A state non-profit organization – the Ukrainian Entrepreneurship Support Fund – also joined. In March 2011, the British Council in Ukraine, acting on behalf of the project partners (Eastern Europe Fund, Pricewaterhouse Coopers, Erste Bank) and the Ukrainian Entrepreneurship Support Fund signed a Memorandum on cooperation within the framework of the project "Supporting Social Entrepreneurship" in Ukraine [4, p. 5-6].

An interesting example of social entrepreneurship in Ukraine is, for example, "Nut House" – an enterprise whose main mission is to overcome poverty by means of social entrepreneurship. "Nut House" includes two components: a business component (bakery, dining room, catering services) and a social component (financing of the Center for women who have fallen into difficult life circumstances; employment of vulnerable groups of the population of Lviv; provision of food to homeless women) [5, p. . 34]. Another example is the Pizzeria "Pizza Veterano" – a social entrepreneurial project that helps combatants adapt to peaceful life. "Pizza Veterano" transfers 10% of the profits to the needs of war participants and their families [5, p. 38].

Having analyzed some examples of social entrepreneurship, we believe that it plays an important role in the mechanism of realization of the constitutional rights and freedoms of a person and a citizen.

Yes, according to Art. 3 of the Constitution of Ukraine states that a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine [6]. The task of a modern state with a social-democratic orientation is to function in order to implement the fundamental constitutional slogan — ensuring human rights. The spectrum of these rights is quite wide, which determines the multifacetedness of the human-oriented activity of the state in society. Historically, it has been confirmed that the package of social human rights is most fully ensured in the conditions of a market economy [7, p. 78]. Social entrepreneurship in the market economy is a key lever in solving social problems from the side of entrepreneurship.

Also, social entrepreneurship helps to reduce unemployment by creating new jobs. In turn, this has a positive effect on the level of realization of the constitutional right to work, which includes the opportunity to earn a living by work that he freely chooses or freely agrees to [6].

Social entrepreneurship helps to rethink the constitutional right to social protection in a new way, which includes the right to provide them in case of total, partial or temporary loss of working capacity, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided for by law [6]. Social entrepreneurship enables the socially vulnerable segments of the population to expand the limits of their opportunities beyond the framework of social security. Such categories include: persons with disabilities; persons with mental disorders; unemployed with dependents, unemployed over 54 and long-term unemployed; representatives of the Roma ethnic minority; prisoners or persons released from prisons; persons addicted to alcohol, drugs, etc.; homeless people; victims of human trafficking, refugees.

It is not difficult to see that there are three main groups: people who cannot compete on the labor market due to certain physical and psychological problems, people who cannot find employment, people who are unable to realize themselves due to social factors. And if for the successful work of the first and part of the second (in conditions of acute need for labor force, a person who wants to work can always find a job) it is enough to find employment in accordance with their capabilities and create appropriate working conditions (it actually depends on the owner or employer), then for third parties (for example,

persons released from prisons), this is not enough. Assistance and close contact with social services and law enforcement agencies is necessary. Thus, it is quite difficult to adapt a person who has been in prison for a long time to a normal life, even if he wishes [7, p. 81].

Conclusions. Social entrepreneurship plays an important role in the mechanism of realization of the constitutional rights and freedoms of a person and a citizen, in particular the right to work, to a sufficient standard of living, to equality, to social protection of a new format. In this case, we believe that the concept of social protection should be interpreted broadly, go beyond exclusively state obligations (pensions, other social benefits), and include a model of responsible entrepreneurship. It can be argued that social entrepreneurship is an important step towards the departure from collectivism and the transition to individualism, where legal entities and natural persons-entrepreneurs create decent conditions for the life of socially vulnerable segments of the population through their activities on their own initiative.

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RESTRICTIONS ON THE RIGHT TO CONCLUDE A PEACEFUL AGREEMENT IN THE CIVIL PROCEDURE OF POST-STATE STATES: COMPARATIVE LEGAL ASPECT OF RESEARCH

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Annotation. In this article, the authors analyze the legislative restrictions of post-Soviet countries on the impossibility of exercising the right to conclude an amicable agreement in civil proceedings. An analysis of the normative enshrinement of these legislative restrictions and concluded that the legal institution of amicable settlement should be enshrined in the first sections of procedural codes with a detailed description of the amicable settlement procedure and reservations about the impossibility of this, as it belongs to the general part of civil procedural law. Such an approach will help to save the normative material in the codified act and adequately apply the institution of amicable settlement by all courts. Restrictions on the right to conclude an amicable agreement in civil proceedings by the authors are divided into three groups. These groups of restrictions on the right to conclude an amicable agreement are analyzed in terms of substantive and procedural law of post-Soviet countries, the practice of its application by the judiciary and the legal doctrine prevailing in the state. As a result of comparative legal research, it was concluded which restrictions on the right to conclude an amicable agreement should be left, and which should be abandoned or not allowed such wording.

Key words: civil process, post-Soviet countries, peace agreement, restrictions.

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Introduction. At the international legal level, numerous legal acts (the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights, the Darkness of Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1973, etc.) require states to guarantee everyone the right to judicial protection. This international legal standard has been enshrined in many constitutions of the world and has become a defining principle of procedural law: the principle of access to justice. According to its content, any person is guaranteed the opportunity to enjoy fair and effective judicial protection. To ensure this, unlimited judicial jurisdiction was gradually formed, where the resolution of any legal dispute or other legal issue could be submitted to the court. In particular, the Constitution of Ukraine as amended until June 2016 in Art. 124 provided that "the jurisdiction of the courts extends to all legal relations arising in the state" [1].

Subsequently, the Constitutional Court of Ukraine gave an interpretation to this article, which in fact consolidated the unlimited judicial jurisdiction, stating that "the refusal of the court to accept claims" in accordance with applicable law is a violation of the right to judicial protection [2], and "a person's right to go to court cannot be restricted by law" [3].

This approach has led to the fact that courts in many countries have been overwhelmed with cases and have not been able to cope with their workload. Many cases could take several years to process and required significant financial costs, which was completely inconsistent with the effective and fair protection that the court was supposed to represent. The consequence of the crisis of the judicial system was the formation in the second half of the twentieth century. an extensive system of alternative dispute resolution (ADR).

Currently, the ADR system covers all non-judicial procedures for resolving legal disputes. In particular, it may include a claim procedure, arbitration (arbitration), a mini-court, the activities of administrative bodies, the work of the commission on labor disputes, the ombudsman, independent examination of the dispute, and so on. One of the procedures of conciliation is the procedure of concluding an amicable agreement in civil proceedings. A number of post-Soviet countries explicitly warn in their legislation that the peace agreement is a conciliation procedure. For example, Chapter 17 of the Civil Procedure Code (hereinafter – CPC) of Uzbekistan, called "Conciliation Procedures" regulates the conclusion of an amicable agreement [4]. or Chapter 19 of the CPC of Armenia, called "Reconciliation" regulates the conciliation process, which may result in a peace agreement [5].

The current stage of development of civil procedural law in the post-Soviet countries shows that many conciliation procedures are at the stage of their comprehension. Given the commonality and openness of borders, internationalization of trade, the formation of supranational law and order, it is important to understand the legal reservations about the impossibility of concluding an amicable agreement, which are inherent in foreign countries. This will make it possible to develop a normative model of the amicable settlement procedure that avoids conflicting legislative decisions and takes into account best case law.

Materials and methods. The empirical basis of this article is the provisions of the national civil procedural legislation of the post-Soviet countries of the institution of amicable settlement and the practice of their application by national courts. The theoretical basis of this article is foreign research on the regulatory framework of restrictions on the right to conclude an amicable agreement and the basis of dollars. this.

Research methods are selected based on the subject of the study and the goals set by the authors. The main research methods are analysis, synthesis and comparative law. Synthesis and analysis made it possible to understand the essence of the grounds that prevent the court from approving the settlement agreement, giving it the legal force of a court decision. The formal-legal method was used in the interpretation of foreign national regulations and judicial documents relating to the restriction of the procedure for concluding an amicable agreement in civil proceedings. The comparative legal method made it possible to identify common and different approaches in regulating the issue of restricting the parties and others to conclude an amicable agreement, which, in turn, gave the authors the opportunity to draw their own conclusions on problematic aspects of reconciliation.

Results.

Amicable settlement as a conciliation procedure in civil proceedings.

Most post-Soviet countries determine that the purpose of civil proceedings is to protect the rights, freedoms and interests of individuals and legal entities. This goal shows that the court is entrusted with the implementation of a rather important function: law enforcement. However, as the case law of Western Europe and the United States shows, the bulk of civil cases are essentially not considered, as the conflict is resolved through conciliation procedures. Thus, in the United States, about 90% of lawsuits filed in US courts successfully pass through ADR institutions integrated into the judiciary and operating outside it [6. p. 39]. This means that the court is primarily responsible for reconciling the parties to the dispute. And this feature comes to the fore today. Although the legislation of the post-Soviet states directs the court to do everything in its power to resolve the case or part of it by compromise or otherwise with the consent of the parties, if this is reasonable in the court's judgment (eg Article 4 (4) of the Estonian CPC [7]), but the reconciliation of the parties to the conflict has not been identified as the aim or task of civil proceedings.

In order to understand what is the restriction of the right to conclude an amicable agreement in civil proceedings, it is necessary to first give this agreement a brief description.

An amicable agreement is an agreement between the plaintiff and the defendant (parties to a civil case) to terminate the dispute and establish a new material relationship between them on the basis of a change in their material rights and obligations. Influencing the nature of substantive legal relations, changing their content, the amicable agreement is in some cases a novelty of the obligation that existed before filing a lawsuit. But, in contrast to a similar method, the termination of the obligation in civil law change of the obligation under the amicable agreement: 1) consists in a special procedural form of its implementation;

2) aimed at ending a civil case; 3) is approved by the court by issuing a decision to close the proceedings; 4) the terms of the amicable agreement are included in the content of the court decision. The combination of the substantive and procedural aspects of the amicable settlement indicates its dual nature: on the one hand it is aimed at settling the material relations between the parties, but on the other hand it is aimed at closing the civil proceedings [8, p. 564].

It is worth noting one terminological problem at once. The institution of amicable settlement is enshrined in the civil procedural law of all post-Soviet countries, but only in Estonia is an amicable settlement called a "judicial compromise" (Article 4 (3) of the CPC of Estonia). However, by its nature and procedural consequences, a compromise is reminiscent of an amicable settlement. Moreover, the CPC of this country regulates both a judicial compromise and an agreement that may be concluded as a result of the conciliation procedure, which is regulated by a separate Estonian Law "On Conciliation Proceedings" [9]. It is noteworthy that the grounds for their non-recognition by the court in most cases coincide (Article 430 (3), Article 627^1 (3) of the CPC of Estonia).

Scholars of many post-Soviet states agree that the amicable settlement in civil proceedings is an agreement (contract) aimed at modifying the material rights and obligations of the parties, entails procedural consequences in the form of termination of proceedings. Thus, the team of Ukrainian scholars who carry out scientific interpretation of the CPC of Ukraine on amicable settlement in civil proceedings note that "the parties will settle their dispute without waiting for the court to establish the truth in the case, and determine a number of rights and obligations the essence of the peace agreement" [10, p. 420]. A similar view of the settlement agreement is given by Belarusian scientists. In particular, V.G. Tikhina understands the amicable agreement as an agreement between the parties, according to which the plaintiff and the defendant by mutual concessions, on mutually acceptable terms, redefine their rights and obligations and terminate the dispute in court that arose between them [11, p. 166-167]. Kazakh scholars note that an amicable agreement is an agreement on the voluntary settlement of a dispute over the right, which is reached under certain conditions on the establishment of changed or new legal relations between the plaintiff or defendant [12, p. 385-386]. Russian scholars point out that the conclusion of an amicable agreement is one of the important administrative rights of the parties to a civil case, the implementation of which deprives these parties of the opportunity to re-apply for an identical lawsuit [13]. The CPC of the Kyrgyz Republic speaks about the impossibility of re-appeal to the court with a statement of claim between the same parties, about the same subject and on the same grounds when concluding an amicable agreement and approving it by the court. 1 Article 220, Part 2 Article 221) [14].

But despite the importance of the conciliation procedure for modern civil proceedings, in particular by concluding an amicable agreement designed to relieve the courts and "amicably" resolve the legal conflict between the parties, such a procedure is not always allowed in civil proceedings. There are a number of restrictions set by law that prevent the conclusion of a civil case by concluding an amicable agreement.

Peculiarity of normative regulation of restriction of the right to conclude an amicable agreement in civil proceedings.

The norms that enshrine legislative precautions before concluding an amicable agreement in civil proceedings are different. Awareness of this is important not only from the point of view of the correct use of legislative techniques, but is important for the process of their interpretation. Yes, all post-Soviet countries allow the conclusion of an amicable agreement at any stage of the civil process. It follows that the institution of amicable agreement is general, and therefore the procedure for concluding an amicable agreement, warnings about the impossibility of concluding it and the procedure for its approval by the court should be contained in Section I of the CPC, which regulates the general provisions of civil procedure. In the future, these general rules can be applied by courts of all instances, taking into account the peculiarities of their proceedings. However, only one post-Soviet country took into account that the institution of amicable settlement belongs to the general part of civil procedural law. This is the Republic of Uzbekistan, which in the structure of the first section of the CPC highlights Chapter 17 "Conciliation Procedures", which describes in detail the procedure for concluding an amicable agreement and obstacles to it (Articles 166–169). The vast majority of post-Soviet countries have done otherwise: the procedure for concluding an amicable agreement and restricting the right to conclude it have been defined in other sections of the CPC designed to regulate litigation. Thus, the CPC of Ukraine in Chapter III "Claims" contains Chapter 5, which regulates in detail what is an amicable agreement, the procedure for its conclusion, the procedure for approving an amicable agreement by a court and restrictions on exercising the right to amicable settlement (Article 207). From a legislative point of view, this is not very correct, especially given the fact that some post-Soviet countries directly or indirectly allow the conclusion of an amicable settlement in non-litigation proceedings, which will be discussed below.

It is worth noting another shortcoming of the legislative location of the rules governing the restriction of the right of a party to conclude an amicable agreement. Successful exercise of the right to amicable settlement and restrictions on the exercise of this right are organically interrelated, as one excludes the other. In the presence of such restrictions, the court will not approve the amicable agreement, and therefore the right to conclude it has not been successfully exercised. Here we can draw a parallel with the refusal to initiate proceedings in the case, which precludes the successful exercise of the right to sue. This has led us to believe that it is necessary to adhere to a certain sequence in the legislative location of restrictions on the impossibility of concluding an amicable agreement. In particular, we consider the situation when the legislator, after regulating the terms and procedure for concluding an amicable agreement, determines a warning about the impossibility of exercising the right to an amicable agreement to be correct. This is important in terms of the logic, consistency and completeness of the conciliation procedure based on the amicable settlement. The compact arrangement of these norms in one article or one chapter of the CPC will ensure their adequate application by courts of all instances. However, there are cases in the legislation of post-Soviet countries when the warnings about the impossibil-

ity of concluding an amicable agreement are taken out of the structural unit of the CPC, which describes the procedure for concluding an amicable agreement. Sometimes even it is preceded by illogical. In particular, the CPC of Tajikistan describes the procedure for concluding an amicable agreement in Art. 177, which is located in Chapter 15 "Judicial review", which is part of Section II "Proceedings" of Section II "Trial in the court of first instance". Instead, reservations about the impossibility of concluding an amicable agreement are defined in Part 2 of Art. 43 of the CPC of Tajikistan, which is contained in Section I "General Provisions" [15]. Often, pointing to the warning about the impossibility of concluding an amicable agreement in the general provisions of Section I of the CPC, the legislator then literally repeats them when describing the procedure for concluding an amicable agreement in the court of first instance (eg, Part 2 of Article 39, Article 15310 CPC of Russia [16]) or in all instances (eg, Article 169, Part 5 of Article 394, Part 4 of Article 414 of the CPC of Uzbekistan), which is superfluous in terms of regulatory savings.

Warnings about the impossibility of concluding an amicable agreement may be contained not only in procedural acts. Thus, an amicable settlement may be an independent procedure or part of another conciliation procedure initiated to prevent the consideration of a civil case on the merits. For example, in the Republic of Moldova, an amicable settlement may be concluded based on the results of judicial mediation. Regardless of how the amicable agreement was concluded, Art. 60 (5) of the CPC of Moldova obliges the court before its approval to check whether the provisions of Part 3 of Art. 32 of the Law of Moldova "On Mediation"[17]. That is, there is a blanket norm that sends us to another piece of legislation to check whether there is a restriction on the right to conclude an amicable agreement, in accordance with this law.

Grounds for restricting the right to conclude an amicable agreement and their classification.

The procedural legislation of the post-Soviet countries variously indicates the restriction of the right to conclude an amicable agreement in civil proceedings: from the succinctly vague "terms of the amicable agreement contrary to law" (Part 4 of Article 43 of the CPC of Kyrgyzstan) to a comprehensive list of legal facts the court does not have the right to approve an amicable agreement, ie the subjects in these cases are legally limited in the right to conclude an amicable agreement. In particular, the CPC of Estonia in Art. 430 (3) states that a court does not approve a compromise if it is contrary to good custom or law, violates essential public interests, or cannot be complied with. In family matters, the court is not bound by compromises and should not approve them. The CPC of Moldova also provides a detailed list of grounds for non-approval by a court of a settlement agreement that restricts the right of the parties to conclude it: it contradicts the law or violates the rights, freedoms and legitimate interests of the individual, society or the state (Article 60 (5)). In addition, as mentioned above, before approving an amicable settlement in Moldovan civil proceedings, the court must verify the existence of a reservation on the impossibility of concluding an amicable settlement under the Moldovan Law on Mediation. This law, in particular, does not allow to include in the terms of the amicable agreement conditions that relate to

rights and obligations that the parties can not freely dispose of by concluding an amicable agreement; violate the imperative norms of law, public order and moral norms; are clearly unfair; harm the best interests of the child; violate the rights of third parties who are not involved in the mediation process [18].

However, most post-Soviet countries enshrine in their CPC two grounds that limit the right of the parties to conclude an amicable agreement. In particular, Art. 169 of the CPC of Uzbekistan provides for two cases that do not allow to approve the settlement agreement by the court: 1) contradicts the law; 2) affects the rights and legitimate interests of third parties. Similarly decides the CPC of Tajikistan (Part 2 of Article 43), the CPC of Russia (Part 2 of Article 39), the CPC of Belarus (Part 4 of Article 61), the CPC of Azerbaijan (Article 52.5) [19]. The CPC of Lithuania also provides only two grounds restricting the right of the parties to conclude an amicable agreement (Part 2 of Article 42) [20]. CPC of Kazakhstan three grounds (Part 2 of Article 175, Part 3 of Article 176) [21]. The CPC of Armenia provides four grounds for non-approval of the amicable agreement of the parties (Part 4 of Article 151), as well as the Civil Procedure Law (hereinafter CPC) of Latvia (Article 226 (3)) [22]. A similar situation with the CPC of Ukraine: the terms of the amicable agreement contradict the law or violate the rights or legally protected interests of others, are unenforceable; or one of the parties to the amicable agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents (Part 5 of Article 207).

However, there are countries in the former Soviet Union, where the CPC does not clearly provide grounds for non-approval of the amicable agreement by the court. In particular, Part 5 of Art. 199 of the CPC of Turkmenistan states that "in case the court does not accept the plaintiff's waiver of the claim, recognition of the claim by the defendant or non-approval of the amicable agreement of the parties, the court makes a decision and continues to consider the case on the merits" [23]. There are no grounds for not approving the amicable agreement in this article, which deals with the specified administrative rights of the parties. However, in Part 3 of Art. 14 of the CPC of Turkmenistan states the following: "The parties may complete the proceedings by concluding an amicable agreement; they may recognize the claims or waive them, unless otherwise provided by law. " If you follow the rules of grammatical interpretation of this regulation, it turns out that the reservation on the other, which may be provided by law applies only to such administrative rights of the parties as waiver of the claim and recognition of the claim, but does not apply to amicable settlement. In our opinion, such a situation does not comply with the principle of legal certainty, as there is no transparency in the procedure for concluding an amicable agreement and conditions are created for the court to abuse its power.

In our opinion, the procedural legislation of the post-Soviet should make a thorough but open list of grounds that do not give the right to conclude an amicable agreement in civil proceedings, which would contain such warnings that are most often repeated in judicial practice. This approach, given that most post-Soviet countries have a high level of corruption, including in the courts (Turkmenistan, Tajikistan, Uzbekistan, Russia, Azerbaijan, Kyrgyzstan, Ukraine,

Moldova, Kazakhstan) [24], minimizes corruption risks in civil proceedings, will not allow the abuse of power.

All restrictions that do not allow to conclude an amicable agreement in the civil process of post-Soviet countries by their nature can be divided into three groups:

1) restrictions concerning the terms of the amicable agreement;

2) restrictions related to the procedure for concluding an amicable agreement;

3) restrictions related to a certain category of civil case considered by the court.

In order to understand these limitations, they should be considered in more detail, relying not only on the legislative model to address this issue, but also on case law and existing legal doctrine in the country.

Restrictions on the right to conclude an amicable agreement concerning its terms.

Restrictions on the terms of an amicable settlement are one of the most common restrictions that prevent the parties from concluding a substantive civil case. The terms of an amicable agreement are the conditions on the basis of which the parties to a civil case reach conciliation. Paragraph 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the preparation of civil cases for trial" states that "it is important to verify the terms of the settlement agreement» [25].

As a rule, the terms of an amicable agreement are constructed in the form of rights and obligations assumed by the parties to the dispute, ie what behavior one party must take towards the other. Thus, the Kazakh court in considering the claim for recognition as a family member and recognition of the right to housing approved an amicable agreement, according to which the plaintiff waives the claims, and the defendant rents a house for 6 months to the defendant with a monthly payment of 35,000 tenge [26]. It is no coincidence that Ukrainian scientist Yu. V. Bilousov notes that "an amicable agreement is an agreement (contract) concluded between the parties and recognized by a court to terminate a dispute between the parties by mutual concessions concerning their rights, obligations and subject matter" [27, p. 138]. However, when discussing the terms of an amicable agreement, it is allowed to go beyond the subject matter of the dispute in the court of first instance (Part 1 of Article 207 of the CPC of Ukraine, Part 3 of Article 1539 of the CPC of Russia).

The legislation of the post-Soviet republics in some cases specifies in detail what the parties must include in the terms of the amicable agreement, and in others warns against the inclusion of which conditions should be avoided because they are unacceptable and will be grounds for non-approval of the amicable agreement. Yes, Art. 167 of the CPC of Uzbekistan states that "the amicable agreement must contain the terms agreed by the parties, indicating the term and procedure for its implementation. Fulfillment of the obligations accepted by the parties under the terms of the amicable agreement should not be made dependent on each other or other events (actions)". Instead of Art. 430 (7) of the CPC of Estonia states that "a compromise may be conditional".

The legislative practice of the post-Soviet countries may coincide with the normative definition of restrictions on the terms of the settlement agreement, and may differ from each other. Virtually all post-Soviet states enshrine the provision that the terms of an amicable agreement must not violate the law. This is a universal caveat, which is aimed at both procedural and substantive law. For example, the CPC of Kazakhstan does not allow the introduction of a suspensive condition in the content of the amicable agreement (Part 3 of Article 176), while the CPC of Armenia prohibits fixing such conditions that do not allow to some extent to determine the amount allocated, the property to be transferred or an action that a party is obliged to take or to include such obligations, the performance of which is conditioned by the performance of the obligation by the other party (Part 4 of Article 151).

Instead, substantive law applicable to the legal relationship of the parties may contain reservations about the impossibility of concluding an amicable agreement. Thus, Russian scholars refer to the following case of non-approval of the amicable agreement by the court: the court of cassation overturned the decision approving the amicable agreement concluded on the claim for invalidation of the decision of the general meeting of founders. civil law contract ". The General Director, as the sole executive body, has no right to change, revoke or invalidate the decisions of the General Meeting, which is the highest governing body of the limited liability company [28]. Or the Ukrainian court did not approve the settlement agreement in the case where the defendant fully acknowledged the debt to the plaintiff and offered him to repay 50% of the share in the authorized capital of a company as repayment of this debt. The motivation of the court was that in this situation there was a hidden civil law agreement on the sale of shares in the authorized capital of the company[29]. The ban on concluding a covert agreement by amicable agreement is based on the fact that there is a certain procedure for concluding certain agreements (notarization, payment of mandatory fees and taxes, etc.), which must be followed by the parties. It is no coincidence that the CPC of Lithuania indicates that the terms of the amicable agreement may not include conditions that violate the mandatory provisions of the law (Part 2 of Article 42). A similar proviso is contained in the Law of Moldova on Mediation (Part 3 (b) of Article 32).

Warnings about the impossibility of concluding a peace agreement, the terms of which violate the rights and interests of the individual, are very common among post-Soviet countries. "Person" means both a person involved in a civil case and having procedural status in it, and an outsider who has nothing to do with the case. In the latter case, it is said that the terms of the amicable agreement affect the rights and legitimate interests of "third parties" (Part 1 of Article 169 of the CPC of Uzbekistan), violate "someone's" rights and legally protected interests (Part 4 of Article 61 of the CPC). Belarus), the rights or legitimate interests of "another person" are violated , paragraph 1, part 5 of Article 207 of the CPC of Ukraine, part 2 of Article 39 of the CPC of Russia, etc.). The fact that these entities are not involved in civil proceedings in some post-Soviet countries has been clarified by the country's highest judicial body. Thus, paragraph 24 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the application of

civil procedural law in cases before the court of first instance" states "if the terms of the amicable agreement не do not violate the rights, freedoms or interests of others (not parties) , the court recognizes the amicable agreement and closes the proceedings"[30].

With regard to the violation by the terms of the amicable agreement of the rights and interests of persons who are participants in the civil case, the civil procedural legislation of the post-Soviet countries addresses this issue in different ways. In particular, paragraph 2 of Part 5 of Art. 207 GIC of Ukraine gives the court the opportunity not to approve the amicable agreement, if one of the parties to the amicable agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents. The point is that the conduct of the legal representative in determining the terms of the settlement agreement will not be in the interests of his ward. As legal representation in the civil process of Ukraine is established in relation to minors and minors, incapacitated and limited in capacity (parts 1-2 of Article 59 of the CPC of Ukraine), these entities are not entitled to control the behavior of the legal representative. Moreover, in some cases they are not even present in the courtroom. That is why it is the court's responsibility to monitor the conduct of the legal representative. If the court determines that the terms of the amicable agreement will violate the rights and interests of the person represented in the civil case by the legal representative, the court shall not approve such an agreement. He must continue the civil proceedings further. Thus, a lawsuit for deprivation of parental rights was filed in one of the Ukrainian courts, which was not satisfied by the court of first instance. However, at the appellate level, an amicable settlement was filed, according to which the defendant acknowledges the claim for deprivation of parental rights in respect of the son and understands all the consequences of deprivation of parental rights, and the plaintiff undertakes not to impose any claims on the defendant property requirements for the maintenance of the son. The court did not approve the settlement agreement because it did not meet the interests of the child [31]. Similarly, Moldovan law, which prohibits the inclusion in the settlement agreement of conditions that would harm the best interests of the child (Part 3 (d) of Article 32 of the Moldovan Law on Mediation).

But not only the private interests of either the party to the case or an outsider are a warning to the conclusion of an amicable agreement in civil proceedings. Some post-Soviet countries attach importance to the observance of public or state interests, which should not be violated by the terms of the peace agreement. In particular, the CPC of Estonia states that it is inadmissible to violate "substantial public interests" (Article 430 (3)), the CPC of Lithuania does not violate "public interests" (Part 2 of Article 42) and the CPC of Moldova »(Part 5 of Article 60). It is necessary to pay attention to the certain value of these concepts, which allow the court to decide whether the public or state interest has been violated in a particular case. Lithuanian Professor Vytautas Nekrosius, commenting on the situation with the category of "public interest" in the Lithuanian civil process, notes that in this situation it becomes obvious not only the mystification of the category of public interest, but also the autonomy of the parties and the

principle of dispositiveness. Thus, the law does not guarantee that the court and the state will not abuse these great rights [32, p. 124].

Procedural restrictions on the right to conclude an amicable agreement.

Restrictions related to the procedure for concluding an amicable agreement in civil proceedings are the second largest group of restrictions that create obstacles to the exercise of the right to conclude an amicable agreement. The procedure for concluding an amicable agreement in civil proceedings is regulated by the rules of substantive and procedural law. This corresponds to the thesis that this legal institution has a dual or complex nature. Since by its material nature a settlement agreement is a contract, the procedure for its conclusion must correspond to the procedure for concluding civil law contracts. The civil law of the post-Soviet countries clearly sets out the general conditions for the veracity of the treaty, non-compliance with which gives the court grounds to declare such treaties invalid. For example, the Civil Code (hereinafter CC) of Moldova in Chapter II of Section III defines the terms of validity of agreements [33]. Yes, Art. 312 (2) of the Civil Code of Moldova indicates that consent is valid if it comes from a person who is in common sense, expressed with the intention to create legal consequences and is not vicious. The Civil Code of Ukraine stipulates that "essential conditions of the contract are the conditions on the subject of the contract, conditions defined by law as essential or necessary for contracts of this type, as well as all those conditions on which at the request of at least one party must be agreed." (Part 1 of Article 638) [34]. In the context of the topic of our study, this information is important because non-compliance with the procedure for concluding civil agreements (contracts) will be grounds for the court not to approve the settlement agreement in civil proceedings. Despite the importance of this, very few procedural codes of post-Soviet countries mention the need to comply with civil law when concluding amicable settlements. Yes, Art. 430 (8) of the CPC of Estonia states that "a compromise may be revoked and its nullity may be based on the grounds specified in the Law on the General Part of the Civil Code". As you know, a settlement agreement in Moldova may be concluded as a result of a judicial mediation procedure, which can be initiated in the process of considering a civil case in court. Moldova's Law on Mediation states that an amicable agreement must comply with the conditions of validity provided for in this Law, the Civil Code and other legislative acts (Article 32 (2)). At present, a number of post-Soviet states are quite scrupulous in their procedural legislation determining the procedure for concluding an amicable agreement. For example, the Code of Civil Procedure of Russia extensively regulates the form and content of the amicable agreement (Article 1539), the procedure for its approval by the court (Article 15310). Thus, the amicable agreement is drawn up and signed in the number of copies, which exceeds by one copy the number of persons who concluded the amicable agreement. One of these copies is attached by the court that approved the amicable agreement to the case file (Part 6 of Article 1539).

If the specified procedure for concluding an amicable agreement in procedural law is violated, it will not lead to the desired legal effect: the court will not approve the amicable agreement and will continue to consider the case further.

The procedural legislation of some post-Soviet countries imposes its own, sometimes quite specific, requirements on the procedure for concluding an am-

icable agreement. Thus, before concluding the case by concluding an amicable agreement, the parties must provide a certificate of public law restriction, which confirms that the subject of the dispute (thing, intangible property) is not registered public law restriction, and contains data valid at the time of the parties amicable agreement (Part 2 of Article 218 of the CPC of Georgia). The Latvian CPC states that an amicable settlement may be approved by a court without the participation of the parties if the amicable settlement is notarized and includes notifications from the parties that they are aware of the procedural consequences of approving the amicable settlement (Article 227 (3)); in cases arising from the right to custody and communication, the amicable agreement is approved after the court requests on its own initiative the opinion of the relevant orphan court or the invitation of its representative to participate in the hearing (Article 2446).

There is a widespread warning among post-Soviet countries about the impossibility of exercising the right to an amicable settlement, which is relevant to the procedure for concluding it: a warning about the subject. These entities can be divided into two groups: entities that are completely incapable of concluding an amicable settlement in civil proceedings and entities that are relatively incapable of such actions.

Entities that under no circumstances have the right to personally conclude and sign an amicable agreement in civil proceedings include such entities as a minor (usually a minor under the age of 14) and an incapacitated party or a third party claiming independent requirements (Article 72 (3) of the CPC of Latvia, Part 5 of Article 37 of the CPC of Russia, Part 4 of Article 59 of the CPC of Belarus, Article 49.4 of the CPC of Azerbaijan, Part 5 of Article 39 of the CPC of Kyrgyzstan, Article 58) CPC of Moldova, etc.); prosecutor in civil proceedings, body of state power or local self-government, who appealed to the court in the interests of others (Part 1 of Article 57 of the CPC of Ukraine, Part 2 of Article 45, Part 2 of Article 46 of the CPC of Russia, Part 1 of Article 51 CPC of Uzbekistan, Part 1 of Article 129, Part 3 of Article 130 of the CPC of Turkmenistan, Part 5 of Article 54 of the CPC of Kazakhstan). The inability of public authorities to conclude an amicable agreement in the interests of others is due to the fact that they do not have a substantive interest, ie they are not the subject of the disputed substantive legal relationship, which is the subject of litigation. Without being such an entity, the prosecutor, public authority or local government is not able to transform the relationship in such a way that it effectively meets the interests of the party. Moreover, the personal fulfillment of the terms of the amicable agreement will not be entrusted to them, but to the party in whose interests they appealed to the court.

Entities that are relatively incapable of signing an amicable agreement in civil proceedings, ie persons who, as a general rule, do not have such an opportunity, but under certain conditions it appears in them, include contractual representatives of the parties and third parties who make independent claims. Thus, the vast majority of post-Soviet countries allow a representative to conclude an amicable agreement if the power of attorney on the basis of which they entered into a civil case explicitly states the representative's right to conclude an amicable agreement on behalf of the person in whose interests they went to court. Uzbekistan, Article 134 of the CPC of Turkmenistan, Part 2, Article 56 of the CPC

of Tajikistan, Part 1, Article 54 of the CPC of Russia, Part 1, Article 81 of the CPC of Moldova, Article 86 (2) of the CPC of Latvia, Part 2, Article 63 CPC of Kyrgyzstan, Part 2 of Article 79 of the CPC of Belarus, Part 1-2 of Article 56 of the CPC of Armenia, Article 74.2 of the CPC of Azerbaijan, Part 1, 3 of Article 60 of the CPC of Kazakhstan, Part 1 of Article 98 of the CPC of Georgia). Otherwise, such a representative does not have such a right. That is why the court before concluding an amicable agreement in civil proceedings checks the authority of the representative to determine whether he has permission for such actions. Instead, the CPC of Ukraine decides differently with the contracting representative: he is authorized on behalf of the person he represents to perform any procedural actions, including concluding an amicable agreement, if such conduct specifically in the power of attorney or warrant issued is not prohibited (Part 2 of Art. 64). A similar rule applies under the CPC of Estonia (Article 222 (1), Article 223).

Interestingly, in some countries, the same entity that has restrictions on the conclusion of an amicable agreement may belong to different groups. In particular, some post-Soviet states categorically prohibit a third party who does not make independent claims to conclude an amicable agreement in civil proceedings (Part 7 of Article 38 of the CPC of Armenia, Article 80 (2) of the CPC of Latvia, Part 6 of Article 53 of the CPC of Ukraine, Part 1 Article 126 of the CPC of Turkmenistan, Article 91 of the CPC of Georgia). While other post-Soviet states under certain conditions allow the conclusion of an amicable agreement by a third party who does not make independent claims. Thus, Part 3 of Art. 49 of the CPC of Uzbekistan states that in case of recognition of the claims by a third party who does not declare independent claims on the dispute, when the plaintiff's rights are violated as a result of his actions or inaction, the court has the right to decide on third party. Russia's Code of Civil Procedure provides for the possibility of a third party to conclude an amicable agreement without independent requirements, if they acquire rights or impose obligations on them under the terms of the amicable agreement (paragraph 2, part 1 of Article 43). We believe that the latter approach is more noteworthy because it reduces the burden on the court: if a third party without independent claims becomes a party to an amicable agreement, the provisions of which will be complied with by all parties, it will not be sued in the future.

Restrictions on the right to conclude an amicable agreement in certain categories of civil cases.

Restrictions related to a certain category of civil case before the court are not common in the current CPC of post-Soviet countries. The amicable settlement as a substitute for a court decision makes it possible to complete the proceedings in not all categories of civil cases. There are cases of restriction of the right to an amicable agreement, not related to its subject or procedure. These cases are related to the category of civil case, ie the material claim with which the person applied to the court. Thus, the CPC of Estonia states that the family court is not bound by compromise and is not obliged to approve them (Article 430 (3)). The CPC of Latvia prohibits concluding an amicable agreement in the following matters: 1) in disputes related to amendments to the register of civil status records; 2) in disputes related to the property rights of persons under guardianship or

trusteeship; 3) in disputes over immovable property, if among the participants there are persons whose rights to purchase immovable property or property are limited in the manner prescribed by law (Article 226 (3)).

In some cases, the legislation of the post-Soviet countries clearly expresses its warning about the impossibility of concluding an amicable agreement in a certain category of civil case, and in others – no, but this follows from the essence of civil procedural law. Thus, it is considered that the amicable agreement is a legal institution, the rules of which are relevant to the consideration of civil lawsuits, where the decision of the parties replaces the court decision on the dispute over the right. Hence, the legal personality of the parties to the non-litigation procedure does not include the right to conclude an amicable agreement. For example, the CPC of Ukraine explicitly prohibits the conclusion of an amicable agreement during the consideration of separate proceedings (Part 5 of Article 294). While the CPC of Russia does not have such a normative clause, it follows from the nature of separate proceedings, which prohibits civil law agreement on an issue to be answered only by a court (in particular, on the adoption of a child – Chapter 29 of the CPC of Russia). That is why Russian scientists warn about the impossibility of concluding an amicable agreement in separate proceedings [35, p. 188].

At the same time, some post-Soviet states allow the conclusion of an amicable agreement in certain cases of separate proceedings. Thus, the Latvian CPC includes cases of insolvency of enterprises or business associations (Chapter 46), which determine the actions of the court after declaring them insolvent. One of such actions is the approval or cancellation of the amicable agreement (Articles 351-352 of the CPC of Latvia). Similarly resolves the issue of the CPC of Estonia, which contains part 11 "Non-litigation proceedings", where in Art. 477 (6) states that a compromise in non-litigation proceedings may be entered into by the parties to the proceedings if they are able to dispose of the right which is the subject of the proceedings. In particular, non-litigation cases under the CPC of Estonia include such cases as declaring a person dead, appointing a guardian for an adult with disabilities, placing a person in a closed institution, taking measures to preserve the inheritance, recognition and enforcement of foreign courts, etc. (Article 475).

Most post-Soviet countries recognize this type of non-litigation procedure as injunction proceedings. In this type of proceedings, when the case is in court, it is impossible to conclude an amicable agreement, because the parties do not see each other and according to the procedure of proceedings are not summoned to court. It is not provided by law. It is obvious that due to such a legislative procedure for considering cases of injunction proceedings, the parties cannot exercise the right to amicable settlement in court. Instead, nothing prevents further participants in the injunction proceedings to conclude an amicable agreement at the stage of execution of the court order [36, p. 845].

It should be noted that there are categories of lawsuits where it is not possible to conclude an amicable agreement. In particular, the Latvian CPC indicates that in cases of divorce or invalidity of marriage, the amicable agreement of the parties is allowed only in disputes related to family law (Article 241 (1)). Under such disputes under Part 1 of Art. 238 CPC of Latvia understand disputes: 1)

about appointment of care; 2) on the exercise of the right to communicate; 3) on child support; 4) funds to ensure the former level of welfare or nutrition of the spouses; 5) on joint housing of the family and household items or personal use; 6) on the division of property of the spouses (also in the case of third parties).

Correspondence proceedings are a type of litigation in civil proceedings in most post-Soviet countries (Chapter 11 of Chapter III of the CPC of Ukraine, Chapter 28 of Chapter VI of the CPC of Belarus, Chapter XXIV of Chapter IV of the CPC of Georgia, etc.). Concluding an amicable agreement in such cases is also impossible due to the absence of one party and the procedure for their consideration.

The existence of certain categories of civil cases, where restrictions on the impossibility of exercising the right to amicable settlement is justified by the fact that each post-Soviet country determines in which case the principle of dispositiveness should be limited and values should be determined in which the whole society is interested in judicial protection.

Conclusion. Thus, a review of post-Soviet legislation on the enshrinement of restrictions on the right to conclude an amicable agreement shows that the vast majority of countries address this issue in the same way, especially with regard to the scope of these restrictions. To some extent, this is due to the common Soviet past, where all-Union legislation was first developed, which was in fact later duplicated by the union republics (at present, this practice has been partially duplicated by some post-Soviet Central Asian republics, including Kazakhstan), and as well as unification processes taking place in the post-Soviet space. However, each post-Soviet country has its own national differences on the proviso that it is impossible to conclude an amicable agreement in a certain category of civil matters, showing the limits of dispositive freedom.

It should be noted that a number of post-Soviet countries that are members of the European Union (Moldova, Estonia) have a fairly smooth system of grounds that do not allow the court to approve an amicable settlement in civil proceedings. Such a situation allows for a more balanced and transparent entry into the sphere of autonomy of the parties to a civil case, without abusing the judiciary. Ukraine should take this legislative practice into account, taking into account its European integration processes. However, given the relatively high level of corruption that persists in Ukrainian courts, there are no grounds to limit the right to conclude an amicable agreement through the use of valuation concepts.

As stated at the beginning of this article, an amicable settlement in civil proceedings is seen as an alternative to the merits of the case. Therefore, Ukraine should borrow the experience of those countries that allow a third party without independent requirements to the subjects of the right to conclude an amicable agreement. Currently, the CPC of Ukraine prohibits this party to enter into an amicable agreement. The abolition of this formal prohibition will result in the fact that those claims that may be filed in the future by filing a recourse action in a new civil case will not be filed, which, in turn, will reduce the burden on the court.

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PROBLEMATIC ISSUES OF TEMPORARY PLACEMENT OF CHILDREN IN THE RUSSIAN-UKRAINIAN WAR

Briukhovetska Maryna[1]

Annotation. The author claims in the article, together with the creation of social programs, it is worth applying other measures to encourage the population, such as, for example, holding forums for parents-educators, information coverage of their activities, public appeals to place children in their families.

It is necessary to include in the provisions of the Family Code of Ukraine the definition of the concept of "temporary placement of children", which means the transfer of children without parental care, orphans, children deprived of parental care to persons who have confirmed the possibility of caring for such children for a period of time until the children can to be handed over to their parents or relatives or until the difficult life circumstances that became the basis for such an arrangement are resolved.

In the difficult conditions of countries where war continues, it is important to observe the norms of international humanitarian law. Violation of the rights of every child cannot be left unpunished. Together with the identification of the guilty, the mechanism of implementation of prosecution must be effective and efficient.

In order to protect the rights of children temporarily placed abroad and evacuated to foreign countries, it is necessary to ensure constant interaction with public organizations and volunteers, who usually provide reliable support to the civilian population.

On the part of the state, a number of important measures aimed at providing children with financial resources should be taken. UN peacekeeping missions should engage in constant interaction with the aim of ensuring humanitarian access to the population and avoiding catastrophe.

Introduction. The beginning of 2022 marked the beginning of an unexpected reform of Ukrainian legislation in all spheres of public life. The reason for such active changes was the invasion of Ukraine by the armed forces of the Russian

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Federation. On February 24, 2022, martial law was introduced on the territory of Ukraine by decree of the President of Ukraine. As a result, the constitutional rights and freedoms of a person and a citizen, provided for by the provisions of the Constitution of Ukraine, are subject to restrictions. A special entry and exit regime has been established, as well as restrictions on the freedom of movement of citizens, foreigners and stateless persons. There are restrictions on the choice of the place of stay or the place of residence of persons in the territory, the population is being evacuated (On the introduction, 2022).

Materials and Methods. Only according to the official data of the Office of the United Nations High Commissioner for Human Rights as of April 22, 2022, civilian casualties among the killed are 746 men, 469 women, 48 girls and 66 boys, as well as 70 children and 1,036 adults, whose gender is not yet known. In addition, 345 men, 274 women, 62 girls, 67 boys, 157 children and 2,041 adults, whose gender is also unknown, were wounded (Ukraine, 2022).

According to the latest official data of juvenile prosecutors, as a result of the full-scale armed aggression of the Russian Federation against Ukraine, the number of victims among children increased to 567 (The Committee…, 2022).

It should be noted that the indicated number of injured people is constantly increasing and it is impossible to give an exact figure. Thus, the relevance of the goal is obvious, because in large-scale tragic conditions, children remain a particularly vulnerable category in Ukraine. Due to hostilities and evacuation, parents are forced to part with their children, handing them over to friends and relatives in safe conditions.

Formulation of the problem. In the conditions of active hostilities on the territory of Ukraine, hundreds of children independently crossed the border in search of a safe place. It is impossible not to remember the story of an 11-year-old boy who reached Slovakia on his own with a written phone on his hand and a bag of things.

In the conditions of a full-scale war, the priority is to ensure the safety of children, so it is difficult to comply with all the formal requirements for recording parental statements. Especially with regard to the notarized certificate of parents' permission to take children abroad.

Attacks on schools and hospitals, obstruction of the transfer of humanitarian aid, violence against children are a direct violation of the norms of international humanitarian law, principles of morality and humanity, and also demonstrate a flagrant violation of children's rights.

Such mass resettlement of children, as today in Ukraine, has not occurred in history since the Second World War. The state takes all measures aimed at temporarily placing resettled children in a family, which will ensure a sense of security, support and realization of their rights, guaranteed by domestic and international legislation.

Despite the proposed scientific conclusions, questions regarding the legal regulation of temporary placement of children remain open. In addition, the relevance of the chosen topic is determined by modern practice, since in the conditions of the Russian-Ukrainian war, the number of children without supervision and orphans increased significantly. The settlement of these issues is an

extremely important task in the field of private legal relations for in-depth study and scientific development.

Thus, the goal is to define the concept of "temporary placement" of children, to determine the legal nature of legal relations arising during the temporary placement of children, to prepare scientific conclusions and to make proposals for improving the current legislation.

Result and Discution. Forms of placement of orphans and children deprived of parental care provided by the Family Code of Ukraine are guardianship and guardianship, adoption, foster families, family-type orphanages, temporary foster care (Family Code, 2002).

According to the Ministry of Social Policy of Ukraine, in 2017, 7,555 children were placed under care on the territory of Ukraine, 2,925 were adopted, and 1,652 children were placed in family-type orphanages and foster homes (Protection of children, 2018).

In 2019, 6,929 children were placed in the care of families of Ukrainian citizens, 1,870 children were transferred to family-type orphanages, 1,810 were adopted. At the end of 2020, the total number of children placed in family-type orphanages reached 1,906, adopted – 1,239, 6,878 were placed under guardianship. In 2021, the number of adopted children was 1,239, in the first half of the year, 950 children were placed under foster care. Therefore, in the first half of 2021, the number of adopted children increased by 42% compared to the first half of 2020 (Protection of children's rights , 2020).

This number is explained by the quarantine conditions, as a result of which the number of adoptions by foreigners was reduced.

These indicators demonstrate that the predominant form of placement is the family form, which covers approximately 64,000 children, which is 92.2% of the total number.

According to V. A. Kreytor, the most successful division of the system of placement of orphans and children deprived of parental care is carried out by V. Yu. Yevko, who singles out three forms: family, boarding and quasi-family. V A Kreytor defines boarding school as a method of placement that involves the transfer of children to health care, educational, educational, etc. institutions. Placement of children in family-type homes or transfer to a foster family is classified by scientists as a quasi-family form of placement. Instead, the family form involves adoption and guardianship (Kraitor V.A., 2018).

In contrast to what was stated, L.M. Tokarchuk notes that patronage cannot be attributed to the forms of placement of orphans and children deprived of parental care, since the specified institute has the characteristics of a social service. It is also impossible not to mention the scientist's interpretation of the concepts of guardianship and care, since, in her opinion, these concepts are generic concepts in relation to "foster family" and "family-type orphanage" (Tokarchuk L.M., 2021).

However, in our opinion, the conclusion regarding the attribution of such subspecies as foster family and foster care to the specified concept is subject to criticism. At the same time, based on the proposed definitions, the only feature that distinguishes foster care from the so-called parenting is the presence of payment, which requires additional justification and delimitation of

the specified concepts. The opinion about subspecies is especially critical, since foster family and foster care also contain signs of actual upbringing. In connection with the proposed subspecies, the question also arises as to how the scientist sees the process of establishing such paternity and whether it does not narrow the scope of exercising the rights and responsibilities of adoptive parents.

The term " temporary arrangement " is not included in the Family Code of Ukraine. Instead, this form is provided for by the provisions of the Resolution of the Cabinet of Ministers of Ukraine "Issues of activities of guardianship and guardianship bodies related to the protection of children's rights" dated September 24, 2008 No. 866 (hereinafter – Order No. 866)(Issues related to the protection , 2008), however, it does not sufficiently regulate the rights and obligations arising between the participants of the specified type of legal relationship.

An approximate concept with characteristic features of a temporary arrangement is guardianship over a child. This institution in family law provides for the temporary care of a child, including its upbringing, for a certain period of time, until life circumstances change for the return of the child to its parents.

The institution of patronage in Ukraine was restored in the 2000s, before that this form of arrangement existed in the 1920s–1960s . The conclusion of I. is seen as well-argued. Rymarenko, that patronage legal relations have a specific nature, as they are regulated by the norms of family law and related norms of civil law. In particular, the specified norms of family and civil law do not always agree with each other (Rymarenko I., 2007).

An approximate opinion about the similarity of patronage to the institute of mentoring. Bezhevets, A. Grebenchuk In addition to the above, it is worth noting that foster care is not an absolute alternative to placing a child, as it is short-term, and the main goal is to keep the child in a specific family during unfavorable circumstances (Bezhevets, A., 2021).

It should be noted that the specified forms of placement of children presuppose their status as orphans or deprivation of parental care, on the other hand, temporary placement may be applied to children whose parents are present, but it is impossible to establish their place of residence.

If we objectively consider the category of children who were left without care in connection with military actions, the legislator defines them as children deprived of parental care, in connection with "the parents' stay in the temporarily occupied territory of Ukraine, in the areas of anti-terrorist operations, implementation of measures on ensuring national security and defense, repelling and deterring the armed aggression of the Russian Federation in the Donetsk and Luhansk regions" (On ensuring organizational, 2005).

In our opinion, such a legislative definition is contradictory, since the fact of deprivation of parental care is established in a judicial procedure, and to identify parents who improperly fulfill their parental duties with parents who are physically deprived of such an opportunity in connection with the deterrence of the armed aggression of Russia Federation is contrary to the principles of justice and is illegal. In addition, the family legislation does not provide for such grounds for deprivation of parental rights. At the same time, the specified law defines only

Donetsk and Luhansk regions, taking into account that today combat operations are conducted on almost the entire territory of Ukraine, the mentioned provisions need to be revised and changed.

Analyzing the above, we consider it necessary to apply the concept of "children without parental care", under which we understand the category of children who were left without the supervision of their parents and relatives in connection with evacuation and temporary residence apart from the family, whose parents are in the territory where military actions and the armed aggression of the Russian Federation is repelled.

In our opinion, in such a case, children can be temporarily accommodated until the child is returned to their parents or relatives.

Therefore, with regard to the terms of establishing a temporary arrangement, it is impossible to determine them specifically. The child needs supervision until the life circumstances, which became the basis for such an arrangement, change.

A question arises regarding the type of legal relationship between the child and the person under whose supervision it is. Given that Article 2 of the Family Code of Ukraine provides for a list of participants in legal relations regulated by family law, such concepts as "supervisor" and "temporarily placed child" do not exist.

Regarding the nature of the legal relationship that arises between foster parents, mentors, or when one of the participants is a legal entity, for example, the center of social services for families, children and youth at the place of residence of the child, the administration of the institution where the child lives, O. IN. Dispersal qualifies as indirectly related to family relations regulated by relevant contracts (Rozhon O., 2018).

If we consider the content of legal relations that arise between supervisors, educators and other persons who temporarily supervise children without parental care, it is clear that each of the participants has corresponding rights and responsibilities. So, for example, the supervisor must provide the child with housing and household items, at the same time he exercises the right to education, carries out all measures aimed at ensuring the protection of the child's rights and providing psychological support.

These actions have the characteristics of social services, however, one cannot help but deny the presence of characteristic features of family relationships that are not related by blood. In turn, a child who is temporarily under supervision also exercises his rights, such as the right to education, the right to personal development, and the right to support.

In the conditions of the Russian-Ukrainian war, in order to ensure the best interests of children, the Ministry of Social Policy of Ukraine provided for a system of temporary placement in a foster family or a family-type orphanage, the family of a foster parent, special centers or services under a simplified, accelerated procedure.

Yes, children whose parents have died (death certificates are missing) are subject to temporary accommodation in the absence of close relatives, as well as children whose parents or close relatives cannot be contacted, or are in places of active shelling, under rubble, wounded in hospitals.

In view of the above, documents regarding the use of housing, income certificates, a report on the state of health of the person, and the written consent of all adult family members, defined in the provisions of Order No. 866, are optional for the establishment of custody and care.

The government also made a decision on the optional completion of a child-rearing training course for candidates for guardians and custodians (Ministry of Social Policy , 2022).

In order to ensure the observance of the rights of orphans , children deprived of parental care, who were in various types of institutions in Ukraine before the start of the war, a Memorandum of Cooperation was concluded between Ukraine and the Representative Office of the United Nations Children's Fund (UNICEF) on ensuring the protection of the rights of affected children from the war in Ukraine, as a result of the armed aggression of the Russian Federation (The Ministry of Social Policy, 2022).

On March 23, 2022, the European Commission adopted a decision, according to which the main directions of assistance to refugees and temporarily resettled persons from Ukraine seeking refuge from Russian aggression were determined. A separate section is devoted to the protection of children's rights. The European Commission solved the problem of registration of unaccompanied children with the help of child protection services where they arrived. Thus, the lack of documents did not become an obstacle to the realization of the rights of unaccompanied children (The European Commission , 2022).

The activities of international organizations in cooperation with the governments of foreign countries are aimed at promoting the creation of safe conditions for the evacuation of children and women from Ukraine to safe places.

Thus, UNICEF and the UN Refugee Agency, in cooperation with the governments of European states and civil society organizations, have created safe places along border crossings for children and families – the so-called "blue points" (One month of war , 2022).

The Qualification Directive 2011/95/EU defines the term "unaccompanied child" as a minor who arrives on the territory of an EU Member State unaccompanied by an adult who is responsible for the minor in accordance with the law or established practice of that Member State, and as long as the minor is not under the guardianship of such an adult; or such a minor who remains unaccompanied after entering the territory of an EU member state (Qualification for international protection , 2016).

A difficult legal issue is the return of children from abroad if one of the parents did not give consent when the other spouse left the border.

Since the beginning of the war, in order to quickly evacuate women and children, the Government has simplified the procedure for taking children across the border and added paragraph 24 of the Rules for crossing the state border by citizens of Ukraine, approved by Resolution No. 57 of the Cabinet of Ministers of Ukraine dated January 27, 1995. Yes , in case of departure of a child accompanied by a person who is one of his parents, grandmother, grandfather, brother, sister, stepmother or stepfather, the notarized consent of one of the parents for the departure of the child abroad was not required.

The procedure for obtaining a permit was also simplified if the child crossed the border with another person. The provisions of the specified resolution also provided that the departure of orphans, children deprived of parental care, who are brought up in family forms of education and have not reached the age of 18, outside of Ukraine is carried out accompanied by a legal representative or another person authorized by him, subject to the written approval of the authority custody and care or military administration (On amendments to the Rules , 2022).

Considering the above, solving the issue of returning a child taken out without the consent of one of the spouses is difficult both from a theoretical and a practical point of view. On the one hand, one of the spouses with whom the child left did not violate any norms, but on the other hand, in the case of preventing communication with the other parent and hiding the child, such actions can be classified as illegal. In our opinion, in the future such disputes will have to be resolved by the court, however, during hostilities, it is worth focusing on safe conditions for the child himself.

The number of children who have become victims of armed conflicts is increasing in the world. The consequences of war not only legally affect children's rights, but also psychologically and physically destroy their future lives.

Afghanistan is a serious war-torn country in the world. In 2019, the death or maiming of about 9 children was recorded almost every day. In February 2020, attacks on 10 educational institutions in northwestern Syria killed at least 9 children and 3 school teachers. The destruction of educational institutions deprives children of the most basic right to education and personal development, which is also accompanied by fear, violence and destruction (Nepesova N., 2020).

Solving the problem of creating safe conditions and protecting children is not a problem of one state, but of the whole world as a whole. Social security, material assistance, constant psychological support are important help, but not the main measure of child protection. Armed conflicts should not affect the lives of children at all, and states should create all conditions for this.

Today, scientists, lawyers, social workers and volunteers work together to protect every child.

Conclusions. In our opinion, together with the creation of social programs, it is worth applying other measures to encourage the population, such as, for example, holding forums for parents-educators, information coverage of their activities, public appeals to place children in their families.

It is necessary to include in the provisions of the Family Code of Ukraine the definition of the concept of "temporary placement of children", which means the transfer of children without parental care, orphans, children deprived of parental care to persons who have confirmed the possibility of caring for such children for a period of time until the children can to be handed over to their parents or relatives or until the difficult life circumstances that became the basis for such an arrangement are resolved.

In the difficult conditions of countries where war continues, it is important to observe the norms of international humanitarian law. Violation of the rights

of every child cannot be left unpunished. Together with the identification of the guilty, the mechanism of implementation of prosecution must be effective and efficient.

In order to protect the rights of children temporarily placed abroad and evacuated to foreign countries, it is necessary to ensure constant interaction with public organizations and volunteers, who usually provide reliable support to the civilian population.

On the part of the state, a number of important measures aimed at providing children with financial resources should be taken. UN peacekeeping missions should engage in constant interaction with the aim of ensuring humanitarian access to the population and avoiding catastrophe.

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FEATURES OF STRUCTURAL TRANSFORMATION OF RAILWAY TRANSPORT BASED ON THE PRINCIPLES OF MARKETING MANAGEMENT

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Annotation. It is established that despite the critical importance of railway transport for the national economy and society, in recent years the railway company has been in a state of deep crisis. It is revealed that the gradual aging and extremely unsatisfactory technical condition of the railway infrastructure and rolling stock level the ability of the railway company to carry out high-quality and safe railway transportation, lead to a gradual loss of customers and the share of railway transport in the market of transport and logistics services, destabilizing the company's work and reducing the opportunities for its financial and economic recovery and innovative and technical revival. It is proved that in order to ensure innovative growth and competitiveness of railway transport in the market of transport and logistics services, it is necessary to activate the processes of its structural transformation by applying modern effective tools for implementing innovative changes at the enterprise. The processes of reforming the railway industry are investigated and the planned reformation changes and deadlines for their implementation do not correspond to the actual pace of implementation of structural transformations in railway transport. The expediency of structural transformation of railway transport based on the principles of marketing management as a proactive enterprise management style is proved, which ensures the formation and expansion of dynamic competitive advantages, taking into account internal and external changes in the operating environment by managing communications with potential market participants to create a competitive advantage, in particular personnel, partners and consumers. The key aspects of the structural transformation of railway transport based

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on the principles of marketing management are revealed. It is indicated that the formation of a marketing management system for railway transport should be carried out in several stages: the first stage is to analyze, evaluate and monitor the marketing environment; the second stage is to develop a marketing management system; the third stage is to ensure monitoring and adjustment of the marketing management system.

Key words: railway transport, systemic crisis, structural transformation, marketing management, communications management.

Formulation of the problem. In such a difficult time for the country, railway transport became one of the first to protect the interests of society and the lives of the population. Since the beginning of the war, JSC "Ukrzaliznytsia" has transported almost 4 million people and more than 100,000 tons of humanitarian cargo with free evacuation trains. Railway transport also plays an important role in supporting the stable operation of Ukrainian enterprises by serving the needs of cargo transportation and the relocation of their production facilities.

However, despite the critical importance of railway transport for the national economy and society, the railway company has been in a state of deep crisis in recent years. Gradual aging and the extremely unsatisfactory technical condition of the railway infrastructure and rolling stock reduce the railway company's ability to provide high-quality and safe railway transport, leading to a gradual loss of customers and the share of railway transport in the market of transport and logistics services, destabilizing the company's work and reducing the opportunities for its financial economic improvement and innovative and technical revival.

In such conditions, in order to restore lost transportation and throughput capacity, ensure innovative growth and competitiveness of railway transport in the market of transport and logistics services, it is advisable to activate the processes of its structural transformation by applying modern effective tools for implementing innovative changes at the enterprise.

Analysis of recent research and publications. Domestic scientists pay active attention to the study of the problems of railway transport development. The expediency of implementing reformation changes is emphasized by a wide range of scientists, including: O. Pshinko, Yu. Barash, V. Dykan, H. Eitutis, Yu. Yelagin, N. Kalycheva, M. Korin, L. Marceniuk, V. Ovchinnikova, M. Oklander, I. Tokmakova, T. Charkina et al. [1–11]. In particular, a team of scientists led by O. Pshinko has detailed the issue of managing freight cars of operating companies in the context of the reforming railway transport in Ukraine [1]. V. Dykan and O. Yelagina analyze the peculiarities of reforming the national transport system, including railway transport [3]. Y. Barash and T. Charkina studied the models of railway transport reform in Europe [2]. The issue of reforming railway transport is thoroughly discussed in the scientific works of H. Eitutis. In particular, in the scientific publication [4], scientists proposed the restructuring of railways based on the branch and regional management model. In turn, certain marketing aspects of railway transport reform are disclosed in the monographic work of M. Oklander and I. Zharska [9]. However, paying tribute to the theoretical and practical value of the research of these scientists, it is necessary to point out the need to study the pace and effectiveness of reform processes in the railway industry, to determine the directions of the structural transformation of railway transport and effective tools for the activation of reformation changes.

Setting objectives. The purpose of the article is to study the effectiveness of the implementation of reform transformations in the railway industry and to determine the priority directions and effective tools of the structural transformation of railway transport in the aspect of implementing a customer-oriented policy by global transport and logistics companies.

Presenting main material. Statistical and analytical reporting on the activities of the railway company indicates high wear and tear of rolling stock and railway infrastructure, a low level of digital equipment of the main assets of railway transport, the deterioration of the quality of railway transport, and, as a result, the gradual loss of customers and the share of railway transport in the market of transport and logistics services, the deterioration of the financial performance of the railway company and other problems, which hinder the stable functioning of railway transport and limit its opportunities for innovative growth in the long term.

The audit conducted by the Accounting Chamber testifies to ineffective management of state assets, as well as improper use and disposal of state-owned objects. In particular, the audit established that the causes of almost 12 billion UAH in losses of Ukrzaliznytsia in 2020 were: non-fulfillment of the revenue plan from freight transportation – more than 11 billion UAH; planned unreasonable indicators of income from the sale of non-core assets – more than 7 billion UAH; non-adjustment of the company's actual expenses to the received income and diversion of funds for loan servicing expenses – more than 3 billion UAH; an increase in costs due to the growth of exchange rate differences is more than 5 billion UAH. In addition, 417 million UAH is directed to the payment of fines and financial sanctions (for the execution of court decisions); another almost 1 million UAH were spent on the maintenance of objects of unfinished construction [12].

The existence of a number of systemic problems in the railway industry is confirmed by the audit conducted by the Temporary Investigative Commission of the Verkhovna Rada, the results of which reflect the state of a deep systemic crisis in the industry and indicate that the key reasons for this state of affairs are the influence of financial and industrial groups and, as a result, lack of independence in decision-making by bodies management of the company, the corruption of the management bodies of the joint-stock company and the lack of effective control by law enforcement agencies. In turn, the suspension of reforms in the industry, non-fulfillment of presidential decrees, government acts and the Association Agreement between Ukraine and the EU led to the centralization of processes and inefficient management of the company's structure [13].

However, despite the importance of implementing reformation changes, their practical implementation dragged on for many years. In particular, the starting point is the approval in 2006 of the Concept of the State Program for the Reform of Railway Transport, the main provisions of which later became the basis of the State Target Program for the Reform of Railway Transport for 2010–2015, adopted in December 2009. Despite the importance of the timely implementation of such a program, already in October 2011, changes were made to its content and the implementation period was extended until 2019. The specified program planned to reform the railway industry in three stages: 1) 2010–2012 – formation of the legislative basis, creation of a company, implementation of the mechanism for distribution of financial

flows by types of economic activity; 2) 2013–2015 – formation of vertically integrated production and technological system of railway transport, improvement of tariff policy and provision of free pricing in competitive market sectors, creation of organizational and legal conditions for the functioning of private operating companies of passenger transportation, etc.; 3) 2016–2019 – elimination of cross-subsidization of passenger transportation, formation of local railways owning infrastructure facilities and rolling stock, development of a network of logistics complexes, warehouse and distribution terminals, etc. [14].

Real changes in the direction of reforming the railway industry began in February 2012 with the adoption of the Law of Ukraine "On the peculiarities of the formation of a joint-stock company of public railway transport", which determined the legal, economic and organizational principles for the implementation of the reform of corporate management of the railway industry [15]. The legislative changes carried out during this period also related to the separation of the functions of the state and the economic management of the railway industry [16]. In June 2014, the process of formation of PJSC "Ukrzaliznytsia", inventory and assessment of enterprise property, approval of partnership status, etc. was started. Subsequently, the assets of six railways and about 40 enterprises were merged into PJSC "Ukrzaliznytsia", which began operating in December 2015.

The urgent need to accelerate reformation changes in the railway industry and to define strategic initiatives for its development determined the expediency of developing the Strategic Plan for the Development of Railway Transport for the period until 2020, taking into account the requirement to define options for strategies for changing the business model of Ukrainian railways, taking into account the need to attract significant investments in the restoration of infrastructure and rolling stock, as well as the integration of Ukrainian railways with EU railway systems [17].

After the implementation of the mentioned legislative changes, already in the second half of 2016, there was a plan to create a cargo transportation operator UZ Cargo. This and other initiatives were reflected in the Development Strategy of PJSC "Ukrzaliznytsia" for 2017–2021 presented in May 2017, which was primarily intended to stimulate the implementation of the target business model of the company's development, based on five business verticals: freight transportation and logistics, passenger transportation, infrastructure, traction services, production and service. In particular, in the cargo sector, in addition to the traditional ones, it is planned to create separate companies of terminal services, forwarding and contact logistics, intermodal transportation, as well as a company that will deal with transportation outside Ukraine. In the passenger sector, in addition to the Passenger Company and the Ukrainian High-Speed Railway Company, six regional companies for suburban transportation and a station company are planned to be created in 2018. The strategy also provided for the creation of a separate traction rolling stock operator company [18]. The implementation of such an initiative was supposed to contribute to the growth of the company's share of the transportation market, increase its profitability, increase the speed of cargo delivery and passenger transportation, and generally improve the quality of customer service, increase wages and social security of employees.

Despite the fact that five years are needed for the full implementation of the defined strategy, already in April 2019, the board of JSC "Ukrzaliznytsia" developed the

Railway Transport Development Strategy for the period 2019–2023. In terms of strategic goals and objectives, many experts pointed out the similarity of the respective strategic documents and, accordingly, a tendency to further delay the implementation of the reformation changes was noted, since no significant steps in the direction of the implementation of the reforms took place.

In order to speed up the processes of reforming the industry, at the end of 2019, the Plan of measures for reforming railway transport was adopted, which clearly defines the list of tasks, the structures responsible for their implementation, and the deadlines for the implementation of the relevant measures. According to the specified document, the reform process should be completed by the end of 2023, which will result in an effectively functioning competitive railway company and an open competitive market of railway transportation. However, to date, most of the tasks remain unfulfilled and to this day the legislative basis for the implementation of reform processes has not been created, the procedures for the interaction of verticals in the field of organization of transportation, repair and maintenance of traction rolling stock have not been developed, and the centralization of the functions of the infrastructure vertical: the management of tracks and structures; electrification and power supply industries; automation and telecommunications industries; traffic management, etc. have not been carried out [12]. Tasks due to expire at the end of 2022 are currently under threat of non-fulfillment. In particular, legal entities of cargo and passenger carriers and railway infrastructure operators, as well as wagon repair and locomotive repair companies were to be formed.

In this sense, it should be noted that in January 2021, the Ministry of Infrastructure of Ukraine announced the start of the implementation of structural reforms in railway transport by approving the new organizational structure of the company in accordance with European directives and creating the transportation operator "UZ Cargo" and the infrastructure operator "UZ Infra". However, already at the beginning of February 2021, the implementation of the reform was suspended by the Supervisory Board of the joint-stock company.

Taking into account the importance of the integration of domestic railway transport into the European transport system, it should be pointed out the lack of progress in terms of the association of railway transport with the EU. In October 2022, in accordance with the Association Agreement with the EU, a set of measures to reform railway transport aimed at separating the functions of infrastructure management and transportation should be fully implemented, in particular, the organizational and financial separation of the infrastructure operator and the carrier within the company, the creation of wagon companies, development and approval of a plan of measures to eliminate cross-subsidization, etc. However, as of the end of 2021, it was not possible to implement any of the measures planned in this direction.

The reform of railway transport acquires special significance in the aspect of the post-war reconstruction of Ukraine. Acting as a key element of the transport system and a powerful driver of the growth of the Ukrainian economy, railway transport will contribute to the generation of revenues for the budget, the creation of new jobs, the improvement of export sales of products by domestic enterprises, the qualitative satisfaction of society's mobility needs, etc. In view of the above,

it is appropriate to determine the directions of the structural transformation of railway transport on the basis of marketing management as a proactive style of enterprise management, which ensures the formation and increase of dynamic competitive advantages taking into account internal and external changes in the operating environment (Fig. 1).

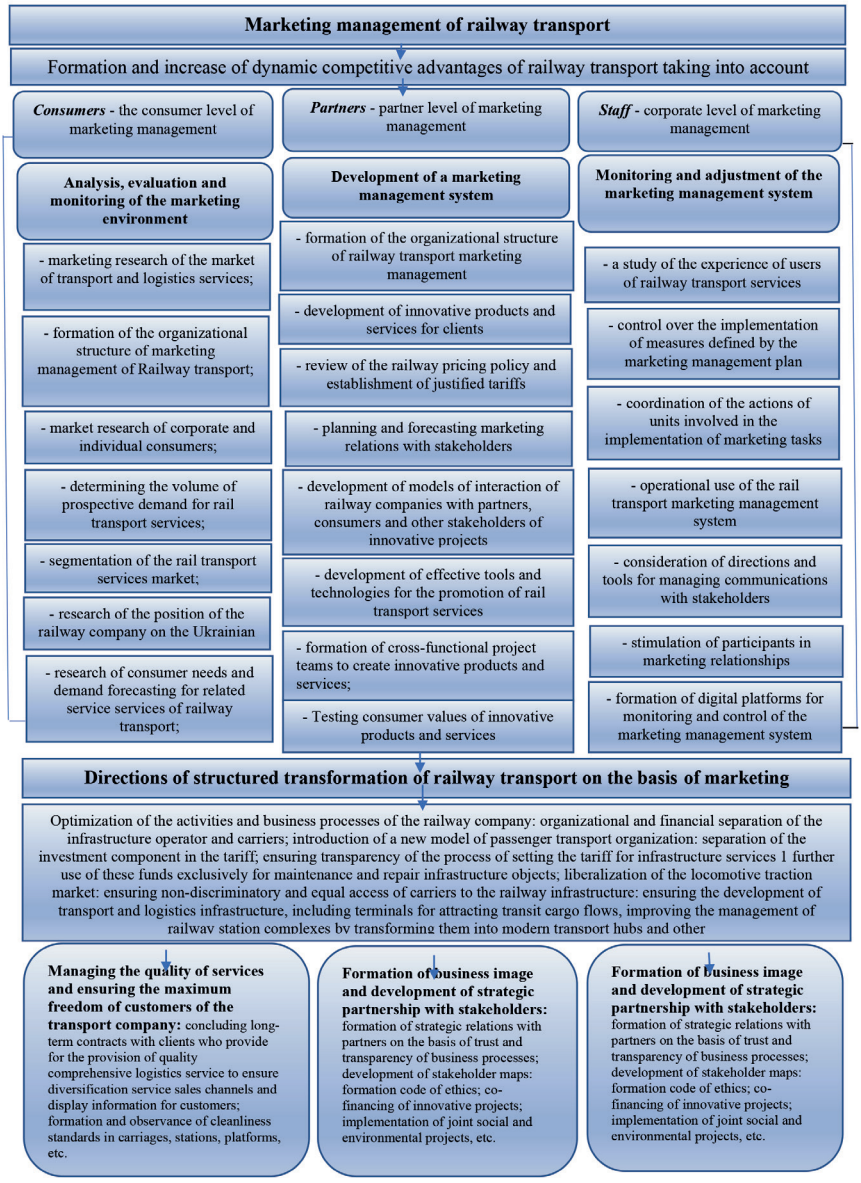

Fig. 1. Features of the structural transformation of railway transport on the basis of marketing management *(developed by: V. Zadoya)*

It is possible to implement the above mentioned by actively influencing the process of railway communication management with potential market participants to create a competitive advantage, in particular, personnel (corporate level of marketing management), partners (partnership) and consumers (consumer).

The formation of the railway transport marketing management system should be carried out in several stages:

the first stage is to carry out analysis, evaluation and monitoring of the marketing environment, which includes: marketing research of the market of transport and logistics services; analysis of the marketing environment of the functioning of railway transport; market research of corporate and individual consumers; determining the volume of prospective demand for rail transport services; segmentation of the rail transport services market; research of the railway company's position on the Ukrainian and global market of transport and logistics services; research of consumer needs and demand forecasting for related services of railway transport, etc.;

the second stage is the development of the marketing management system, which includes: the formation of the organizational structure of marketing management of railway transport; development of innovative products and services for customers; review of the railway pricing policy and establishment of justified tariffs; planning and forecasting of marketing relationships with stakeholders; development of models of interaction of the railway company with partners, consumers and other stakeholders of innovative projects; development of effective tools and technologies for the promotion of railway transport services; the formation of cross-functional project teams creating innovative products and services; testing consumer values of innovative products and services, etc.;

the third stage is ensuring monitoring and adjustment of the marketing management system, which includes: research on the experience of consumers of railway transport services; control over the implementation of measures defined by the marketing management plan; coordination of the actions of units involved in the implementation of marketing tasks; operational adjustment of the railway transport marketing management system; review of directions and tools for managing communications with stakeholders; stimulation of participants in marketing relationships; formation of digital platforms for monitoring and control of the rail transport marketing management system, etc.

Regarding the directions of structural transformation of railway transport on the basis of marketing management, first of all, attention should be paid to the optimization of activities and business processes of the railway company, which will create a basis for the successful implementation of important transformational changes. In this direction, the organizational and financial separation of the infrastructure operator and carriers should be implemented, a new model of the organization of passenger transportation should be introduced with the aim of ending the practice of cross-subsidization with freight transportation, the investment component of the tariff should be separated, the process of setting the tariff for infrastructure services and the further use of these funds exclusively for maintenance and repair of infrastructure facilities, improve the management of railway station complexes by transforming them into modern trans tailor HUBs, etc.

The format of the railway company's relations with customers also needs significant changes through comprehensive customer orientation, maximum satisfaction of existing and anticipation of new needs, creation of value for the consumer. Since the participants of the market of transport and logistics services evaluate the work of the transport monopolist extremely negatively (61% are convinced that the company's activities are "negative" or "extremely negative", and only 15% evaluate the efforts of the state carrier as "good" [19]) it is extremely necessary to return lost customers and win the loyalty of new customers. In this direction, it is necessary to implement effective measures aimed at quality management and customer satisfaction of the railway company, in particular by concluding long-term contracts with customers, which provide for the provision of high-quality comprehensive logistics services to the last one, ensuring the diversification of service sales channels and displaying information for customers, forming and observing standards cleanliness in carriages, stations and platforms, etc.

It is impossible to ensure a change in the attitude of customers towards the railway company and their return to the use of railway transport services without an appropriate level of investment in the renewal of rolling stock and railway infrastructure. Many years of underinvestment in the industry led to the establishment of a significant number of speed restrictions or even bans on traffic on certain sections of the railway network. At the same time, it should be noted that limited financial resources did not allow Ukraine to modernize the main railway corridors in accordance with EU standards and, accordingly, take advantage of the potential for increasing transit transportation.

The railway company's communication system with partners also needs revision. In the direction of forming a business image and developing a strategic partnership with stakeholders, it is necessary to: form strategic relations with partners based on trust and transparency of business processes, develop stakeholder maps, form a code of ethics, ensure co-financing of innovative projects and the implementation of social and environmental projects shared with partners, etc.

In turn, it is possible to ensure the social development of the railway company, manage the motivation and involvement of personnel by developing a personnel strategy and a professional code of ethics, forming social packages taking into account the needs and values of the personnel; compliance with standards of conditions and labor protection, implementation of housing and youth policy programs, formation of programs for professional growth, adaptation and motivation of personnel, etc.

It is the implementation of the structural transformation of railway transport on the basis of marketing management that will allow the railway company to achieve the intended goals of increasing demand for railway transport services, increasing profits and improving the financial and economic situation, ensuring innovative growth and competitiveness of railway transport in the market of transport and logistics services.

Conclusions. In order to ensure the innovative growth and competitiveness of railway transport in the market of transport and logistics services, it is necessary to activate the processes of its structural transformation through the use of modern effective tools for implementing innovative changes at the enterprise. The processes of reforming the railway industry were studied and the incon-

sistency of the planned reform changes and the terms of their implementation with the actual pace of implementation of structural transformations in railway transport was established. The expediency of the structural transformation of railway transport on the basis of marketing management as a proactive style of enterprise management, which ensures the formation and growth of dynamic competitive advantages taking into account internal and external changes in the operating environment by managing communications with stakeholders, has been proven. The key aspects of the structural transformation of railway transport on the basis of marketing management are disclosed.

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DOCTRINAL APPROACHES TO DEFINING THE CONCEPT OF CYBERCRIME AND ITS MAIN FEATURES

Dumchykov Mykhailo[1]

Annotation. The article is devoted to the problem of defining the concept and essential features of cybercrimes. The main theoretical approaches to defining the definition of "cybercrime" are researched and highlighted in the work. The opinions of domestic and foreign scientists regarding the definition of signs of cybercrime in the doctrine of criminal law are analyzed. Special attention is paid to the issue of separating cybercrimes from traditional illegal acts defined by the criminal legislation of Ukraine. The authors of the article, studying statistical data, point to the extreme need for comprehensive scientific development of the theoretical and legal foundations of the cybercrime prevention system in Ukraine by the method of scientific reduction of fundamental theoretical points.

It was found that, as of today, there is no single universally accepted term "cybercrime" in forensic science, and, accordingly, there are no universally recognized signs that conceptually defined cybercrime as an independent type of illegal acts. The work analyzes in detail the opinions of specific researchers and their variants of interpretation of the definition of "cybercrime". Relevant approaches to determining the essential features of cybercrime and their relationship with the impact on the practical side of the problem of the threat of cybercrime have been studied. In the course of the study, with the help of the logical method and the method of scientific reduction, the need to recognize cybercrimes as an independent and independent type of socially dangerous acts in the doctrine of criminal law was proven.

Keywords: cybercrime, signs of cybercrime, definition of "cybercrime".

Main text. The development of information and computer technologies led to the emergence of such a destructive phenomenon as cybercrime. Specifically, in Ukraine, the situation with the prevalence of this type of illegal acts is quite

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unsatisfactory. In 2020, the Minister of Internal Affairs of Ukraine, Arsen Avakov, noted: "In general, cybercrimes in the world are growing by 30–40% per year. in Ukraine over the past 5 years, the number of cybercrimes has increased by 2.5 times" [1]. However, taking into account the actual damage without compensation – statistical data say that the situation is much worse. According to the Report of the Head of the National Police of Ukraine on the department's results in 2019, 4,263 crimes in the field of cyberspace in the amount of UAH 28 million were detected in 2019 [2, p. 8-9]. In 2020, more than 5,000 cybercrimes worth 241 million hryvnias were registered [3, p. 12].

In 2020, the McAfee company, together with the Center for Strategic and International Studies, presented a new global report called "The Hidden Costs of Cybercrime", in which it was noted that cybercrime cost the world economy more than 1 trillion US dollars – a little more than 1% world GDP. Compared to the data of 2018, this indicator increased by more than 50%. Then it amounted to about 600 billion US dollars [4, p. 3].

Based on the above statistics, cybercrime is one of the most urgent problems of the modern legal world. As a reaction to this, the state authorities of Ukraine are constantly updating the legal apparatus regarding the actual regulation of this sphere. Back in 2002, the Elements for creating a global culture of cyber security were adopted, approved by resolution 57/239 of the UN General Assembly of December 20, 2002 [5]. The task of this regulatory act was to introduce in Ukraine 9 principles of security in the information space, which determined the vector of future policy in this area. And, in the Cybersecurity Strategy of Ukraine, approved by the Decree of the President of Ukraine dated August 26, 2021 No. 447/2021, it was stated that ensuring cyber security is one of the priorities in the national security system of Ukraine. At the same time, it is directly emphasized that cyberspace, together with other physical spaces, is recognized as one of the possible theaters of military operations, which only underlines the importance of this problem [6].

Accordingly, there is an urgent need to improve the country's legal system to combat cybercrime. The foundation of this system is a theoretical component, which involves defining the main definitions and signs of specific aspects of countering cybercrime. Thus, the National Security Strategy, approved by the Decree of the President of Ukraine dated June 8, 2012 No. 389/2012, contains the first definitions of such terms as "cybercrime", "cyberthreat", "cybersecurity" [7]. According to Clause 9 of Art. 1 of the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" dated October 5, 2017, No. 2163-VIII, cybercrime is a collection of cybercrimes. According to Clause 8 of Art. 1 of this Law, cybercrime (computer crime) is a socially dangerous criminal act in cyberspace and/or with its use, responsibility for which is provided by the law of Ukraine on criminal responsibility and/or which is recognized as a crime by international treaties of Ukraine [8]. Using a logical method, we can identify the following signs of cybercrime, based on the legal definition:

– This is an act directly committed in cyberspace or with its help;

– The objective side of a cybercriminal act has its reflection in real life, namely: the negative consequences of this act coincide with the criminal offenses defined in the Special Part of the Criminal Code of Ukraine [9]; That is, unauthorized interference in the operation of electronic computing machines (computers), automated systems, computer networks or telecommunication networks (Article 361 of the Criminal Code of Ukraine); – creation for the purpose of use, distribution or sale of malicious software or technical means, as well as their distribution or sale (Article 361-1 of the Criminal Code of Ukraine); 109 – unauthorized sale or distribution of information with limited access, which is stored in electronic computing machines (computers), automated systems, computer networks or on the carriers of such information (Article 361-2 of the Criminal Code of Ukraine). In addition, it should be added that the activities of cybercriminals are also qualified under Article 200 of the Criminal Code of Ukraine – illegal actions with transfer documents, payment cards and other means of accessing bank accounts, electronic money and equipment for their production [9].

It is also worth noting that in this case the legislator equates such concepts as "cybercrime" and "computer crime". However, according to V. Butuzov, computer crimes and cybercrimes are different types of crimes in the field of high information technologies, which are classified according to the following characteristics:

– a sign of classifying certain crimes as computer-related is the instrument of committing the crime – computer equipment [10]; However, as M. Saltevskii notes: "in criminal law and criminology, the type of crime is not named by the means (instrument) of committing the crime, but by the type of criminal activity" [11, p. 4].

– the object of encroachment is public relations in the field of automated information processing [10];

– a sign of classifying crimes as cybercrimes is the specific environment in which crimes are committed – cyberspace (the environment of computer systems and networks) [10].

But, despite a fairly large research base of doctrinal sources, the question of defining the definition of "cybercrime" and its signs has not yet found an unequivocal answer. In the theory of criminal law, there is generally no generally accepted criminal law definition of the concept of crimes committed by the method of using or applying an electronic computing machine. In the scientific doctrine, you can find a number of concepts ("computer crime", "crime in the field of high technologies", "communication crime", "cybercrime", "crime in the field of computer information", "network crime"), which mostly mean the same types of criminal activity. Foreign researchers more often use the terms "high-tech crime", "cyber crime", "network crime", which are respectively translated as "crimes in the field of high technologies", "cyber crimes", "crimes in computer networks" [12, p. . 58]. We see the need for a comprehensive study of the opinions of specific scientists on this issue in order to highlight and analyze views with further identification of the main fundamental signs of cybercrimes.

Thus, O. Kopatin and E. Skulishin provide the following definitions of the concept of "cybercrime":

1. Cybercrime is a crime related to the use of cybernetic computer systems and a crime in cyberspace [13].

2. Cybercrime is the most dangerous cyberoffense for which criminal liability is established by law [13]. That is, researchers correlate cybercrimes purely with cyberspace and computer technologies, without separating the sign of punishment and the connection with criminal legislation.

According to V.M. Bolhova, cybercrimes are a set of socially dangerous acts (actions or omissions) provided for by current legislation that are criminally punishable, encroaching on the right to protection against the unauthorized dissemination and use of information, the negative consequences of the influence of information or the functioning of information technologies, as well as other socially dangerous acts related to associated with the violation of the right to ownership of information and information technologies, the rights of owners or users of information technologies to receive or disseminate reliable and complete information in a timely manner [14]. This definition is closer to the legal one and complements it in the sense of highlighting such a specific feature as a negative consequence of cybercrime.

A somewhat similar definition is given by O. Sirenko: "a cybercrime is a criminal offense committed with the help of or through computer systems, encroaching on the right to protection against unauthorized dissemination and use of information, negative consequences of the influence of information or the functioning of information technologies, and as well as other socially dangerous acts related to the violation of the right to ownership of information and information technologies, the right of owners or users of information technologies to receive or disseminate reliable and complete information in a timely manner and for which criminal liability is provided" [15, p. 48].

O. Amelin gives the definition closest to the legal one, with an addition regarding the rationalization of the problem specifically in the field of information relations: "computer crimes" – as socially dangerous, illegal, criminally punishable, culpable acts that harm information relations, a means of ensuring normal functioning which are computers, automated systems, computer networks or telecommunication networks [16, p. 8]. S. Buz supports a similar vision "In this article, "cybercrime" means any crime committed with the help of information technologies or in the information space" [29]. This definition does not take into account the fact that the field of action of cybercrimes does not stop exclusively in the information sphere. In Germany, a cyberattack on a medical hospital led to the shutdown of necessary equipment for a week and the death of a person [17]. V. Winkert and A. Klochkova share a similar view: "In our opinion, this concept can be defined as a set of crimes committed with the help of ICT (information and communication technologies)" [28].

T. Tropina proposes to define a cybercrime as culpably committed socially dangerous criminal punishable interference with the operation of computers,

computer programs, computer networks, unauthorized modification of computer data, as well as other illegal socially dangerous acts committed with the help of computers computers, computer programs, computer networks, as well as with the help of other means of access [18, p. 38]. Note that the researcher focused exclusively on the "computer" nature of cybercrime and combined its impact on the information field. A similar definition is provided by O.E. Korystin and others: "a set of criminal offenses committed in cyberspace with the help of computer systems or by using computer networks and other means of access to cyberspace, within computer systems or networks, as well as against computer systems, computer networks and computer data" [24].

D. Wall offers the following definition: "Cybercrimes are criminal or malicious activities that are informational, global and networked and should be distinguished from crimes that simply use computers. They are the product of network technologies that have transformed the division of criminal labor into entirely new opportunities and new forms of crime, usually involving the acquisition or manipulation of information and its value on global networks for profit. They can be divided into crimes related to the integrity of the system, crimes in which network computers are used to facilitate the commission of a crime, and crimes related to computers [19].

The dictionary of cyber security terms edited by O. Kopan provides two definitions of the concept of cybercrime, while the authors divide cybercrimes into computer and cybernetic ones:

1. Cybercrime (computer crime) – illegal interference in the work of cybernetic systems, the main control link of which is a computer (for example, distortion of information about the state of an object in the channel of reverse malicious software, etc.), creation and use for criminal purposes certain cybernetic (computer) system, use of existing cybernetic (computer) systems for criminal purposes (for example, computer or telecommunication networks in fraud, extortion, etc.) [20]. 2. Cybercrime (cybercrime) is a crime related to the use of cybernetic computer systems and a crime in cyberspace [20].

D. Halder and K. Jaishankar define cybercrimes as offenses committed against individuals or groups of individuals with the criminal motive of intentionally damaging the victim's reputation or causing physical or mental harm or loss to the victim directly or indirectly, using modern telecommunications networks such as the Internet (various online messengers) and mobile phones (SMS/MMS) [21].

Professor Viswanathan gave three definitions of the term "cybercrime":

1. Any illegal act in which the computer is an instrument or object of a crime, i.e. any crime whose means or purpose consists in influencing the functioning of a computer.

2. Any incident related to computer technology, during which the victim suffered or may have suffered loss, and the perpetrator intentionally received or may have received a benefit.

3. Computer abuse is considered as any illegal, unethical or unauthorized behavior related to automatic data processing and transmission [21].

Yu. Belskyi interprets cybercrimes as crimes committed in the process of automated processing of information with the help of electronic computing machines or through computer systems, the object of which is encroachment on social relations in the field of electronic information circulation and other social relations in which computers the computer acts as a qualifying sign of committing a crime (for example, computer fraud or cyber terrorism) [22, p. 417].

I. Vasylkovsky defines "cybercrime" quite interestingly, namely: "Cybercrime (or "crime using computer technologies") is an economic crime committed using computing equipment and the Internet." [23, p. 278]. However, the negative consequences of committing a cybercrime are not always economic in nature. D. Karpova gives a more extended definition: "cybercrime is an act of social deviance with the aim of causing economic, political, moral, ideological, cultural and other types of damage to an individual, organization or state by means of any technical means with access to the Internet" [27].

N. Savchuk gives the following definition of the concept of "cybercrime": it is a concept that covers computer crime (where the computer is the subject of a criminal offense, and information security is the object of a criminal offense) and other offenses where computer is a tool or method of criminal offense against property, copyright, public safety, morality, etc. [25, p. 338–342].

K. Tarasyuk understands "cybercrimes" to be socially dangerous acts that are somehow related to cyberspace and computer information simulated by computers. But it provides the following signs of cybercrimes: high latency, difficulty of detection and investigation, difficulty of proving such cases in court, have a transnational component mainly with the use of the Internet information network, high damage even from a single criminal offense [26, p. 178].

As we can see, in the scientific opinion, there is even no generally accepted opinion on how to name crimes in cyberspace. In our opinion, the word "cybercrime" is the most appropriate and comprehensive. As I. Kucherkov emphasizes: "The concept of "cybercrime" in jurisprudence is quite broad. According to researchers, these include all crimes committed using computers or the Internet, through public, private or home computer networks" [32]. Therefore, we can state the fact that the definition of "cybercrime" is a broader concept than "crime in the information space", "computer crime", etc. We emphasize the fact that scientists emphasize that cybercrime should be defined as a crime in the field of computer information [30]. According to V. Bolgov, the expression "criminal offenses committed with the use of information technologies" is not very convenient for use in everyday language, therefore the scientist considers the short term "cybercrimes" appropriate, especially since the object of this category of offenses is information and closely related technologies of its processing – information technologies [14]. And as O. Stolyar emphasizes, despite the available alternative definitions ("computer crime", "crime in the field of high technologies", "communication crime", "crime in the field of computer information", "network crime"), the term " cybercrime" to the greatest extent reflects the essence of the mentioned phenomenon [31, p. 192-193].

Based on this, we can come to the conclusion that the very name "cybercrime" is the most successful and quite comprehensively reveals the essence of the phenomenon of this type of crime. Having analyzed the doctrinal sources of domestic and foreign scientists, we can come to the conclusion that, as of today, in legal science there is a dichotomy of doctrinal and legal definitions. Scientists all interpret cybercrimes in different ways, and, accordingly, distinguish various specific features (signs) of such violations. In our opinion, the specifics of cybercrimes are most successfully, although not completely, revealed by the legislative definition specified in the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" dated October 5, 2017 No. 2163-VIII. However, we note that this interpretation does not highlight all the fundamental features of cybercrimes.

Conceptually, an essential condition for distinguishing cybercrimes from other criminal offenses is the space of their commission – cyberspace. Some researchers single out another qualitative feature – these are crimes without victims. This means that the consequences of committing such an offense cannot be physical defects of the victim. This opinion is wrong, because the abuse of administrator rights (or a cyber attack) can cause serious consequences for individuals.

M. Pohoretskyi believes that a common feature of illegal acts – cybercrimes – is precisely that their commission at various stages is directly related to the use of computer system resources (commitment with the help of computer systems or through computer systems), which, in turn, are the environment for committing cybercrimes. Cybercrimes should be considered those that are committed with the help of or through computer systems or are specifically related to computer systems, that is, to a set of devices, one or more of which, according to a certain program, perform automatic data processing [33, p. 91]. That is, not only being in cyberspace is a sign, but also its direct use through computer systems (for example, carding).

Thus, we can distinguish three main features that separate cybercrimes from classic ones:

– Cybercrimes are committed directly in cyberspace or with its help using electronic computing equipment;

– The damage caused by cybercriminals is both virtual and materialistic in nature;

– Committing a cybercrime does not involve direct physical contact with the object of encroachment.

Considering all these features, we can directly state that cybercrimes definitely have all the specific fundamental features to separate them from classic crimes. After all, if we analyze specific practical situations, for example, carding, then it is a prototype of the criminal offense provided for in Part 1 of Art. 185 of the Criminal Code of Ukraine – secret theft of someone else's property (theft), but, despite this, if you remove from carding the conditions that logically separate cybercrimes – it will be a classic theft. Thus, cybercrimes are an independent

type of crime, separated from "classical" ones by specific fundamental features. Accordingly, Chapter XVI "Criminal offenses in the field of use of electronic computing machines (computers), systems and computer networks and telecommunication networks" can be submitted as "Cybercrimes" with further updating and improvement of criminal legislation in this area.

Conclusions. Based on the material presented above, we can conclude that cybercrimes, by their characteristics, are a new form of socially dangerous acts, and can be recognized as an independent type of criminal offense. As of today, in the science of criminal law there is a considerable diversity of scholarly views regarding the identification of cybercrimes and their theoretical separation from traditional ones. The theoretical and legal development of this issue has not yet found its generally accepted solution, which reduces the effectiveness of the system of countering cybercrime at the initial level. A more detailed development of this issue is a subject for further research.

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INTERNATIONAL LEGAL STANDARDS FOR COMBATING FRAUD IN THE FIELD OF COMPUTER INFORMATION

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Annotation. Fraud is one of the traditional crimes that are sufficiently well analyzed in doctrinal sources and at the practical level. However, the creation of the digital economy in the 21st century, the rapid development of information and communication systems and networks, and the development of the computer industry have led to the emergence of new types of crimes committed in cyberspace. As a result, new types and methods of fraud very quickly adapt to new realities, namely the realities of the Internet. In this way, fraud is gradually becoming more and more virtualized. Fraud in cyberspace has its own specifics, including its transnational nature and high level of latency. In our opinion, it is worth developing tools and mechanisms that will ensure effective criminal and legal countermeasures against fraud in cyberspace, taking into account the problems of transnational jurisdiction and the location of the thief. Currently, as a result of quarantine restrictions and the armed aggression of the Russian Federation, fraud in cyberspace has taken on a new form. Fraud in cyberspace is increasingly taking on new forms. The statistics of the Department of the Cyber Police of Ukraine show that fraud in cyberspace is increasing every year, so compared to 2021, 5,102 proceedings were opened under Article 190 fraud, for comparison, 3,065 proceedings were opened in 2020. The high latency rate of fraud in cyberspace does not fully reflect the level of crime in this segment.

The main goal of our research is the analysis of international legal legislation in the field of cybercrime, and the development of recommendations on the regulation of fraud in cyberspace within the framework of national legislation.

The object of our research is social relations that arose in the field of property relations and the implementation of the criminal-legal norm that regulates crime (fraud).

The subject of the study is the criminal legal norms that regulate responsibility for fraud in cyberspace.

Key words: criminal offenses in cyberspace, cybercrime, cyberfraud, fraud, Internet fraud.

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Fraud in the field of computer information, like any other crime committed using information and telecommunication technologies, is an international (transnational) problem. No matter how proven and progressive the measures taken at the domestic level are, all of them will a priori have a limited character, since they will not be able to provide an effective solution to the global task in terms of content.

Despite the almost universal agreement that crime in cyberspace is an urgent problem that requires an immediate and coordinated response, it should be noted that a general (universal) agreement regulating countermeasures against crimes in the field of information and telecommunication technologies does not yet exist.

According to the well-founded opinion of Tataryn I.Y. , the available international instruments aimed at ensuring cyber security are characterized by mosaicism, are recognized as fragmented and rather compete with each other, which contributes to the harmonization of criminal and criminal procedural legislation of states. However, such a situation does not at all indicate that the documents developed and adopted by the UN, the European Union, the Council of Europe, the Commonwealth of Nations, and the countries of the Caribbean region had absolutely no influence on the development of criminal legislation in the regions of the world. As it appears, in many ways it was they who determined the boundaries of criminalization of computer criminals, and also laid down the basic principles and mechanisms of international cooperation [1].

One of the first efforts to create a unified solution to the problem of computer crime at the international level was implemented by the Organization for Economic Cooperation and Development (OECD). According to the results of its work, the OECD recommended that "introducing, changing, erasing and/or suppressing computer data and/or computer programs, committed intentionally with the intention of carrying out an illegal transfer of financial funds or other valuables" is a criminal offense [2].

A little later, the Committee of Ministers of the Council of Europe, in its recommendation No. R89 (9) "On crimes related to computers"13 dated September 13, 1989, determined the minimum necessary list of cybercrimes for inclusion in national legislation, among which computer fraud was also specified. It should be noted that in comparison with the wording of the OECD, in Recommendation No. R89 (9), it received a more detailed and specific definition – input, modification or deletion of data or computer programs, or other interference in data processing processes, affecting the results of data processing, which causes economic damage or leads to the destruction of the property of another person, committed with the purpose of illegally obtaining economic benefits for oneself or another person [3].

In 1991, Interpol introduced a codifier of computer crimes and methods of their commission 14 . According to this document, each computer crime corresponds to a certain alphabetic index, arranged in order of decreasing public danger of the committed act. Up to five codes can be used to describe actions. Computer fraud in the codifier is presented as follows: 1) QF – Computer fraud; 2) QFC – ATM fraud; 3) QFF – computer forgery; 4) QFG – slot machine fraud;

5) QFM – manipulation of input-output programs; – QFP – fraud with payment means; 6) QFT – telephone fraud. [4].

In our opinion, when implementing the integration of new categories of crimes that regulate responsibility for committing cybercrimes into national legislation, the use of the specified indicator or the development of your own significantly simplified this process.

The Okinawa Charter of the Global Information Society proclaimed the need to direct the efforts of the international community to coordinated actions to create a safe and crime-free cyberspace to ensure the implementation of effective measures – as specified in the Guiding Principles on the Security of Information Systems OECD – in the fight against crime in the computer sphere [5].

The need to criminalize computer fraud information is one of the clauses of the Framework Decision 17 of the Council of the European Union of May 28, 2001 "On combating fraudulent activities and counterfeiting in relation to non-cash means of payment", which determines that each participating state must take all necessary measures to ensure that intentional actions of a person related to causing damage to the owner or other owner of property, committed by unlawfully entering, changing, deleting or suppressing computer data, in particular identification data, or by unlawfully interfering with the functioning of a computer program or system (Article 3) were recognized as a criminal offense [6].

The European Convention on Cybercrime as a mandatory measure also provides for the establishment of criminal liability of legal entities. At the same time, the following are the conditions for the organization's liability: 1) committing fraudulent actions in order to obtain benefits for a legal entity; 2) actions must be performed by a person holding a managerial position (having managerial and (or) representative functions); 3) fraudulent actions should be associated with the use of powers to represent a legal entity, make decisions or exercise control over its activities. The Convention also prescribes establishing the responsibility of legal entities in cases of illegal actions committed by another employee under the direction of a person holding a managerial position in the organization.

According to Art. 13 of the Convention, effective, proportionate and convincing punishments, including imprisonment, must be applied to individuals who have committed crimes under the Convention. Non-criminal measures, including monetary sanctions, may be applied to legal entities. Separately, the Budapest Convention on Computer Information Crime obliges the participating countries to qualify as criminal acts incitement to the commission of any of the crimes provided for by it, complicity in it, or an attempt. At the same time, the establishment of responsibility for incitement and complicity is the obligation of the signatory state of the convention, and the criminalization of an attempt is a right.

Currently, the 2001 Council of Europe Convention "On Crime in the Sphere of Computer Information" is perhaps the most developed and significant international document aimed at unifying the efforts of the world community in the fight against crime in the information space.

Computer fraud is specifically highlighted in Article 11 of the Convention on Combating Crimes in the Field of Information Technologies of the Arab States dated December 21, 2010. In accordance with this convention, fraud is defined

as the intentional infliction of property damage to the owner or other property owner by: 1) entering, changing, destroying, or hiding computer information; 2) interference in the functioning of information and telecommunication networks; 3) failure of computer equipment, computer programs or other resources [7].

In June 2014, the African Union adopted the Convention on Cyber Security and Personal Data Protection. In accordance with Article 30 of this convention, the participating states must take all necessary legislative measures to: 1) provide for criminal liability for encroachment on property, such as theft, fraud, extortion, committed using computer data; 2) the use of computer information and information and telecommunication technologies in the commission of crimes such as theft, fraud, extortion, terrorism and money laundering shall be considered as an aggravating circumstance.

The analysis of the above documents allows us to conclude that fraud with the use of computer technologies at the level of the norms of international law in the vast majority of cases is understood as any type of action related to the alteration of computer data or interference in the functioning of a computer system, resulting in the deprivation of a second person of any property.

It should be recognized that selected international legal acts create a certain basis for the formation of national criminal legislation aimed at countering fraud in the field of computer information. At the same time, these agreements, having a recommendatory character, leave the national legislator the opportunity to take into account the peculiarities inherent in one or another country. For example, in the final document of the Thirteenth Congress of the United Nations on Crime Prevention and Criminal Justice (Doha, April 12–19, 2015), it is specifically indicated as a recommendation that in the field of cybercrime, member states should be guided by a balanced legal approach that provides recognition as specific crimes against the confidentiality, integrity and availability of computer data and computer systems, while simultaneously considering the question of applicability to acts committed online, it is established that they concern such general crimes as theft, fraud, forgery and crimes against the person [8].

It should be noted that the greatest work in this direction was carried out by the countries of the European Union. For example, in Directive 2000/31/EC of the European Parliament and the Council of the European Union "On certain legal aspects of information services in the domestic market, in particular, on electronic commerce" with the aim of preventing fraud, the requirements imposed on persons providing information services are defined. According to this document, the provider of information services must always be available to service recipients and competent authorities and provide mandatory information about themselves: 1) the name of the service provider; 2) geographic address of the place of establishment of the supplier; 3) information about the service provider, including an e-mail address that provides the possibility of online communication; 4) information about the registration of the provider of information services in a trade or similar public register, its registration number, or an equivalent means of identification in this register; 5) data on the authorization to carry out certain types of activity, as well as on the relevant controlling body (clause 1, article 5 of the Directive) [9].

Directive 2002/65/EC of the European Parliament and the Council of Europe of September 23, 2002 on distance marketing of consumer financial services, which establishes basic requirements for conducting such operations as opening a bank account and obtaining a credit card, is aimed at preventing fraud in the financial market , conclusion of an agreement on asset portfolio management, etc. Among the principles that ensure safe marketing of such services, the following are named: 1) consumer awareness, that is, before concluding an agreement, a person must be provided with the amount of information necessary for making a decision, and 2) consumers must be protected from unsolicited services and should not bear any obligations for them. At the same time, the absence of a response from the user cannot be interpreted as his consent [10].

The Directive of May 11, 2005 No. 2005/29/EC "On Unfair Commercial Practices in Relation to Consumers in the Domestic Market" prohibits the so-called "unfair commercial activity", under which it is proposed to understand the activities of economic entities on the condition that they: 1) contradicts the requirements of professional ethics; 2) significantly distorts or can significantly distort the economic behavior of an average consumer to whom this activity is directed or to whom it is addressed, or a group of consumers, if the activity is directed at a specific group of consumers, in relation to a specific product (Article 5). Such behavior may manifest itself in misleading and aggressive actions (Article 6.7 of the Directive). In accordance with the Directive, misleading actions include: 1) marking of goods with signs of trust, quality or compliance, without obtaining a special permit; 2) creating the impression that the goods are sold legally, if this does not correspond to reality; 3) advertising of a product similar to the product of a second specific manufacturer, in such a way that the consumer may have the impression that the advertised product was produced by this manufacturer; 4) creation and promotion of the "Pyramid" scheme, in which the consumer agrees to receive a reward depending on the involvement of new consumers in it [11].

On July 23, 2014, in Brussels, the European Parliament and the Council of the European Union adopted Regulation No. 910/2014 "On electronic identification and authentication services for electronic transactions in the domestic market and on the repeal of Directive 1999/93/EC"32. The key tasks of this document are the creation of common standards for the electronic identification of market participants. The proposed rules for the processing and protection of personal data must ensure the safety of the activities of both business entities and direct consumers. It should be noted that this document (a de facto European law of direct effect) presupposes the further adoption of a number of clarifying normative acts establishing specific requirements, standards, rules, etc.

At the end of this part of the work, we will focus on its main conclusions and provisions:

1) effective international cooperation is a key condition for successful countermeasures not only to fraud in the field of computer information, but also to cybercrime in general. Only through the joint work of states and international organizations on the development of universal mechanisms of control and management of information and telecommunication technologies, it is possible to

ensure the proper level of information security, which at the present time appears to be an unachievable goal;

2) the conducted research makes it possible to distinguish two main directions of international legal protection against fraud in the field of computer information: a) through the preparation and adoption of documents aimed at the harmonization of criminal legislation of states and b) through the adoption of acts aimed at preventing fraudulent activities in the field of electronic commerce;

3) the study of a number of international acts showed that the idea of the necessity of criminal law counteraction to computer fraud in general received universal recognition. At the same time, the advisory nature of international agreements allows states to be guided by the so-called balanced legal approach, which provides, on the one hand, for the independent criminalization of acts against the confidentiality, integrity, and availability of computer data and computer systems, and on the other hand, the possibility of applying them to acts committed with the use of information telecommunication technologies, existing provisions on general criminal offenses, including provisions on liability for fraud.

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BASIC PRINCIPLES OF LEGAL REGULATION OF COMPETITION IN THE EU

Grechkivskyi Vadym[1]

Annotation. The scientific article reveals the general features of the legal regulation of relations regarding the protection of competition in European countries, and also devotes time to the analysis of normative legal acts in this area. The article analyzes the provisions of fundamental international agreements regulating competitive relations. The main duties incumbent on participating countries in the field of combating unfair competition are defined. It is emphasized that the harmonization of the legislation of the EU member states in the field of competition protection and the establishment of competition law at the EU level are conditioned by the creation of the internal market, which provides for the free movement of goods, people, services and capital between the EU member states. The feature analyzed is that the territory of the entire EU is considered as a single market, within which producers of goods of all member states can freely and under the same conditions carry out business activities, and consumers get a better opportunity to buy products anywhere without hindrance. Most of the time is devoted to the analysis of the principles of legal regulation of competition in the European Union.

Key words: competition law, competition, countering unfair competition, EU competition law, legal regulation of competition.

Formulation of the problem. Legal regulation of relations regarding the protection of competition in European countries has been developed and implemented for a long time. As you know, the first regulatory act in this field was the Paris Convention of 1883 for the Protection of Industrial Property.

Today, more than two hundred countries have joined the Convention, and it is considered one of the fundamental international agreements regulating competitive relations. It, among other things, contains a declarative norm that assigns member countries to counteract unfair competition, which was later clarified.

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Analysis of sources. The issue of competition law is investigated in their scientific works by such scientists as: Androschuk G. O., Avlitov S. S., Zhuryk Y. V., Petrov D. A., Porter M., Reveruk S. K., Saniahmetova N., Totiev K. Yu., Udalov T. G. and others.

Goal. The purpose of the article is devoted to the analysis of the principles of legal regulation of competition in the European Union.

Presentation of the material. The harmonization of the legislation of the EU member states in the field of competition protection and the establishment of competition law at the EU level are primarily due to the creation of the internal market, which provides for the free movement of goods, people, services and capital between the EU member states. That is, the territory of the entire EU is considered as one market, within which producers of goods of all member states can freely and under the same conditions carry out business activities, and consumers get a better opportunity to buy products anywhere without hindrance.

Based on the analysis of the norms of the founding treaties of the European Union, acts of its institutions and judicial practice, it is possible to systematize the system of principles of legal regulation of competition relations in the European Union.

The first principle of legal regulation of competition in the European Union is the prohibition of anti-competitive behavior by both private and state enterprises, that is, the prohibition of concerted practices. This principle is reflected in such behavior in the form of concluding anti-competitive agreements and decisions of associations between enterprises that can affect trade between member states and prevent, limit or distort competition within the internal market. The principle of prohibition of such behavior is clearly defined in Article 101 of the Treaty on the Functioning of the European Union. However, this prohibition, which is the core of competition policy, the purpose of which is to eliminate obstacles to trade between member states, is not absolute. A market economy, dynamic in nature, requires flexible regulatory mechanisms based not on exhaustive lists of prohibitions, but on decisions approved on a case-by-case basis using a system of exceptions to the basic principle of prohibition. These exceptions are dictated by market efficiency considerations in accordance with paragraph 3 of Article 101 of the Treaty on the Functioning of the European Union [2].

The second main principle of legal regulation of competition in the European Union is the prohibition of the abuse of a dominant position within the internal market of the European Union, as this may affect trade between member states. Such a prohibition, as defined in Article 102 of the Treaty on the Functioning of the European Union, may consist of the direct or indirect imposition of unfair pricing or the imposition of other unfair trading conditions; restrictions on production, sales or technical development to the detriment of consumers; putting forward unequal conditions for equivalent agreements with other trading partners, which puts them in an unequal competitive position. Such a stipulated prohibition cannot have exceptions, in other words, such behavior that affects trade within the internal market of the European Union is defined as absolutely illegal [2].

In order to implement these two principles, regulations are adopted on the basis of a special legislative procedure, which consists in the powers of the Council of the European Union to take relevant decisions on proposals from the Commission and after consultations with the European Parliament, in accordance with Article 103 of the Treaty on the Functioning of the European Union.

In other words, in the field of competition regulation in the European Union, only the Council and the Commission have significant powers, and the European Parliament does not have significant powers in the mechanism of developing this supranational policy.

The third principle of competition regulation – control of concentrations in the European Union – is a consequence of the evolution of the powers of the institutions of the European Union in order to fulfill the requirements of Articles 101 and 102 of the Treaty on the Functioning of the European Union. As noted above, the Commission has argued for a long time, through lengthy litigation, the need to introduce separate powers for preventive surveillance of European-wide mergers, approving or prohibiting prospective alliances. This principle is provided for in the Council Regulation 139/2004, which establishes the obligation of the enterprise in appropriate cases to obtain the Commission's permission to carry out the concentration. In other words, this principle is fundamental in case of conflict of jurisdictions in cross-border transactions [2].

The fourth principle is the principle of control, supervision and monitoring with assistance provided by member states or through public resources in any form and at any time, which threatens to distort competition by favoring certain enterprises or the production of certain goods. In essence, the principle of incompatibility of state aid with the internal market applies to the extent that it concerns trade between member states (according to Article 107 of the Treaty on the Functioning of the European Union).

However, there are exceptions to this general principle provided for in clauses 2 and 3 of Article 107, which lead to a different legal mechanism for granting permits, control and supervision of state aid schemes. In order to implement this principle, on the basis of Article 109 of the Treaty on the Functioning of the European Union, a special legislative procedure is also applied, according to which the Council, on the proposal of the Commission, adopts relevant regulations after consultations with the European Parliament [2].

The main subject of implementation of this principle is the Commission, which "in cooperation with the member states keeps under constant control the aid regimes that exist in the states" (according to Article 108 of the Treaty on the Functioning of the European Union).

The principle of liberalization becomes fundamental for the legal regulation of markets whose subjects are under state (monopoly) power. Such sectors of the economy as telecommunications, post, transport, energy developed monopolistically, not obeying the basics of competition. The European Union's approach to the development of competition rules for these sectors of the economy can generally be called the introduction of the principle of liberalization. The legal basis for this principle is Article 37 of the Treaty on the Functioning of the European Union, according to which member states undertake to reorganize national

monopolies of a trade nature in such a way as to ensure the absence of any discrimination in terms of supply and sales [2].

At the same time, this provision may be under the control of the Commission and the Court of Justice of the EU in accordance with Article 258 of the Treaty on the Functioning of the European Union. This provision is confirmed in Article 108 of the Treaty on the Functioning of the European Union, according to which state enterprises must bring their activities in line with the principles set forth in Articles 101 and 102 of the Treaty on the Functioning of the European Union. On the basis of this, in the sectoral directives and regulations that regulate the relevant type of activity on the market, special rules of competition are established, which are aimed at developing a competitive policy by such state enterprises (monopolies).

The central place among the main principles of legal regulation of competition in the European Union is occupied by extraterritorial application of competition rules. This principle derives from Article 101 of the Treaty on the Functioning of the European Union, which provides for the main purpose and consequences of established prohibitions that are "capable of affecting trade between Member States" and creating "obstacles to competition within the internal market". It follows from this general rule that the competition rules of the European Union are applied to enterprises of third countries in cases where their business operations, even if carried out outside the territory of the European Union, have negative consequences for the economy of its internal market and affect trade between member states. The Commission has repeatedly imposed fines, and the EU Court has considered lawsuits against non-resident enterprises of the European Union.

Conclusions. The doctrine of nationality in the law of the European Union makes it possible to justify its extraterritorial effect in relation to individuals and legal entities from the EU who enter into business relations with subjects of the law of third countries. This doctrine is often used to regulate trade and export control policies. It is worth noting that it is not often used in competition policy, unlike in the field of export control and relations related to the application of sanctions against third countries.

To date, there is still no widespread practice of issuing court decisions under the jurisdiction of the European Union in cases of violation of competition norms in which the Ukrainian element participates.

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MYPHOPOETIC STRATEGIES OF NOVELS BY DARA KORNIY "LORD OF THE CLOUDS" AND BY STEPHENIE MEYER "TWILIGHT"

Gurduz Andriy[1]

Annotation. Overcoming the stereotypes of exclusively entertaining literature, this texts are now recognized as one of the most requested in the genre spectrum. Rapid evolution and the lack of a unified theory complicate its already problematic study. The systematic analysis of fantasy from the perspective of the evolution of the ideal direction turns out to be uncontroversial and much more effective. A representative example of artistic works of the new generation, conceptually important in Ukrainian and American literatures, are "Lord of the Clouds" by D. Korniy and "Twilight" by S. Meyer.

In our article we compare these texts for the first time to determine the commonality and uniqueness of its mythopoetic strategies. These works are ideologically and in terms of form of embodiment organic to the literary and artistic trends of the first decades of the XXI century, written in compliance with national literary and folklore-mythological traditions during their creative development and reveal typological similarities. In the combination of different national cultural elements, the image of the Ukrainian Lord of the Clouds is modernized and enriched, receiving new associative semantics in the eyes of the national reader and expanding its artistic valence. The new interpretation of the image of Ukrainian "inferior mythology" in the text by D. Korniy is original and is a step on the way to the construction of the national literature's own myth-making tradition of the new era. "Twilight" saga by S. Meyer is also indicative in the development of urban fantasy and is a representative example of the currently formed world picture with an updated paradigm of the relationship between the forces of good and evil. When ascertaining the gender accent in these works, we find in them the combinatorial character of mythopoetics with the leading vectors of vi-

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tality and corporeality. The latter in the deciphering of E. Fromm's concept sound like life strategies to have ("Twilight") and to be ("Lord of the Clouds") and are arranged in the plot with appropriate sets of mythologists and symbols. The motives of stone and body in the American work and wingedness in the Ukrainian one deserve special attention here.

Key words: myth, fantasy, concept, vampire, physicality, typology.

The relevance of the research topic. Fantasy artistic works are rehabilitated since the end of the XX century in the eyes of academic literary studies, and they increasingly become the object of research. Overcoming the stereotypes of exclusively entertaining literature, this texts are now recognized as one of the most requested in the genre spectrum. Rapid evolution and the lack of a unified theory complicate its already problematic study. Due to internal contradictions, attempts to classify fantasy are productive conditionally, because they are based on formal-content (C. Manlove; P. Gates, S. Steffel and F. Molson; O. Kovtun; A. Sapkowski) or formal criteria (F. Mendlesohn). The formal feature is dominant, for example, in the definition of urban or Christian fantasy (C. Manlove), children's subgenres (C. Manlove), the intrusion (F. Mendlesohn), or transformations (P. Gates, S. Steffel and F. Molson). Studying a wide fantasy spectrum allows us to assert that the key drawback of modern classifications of this metagenre is reliance on a formal indicator, it was not for nothing that O. Spengler also warned against such judgments (Spengler, 1927, p. 195). The inability to dominate of the formal-content profile, by the way, has already been proven in relation to the study of myth, and fantasy prose works in different ways with classical mythology and/or forms its own.

The systematic analysis of fantasy from the perspective of the evolution of the ideal direction turns out to be uncontroversial and much more effective; the content of such an analysis correlates with the transformation of the metagenre of the first decades of the XXI century, when the classic confrontation between good and evil in it turns into the triad. The proposed research profile is consistent with the currently outlined direction of analysis of changes in the ethical direction of the metagenre (Guanio-Uluru, 2015). The latter approach was not previously considered promising, but in the context of the modern evolution of this artistic corpus, it deserves thorough elaboration.

The frontal analysis of the corpus proves that the productivity of the comparison of its texts within the metagenre or outside it is significantly higher than the autonomous examination, since it is primarily about the dynamics of artistic ideas and conceptual strategies. And it is the ideal spectrum that gives the widest prospects for solving the actual problem – the formation of a consistent fantasy taxonomy.

A representative example of artistic works of the new generation, conceptually important in Ukrainian and American literatures, are "Lord of the Clouds" (2010) by Dara Korniy and "Twilight" (2005–2020) by Stephenie Meyer. D. Korniy's novel became one of the brightest fantasy works in Ukraine in the first decades of the XXI century, and critics associated it with the world bestseller by S. Meyer. Corresponding comparative studies were not conducted, although D. Korniy

controversially commented on similar remarks in favor of the originality of her text (Korniy, 2012). The comparison of these works, which represent the new parameters of the modern fantasy paradigm, allows a new look at the trends in the development of this metagenre both in general and in national versions. In particular, the nature of the transformation of folklore-mythological images – embodiments of good and evil – attracts attention here, which also shows the organic nature of these books to the current fantasy paradigm.

Analysis of recent research and publicatioms. Despite the broad resonance of "Lord of the Clouds" in Ukrainian literature, it did not become the object of thorough research, being satisfied with a number of more emotional than analytical reviews. For the first time, the author of this article comprehensively traced the features of tradition and innovation of this novel in Ukrainian prose, as well as the specifics of its mythopoetics and intertext in a comparative aspect (Gurduz, 2012). The analysis of D. Korniy's subsequent novels generally attracts the attention of literary critics, who sometimes refer to our articles (Mizinkina, 2020), but the studies of "Lord of the Clouds" at the problem-thematic or mythopoetic level are not practiced. Unfortunately, in one of the cases of the analysis of this novel, we recorded classic plagiarism, when N. Herasymenko included a significant volume of our named article without reference to it in her monograph (Herasymenko, 2015, p. 164–166).

"Twilight" as a world bestseller has been the subject of some number of scientific works, however, a comprehensive examination of the myth-making concept of this saga has not yet taken place; the available studies mainly consider the system of images of this artistic circle and as a maximum – in the projection onto the gender plane, a role of which is clearly overestimated here (Kostihova, 2012, p. 86–91). We consider L. Guanio-Uluru's monograph with an analysis of the relationship between ethical content and its formal expression in S. Meyer's saga as a component of modern fantasy to be a study of a new generation, although, again, the analysis of the whole idea of this cycle of novels is only outlined here (Guanio-Uluru, 2015). One of the most interesting dissertation attempts provides observations on the realization in the cycle of the bodily aspect (MacLeod, 2014), although the connection of these reflections for a comprehensive analysis of the saga concept does not occur.

The comparative perspective of the vision of both the American saga and the Ukrainian novel allows us to specify the artistic parameters of the works by S. Meyer and D. Korniy, and inclusion of their works in a broad fantasy context provides verification of our judgments about the metagenre.

Formulation of the purpose and tasks of the article. The purpose of our first comparison of "Lord of the Clouds" and "Twilight" is to determine the commonality and uniqueness of its mythopoetic strategies. The realization of this purpose involves focusing the main attention on clarifying a) key concepts in the named novels by D. Korniy and S. Meyer; b) embodying in them the dilemma of "to have or to be" formulated by E. Fromm, i. e., first of all, the vectors of vitality and corporeality, as well as c) definition the specifics of the functioning of folklore and mythological images in these texts (respectively, Lord of the Clouds and a vampire) .

Presentation of the main research material. In the metaprose of D. Korniy, the debut "Lord of the Clouds" occupies one of the most important places, forming the main imperatives and principles of images of her novels. In the artistic world, D. Korniy synthesizes elements of national and foreign cultural traditions, of past and present, offering original solutions to current social problems. A thorough comparative study proves the formation in her prose of productive for Ukrainian literature of the XXI century the author's myth, which was defined and systematically analyzed by us for the first time. We can also talk about the presence in D. Korniy's novels of the image of a metaheroine – a figure who, passing from one artistic work to another, preserves her artistic supertask, the key ideas associated with her. We have before us a strong creative young personality who stands above the everyday hustle and bustle, belonging to it formally and being higher than it spiritually. The strong-willed, rebellious, stronger-than-male nature of the metaheroine of the writer's novels evolves in terms of hypostases and reflects the general patterns of images of female fantasy prose heroines of Ukraine in the first decades of the XXI century (L. Bahrat, L. Taran, V. Hranetska and others), which corresponds to the concept of D. Korniy (Korniy, 2012).

In connection with the parallels to "Twilight" by S. Meyer, the "Lord of the Clouds" hastily began to be perceived as its Ukrainian version. But Ukrainian novel is significantly different from the American series of novels in terms of the scale of the described events, ideological focus, problem-thematic complex and it is built on Ukrainian (and Slavic in general) folklore-mythological material with the appropriate topic and observance of the national traditions of mythopoetics. That's why "Lord of the Clouds" cannot be considered a national version of the novels by the American writer. A certain similarity between "Lord of the Clouds" and "Twilight" can be due to socio-typological (Ďurišin, 1984, p. 197–198) and psychological-typological similarities (Ďurišin, 1984, p. 208). Being in the relative atmosphere of mass culture and having common literary and film references, D. Korniy and S. Meyer used the same models of images, plots, etc., recognized in fantasy (the title of "Twilight" already appears in "The Reverse Side of Light" (Korniy, 2013, p. 159)). The appeal in "Lord of the Clouds" (Korniy, 2010, p. 305) and "Twilight" (Meyer, 2009 New, p. 312) to the products of the Hollywood entertainment industry is similarly motivated. At the same time, unlike the Ukrainian novel, S. Meyer's vampire series written according to the stylistics of the thematic direction, although it uses figurative and plot models modified within the limits of the metagenre, but does not contain a new programmatic imperative in the socio-cultural sense – a special metamessage (Mayyer, 2010, p. 105–106), such as "Watches" by S. Lukyanenko, fantastic "The Matrix" (USA, Australia, 1999–2021) by dir. L. and L. Wachowski, etc. So the saga ideologically does not rise above similar vampire or, more broadly, fantasy works.

The type of development of events in "Lord of the Clouds" resembles the modified plot of "Twilight", while the images of the main characters differ in a number of characteristics (in particular, the motivation of their relationships and life tasks) from the key images of S. Meyer's novel. Compared to the "American Joanne Rowling", D. Korniy (at least due to the much smaller volume of "Lord of the Clouds") prescribes simpler vicissitudes, pays more attention to ordinary

people and does not belittle their world in relation to the world of supernatural beings, makes an attempt to renarrate the Ukrainian pagan myth with the arrangement of elements of other national mythologies, brings the pantheistic experience of the world characteristic of the Ukrainian soul. Perhaps the choice of a key mystical image is connected with the latter – the Lord of the Clouds, a duplicitous, part of living nature, and not, say, a vampire – a dead irrational entity. No wonder there is a joke in the novel: "Listen, Bat, aren't you a vampire by any chance..?" (Korniy, 2010, p. 251).

Like D. Korniy's heroine, Bella Swan is "a rebel" (Meyer, 2009 New, p. 197). At the same time, in the fight between the living (people) and the irrational, the former wins in "Lord of the Clouds", but in "Twilight" the heroine's purpose is the life of vampires, which changes the pole for her from the notliving to the living. Systemic emphasis in the saga of the advantages of vampire existence is reinforced in "Breaking Dawn" (2008) by comparing Bella's feelings after her transformation into a vampire with experiences in a human body. The brightness and "authenticity" of Edward Cullen's wife's new sensations in the body of "a goddess" (Meyer, 2009, p. 372) are combined with the recollection of a previous experience when, the heroine admits, she looked at the world with "sightless human eyes" (Meyer, 2009, p. 371). The inevitability of the girl's transition to the world of nothingness is indicated by her father's prognostic statement in "New Moon": «You're just… lifeless, Bella» (Meyer, 2009 New, p. 95).

Both Alina and Bella save their loved ones in these works, but the actions of the Ukrainian heroine are only altruistic, she lacks the ambition to live forever and receives supernatural abilities as a gift as a result of passing forced tests. Blinded by the desire to be forever, the American seeks eternal existence, but as non-existence.

We will also add the consistent drawing of parallels in "Twilight" to "Romeo and Juliet" by W. Shakespeare, and the center of the intrigue of the writer's comparison is not only the analogy of the inadmissibility of the combination of a woman and a vampire as representatives of different (hostile – in the projection on the content of the English play) camps, but also Bella Swan's assumption of the trusting relationship between Juliet and Paris (Meyer, 2009 New, p. 370), and therefore the heroine's interpretation of rivals Edward Cullen and Jacob Black as Romeo and Paris, respectively. With S. Meyer's original development of the Shakespearean line and systematic observance of the associations of her characters with the protagonists of the English meter, D. Korniy's ironic mention of Romeo and Juliet rather hints at a possible understanding of the love of the heroes of "Lord of the Clouds" in the light of the Verona tragedy (Korniy, 2010, p. 251).

Let's pay attention to H. MacLeod's fair opinion about the reflection in "Twilight" on the example of vampire images and Bella Swan's desire to turn into a vampire of the intention of avoiding the "aging perspective" by modern American society (MacLeod, 2014, p. 109); the scientist's statement is confirmed by the parallel fascination of S. Mayer's compatriots with superhero mythology, the figures of which, as a rule, are eternal, as well as Bella's own fear after meeting herself in a dream at the age of her deceased grandmother (Meyer, 2009 New, p. 4–6)).

Systematic artistic solutions inherent in a number of national classical and newer works testify to the rootedness of "Lord of the Clouds" in the Ukrainian literary tradition. The mythopoetics of this novel is related to the mythopoetics of the "Shadows of Forgotten Ancestors" by M. Kotsyubynskyi and the "Forest Song" by Lesia Ukrainka. The novel (where the word combination "sun worshiper" is used several times (Korniy, 2010, p. 301, 323)) is related by the similarity of the plot elements to the story by M. Kotsyubynskyi: it is a story of relations in the Carpathian village of the families of the Gradobur and the Hryhorenko, these relations are continued in Lviv later and thus modernized compared to the narrative. In "Lord of the Clouds" the images of women of the Alina family and men of the Sashko family are contrasted on the level of mythologems of earth (the first) and air, fire and water (the second). In this context, we note that an important part of the plot with the unfolding of events against the background of nature does not affect the qualification of this novel as belonging to urban fantasy (Ekman, 2016, p. 457–458).

The heroine's hearing of Bat's – Lord of the Clouds' flute (Korniy, 2010, p. 129–130) corresponds to Ivan's recognition from "Shadows of Forgotten Ancestors" in the song of the crap's flut of his own melody, so prompted by nature. Stephen Black's consonant pantheistic experience from "Jonathan Strange & Mr Norrell" by S. Clarke while listening to the singing of the fairy (Clarke, 2017, p. 604). Immersed respectively in Ukrainian and English mythological traditions, the texts of D. Korniy and S. Clarke convey the specifics of the pagan picture of the world.

The line of the "Forest Song" is also originally woven into the canvas of the novel: this is Alina's favorite book in childhood (Korniy, 2010, p. 205), her father then calls her Mavka (Korniy, 2010, p. 205) etc.. The green color of Alina's hair is noticeable, as well as the fact that her mother "…grew up in a remote Volyn village" (Korniy, 2010, p. 58). We find an overemphasis compared to the extravaganza drama: the strong-spirited Alina fights for the soul of Sashko – Lord of the Clouds (in Lesya Ukrainka's work that are Mavka, who longs for a human, and the weaker-spirited Lukash). The strong-willed, rebellious, stronger than male nature of the heroine of the novel complements the gallery of female images of modern Ukrainian fantasy.

In the innovation by D. Korniy, the fantasy woman – a kind of installation of the image of the character of Mistress of the Clouds in the modern national existence ("Lord of the Clouds" became a woman, or a woman first became a Lord of the Clouds (Korniy, 2010, p. 280)) – we see the adoption of a (modified) motif in the Slavic epic of a "warrior girl", which "...on Ukrainian soil did not lose its productivity until the XX century..." (Yaremchuk, 2013, p. 120). Such a move by the writer is consistent with the logic of Ukrainian nature (Yaremchuk, 2013, p. 111). Bella Swan's desire to become superhuman is combined with a transparent gender imperative and the heroine's ambitions: «I can't always be Lois Lane… I want to be Superman, too» (Meyer, 2009 Twilight, p. 413). Although her desire to save her beloved Edward is also strong.

In "Lord of the Clouds" the traditional story model for this type of work – "a person gets close to a representative (-s) of an irrational world (a monster (-s)) and opposes him (them) or, less often, becomes a part of this world" – is slightly

changed : this is already the story of the relationship between representatives of light and darkness, angelic and demonic (Saint Yuri the Snake Wrestler also appears in this novel as the patron saint of Lviv). The creation of a mystical image is facilitated by the descriptions of the ugly essence of the dual person (Korniy, 2010, p. 81), Sashko-Bat's reflections on his ugliness in the eyes of the heroine (Korniy, 2010, p. 228).

Alina's figure, on the contrary, is shrouded in a halo of nobility ("That girl seems to be swaying in bright light... The light emanates from the girl" (Korniy, 2010, p. 224)) and for Sashko acquires an unambiguous symbolism: "...Alina on Smotrychi, like an angel in a green wreath from her hair, and behind her are wings woven from the south wind" (Korniy, 2010, p. 228). As we can see, the image of Alina combines the features of paganism (Mavka; the girl here is a "sun-worshipper, heathen" (Korniy, 2010, p. 300)) and Christianity (an angel). The heroine's intention to win Sashko's human soul from Gradobur and the compassion to Lord of the Clouds, an attempt to look at the world through his eyes in a hopeless situation, emphasizing the imperfection of people cause the convergence of the poles of good and evil in the book. Thus "Lord of the Clouds" is inscribed to the corpus of popular in the end of the XX – the first decades of the XXI century works where the blurring of the boundary between good and evil or its relativity is emphasized, where sometimes the functions of good and evil are acquired by one mystical character with a traditionally unambiguous symbolic semantics or representatives of supernatural forces that are opposite to these functions. In this sense, the words of Alina's grandmother are indicative ("The world, child, is not black and white. What seemed good yesterday can easily become evil today, and the opposite also happens..." (Korniy, 2010, p. 74)), or also the thesis in "Maiden of the Moon" ("...there is no evil that does not turn out to be good" (Korniy, 2019, p. 43)) is consonant with the lines of priestess Kan-Kendarat from "Peace along the Way" by M. Semenova ("That which to someone it may be a blessing, to another it may seem like a misfortune..." (Semenova, 2021, p. 22)). The form of St. Yuri's thesis about good and evil expressed in the "Lord of the Clouds", is also perceived paradoxically, with a clear hint of the relativity of these principles: "...there is always the right to choose. Between what you people call good and what you call evil" (Korniy, 2010, p. 221).

Following Ukrainian and, in general, Slavic mythology and describing the presence of two entities in the human body, self-sacrifice, D. Korniy asserts the importance of the integrity of the individual, the need for the ability to recognize good and evil, high and low, the opposition of which is eternal in man.

The nature of the reinterpretation of vampire images in "Twilight" corresponds to the development trends of modern artistic vampirism, when, according to the amplitude of interpretation, this artistic image can be not only a friend and a possible lover (mistress), man or woman for a person – turning into an undead becomes luck (in "Empire 'V'" by V. Pelevin), the character's dream (in "Empire of Fear" by B. Stableford), "rescue" from death with the corresponding substitution of concepts for the mass recipient (in "Dark Reunion" by L. J. Smith, "Vampyre Nation" (USA, 2012) by dir.. T. Chapkanov) etc. Vampires' search for spirituality and God (as in "Guilty Pleasures" by L. Hamilton, "Ampire 'V'" and

"Batman Apollo" by V. Pelevin) are consistent with similar mental and spiritual movements of the incarnations of the monstrous in general in the literature of the first decades of the XXI century when the actual spirituality of the demonic character is no longer in doubt. The named parameters of the interpretation of the image of a vampire are in relief in "Twilight" by S. Meyer.

Illuminated by her love for Edward Cullen, a vampire, Bella Swan's desire to become a vampire is considered in the lens of a number of semantic levels (in particular, gender (Kostihova, 2012, p. 86–91)) and marks the world of the undead as desirable for her in a special tonality – divine, and expressed of the ancient era. Corresponding stylization of the depicted row of vampires in the painting in Carlisle Cullen's house (Meyer, 2009 Twilight, p. 297); the master of the house looks like "Zeus's younger… brother" (Meyer, 2009, p. 471); it is the "divine" epithets that emphasize the beauty of Edward – "godlike" (Meyer, 2009 Twilight, p. 312), similar to the "forgotten pagan god of beauty" (Meyer, 2009 New, p. 7), to Adonis (Meyer, 2009 Twilight , pp. 261, 277). On the contrary, his perception of Bella for a certain time as "some kind of demon" (Meyer, 2009 Twilight, p. 236) is symbolic and is an echo of the tendency we have indicated to level in modern fantasy the difference between the poles of good, to underline their sometimes mutual substitution. The systematic and consistent introduction of the antique element is connected in the intertext of the saga with a less pronounced Christian component – the same comparison of vampires with angels, in which we see an attempt to make an aspect transition in the reinterpretation of the vampire character also to the Christian paradigm. So, Carlisle Cullen looks like a "golden-haired angel" (Meyer, 2009 New, p. 20), Edward's angelic face is accented (Meyer, 2009 Twilight, p. 230), etc. The third synonymous component of the intertext in this series of novels by S. Meyer is the modern superhero mythology (also played out in her "The Short Second Life of Bree Tanner" (Meyer, 2010, p. 3, 4).

Alina's double life in the "Lord of the Clouds" (at night – in unusual "dreams"-transitions to another dimension), which is mentioned in the epilogue, also corresponds to the way of existence of a modern superhero.

S. Meyer's heroine's appeal to the opposite pole of divine evil when praising vampires is not accidental and motivated not only by the principle of contrast. According to the logic of transformation in the fantasy of the end of the XX – the first decades of the XXI century the images of the "good – evil" paradigm, associated with the poles of this opposition converge, acquiring each other's characteristics. Along with the rise of the status of the demonic, the vampiric as occasionally similar to the divine in "Twilight", the status of the divine itself decreases. At the same time, we can talk about a kind of compensation, provided we take into account that within the boundaries of Christian culture, the ancient Olympian deities are interpreted as pagan and demonic.

The mental anguish of the demonic creature in the compared artistic works is obvious and deepens the drama of the situation of Lord of the Clouds (Sashko) and the vampire Edward Cullen, who are aware of the impossibility of being with the chosen one and not being with her. An important role in these works is played by the pictorial and musical intertext.

On the other hand, the motif of the monstrous as divine in "Twilight" is shaded by the attributive motif of stones (like marble), conceptual for the saga, sometimes used for arrangement when depicting irrational figures in modern fantasy (for example, in "Jonathan Strange & Mr Norrell" by S. Clarke).

Not only Edward ("marble face" (Meyer, 2009 New, p. 20), "marble forehead" (Meyer, 2009 New, p. 24) and "marble body" (Meyer, 2009, p. 512) in general) or his sister Alice ("marble skin" (Meyer, 2009 New, p. 388)) have a stone characteristics in Bella's perception before her rebirth; such features also have another vampires: like Laurent (Meyer, 2009 New, p. 245).

Such a stone characteristic, among other things, distances the camp of human characters in the saga from the camp of non-humans, one way or another adding to the latter features of the inanimate. In this way, Bella Swan's desire to transition into a vampire is subtextually interpreted as a transition into the eternity of nothingness, when the latter is elevated as a kind of existence – eternal and invulnerable, as only the vulnerable lives.

The analysis confirms the different directional vectors of mythopoetics of the compared works. While in the Ukrainian novel the desire for life and the struggle for it is absolutized in the spiritual sense, in the American cycle the desire to continue existence at any cost, even replaced by non-existence, is accentuated. The latter is emphasized by the dominance of the bodily and subject matter in the text. In the novel by D. Korniy, the abstract and the high prevail. These two trends are logical in the history of civilization and were formulated by E. Fromm (Fromm, 2008, p. 13) as the desire *to have* (in Bella Swan) and *to be* (in Alina), respectively. Given the representativeness of such vectors in modern fantasy, it is worth talking about a certain universality of the corresponding philosophies in the current metagenre with a dominant tendency *to be* in Eastern European segment of fantasy and with a dominant tendency *to have* in its Western European and North American segments. The accompanying set of symbols and mythologems in the works by D. Korniy and S. Meyer, as we can be seen from the above, confirms our conclusion.

Conclusion. The novel "Lord of the Clouds" and the novel series "Twilight" are ideologically and in terms of form of embodiment organic to the literary and artistic trends of the first decades of the XXI century, written in compliance with national literary and folklore-mythological traditions during their creative development and reveal typological similarities. In the combination of different national cultural elements, the image of the Ukrainian Lord of the Clouds is modernized and enriched, receiving new associative semantics in the eyes of the national reader and expanding its artistic valence. On the other hand, the perception of a national image stylized in a similar way by a foreign recipient is somewhat easier, since he recognizes familiar shades of meaning in the artistic material.

The new interpretation of the image of Ukrainian "inferior mythology" by D. Korniy is original and is a step on the way to the construction of the national literature's own myth-making tradition of the new era. "Twilight" saga by S. Meyer is also indicative in the development of urban fantasy and is a representative example of the currently formed world picture with an updated paradigm of the relationship between the forces of good and evil. At the same time, the sub-

textual ideas of the cycle, due to the relief and systematic expression, should be considered as imperatives, the degree of influence of which on the young mass recipient is very high. When ascertaining the gender accent in these works, we find in them the combinatorial character of mythopoetics with the leading vectors of vitality and corporeality. The latter in the deciphering of E. Fromm's concept sound like life strategies to have ("Twilight") and to be ("Lord of the Clouds") and are arranged in the plot with appropriate sets of mythologists and symbols. The motives of stone and body in the American work and wingedness in the Ukrainian one deserve special attention here.

A broader analysis of D. Korniy and S. Meyer's novels in a fantasy context, in particular against the background of the transformations of the images of the diabolical, is expedient and promising; it will contribute to a deeper understanding of the evolution of the modern metagenre at the ideological and conceptual level.

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WAR IN UKRAINE AND THE ROLE OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS IN ENSURING INTERNATIONAL COOPERATION OF STATES IN THE FIELD OF HEALTH CARE

Homonay Vasyl[1]

Annotation. The purpose of this scientific article is to identify the role of international non-governmental organizations in ensuring international cooperation of states in the field of health care.

The article focuses on the role of such international non-governmental organizations during the war in Ukraine: the Red Cross Committee, the World Medical Association, the International Pharmaceutical Federation, etc.

International cooperation of states in the field of health care is a complex of legal means and institutions that the subjects of international public law – states – use to achieve common goals in the field of health care, which is implemented in the forms of multilateral and bilateral participation and is carried out accordingly to generally recognized principles and norms of international law. It can be carried out with the participation of both states and international intergovernmental organizations, but not international public organizations.

The subject of international legal relations in the field of health care can only be that international organization that is endowed by its member states with special competence, defined in its charter. The term "international intergovernmental organization" is not synonymous with the term "international public organization".

The participation of non-governmental legal entities in activities in the field of health care does not contradict the norms of international law, however, they are not subjects of international legal relations in the field of health care, because they are not endowed by the states with special competence, which would be determined in their statute.

Key words: a person, the highest social value, displaced persons, the Ukrainian Red Cross, The World Medical Association, the Health Care Committee of the European Business Association, World Psychiatric Association.

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Formulation of the problem. A person is the highest social value [1]. The health of the population is one of the most important factors in the development of the economy of any country and the well-being of the population. Over the last half century, the ability of the health care system to influence the health of the population has increased several times. According to the definition of the WHO, a modern health care system should ensure the availability of medical services for those who need them most, be characterized by high quality and safety of medical services, and ensure the maximum possible health outcomes at the population level. According to the WHO, the health care system, provided it is effectively organized, can ensure a decrease in total mortality under the age of 75 – by 23% in men and by 32% in women; mortality from coronary heart disease – by 40–50% [2].

The hostilities on the territory of Ukraine do not stop – the Russian invaders continue to hold a number of temporarily captured settlements, make attempts to capture others, the ARC, part of the Luhansk and Donetsk regions remain occupied.

The activity of the Red Cross Society of Ukraine is active in Ukraine. It is based on the Geneva Conventions of August 12, 1949, as well as on three Additional Protocols to them dated June 8, 1977 (I, II) and December 8, 2005 (III). The activities of the Ukrainian Red Cross Society are regulated by the Law of Ukraine «On the Red Cross Society of Ukraine» of 2014, the Law of Ukraine «On the Symbolism of the Red Cross, Red Crescent, Red Crystal in Ukraine» of 2010, Decree of the President of Ukraine dated 28.10.1992 No. 548/92 «On the Society of the Red Cross of Ukraine», as well as the Statute of the Red Cross of Ukraine [3].

The Ukrainian Red Cross fruitfully cooperates with 21 national societies of foreign countries with which cooperation agreements have been concluded, with the financial support of international colleagues, it carries out more than 20 humanitarian programs every year [3].

More and more people from the east of Ukraine, the south and the north of Ukraine are coming to Zakarpattia Oblast. They become internally displaced persons. Discrimination of internally displaced persons in the field of health care is certainly unacceptable – the state is obliged to ensure their right to health care and medical assistance.

From February 24, 2022, the Red Cross Society of Ukraine mobilized all forces and resources for an immediate response to the humanitarian crisis that arose from the unfolding of the armed conflict in Ukraine. The main task of the Society's organizations is to provide the basic needs that currently arise for people fleeing the war and starting to live in a new place [3].

District, city-district, city and regional organizations of the Red Cross Society of Ukraine at the local level support IDPs. In organizations, volunteers and employees of the Red Cross Society of Ukraine issue food kits (cereals, pasta, canned goods, sugar, flour, oil and other long-term storage products), hygiene products (baby and adult diapers, male and female hygiene products, disinfectant solutions, etc.). Medicines and medicines can also be issued to people if available. In addition, the organizations have Clothing Banks, where there are both new and

used items that anyone who applies can take for themselves and their families. The Clothing Bank has clothes for adults, children's things, toys, and there may also be basic necessities: dishes, blankets, bed linen, towels, etc. [3].

There is a war going on in Ukraine. The number of rocket attacks is increasing every day. More and more people suffer from war.

In such conditions, the role of international non-governmental organizations in ensuring international cooperation of states in the field of health care is strengthened.

The participation of non-governmental legal entities in activities in the field of health care does not contradict the norms of international law, however, they are not subjects of international legal relations in the field of health care, because they are not endowed by the states with special competence, which would be determined in their statute.

The purpose of this scientific article is to identify the role of international non-governmental organizations in ensuring international cooperation of states in the field of health care.

Analysis of scientific publications. The issue of international cooperation of states in the field of health care was studied in the scientific works of Yu. Bysaga [4; 5; 6; 7], S. Buletsa [8; 9;], L. Deshko [10; 11; 12; 13; 14] and others. In particular, in the scientific works of L. Deshko, it is rightly noted that the objective necessity of international cooperation in the field of health care is explained by the importance of this type of activity for humanity. In particular, its results played, are playing and will play an important role in solving global problems of humanity (epidemics of plague, typhus, cholera, etc., pandemics caused by influenza viruses (H1N1, H3N2, H2N2) and highly pathogenic strains of bird flu (H5N1, H7N3) , the SARS-CoV-2 coronavirus, etc., maintenance of international peace and security, etc.), as well as in ensuring sustainable development [15].

Also, Professor Lyudmila Deshko correctly emphasizes in her research that there has been an expansion and deepening of international cooperation in the following areas: human rights in the field of health care, the international mechanism for their protection; international cooperation in the field of creation, production, quality control and sale of medicinal products; international cooperation in the fight against the circulation of falsified medicinal products; international cooperation in the field of combating the illegal circulation of narcotic drugs, psychotropic substances and precursors; international cooperation in the field of providing medical care with the use of transplantation and implementation of activities related to transplantation; international cooperation in the field of hematopoietic stem cell transplantation; international cooperation in the field of blood donation and its components; international cooperation in the field of sanitary protection of the territory and ensuring the epidemiological well-being of the population [15]. Also on the agenda were issues of global human security in connection with pandemics caused by influenza viruses (H1N1, H3N2, H2N2) and highly pathogenic strains of bird flu (H5N1, H7N3), SARS-CoV-2 coronavirus, etc., and other factors [15].

This study develops the approaches laid down by L. Deshko regarding international cooperation in the field of health care and focuses on the issue

of the role of international non-governmental organizations in ensuring international cooperation of states in the field of health care in the conditions of Russian aggression against Ukraine.

Presentation of the main material of the study.

Public organizations, activists and volunteers were the first to respond to the challenges posed to the communities by Russia's full-scale war in Ukraine – helping the military, searching, setting up logistics, supporting people who come to the community in search of medical assistance, security, collecting humanitarian aid, etc.

The World Medical Association was founded against the background of the atrocities of war and the abuse of the medical profession to violate human rights and dignity. As L. Deshko notes, on September 17, 1947, the World Medical Association was founded – an international organization that represents doctors of the world. It is designed to ensure professional independence (autonomy) of doctors and high standards of their professional activity. The World Medical Association adopts norms of medical activity, which are mandatory for doctors of all countries of the world.

The World Medical Association condemns the Russian invasion of the territory of Ukraine and calls for an end to hostilities; the world medical organization believes that the Russian political leadership and the Russian armed forces are responsible for the human suffering caused by the conflict.

According to the WMA statement on the cooperation of national medical associations during or in the aftermath of conflicts all national medical associations and their members have an obligation to uphold the ethos of medicine, to demonstrate absolute forthrightness and honesty in confronting historical and ongoing national conflicts, as well as to preserve the lessons gleaned from all forms of unethical behavior. This includes maintaining a clear commitment to human rights, explicitly rejecting racial, religious, gender, sexual orientation and any other forms of discrimination and actively confronting moral failures of the medical profession [16].

In 1912, the International Pharmaceutical Federation was founded – the World Federation of National Pharmaceutical (Scientific) Associations. It is designed to represent the interests of pharmacy and pharmaceutical science throughout the world. The International Pharmaceutical Organization has the status of a non-governmental organization [18; 19], which cooperates with WHO [20]. The organization holds annual congresses, considering current issues in the field of pharmacy (Internet pharmacy, etc.).

Member companies of the Health Care Committee of the European Business Association continue to support the health care system of Ukraine, providing humanitarian aid to patients of Ukraine with vital medicines and medical products, as well as providing financial assistance to charitable organizations and international funds.

Since the beginning of the military aggression of the Russian Federation against Ukraine, pharmaceutical companies of the Association Committee, namely: Abbott, AbbVie, Adamed, Alcon, Arterium, Astellas, AstraZeneca, Bausch Health, Bayer, Berlin-Chemie, BMT Medical Technology s.r.o.,

Boehringer Ingelheim, Darnitsa, Egis , Farmak, Fresenius Medical Care, Gedeon Richter, GSK, Glenmark, Johnson & Johnson, MSD, Novartis, Orion Pharma, Pfizer, Philips, Polpharma, Reckitt Benckiser, Recordati, Roche, Sandoz, Sanofi, Santen, Servier, Takeda, Teva, USB, Wörwag Pharma provided assistance to Ukraine in the amount of about 234 million US dollars, which is more than 8 billion 659 million hryvnias [17].

In 1980, the Section of laboratories and drug control services was created, which is designed, in particular, to determine the principles of quality assurance of medicinal products, to investigate their quality, and to exchange information on issues of quality assurance control. Thus, as a result of studies of such generic drugs as glibenclamide, carbamazepine, prednisone, phenytoin, furosemide, differences in their solubility (in vitro) were established, which indicates the risks of their absorption. This information was distributed among all countries of the world [15].

In 1950, the World Psychiatric Association was founded, which is designed, among other things, to expand the knowledge and skills necessary for work in the field of mental health, to contribute to the improvement of care for mentally ill persons, to carry out the prevention of mental disorders, to protect the rights of mentally ill people, to promote the development and to observe the highest ethical standards and quality standards when conducting research and providing psychiatric care, to promote compliance with the principle of non-discrimination when providing care to the mentally ill, to protect the rights of psychiatrists.

Although initially the World Psychiatric Association was created to hold world psychiatric congresses once every three years, later its activities expanded and began to include: conducting regional meetings, improving the quality of training of specialists, developing and adopting ethical, scientific and therapeutic standards in the field of psychiatry. Thus, the World Psychiatric Association participated in the implementation of the code of professional ethics for psychiatrists. To overcome the severe consequences of stigma and discrimination associated with schizophrenia, the World Psychiatric Association initiated the launch of the global program «Open-the-Doors» (1996). In 2005, the Stigma and Mental Health Section of the Organization was established [15].

Therefore, the international cooperation of states in the field of health care is a complex of legal means and institutions that the subjects of international public law – states – use to achieve common goals in the field of health care, which is implemented in the forms of multilateral and bilateral participation and is carried out in accordance with generally recognized principles and norms of international law. It can be carried out with the participation of both states and international intergovernmental organizations, but not international public organizations.

The subject of international legal relations in the field of health care can only be that international organization that is endowed by its member states with special competence, defined in its charter. The term «international intergovernmental organization» is not synonymous with the term «international public organization».

The participation of non-governmental legal entities in activities in the field of health care does not contradict the norms of international law, however, they are not subjects of international legal relations in the field of health care, because they are not endowed by the states with special competence, which would be determined in their statute.

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THE MOST COMMON ICONOGRAPHIC PLOTS OF V.M. VASNETSOV IN THE PROGRAMS OF PAINTING ORTHODOX CHURCHES IN THE EAST OF UKRAINE AT THE END OF THE 20th – BEGINNING OF THE 21st CENTURY

Khlystun Yuliia[1]

Annotation. The painting of St. Vladimir's Cathedral in Kyiv, which appeared in the late 19th century thanks to the work of the outstanding artist V.M. Vasnetsov, served as the beginning of a new trend in religious art, more precisely, in monumental church painting. Creating new compositions, the artist was based on texts from the Holy Scriptures. The motives of V.M. Vasnetsov also played an important role in the design of Orthodox churches in the East of Ukraine, painted in the late XX – early XXI century, that is, in the historical period after the celebration of the 1000th anniversary of the Baptism of Rus'.

The purpose of the work is to determine the most common iconographic scenes (created by V.M. Vasnetsov) in Orthodox churches in the east of Ukraine, as well as the reasons that incline designers and customers of church painting to such a choice.

Methods: iconographic, iconological, cultural, hermeneutical, historical-comparative, observational, analysis and synthesis, semiotic.

Results. The most widespread plots were "The Last Judgment", "The Crucified Jesus Christ" and "The God of Hosts", written in 1885–1896 for the Kyiv Vladimir Cathedral (to the 900th anniversary of the Baptism of Rus'). The "Last Judgment" is depicted on the western wall, the plots "The Crucified Jesus Christ" and "God Sabaoth" are most often located in the vaults of the central and lateral parts of the temple. Nevertheless, among the works of V. Vasnetsov there are also plots that have not aroused interest among modern masters and customers of painting: for example, the compositions "The Bliss of Paradise", "The Temptation of Eve". The reason for "ignoring" these plots is most likely that these works are

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closest in style to paintings on religious themes, but not to icon art and are completely far from icon painting canons.

Conclusions. One of the reasons for the wide distribution of Vasnetsov's motifs at the end of the 20th century is the availability of these subjects for reproduction by secular artists, not icon painters, who are unfamiliar with the canons of the classical Byzantine icon painting style. Most of the Orthodox churches built and restored during this historical period were painted by such masters. Therefore, the use of plots by V.M. Vasnetsov is typical for Orthodox churches, painted in whole or in part in the style of academic painting. The inclusion of these plots in the program of church painting often does not imply compositional unity with all other plots, and often they stand out against the general background. Common to most of Vasnetsov's stories is the perception of time. Even in complex iconographic compositions, time is instantaneous, that is, the events depicted occur simultaneously, which gives the plots greater richness and even tension.

Key words: Vasnetsov, monumental church painting, church painting program, church art, Orthodox church, iconography, iconographic plot.

Analyzing the features of the painting of Orthodox churches in the east of Ukraine at the end of the 20th – beginning of the 21st century, one cannot ignore the widespread use of the plots of the artist Viktor Mikhailovich Vasnetsov in monumental church painting. Iconographic compositions, created by the master as early as the end of the 19th century, began to be actively embodied in church painting: somewhere only individual plots were included, and in some churches even the painting program for St. Vladimir's Cathedral in Kyiv, painted by V. Vasnetsov, was reflected quite fully.

One of these churches is the church in honor of the Nativity of the Most Holy Theotokos, located in the village of Novoekonomicheskoye, Pokrovsky district, Donetsk region, which was painted in the period from 1999 to 2004 by icon painter Anatoly Boyko under the rector of the church, Archpriest Alexander Nikolaev (customer of the painting). The temple was built at the beginning of the 20th century (1906–1911) in the neo-Byzantine style, the most common in the sacred architecture of the Art Nouveau era, and almost until the end of the century it remained without painting.

Since the interior of the temple is one of the most important factors influencing the formation of its painting program, the architectural decision in favor of the Byzantine (neo-Byzantine) style was not taken by chance. Like the St. Sophia Cathedral in Constantinople, which later became a symbol of Byzantine architecture, in the Church of the Nativity of the Most Holy Theotokos, the main load-bearing elements of the entire building are four powerful semicircular elevated arches, on which the drum and dome of the temple rest, connecting the circumference of the drum of the dome with the main volume of the building cruciform in plan. This provides the effect of increasing space. The originality and solidity of this architectural system is also facilitated by the uniform distribution of the entire mass of the dome and the drum due to the "sails" – triangular segments formed by connecting the arches and the circumference of the drum. The Church of the Nativity of the Blessed Virgin Mary is three-aisled, like the Vladimir Cathedral in Kyiv (Fig. 1).

Fig.1. The interior of the Church of the Nativity of the Blessed Virgin in the village of Novoekonomicheskoye. Photo by Timofey Cherepanov. https://sobory.ru/pic/05100/05113_20150104_130718.jpg

Despite the fact that the church was painted at the beginning of the 21st century, the chosen program for painting this church is typical for Orthodox churches painted at the beginning of the 20th century, the model for which was St. Vladimir's Cathedral in Kyiv. What elements in the painting programs of these two temples coincide? First of all, it is the painting of the dome, drum belt, sails, vaults of the central parts of temples. In the dome of the temple is written "The Lord Almighty" or "Pantocrator", made according to the sketch of V. Vasnetsov (Fig. 2).

Fig. 2. Painting of the under-dome space of the Church of the Nativity of the Blessed Virgin Mary. Photo by Timofey Cherepanov. https://sobory.ru/pic/05100/05113_20150104_130753.jpg

"The Lord Almighty" blesses with his right hand, and in his left hand he holds an open Gospel with the text: «Аз есмь свет миру. Ходяй по мне, не имать ходити во тьме, но имать свет животный» (John 13–46). The Savior is depicted against the background of the starry sky, referring to the events of the Nativity of Christ and the Second Coming of Christ. The face of the "Pantokrator" by V. Vasnetsov is comparable to the mosaic images in the St. Sophia Cathedral in Kiev (2nd half of the 13th century) and the Chora Monastery (14th century) in Constantinople.

The belt of the drum is divided into four equal parts by the image of a cross in a medallion, three of them (northeast, southeast and southwest) are occupied by the three-part composition "Joy of the righteous in the Lord. The Threshold of Paradise", which is a reproduction of the painting on the drum of the Vladimir Cathedral, the fourth (north-western) part depicts a composition with many people accompanied by angels, complementing the plot. Most likely, the inclusion of the fourth plot in the painting of the drum is due to its diameter (since it significantly exceeds the diameter of the drum of the Vladimir Cathedral in Kyiv). The painting of the drum is replete with ornaments and images of angelic forces.

The sails of the temple depict the Apostles Matthew, Mark, Luke and John, who spread the Gospel teaching throughout the world (respectively, to the 4 cardinal points) and their apocalyptic symbols, mentioned in the book of Revelation of John the Theologian (angel, lion, calf, eagle), which here also reproduced according to the samples of V.M. Vasnetsov.In the vaults of the central part of the temple, the compositions "God Sabaoth", "Crucified Jesus Christ", scenes of the passionate cycle are depicted (Fig. 3).

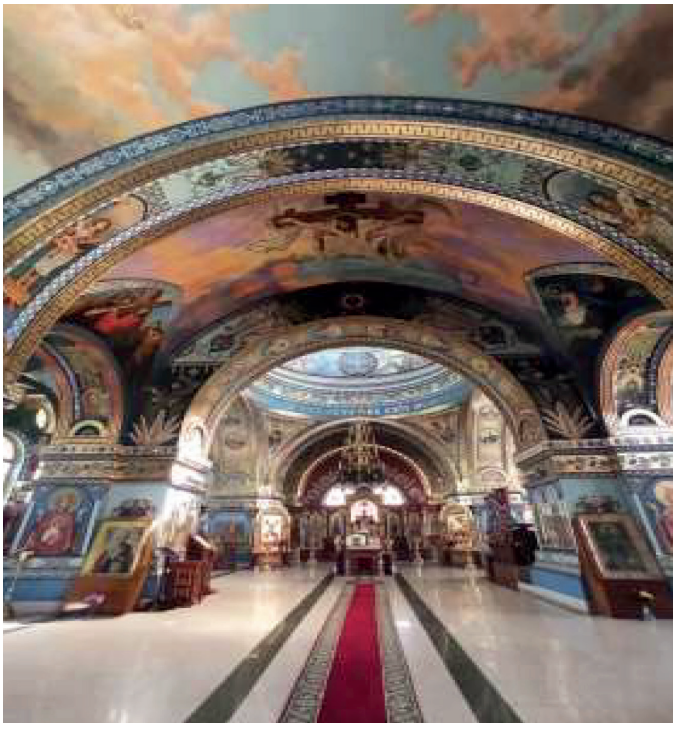

Fig. 3.
The interior of the Church of the Nativity of the Blessed Virgin Mary. Photo by Priest Oleg Kruchinin

The painting program of the temple includes images of holidays, saints (in medallions and in full growth). The lower tier of the painting (mainly on the columns) is occupied by the most revered images of the Blessed Virgin Mary ("The Sign", "Kazanskaya", "Indestructible Wall", etc.), which is probably due to the artist's desire to emphasize the dedication of the temple (Fig. 4).

Figure 4. The interior of the Church of the Nativity of the Blessed Virgin in the village of Novoekonomicheskoye. Photo by Priest Oleg Kruchinin

This church painting program corresponds to the ancient patterns of building a painting program, mentioned, for example, in one of the sermons of Patriarch Photius of Constantinople (in the middle of the 9th century), where he described the painting of a new church built during his reign in the imperial palace. According to this description, Christ the Almighty was depicted in the dome in a medallion surrounded by archangels. In the temple there were numerous images of saints: forefathers, prophets, apostles and martyrs [2].

It should be noted that the proposed painting program corresponds to the three-part division of the internal space of the temple into the "mountainous" one, which includes the space of the dome, drum and conch of the apse, the "Holy Land" (or Paradise), which includes the register of sails, sometimes the upper part of the walls, and as in this example – the lower area of the drum, and the "longitudinal", corresponding to the zones of the central and lower parts of the walls and columns.

In the program of painting the considered temple of the Nativity of the Blessed Virgin Mary, the plot is "Joy of the righteous in the Lord. The Threshold of Paradise" occupies a special place, since it is written at the bottom of the drum, which quite accurately corresponds to "The Threshold of Paradise" in the inner space of an Eastern Christian church. The composition "The Threshold of Paradise" (you can also find the name "At the Gates of Paradise") is the author's interpretation of the plot "the souls of the righteous at the gates of Paradise" (an episode from the "Apocalypse").

The basis for writing the plot "The joy of the righteous in the Lord. The threshold of paradise" most likely the following words from the book of Revelation of John the Theologian became: «After this I looked, and there before me was a great multitude that no one could count, from every nation, tribe, people and language, standing before the throne and before the Lamb. They were wearing white robes and were holding palm branches in their hands. And they cried out in a loud voice: "Salvation belongs to our God, who sits on the throne, and to the Lamb". All the angels were standing around the throne and around the elders and the four living creatures. They fell down on their faces before the throne and worshiped God, saying: "Amen! Praise and glory and wisdom and thanks and honor and power and strength be to our God for ever and ever. Amen!"» (Rev. 7:9–12). This composition represents a multitude of righteous people flying across the heavens to the golden Heavenly City guarded by the archangels. They are located in the central (eastern) part of the composition, called "The Triumph of Angels".

Among the characters in this composition, it is easy to recognize the prudent thief, who, according to the Holy Scriptures, was the first to enter Paradise according to the promise of the Lord "Today you will be with Me in Paradise" (Luke 23: 43). He is depicted walking ahead of others and carrying a cross, since he was crucified on the cross at the "right hand" of the Savior. He is followed by the forefathers Adam and Eve, along with their son Abel, raising his hands to heaven. In the same part of the composition, the king, the prophet and psalmist David, is depicted.

In the foreground is also depicted one of the Myrrh-bearing Women, the Holy Equal-to-the-Apostles Mary Magdalene with a vessel in her hands, and the Reverend Mary of Egypt, who can be recognized by her long gray hair. Then they are followed by the holy martyrs Faith, Hope, Love and Sophia, accompanied by a flying angel.

On the right side of the composition, the Holy Great Martyrs Catherine and Barbara, surrounded by angels, are the central characters. Recognizable here are the Holy Equal-to-the-Apostles Prince Vladimir and the Holy Equal-to-the-Apostles Princess Olga, the Holy Princes Passion-bearers Boris and Gleb, followed by a host of righteous people. That is, in this iconographic plot, V.M. Vasnetsov included mainly especially revered saints in Kyiv.

A special place in this composition is occupied by the image of the Holy Great Martyr Catherine. S.P. spoke about this image in this way. Bartenev: "You can't tear yourself away from this face. And the more you look, the stronger this inexplicable peace enters the heart, the premonition of such bliss, the words of which we do not have here on earth. Whoever heard the adagio of Beethoven's Ninth Symphony and strongly feels the music will understand this state of mind, embracing the chest with an inexpressible languor of unknown bliss. And what are earthly torments in comparison with what awaits us, with this endless spiritual joy" [5].

In the image of the Holy Great Martyr Catherine, one can notice an interesting artistic device: she does not seem to see the angel accompanying her, because her gaze is directed further, through him, to the gates of heaven, but she is horrified by the love of God.

Despite the fact that the composition "At the Gates of Heaven" is three-part and rather complex, the time in it is simultaneous. The composition is read all at once in the simultaneity of its meanings and does not imply a phased reading of events and following a certain route.

The images are characterized by movement and emotionality, which are characteristic of Western Christian monumental church art. E. N. Trubetskoy's review of the painting "The Joy of the Righteous in the Lord. Paradise gate." In his work "Speculation in Colors," he wrote the following: "In Vasnetsov, the flight of the righteous to paradise has an overly natural character of physical movement: the righteous rush to paradise not only with their thoughts, but with their whole body; this, as well as the painfully hysterical expression of some faces, gives the whole image that character that is too realistic for a temple, which weakens the impression" [4].

One of the plots of the Passion cycle "The Crucified Jesus Christ", which is a copy of the plot of the same name of the Kyiv Vladimir Cathedral, is written in the vault of the central part of the Church of the Nativity of the Blessed Virgin Mary (Fig. 3). This is one of the unique compositions of V. Vasnetsov, conveying the greatness of the Cross Sacrifice, as well as sorrow for the crucified Savior in the heavenly world.

It should be noted that Viktor Vasnetsov created a separate Passion cycle in a unique iconographic style, which became a kind of standard peak of religious and aesthetic ideals of his time. His mosaics on the theme of the crucifixion of Jesus Christ, the carrying and removal from the cross, the Descent into Hell, the famous fresco "The Joy of the Righteous in the Lord" are the greatest heritage of the religious painting of the Orthodox Church.

In addition, in the work of V.M. Vasnetsov, who tried to combine the Eastern Christian and Western Christian icon-painting traditions in his religious painting, clearly reflected the desire for a synthesis of arts, which in the last two decades of the 19th century and the first decade of the 20th century was considered one of the ideals of the then dominant Art Nouveau style.

The painting of the Church of the Nativity of the Blessed Virgin Mary in the village of Novoekonomicheskoye surprisingly corresponds to the nature of the era of its creation, iconographic plots form a compositional unity in the painting program.

Some scenes, made according to the samples of V. M. Vasnetsov, are included in the painting of other Orthodox churches in the East of Ukraine. For example, the painting program of St. Vladimir's Church in the city of Pokrovsk, Donetsk region, includes large compositions "The Baptism of Rus'" and "The Baptism of Prince Vladimir" (on the southern wall), as well as the image of St. Olga reproduced according to sketches by V.M. Vasnetsov (in the early 2000s), which quite clearly reflects the dedication of the temple and illustrates the most important events in church history.

An important fact for the analysis of Vasnetsov's plots is that the construction and painting of the Kyiv St. Vladimir's Cathedral (in the second half of the 19th century), for the painting of which V. M. Vasnetsov was invited, were timed to coincide with the date of the 900th anniversary of the Baptism of Rus'. The cathe-

dral was supposed to appear as a monument of spiritual history, and the painting program, compiled by A. Prakhov with the participation of V. Vasnetsov, had an educational character and aimed to reveal the spiritual greatness of Kievan Rus.

Before starting to paint the walls of the cathedral, the artist Viktor Mikhailovich Vasnetsov visited Italy, where he studied the best examples of Renaissance masters: Michelangelo, Raphael, Veronese, Titian, as well as the mosaics of Ravenna. After that, while already in Kyiv, in 1885, he studied the mosaics and frescoes of the Hagia Sophia and the St. Michael's Golden-Domed Monastery, which significantly influenced the formation of his own style, and then the features of the entire direction of academic painting in monumental church art. So, for example, one of the characteristic features of the artist's works is the exaggeratedly huge, emphatically expressive eyes of all the characters without exception.

The plots "The Last Judgment", "The Crucified Jesus Christ", "God Sabaoth", based on the samples of V. M. Vasnetsov, were used in the painting of the church of St. Basil the Great (Holy Assumption Nikolo-Vasilyevsky Monastery in the village of Nikolsky, Volnovakha District, Donetsk Region). Basil the Great Cathedral was built in 1912, destroyed by the Bolsheviks during the Soviet period, then was restored in the late 80s. The temple was painted in the period from the mid-1990s. to 2007. Various icon-painting styles were used in the painting of the temple, so the plots do not constitute a compositional unity.

The Last Judgment composition, painted on the western wall of St. Basil's Church, illustrates the last, universal Judgment of God over the world, which will take place at the second Coming of the Lord Jesus Christ (in this case, all dead people will be resurrected, and the living will change (1 Cor. 15:51- 52), and an eternal destiny will be determined for each according to his deeds (Mt. 25:31-46, 2 Cor. 5:10), words (Mt. 12:36) and thoughts.

This plot occupies the entire western wall of the temple, and traditionally combines large and small eschatology (the doctrine of the end of time). The upper part of the composition (large eschatology) depicts the triumph of the power of Jesus Christ, the lower (small eschatology) is designed to reveal the posthumous fate of the soul. The Savior is depicted holding the Gospel and the Cross in his hand. Next to him is the Mother of God and John the Baptist. In the center of the Last Judgment composition is an angel holding a scale in his hand. The bowls of the scales are located on the same level, but the viewer has the impression that either one or the other bowl is about to outweigh. On one side of the angel are sinners and hellfire, on the other – the righteous. Moreover, on both sides there are people of different classes: rich, poor, kings, clergymen. The artist sought to show that everyone is equal before God at the moment of truth. There will be a just decision for all people at the last hour. The red background of this part of the composition is associated not only with fire, but also symbolizes justice and judgment. Time in this plot is simultaneous: the iconographic composition is read all at once in the simultaneity of its meanings.

The space of the Last Judgment icon is revealed through a system of coordinates that is universal for such plots. The lower left corner (when viewed from inside the composition) symbolizes hell, sin and death; the top right symbolizes

paradise [1]. According to the author of this article, this system corresponds to the image of the Orthodox eight-pointed cross, in which one end of the diagonal line points to heaven at the top of the composition, to the right of the Savior, and the other to hell below, to the left. The vertical line of the cross corresponds to the image of an angel. The conditional horizontal line of the cross divides the composition into two parts, representing the major and minor eschatologies.

The compositions "The Crucified Jesus Christ" and "The God of Sabaoth" are written in the upper part, in the vault of the central part of the Basil the Great Cathedral near the western wall. The plot of "The God of Hosts" illustrates the creator of the world in the form of an ancient majestic old man with white hair and a gray beard, surrounded by heavenly forces. White hair in iconography is a symbol of wisdom and omniscience. He is also recognizable by a halo with a six-pointed star of David. The pink color of the angel wings contrasts with the dark sky. The Holy Spirit is depicted on the elder's chest in the form of a flying white dove.

The painting of the mentioned plots was made by Schema-Archimandrite Alipiy (Bondarenko), icon painter and rector of the monastery from 2004 to 2013. To date, the painting has not been preserved, since the temple was destroyed by Russian invaders on March 13, 2022.

Iconographic compositions based on the motives of V. Vasnetsov "The Only Begotten Son, the Word of God", "The Crucified Jesus Christ" and "The God of Sabaoth" are also present in the painting of the "mountains" of the church of St. Nicholas the Wonderworker in the village of Nikolsky, Donetsk region. The temple was built in 1911. The interior of the temple is a cross. The plot "The Only Begotten Son, the Word of God" is written in the vault of the northern part of this cross and illustrates Jesus Christ in adolescence with a cross and a scroll in his hands, surrounded by an eagle, a lion, a calf and an angel, symbolizing the evangelists. The plot "Crucified Jesus Christ" is located in the vault on the south side, "God Sabaoth" is written in the vault of the central part of the temple. The temple was painted in the early 2000s by a group of icon painters from western Ukraine (the Lviv icon painting school). Schema-Archimandrite Alipiy (Bondarenko) was the customer for the painting.

The motives of V. Vasnetsov are found in the program of painting the Holy Trinity Cathedral in Kramatorsk, which was painted in 2004–2007 by the icon painter Vyacheslav Mikhailovich Pashkovsky. The customer for the painting was Archpriest John Ustimenko. These are the plots "The Lord Almighty" in the dome of the temple, the compositions "God Sabaoth", "The Crucified Jesus Christ" located in the vault of the western part of the temple, the images of the evangelists Matthew, Mark, Luke and John, located on the 4 sides of the naos. It should be noted that such an architectural element as sails is absent in this temple, and the domed skuf of the temple forms at the base not a circle, but an octahedron, in which eight twelve feasts are depicted, among which the Trinity occupies a central place on the eastern side.

The plot "Crucified Jesus Christ" is present in the painting of the "high" of the Exaltation of the Cross Church in Severodonetsk (located in the village of Lesnaya Dacha) – in the vault of the central part of the temple. The temple was built in

the early 2000s and painted in the next few years. It should be noted that the color scheme of this composition differs from the traditional one: lighter tones are used here, which prevail in the painting of the rest of the temple. Unfortunately, during the hostilities in the spring of 2022, the temple was significantly damaged.

In some churches, the composition "The Last Judgment" is partially presented: for example, in the Church of the Holy Great Martyr Panteleimon in Kharkov (painted in 2019–2021), only the upper part of the plot is presented on the western wall above the choirs, reflecting a great eschatology (the triumph of the power of the Savior).

The famous image of the Mother of God with the Child by V. M. Vasnetsov, which adorns the altar wall of the Kyiv Vladimir Cathedral, is found in the interior decoration of the central part of the church in honor of the Holy Spirit in the city of Slavyansk, Donetsk region, built in 2007. However, this image cannot be completely attributed to monumental church painting, since it is made on canvas and enclosed in a wooden frame. The Mother of God painted by Vasnetsov became one of the most beloved images immediately after the consecration of the Kyiv Cathedral, its reproductions could be found in many Orthodox churches of the early twentieth century. It is this composition that is considered the best church work of the famous master.

Conclusions.

Iconographic plots by V. M. Vasnetsov played an important role in the design of Orthodox churches in the East of Ukraine, painted in the late 20th and early 21st centuries. Most of the master artists, as well as the customers of the mural, at that time did not have experience in compiling mural programs and borrowed these programs in whole or in part from the surviving temples of the past and the century before last.

One of the reasons for the wide dissemination of Vasnetsov's motifs at the end of the 20th century is also the availability of these subjects for reproduction by secular artists who are not icon painters, who are unfamiliar with the canons of the classical Byzantine icon painting style. However, most of the Orthodox churches built and restored during this historical period were painted by such masters. Therefore, the use of plots by V. M. Vasnetsov is typical for Orthodox churches, painted in whole or in part in the style of academic painting. The inclusion of these plots in the program of church painting often does not imply compositional unity with all other plots, so that they often stand out against the general background.

Common to most of Vasnetsov's plots is the perception of time: even in complex iconographic compositions, time is instantaneous, that is, the events depicted occur simultaneously, which gives the plots greater richness and even tension.

His works largely corresponded to the spiritual needs of that era: on the one hand, originality and a new look at religious subjects, on the other hand, it was not a departure for free creativity, some traditions of icon painting in his paintings, albeit partially, were preserved.

The most widespread plots were "The Last Judgment", "The Crucified Jesus Christ" and "The God of Hosts", which were written in 1885–1896 for the Kyiv Vladimir Cathedral (to the 900th anniversary of the Baptism of Rus'). The "Last

Judgment" is depicted on the western wall, the plots "The Crucified Jesus Christ" and "God Sabaoth" are most often located in the vaults of the central and lateral parts of the temple.

Sufficiently high level of skill in performing the mentioned compositions was demonstrated by artists from different regions of Ukraine. Nevertheless, among the works of V. Vasnetsov there are also plots that have not aroused interest among modern masters and customers of painting: for example, the compositions "The Bliss of Paradise", "The Temptation of Eve". The reason for "ignoring" these plots is most likely that these works are closest in style to paintings on religious themes, but not to icon art and are completely far from icon painting canons.

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HUMAN RIGHTS BEYOND THE IRON CURTAIN: CONCEPTION OF SOVEREIGNITY AND INTERNATIONAL LAW

Napolitano Marianna[1]

Annotation. The aim of this analysis is exploring the relationship of the Soviet Union first and of the Russian Federation then with European and international human rights norms. It aims to explain the reasons for the delay in the reception and application of this jurisprudence in the Russian system of laws, the reasons why analyzing Russia's relationship with them means considering the concept of sovereignty and the role of the state and the church in promoting and defending it. The analysis is conducted from a political and historical perspective and traces Russia's relation with major international human rights conventions from the Soviet Union to the beginning of Vladimir Putin's third term (2012). Central turns out to be the concepts of *multiple modernities* and of *multiple moralities* according to which the values system of a country develops in close relation to its history and culture. Talking about the recognition of human rights in Russia indeed means also considering the significance of the defense of so-called traditional values, their connection with the real heritage of the Soviet past, and that with tradition understood as *predanje* as well as it interests the heritage of the Christian tradition. In fact it is in this defense of the country's history that the state and the church built their new relationship after the end of the Soviet Union. Proceeding from the idea of parallel trajectories in the process of modernization, which implies that not to all modernities can be applied the same model, it seems important to wonder what is the result of the encounter between the normative principles of these other cultural programs and the potentially universal normative principles of the Western model.

Key words: Soviet Union; Russia; human rights; Europe; sovereignty; State; Church.

Introduction.

"Can one imagine that human rights are subject to differing levels of protection depending on the extent to which a particular state has agreed to follow international humanitarian standards? If so, does this not undermine the very idea of

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human rights as *supra-statutory* law standing above state laws, the discretion of the state government, and the shield of sovereignty?" (Antonov, 2014). This analysis will try to answer to this question. Referring to the *Universal Declaration of Human Rights* (1948) would undoubtedly mean to provide an affirmative answer, however the case of Russia allows for a critical development of this question. It calls for a reflection on the influence of Western culture in defining rights that are enshrined internationally and on the reasons why in order to understand what modernity means in relation to the Russian context, it is necessary to consider the synthesis of human rights protection and sovereign democracy.

The expression *sovereign democracy* is first used by V. Surkov and it seems that V. Putin never explicitly referred to it to qualify the Russian political system. But talking about democracy in Russia means understanding what the expressions managed democracy and sovereign democracy indicate and how they can be reconciled with what is the liberal conception of democracy. "Human rights are no longer considered an exclusively domestic affair, as before World War I, and have led to frequent diplomatic interventions by states or protests by international organizations which no longer can be blocked by the state concerned with the shield of domestic affairs" (Steinberger, 2000 in Antonov, 2014). Indeed the theory of *multiple moralities* (Zigon, 2011) allow us to reflect also on the central role that religion acquired in the post-soviet social arenas in which took place the struggle to articulate an acceptable notions of morality to better grasp the complicated period Russia experienced from an ethical perspective. In my opinion this concerns both the pre-soviet and the soviet inheritance, both did contributed to shape the system of values in post-soviet Russia. The Russian Orthodox Church has been an integral part of Russian life for centuries, and in the post-soviet period it has been establishing itself as one of the most influential cultural institutions in Russia. Nevertheless, after the fall of the Soviet Union there has been not only a rapid restoration of that kind of morality we can define religious, but also a precipitous opening of former Soviet lands to all kinds of other morality. This sort of dichotomy is perfectly reflected in the dualism, "moral ab extra and moral ab intra (Stepanova, 2019). It calls in questions, both the duty of the Russian Orthodox Church as promoter of a moral agenda both inside and outside Russia and the opposition of citizens, who claim their right for moral freedom.

Literature Review

Since the end of the Cold War and the dissolution of the Soviet bloc, Russia has shown a strong commitment to implement norms consistent with respect for rule of law, multi-party democracy and protection of individual human rights. This commitment is evidenced by accession to the *Council of Europe* (1996), by the ratification of the *Convention on Human Rights* (1998), and by the *Constitution* promulgated in 1993, whose democratic aspirations, despite the controversial circumstances under which it was adopted, nevertheless appear to be beyond question (Antonov, 2014; Bowring, 2009). These steps toward the implementation of European human rights instruments might suggest Russia's acceptance of the European and international conception of law and conception of human rights. A confirmation seems to be traceable in D. Medvedev's inaugural speech, which highlighted the value of respecting human rights and fundamental freedoms as they "deter-

mine the sense and the substance of all state policy." These commitments were in response to the need felt by Putin himself, who in 2000, had not only referred to the much opposed dictatorship of law, but had raised the need to renew Russia's commitment as a member country of the *Council of Europe* (CoE) (Preclik, 2012). Preclik himself noted that Russia finds itself having to actively participate in the promotion of the international human rights regime in order to legitimize itself in the area of liberal countries (Preclik, 2012), but that these aspirations must be reconciled with conservatism and the preservation of sovereignty, which also characterize Russian politics (Antonov, 2014). Indeed, Russia is often perceived, even in the *Council of Europe*, as an obstacle to the general conduct of its activities, an autocracy and a country strongly bent on the violation of human rights. However, this Eurocentric perspective must be analyzed by reference to the Russian perception that a kind of Russophobia exists in the West. The result is a situation that could be considered paradoxical: Russia finds itself having to actively participate in the promotion of the international human rights regime in order to gain the recognition of a legitimization in the area of liberal countries, but these aspirations must be reconciled with conservatism and the preservation of sovereignty, which also characterize Russian policy. In addition to a reflection on the respect for human rights in the Russian Federation (Pomeranz, 2012; Saari, 2010; Paneyakh, 2010; Henry, 2009, Valdai, 2013), it is therefore important to consider the interplay between the country's history, its cultural system, its identity, and its conception of human rights (Leustean 2002; Stoeckl, 2010; Stoeckl 2011; Annicchino, 2018; Agadjanian, 2017; Stepanova 2019).

Methods.

The discussion conducted in the following pages refers to the years after the collapse of the Soviet Union and considers the period of the Putin and Medvedev's government and of Aleksii and Kirill's patriarchate. It is conducted by examining the secondary literature related to the recognition (and non-recognition) of human rights in the Russian Federation and the country's adaptation to European and international human rights legislation. The discourse is related to the process of modernization of the country that would begin with the end of the USSR (the end of history[1]) which showed that the only model of development, in economic and social terms was the western one, and to the discussion of this principle that emerges in the theory of *multiple modernities* and *multiple moralities*, and in the theory of the Russian Orthodox Church as moral norm entrepreneur[2] (Stoeckl, 2016). Indeed, although this analysis is conducted from a political and historical perspective, it is underpinned by the assumption that in post-Soviet Russia, the church recovered the role it had historically played in the country as a landmark institution and did contribute to define the agenda of moral values that the country must promote and defend in collaboration with the Kremlin.

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[1] Fukuyama Francis, *La fine della storia e l'ultimo uomo*, Rizzoli, Milano, 1992.

[2] "Norm entrepreneurs 'create' norms by calling attention to issues that hitherto have not been 'named, interpreted and dramatised' as norms". See: Stoeckl Kristina, *The Russian Orthodox Church as moral norm entrepreneur*, Religion, State&Society, 44:2, 2016, pp. 132–152.

Proceeding from the idea that all rights are universal, indivisible, interdependent, and despite "the significance of national and regional particularities and various historical, cultural and religious backgrounds, it is duty of the States, to promote and protect all human rights and fundamental freedoms" (United Nations General Assembly, 1993 in Preclik, 2012). The problem is the tendency not to recognize the link between the conception of human rights and their relation to a particular cultural system, a recognition that is not an expression of cultural relativism, but one that challenges the claim of universality of both human rights and international law. Russia, from this perspective, is the perfect exemplification of the fact that human rights must be studied as a practical discourse, as a local response to locally perceived threats. Thus, it is possible to argue that the attitude of the Russian Federation is, on one hand, of securitization due to the numerous Strasbourg Court (or *ECHR*) cases against the country, in clear contradiction to solemn declarations of order, prosperity and law, promoted by Putin's regime (Preclik, 2012) and, on the other hand, that of the rejection of deconstruction of sovereignty. This concept has been analyzed in close connection with the concept of globalization, and thus raises questions in relation to the synthesis between Russian system of values and international norms. The ambiguity was resolved by the constitution adopted in 1993, in with article 15 emphasizing that the norms of international treaties and international law were to be regarded as an integral part of the Russian legal system and that consequently if an international treaty entered into the Russian Federation provided for different norms than those provided for in Russian law, the norms enshrined in the international treaty were to prevail. A decree of the Supreme Court of the Russian Federation in 2003 also stipulated that in the event of conflict, judges should apply both sources of law and thus, both those of international law and domestic law. Formulation with only theoretical value in that international jurisprudence continued to serve as a supplement to domestic jurisprudence. This trend seems to find confirmation in a 2013 Supreme Court Decree. The difference with the previous decree was that this time ECHR jurisprudence was regarded as subsidiary. One of the main reasons must be precisely traced to the manifestation of Russia's desire to protect state sovereignty, that appeared undermined by the application of international jurisprudence as a primary source of law. Particularly in more recent years, debates on the issue of sovereignty have seen the confrontation between the Strasbourg Court, the Constitutional Court and the Supreme Court of the Russian Federation, and it is also from this confrontation that the present research develops.

Results.

Given the premises made above, it seems interesting to begin this analysis by referring to the debate on the Markin I (2012)[1], Magnitsky act (2012)[2], and Kudeshkina case (2009)[3]. Medvedev himself, then Prime Minister, pointed out that

[1] Case Of Konstantin Markin V. Russia, (*Application no. 30078/06)*, https://hudoc.echr.coe.int/ukr#{%22itemid%22:[%22001-109868%22]}, Accessed October 2022.

[2] The Magnitsky Act At Five, 14-12-2017, https://www.csce.gov/international-impact/events/magnitsky-act-five, Accessed October 2022.

[3] Case Of Kudeshkina V. Russia, (Application No. 29492/05), Https://Hudoc.Echr.Coe.Int/Fre#{%22itemid%22:[%22001-91501%22]}, Accessed October 2022.

"we never handed over so much of Russia's sovereignty as to allow any international court or foreign tribunal to render decisions that would change our national law" (Medvedev, 2010 in Antonov, 2014). Thus, the promotion of human rights in Russia stood in a complex relationship with the principles of the rule of law and legal independence that are the essential components of human rights promotion in Western Europe.

The beginning of the history of Russian law can be placed in the 18th century and associated with the name of Desnisky[1], whose work cannot be considered the simple transposition into Russian society of Western liberalism, but as characterized by the struggle against the overpowering autocracy. Of particular note should be considered Alexander II's laws on the emancipation of serfs of 1861 and 1864. Indeed "between 1864 and 1906, Russia offered the example of a state unique in political history, where the judicial power was based on democratic principles, whereas the legislature and executive powers remained complexity autocratic" (Kucherov, 1992 in Bowring, 2009). Soviet Union showed big delay in ratifying the international human rights conventions, ratified in 1960 and 1970, and actively resisted the inclusion of human rights norms in the *Helsinki Final Act*, which was adopted in 1975 by the *Conference on Security and Cooperation in Europe* (Thomas, 2005). It is necessary to point out that the *Stalinist Constitution* approved on December 5, 1936, shortly after the USSR joined the League of Nations in 1934, although the class character of the rights enshrined, contained references to a number of fundamental rights. Chapter 7 of the *Constitution* promulgated by Brezhnev in 1977, entitled *Basic rights, freedoms and obligations of the citizens of the USSR* gave priority to economic and social rights: the implementation of these rights can be seen as one of the main sources of legitimacy of the Soviet state (Bowring, 2010). The transition to a true law-governed state was realised with Gorbacev (Bowring, 2009), whose political and social agenda recovered the desire for the inclusion of Europe's proclaimed human and social rights emerged in the 1970s. Of big significance was the implementation of reforms as: decentralization, glasnost, equality before the law, perestroika, democratization, and the priority of the human factor (Thomas, 2005). One of the first steps in this direction must be considered the creation of the *Committee for Constitutional Supervision* "with the goal of guaranteeing the strictest correspondence of laws and Governments decrees with the Constitution of the USSR" (XIX All Union Conference of the CPSU 1988 in Bowring 2009). Gorbachev saw Western Europe as a necessary resource for the modernization of the Soviet economy, and as the main reference in the project of building democratic socialism. An example was the commitment of the *Council of Europe* as a way of strengthening the protection of human rights in the Soviet Union (Thomas, 2005). The publication of the *Conception of judicial reform* in October 1991 and the promulgation in November of the same year of the *Declaration of the rights and freedoms of the person and citizen* by the Supreme Soviet of the RSFSR, the

[1] Desnitsky Semen, *The Study of Religion in Russia in the 18th – first half of the 20th cent.* Saint Petersburg State University, 2022, https://relstud-hist.spbu.ru/en/articles/en-desnickij-semen-efimovic, Accessed October 2022.

work of the Constitutional Court on the adoption of the law *On complaining the Court* about activities and decisions which violate the rights and freedoms of citizens in 1993 can be considered the most important steps along the Russian Federation's road to ratification of the *European Convention on Human Rights* (ECHR) on February 28, 1996. This path was certainly fraught with obstacles: these were the years of the suspension of the Constitutional Court in 1993 and the first Chechen war (1994–1996). The signing of the *ECHR* (CEDU) and other Council of Europe's treaties was consistent with the long list of commitments arranged by the Parliamentary Assembly of the Council of Europe (PACE) in 1996 (the Convention entered into force in 1998). "To sign within one year and ratify within three years from the time of accession, *Protocol No. 6 to the European Convention* on human rights, on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession" were among the most important obligations brought forward by President Yeltsin, who issued a decree on May 16, 1996, according to which the government should, within one month, submit a law on the ratification of *Protocol No. 6* to the State Duma[1] (Bowring, 2009). The first Chechen war had a devastating impact on the human rights situation in Russia; it caused the postponement of the signing of an *Interim Agreement on Trade*, part of a broader *Agreement on Partnership and Cooperation with Russia*. New concerns emerged with the outbreak of the Second Chechen War (1999–2009): in 1999 the Council promulgated the *Declaration on Chechnya*, which contained threats of sanctions against Russia (Saari, 2010). Certainly worthy of attention were the controversial amendments to the laws *On the Constitutional Court*, *On the judicial system of the Russian Federation* and *On the Status of judges in the Russian Federation*, in which the CoE played a role of a major input. The final phase of the reform project coincided with the Yukos affair and Khodorkovsky's arrest (2003), and with the beginning of the second conflict in Chechnya. The conclusion that Russia's attitude appeared to be inadequate with respect to its obligations under the CoE and under Article 52 of the Convention (Bàn 2009 in Bowring 2009) was therefore hardly surprising. Starting in 2004 Russia was the subject of multiple convictions by the Strasbourg Court: Gusinskiy v Russia (2004)[2], Ilascu and others v Moldova (2004)[3] and Russia Shamayev and 12 others v Russia and Georgia (2005)[4], represent the main examples. In 2006 there were 102 prosecutions against Russia in the Court; in 2007 cases against the Russian Federation made

[1] the approval for ratification was denied not only then but also at a later date, in August 1999. The issue later found an indirect resolution through the intervention of the Constitutional Court.

[2] Case Of Gusinskiy V. Russia (Application No. 70276/01), https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22\%22CASE%20OF%20GUSINSKIY%20v.%20RUSSIA\%22%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-61767%22]}, Accessed October 2022.

[3] Ilaşcu and Others v. Moldova and Russia [GC] - 48787/99 (Judgment 8.7.2004 [GC]), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-4244%22]}, Accessed October 2022.

[4] Shamayev and Others v. Georgia and Russia - 36378/02 (Judgment 12.4.2005 [Section II]), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-3916%22]}, Accessed October 2022.

up 21.5% of those engaging the Strasbourg Court. The reaction to this series of convictions was the country's refusal to ratify *Protocol No. 14* aimed to the simplification of the Strasbourg decision-making process, whose ratification by all CoE member countries was a necessary condition for it to enter into force (Bowring, 2009). The policy pursued by Putin since 2000 was indeed a manifestation of his desire to strengthen state authority: in this sense must be read the action that from the very beginning marked his presidency, aimed at imposing on various holders of power such as businessmen, governors or NGOs, limits regarding the prerogatives they enjoyed, even those through which they could come into contact with each other. The realization of this goal thus passed through reforms but also through the use of force and intimidation. It is precisely for this reason that phenomena such as the extension of the prerogatives of the tax inspection or anti-money laundering services, as well as the increase in the power of information of an economic nature, must be considered in relation to the ambiguous relationship entered into from the beginning with the oligarch class (Favarel-Guarrigues, 2009). The situation worsened sharply in 2003-2004 when, two federal elections in the country, colorful revolutions in Georgia and Ukraine, and the Beslan massacre in North Ossetia reinforced the general conception of insecurity in the protection of rights in Russia. For this reason, the country decided to proceed with the so-called securitization of the issue of human rights and democracy. The greatest criticism was directed by the Russian Federation precisely at the OSCE and the Council of Europe: being questioned were not only the *Copenhagen criteria* relating to the need to hold free elections. In the case of the OSCE, it was pointed out that this organization applied a double standard in reference to Russia, in that it tended to consider only human rights violations occurring at east of Vienna (Saari, 2009). Indeed the introduction of the concept of sovereign democracy was intended to convey two simultaneous messages to Russian society. First, that Putin's was a party constituted by a sovereign elite whose source of legitimacy was in Russia and not in the West, as it was during the period of B. Yeltsin's guided democracy. Second, since it was a power holding legitimate force within the country, it was the guarantee of the preservation of Russia's sovereignty, and the survival of its power in a context characterized by globalization and other external threats. The constituent elements of this sovereign democracy seemed to recall the Orthodoxy-Autocracy-Narodnost link defined by Count S. Uvarov, Russian minister of education between 1830 and 1840. In fact it is possible to establish a parallel between autocracy and Surkov's concept of sovereignty, between the concept of *narodnost* and that of democracy (Okara, 2007).

Conclusions.

The analysis conducted above has shown that the discourse on human rights in Russia intersects two sets of problems. The relation of Russia's moral agenda with Western liberalism and the freedom of choice supported by it, and what can be analysed referring to the concept of moral norm entrepreneur and to the debate developed in post-soviet Russia which put under discussion western-Eurocentric approach to human rights. Talking about *multiple moralities* in today's Russia and on the struggle between "individual rights and freedom" and "traditional moral values" impose us to consider Russia's rela-

tion with the western modernity and with the secularism. Moreover it means defining a theoretical framework to grasp the "diverse understandings of the role of the secular in Russia and elsewhere in the Soviet Union as a result of a recasting the Soviet secularization" (Wanner, 2011), and to understand the double confrontation with secularism and religious pluralism, Russia has been experiencing since the fall of the Soviet Union. In my opinion the analysis on *multiple moralities* call in question the debate on *multiple modernities* and *multiple secularism* as a possible way to grasp the real meaning of the ralation between moral values and traditional values, and the one between secularism and the weakening of Christianity caused by the secular state, raised in Russia in particular by the Russian Orthodox Church which merely defend particular interests per se in her privileged relation with the Kremlin[1].

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[1] An example can be considered the document *The Basic Values: the Fundaments of National Unit* issued by the World Russian People's Council on May 26, 2011. See: Curanović Alicja, Leustean Lucian, *The Guardians of Traditional Values. Russian and the Russian Orthodox Church in the quest for Status*, Transatlantic Academy Paper Series No. 1. Washington, DC: Transatlantic Academy, 2015, pp. 1-26.

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ACCUMULATION OF SOCIAL CAPITAL AND CONSOLIDATION OF CIVIL SOCIETY IN THE CONDITIONS OF GREAT SOCIAL SHOCKS (EXPERIENCE OF UKRAINE IN THE RUSSIAN-UKRAINIAN WAR)

Nechitailo Iryna[1]

Annotation.

The article is devoted to the study of interrelated and interdependent processes of accumulation of social capital and consolidation of civil society. It is emphasized that the processes of social consolidation and cohesion play an important role in the strengthening of civil society, being both a prerequisite for the formation of such a society and a mechanism for its further functioning. The author notes that during significant social upheavals, social ties between individuals and groups can both deteriorate/weaken and improve/strengthen. According to the author, war is one of the most significant social upheavals. The example of Ukraine, which is currently at war with the Russian aggressor, proves the high resistance of Ukrainian society, as the ability to resist the enemy, which is largely based and supported by the functioning of public associations. The data of sociological researches are given, which testify in favor of the population consolidation during the war, value integration and crystallization of the civic identity, which is supported by the majority of Ukrainians. Analyzed and systematized forms of civic activity of Ukrainians, common both among those who are in Ukraine and among those who are in the EU countries. It is concluded that in the conditions of war, not only restoration takes place, but also the formation of numerous new connections and relations between citizens and their associations. The social capital of both individuals and groups, as well as the entire Ukrainian society, is being strengthened. This capital is not social and civic activity as such, it contains the resources and potential of such activity. Even if the active actions of citizens and social groops will decrease in certain periods of time, the acquired social capital will always serve as a factor of quick and effective cohesion, if necessary, because it has the property of remaining in the already accumulated volume for a fairly long period of time.

Key words: civil society, non-governmental (civil) organizations, social capital, social connections, self-organization, Russian-Ukrainian war.

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Introduction.

Actuality. In the development of civil society, the processes of social consolidation and cohesion play an important role, being both a prerequisite for the formation of such a society and a mechanism for its further functioning. Social consolidation and cohesion, in turn, are made possible by the presence of stable social connections and interactions between individuals and social groups, which are established and exist on the basis of trust, respect, mutual interest, etc. The special scientific literature uses the term "social capital" to denote such connections and interactions. It should be emphasized that during significant social upheavals, social ties between individuals and groups can both deteriorate/weaken and improve/strengthen. The experience of the COVID-19 pandemic has shown that society has suffered significant losses, including at the level of social capital. Forced social isolation, distance from work, student and other collectives, deterioration of health and financial situation, constant fear of illness, very aggressive confrontation between those who consider it necessary to wear masks and those who do not think so, those who consider it necessary to vaccinate and those who are against vaccinations, many disputes between people about whether to believe in the existence of the disease and so on and so forth, led to the weakening and deterioration of social connections and relationships, to a decrease in people's trust in each other, in government bodies, in the healthcare system [23].

One of the most significant social upheavals is war. As a rule, in its first phase, war consolidates society, unites its citizens in the face of a common disaster and a common enemy. However, with the further progress of the war, against the background of economic decline, constant emotional stress, physical and psychological exhaustion of the population majority, a quick burst of consolidation can be replaced by an equally quick drop in its level, which, of course, will not lead to strengthening and building up of social capital. Considering the above, this article is devoted to the study of interdependent processes of social capital accumulation and cohesion of civil society in the conditions of such a social upheaval as war (using the example of the Russian-Ukrainian war).

The methodological basis of the study. According to the Ukrainian researcher T. Ruda, "... social capital is one of the most effective tools of conscious citizens' self-organization, which involves the formation of mutual relations between them, based on trust and assistance" [17, p. 122]. According to M. Bondarenko, "the presence of social capital ... contributes to democratic development, while its absence, disunity inhibits the development of civil society" [1]. As Yu. Sereda writes, "...the development of social capital is considered as a "universal medicine" for overcoming the institutional crisis, considering it a necessary condition for the formation of dialogue between the government and the population, the formation of civil society and law" [18, p. 81]. In general, many scientists from different countries of the world adhere to a similar point of view (which is fully supported by the author of this article), asserting that the development of a democratic society, the basic values of which are statehood, the welfare of the population, national security, humanism, the ideals of freedom, equality of social chances and opportunities, a high level of personal responsibility and others, does not seem possible without a powerful social capital

(O. Girman, M. Hrytsaenko, O. Demkiv, I. Lazarenko, I. Karpova, and others) [5; 6; 9; 11; 14].

The unsolved part of the general problem to which the article is devoted. Against the background of increased interest in the phenomenon of social capital, important questions related to the study of the processes of social capitalization and the development of civil society in periods of great social upheavals, such as war, remain insufficiently developed and studied.

In view of the above, the purpose of this article is to investigate the processes of social capital accumulation and civil society cohesion in conditions of great social upheavals (using the example of Ukraine in the Russian-Ukrainian war).

Presentation of research results.

In general, all scientific interpretations of social capital can be differentiated into those that correlate with the micro-level of social interaction and those that reveal this concept in the context of macro-social relations [2, p. 240; 3, p. 100]. At the micro level of social interaction, social capital is a set of real and potential resources of an individual, to which it has access as a member of one or another social group (community, network, etc.) and which can be used to achieve personal goals (U. Baker, R. Barth, N. Lin, A. Portes, H. D. Flap, etc.). Macro-level interpretations of social capital are reflected in the definition proposed by R. Putnam. According to this definition, social capital is formed from active relationships between people, within which (and for the existence/support of which) trust and common values are of primary importance, make possible and simplify their (people's) interaction [6, p. 103; 16, p. 38]. Similar definitions of social capital are proposed by M. Schiff, F. Fukuyama, and others. With such an approach, the amount of social capital completely depends on the level of mutual trust of members of society and most often manifests itself in the activity of their participation in certain non-governmental organizations, unions, associations, etc. Concepts of social capital as a social phenomenon, which concerns the macro-level of social interaction, are supported by such concepts as social solidarity, citizenship, normative and value-based social consciousness. In addition, depending on the qualitative and quantitative characteristics of social networks in which a person is included, a distinction is made between bonding (the one that "connects") and bridging (the one that "builds bridges") social capital [16, p. 40]. Bonding social capital is formed and accumulated in interaction with close people, personally significant for the individual (family members, relatives, friends, etc.). Bridging social capital is built on the basis of relations between different social groups. First of all, this refers to connections within non-governmental organizations and similar associations, formal membership and/or partnership ties. It is believed that bridging social capital is the resource that allows for transparency and accountability of governmental and non-governmental institutions, stimulates economic growth and facilitates the implementation of reforms. Ideal conditions for the accumulation of bridging capital are created by a developed civil society, which is characterized by a wide infrastructure of non-governmental organizations, a high level of public activity and trust [19].

Undoubtedly, there is a common sense in all the mentioned interpretations and types of social capital. In all cases, it is talking about social connections built

on the basis of trust and values similarity. The lack of social capital, in any case, must be compensated by something. As a rule, such compensation occurs at the expense of the spread and dominance of authoritarian and totalitarian government practices, since passive and disunited citizens cannot resist the influence of the government and oversee government actions and decisions. In such a situation, the development of democracy is impossible, and civil society can exist, at best, only "in formal documents".

The concept of civil society is used to denote a system of social relations that are outside the scope of government regulation. Civil society is formed and functions on the basis of self-organization of its structures, but not on the basis of the organization of certain "founding" measures by the government, imposing a line of behavior on certain institutions. This will not lead to the formation of a civil society. Various forms of self-organization of citizens carry huge reserves of social, economic and cultural development of the state [15, p. 178].

Since the first year of independence, the number of non-governmental public organizations in Ukraine has been steadily increasing. So, in 1991 there were about 400 of them, ten years later (2011) there were already 67,696, and after another 10 years (2021) – 92,361. Researchers of the civil society development in Ukraine testify that 2013-2014 were turning points in this process [19]. Against the background of the events related to the Revolution of Dignity, Russia's aggression (as an inadequate, abnormal reaction to this revolution), its violation of the Ukraine state borders, the annexation of Crimea, the deployment of hostilities in the Donbass and the beginning of the Russian-Ukrainian war, the Ukrainian people are rallying, numerous volunteer movements and non-governmental organizations are emerging that unite people who seek to use their own strength and activity to resist the aggressor, help the Ukrainian military, support the civilians, etc. It is important that most of these organizations do not simply exist, but actually operate, doing important things for the country.

It should be noted that, according to regular sociological monitoring, "turning" moments for Ukraine were accompanied by sharp jumps in the level of trust in state authorities. However, over time, the level of trust again decreased to critically low indicators. This is perfectly illustrated by the results of the National survey of Ukrainians on democratic changes in the political and social spheres, judicial reform and the process of cleansing the government in Ukraine, on the topic "Level of citizens' trust in social and state institutions", conducted by GFK Ukraine with the financial support of the USAID project "Fair Justice". The research was based on the comparison of the results of two sociological surveys conducted in in 2015 and 2016. The results of this research made it possible to draw the following conclusions: 1) the level of trust in higher government officials remained critically low and without signs of positive dynamics (the level of trust in the President (P. Poroshenko) even decreased slightly: from 19% in 2015 to 16% in 2016); 2) there was a weak trend of increasing trust in the court and the prosecutor's office (5% and 10% trusted the judiciary in 2015 and 2016; 6% and 11% trusted in the prosecutor's office in 2015 and 2016), while the level of distrust in the court decreased from 79% in 2015 to 69% in 2016, the level of distrust in the prosecutor's office decreased from 77% to 61%, respectively. This may indicate public

expectations from the reforms started at that time, rather than real changes; 3) the level of trust in the new police increased significantly (from 8% in 2015 to 21% in 2016), although the level of mistrust remained high (37%), as well as the percentage of those who were undecided; 4) the high level of trust in institutions that are associated in the mass consciousness with resistance to Russia's aggression (Armed Forces of Ukraine, volunteer battalions and volunteers ornamentations) remained stable; 5) in 2016, regional differences increased. The "special position" of the population of Eastern Ukraine manifested itself quite noticeably: the level of mistrust in certain institutions is two times higher than the average values for Ukraine. The answers of the population of Southern Ukraine were rather unexpected, which recorded an increase in the level of trust even in governments (for example, the Cabinet of Ministers of Ukraine was trusted by 16%, while the average across Ukraine was 10%); 6) increased disbelief in the ability of the Ukrainian governments to become more effective in the near term ("the next 12 months") (in 2015, 11% of respondents believed this, and in 2016 – only 7%); 7) the majority of respondents (57% in both surveys) were convinced of the impossibility of positive changes in the state [8; 13].

Against the background of the full-scale invasion of Russia into Ukraine, there was a civil rally. The level of trust of Ukrainians in the governments and in the actions of government officials has grown significantly, as evidenced by the current results of sociological research. Thus, according to the data of the Sociological Group "Rating" (August 2022), three quarters of Ukrainians (74%) assess the direction of the country's development as correct. Only 13% believe that the country is moving in the wrong direction, the same number could not answer. After a slight decrease in May 2022, the indicators stabilized[1] [21].

According to the results of a survey conducted by the Research Company Gradus Research[2] on migration and socio-political attitudes during the full-scale invasion of Russia in Ukraine, 68% of Ukrainians evaluate the actions of the government authorities as effective. In addition, 72% of respondents consider the government's actions in the field of military defense of the country against the aggressor to be effective [24].

The unity of Ukrainians is also visible in their attitude towards state institutions. The highest level of trust of Ukrainians is in the Armed Forces of Ukraine

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[1] Audience: the population of Ukraine aged 18 and older in all regions, except for the temporarily occupied territories of Crimea and Donbas, as well as territories where there is no Ukrainian mobile connection at the time of the survey (n=1000 respondents). The results are weighted using current data from the State Statistics Service of Ukraine. The sample is representative by age, gender and type of settlement. Survey method: CATI (Computer Assisted Telephone Interviewing). Based on a random sample of mobile phone numbers. The error of representativeness of the study with a confidence probability of 0.95: no more than 3.1%. Dates: August 17-18, 2022.

[2] The survey was conducted by the method of a questionnaire self-completion in a mobile application by order of the European Commission and in partnership with the Center for Economic Recovery. The Gradus online panel displays the population structure of cities with more than 50,000 residents aged 18-60 by gender, age, settlement size and region. Research period: May 20-22, 2022 (n=2083 respondents).

(62% of respondents) and the President of Ukraine V. Zelensky (49% of respondents) [24]. As for economic regulation, almost half of the respondents (47%) believe that the government's actions in this direction are effective. The assessment of government's actions in the context of helping citizens who lost their jobs and income during the war is somewhat worse (only a third (31%) rated these actions as effective, and 44% consider them ineffective [24].

What is particularly important in terms of accumulation and further multiplication of social capital is that there have been significant changes at the level of values and value consciousness of Ukrainians, as well as at the level of civic identity. In a relatively small period of time since the beginning of the full-scale invasion of Russia, Ukrainian society has acquired a distinct value homogeneity (previously there were noticeable regional differences). In general, there is a trend towards the values of self-determination and openness to change. Traditionally, universalism and kindness dominate. Conformity remained at a high level and, in contrast, independence. The values of security and traditionality are also significant. Over the year, values of traditionality, hedonism, stimulation, and especially independence have slightly increased. Traditionally, the values of independence, wealth and hedonism are characteristic of more young people. In contrast to them, in the middle and especially in the older age groups, they are more inclined to conservative values (traditionalism and conformity). Instead, such values as independence, universalism, kindness, security and achievement are common to representatives of all age categories. If the values of stimulation, achievement and wealth (power) are much higher for men, then for women security, traditions, conformity, universalism, kindness are of great importance [21].

The majority of respondents identify themselves as citizens of Ukraine (94%). Approximately the same number of respondents identify themselves with a resident of their region. Half of the respondents identify themselves as Europeans (about 30% do not identify). Almost 10% identify themselves with a "Soviet person", on the other hand, more than 80% do not. Young people often consider themselves "Europeans", and older and elderly people consider themselves "Soviet people". In general, with respect to civic identity, no significant regional and age differences are recorded [21].

According to the data presented within the framework of the "Science at risk" project (the series of lectures "Ukraine and Kharkiv region in wartime: through the mouths of scientists") by one of the involved expert lecturers, PhD in Political Science Yulia Bidenko, despite the fact that the non-governmental sector has experienced significant financial problems with the beginning of a full-scale invasion of Russia, nevertheless, significant positive changes are also evident. According to the expert, the unexpectedly high resistance of Ukraine, as the ability to resist the enemy, is largely based and supported by the functioning of non-governmental organizations and associations. Despite the widespread stereotype about the weakness of civil society in Ukraine, the data show otherwise: Ukraine has a fairly high civil society sustainability index (Civil Society Organizations Sustainability Index – CSOSI). This index is equal to 3.2 (on a 7-point scale, where indices close to 7 indicate the weakness of civil

organizations, and indices tending to 1, on the contrary, indicate the strength of public organizations) and is the highest (and significantly higher) among all post-Soviet countries, and is also generally normal, i.e. similar to the indices of the EU countries. The sustainability index of civil society organizations was developed in 1997 to analyze the situation in Central, Eastern Europe and Eurasia, today it covers 74 countries of the world. The calculation of the index includes indicators for the following aspects of the activity of civil organizations: (1) Legal environment; (2) Organizational capacity; (3) Financial sustainability; (4) Advocacy; (5) Provision of services; (6) Sectoral infrastructure; (7) Public image [12].

It is important to emphasize that the indicator mentioned above characterizes the situation before the full-scale invasion of Russia. However, there is every reason to believe that the situation did not deteriorate after the full-scale invasion. Ukrainians began to unite not only on the basis of the activities of civil organizations, but also without their participation, on the basis of common goals, values, aspirations and needs. They self-organize into groups that help clean up the consequences of bombings, prepare food for territorial defense soldiers, equip the basements of houses for bomb shelters, transport people for free around the city and beyond, take care of lonely elderly people, abandoned (lost) pets, etc. [4, p. 124]. The people who stayed at home take care of the animals and plants of the neighbors who left. At the same time, the level of trust manifests itself in previously unseen practices. For example, people who have hardly communicated before leave each other the keys to their apartments.

Voluntary networks and the scope of their activities are expanding significantly [22, p. 170; 25, p. 7]. Those volunteer organizations, which were formed at the beginning of the Russian-Ukrainian war in 2014, and already then helped the military, veterans, refugees from Crimea and Donbas, at the time of the beginning of the full-scale invasion of Russia, they already had contacts, knew how to act, and quickly oriented themselves, what and how to do. People who have lost their jobs, businessmen whose business is unable to work during the war, and simply caring citizens who have been activated by war events and who have the time, desire and strength for such activities joined volunteer movements.

Somewhat supplementing the above-mentioned Yu. Bidenko, we will single out the following vectors of civil activity, which are typical for wartime: material and other support of the Armed Forces of Ukraine and the Territorial Defense Forces; humanitarian support of the people in the territories most affected by the Russian aggressor; provision of evacuation and placement of evacuees in new places; charity, donations, financial support of various initiatives in the fight against the enemy and in favor of victory; elimination of the consequences of bombings; documenting the Russian aggressor's crimes; journalistic coverage of the war and journalistic investigations; countering informational influence on the part of the aggressor (participation in squads, the so-called "cyber army", etc.); informing the Security Service of Ukraine about the location of the enemy and objects of enemy equipment, about cases of collaboration, etc. [10; 20].

It is important to note that the practices of civil solidarity take place not only among those Ukrainians who remained in Ukraine, but also among those who

were forced to leave abroad. They also self-organize and/or join existing volunteer movements, organizations, associations, groups in social networks and messengers to help Ukraine and Ukrainians, as well as create new ones. Analysis of social networks (Facebook, Telegram) of Ukrainian refugees, conducted by the non-governmental organization "Institute of Youth" on April 5–17, 2022, revealed how Ukrainians, while abroad (Poland, Lithuania, Czech Republic, Slovenia, France, Germany, Italy) join to help Ukraine [7]:

– informing about events in Ukraine, about the development of military operations and heroic deeds of Ukrainian soldiers;

– initiating and promoting the practice of publishing information on websites only in Ukrainian;

– notification of public events, actions in support of Ukraine ("Peace march", Peaceful rallies, etc.), involvement of users in Internet groups to participate in such actions;

– creation of Ukrainian communities for communication and mutual assistance to Ukrainians;

– organization and holding of flash mobs in support of Ukraine, which later turn into powerful fundraising art projects (for example, "Motanka Svobody" flash mob in France);

– creation, distribution and signing of various petitions, in particular regarding the ban of Russian rallies or other similar events, Russian military symbols in the EU countries, etc.;

– organization of fundraising to help the Ukrainian army;

– production and sale of goods with Ukrainian symbols, Ukrainian dishes (dumplings, borscht, etc.);

– organization of collection and transportation of humanitarian aid to Ukraine, organization of various financial means to support defenders of Ukraine, refugees, etc.;

– collection and sorting of essential items for Ukrainians affected by the war, as well as for the military (sleeping bags, products with a long shelf life and hygiene products, harnesses and medicines, etc.);

– escorting and settlement of Ukrainian immigrants, helping in centers for refugees, coordination of volunteer activities, assistance with translation during communication, etc.;

– conducting educational classes for children of Ukrainian refugees, helping Ukrainian children to adapt and integrate to new living conditions.

Despite the surge in civic activity and the high cohesion of civil society, experts predict their gradual decline, in particular, in the post-war period, which is associated with the banal exhaustion of Ukrainians [10]. Despite this, our view of the situation is more optimistic, since we evaluate it precisely through the prism of knowledge about social capital. Firstly, the acquired value homogeneity, unity of national identity, total recognition and support of the European vector of the country's development will not disappear anywhere. Secondly, even if the active involvement of citizens in civil affairs will decrease, the received and established connections will remain. Because that is why we talk about social "capital", and not, for example, about a social "network" or some-

thing similar, because capital consists of a "previously produced product" and has the property of remaining in the already accumulated amount for a fairly long period of time.

Conclusions.

Summing up, we note that during the relatively short time of full-scale invasion of Russia in Ukraine, not only the restoration of ties and relations between citizens and their associations, but also the formation of a large number of new connections and public associations took place. These connections and associations are "new" not only because they brought together new people (previously not involved in civic activity), but also because they acquired new forms of activity. The connections formed significantly strengthened the social capital of both individuals and groups, as well as Ukrainian society as a whole. This capital is not social and civic activity as such, it contains the resources and potential of such activity. Even if the active actions of citizens and their associations in certain periods of time will decrease, the accumulated social capital will always serve as a factor for quick and effective cohesion, if necessary.

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DIRECT MODEL OF INDIGENOUS REPRESENTATION: THE CASE OF MĀORI

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Annotation.

The article provides a brief classification of models of representation of indigenous peoples: direct, which is used by the Māori people in New Zealand, and indirect, which is used by the Sámi people in the countries of Fennoscandia. The publication then explores the specifics of the application of the direct representation model in New Zealand. The peculiarity of the representation of the Māori people within legislative, executive and judicial bodies of the country, as well as local self-government bodies, is explained. The article describes in detail the procedure for creating separate Māori constituencies for parliamentary and local elections, the peculiarities of forming the Māori electoral rolls for the participation of representatives of this people in elections. Thanks to the historical analysis of the process of changes in the legislation of New Zealand in this area, positive trends are revealed that confirm the democratization of the country's electoral procedures, as well as a shift in the focus of attention during the electoral process from ethnicity to the choice and identity of the individual. The publication also examines the role and functions of the Ministry for Māori Development and its place within New Zealand's executive branch of government. In addition, special attention is paid to the implementation of the Māori right to land in the aspect of the Māori Land Court, which was created to resolve the problem of inconsistency between the traditional Māori collective form of land ownership and individual land titles typical for European legislation. The article proves that the level of preservation of the heritage of indigenous peoples and their identity largely depends on the political will of legislators and the state. The right to self-determination in this aspect should be considered as primary, in relation to other derivative rights that arise from it. At the same time, the realization of this primary right depends precisely on the level and quality of the implementation of the specific above-mentioned derivative rights in various spheres of life that the indigenous people and their representatives face on a daily basis.

Key words: New Zealand, Aotearoa, Māori, Native, Indigenous, Aboriginal.

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Effective representation of indigenous peoples requires clear legislative regulation of the procedure and features of such representation. The relevant procedures vary greatly depending on the specific country, whose legislation provides for a special procedure for the representation of indigenous peoples, but a detailed analysis of the practice of such representation allows us to single out certain trends and classify the representation of indigenous peoples into separate models. The model of representation thus defines the main way of realization of the respective indigenous population's own right to self-determination and representation.

Currently, the main models of representation of indigenous peoples are the so-called direct and indirect models. It should be emphasized right away that in some places in individual countries one model may prevail, however, at the same time, incorporating certain elements of another model of representation. Sometimes, both models of representation of indigenous peoples can co-exist in one state.

The first of such models is the direct model of representation of indigenous peoples, which consists in reserving individual seats for representatives of indigenous peoples within the framework of state authorities (mostly legislative) and local self-government. Elections of representatives for these seats take place by means of a separate vote, the right to participate in which is given to persons who are representatives of the respective population groups. Such elections can take place both as part of national elections, but for given groups of the population, and as completely separate procedures, in which representatives of indigenous peoples participate in addition to possible participation in general elections. A clear example of the application of the direct model of representation of indigenous peoples is New Zealand (Aotearoa in Māori), where the indigenous Māori people have guaranteed representation both in the national parliament of the state and local representative bodies, being thus involved in the decision-making process at all levels as a separate collective subject of law.

The second model of the representation of indigenous peoples is the indirect model of the representation of indigenous peoples, which consists in the creation of separate representative bodies (parliaments) of indigenous peoples, which have a clearly defined legal status and powers and represent the interests of the indigenous people in dealings with state authorities and local governments of states. A feature of this model is the creation of independent bodies for the representation of indigenous peoples, which are formed through separate elections, in which representatives of indigenous peoples participate, who at the same time also participate in national and local elections on a general basis in accordance with current legislation. Thus, the system of representative bodies of indigenous peoples acts as a kind of separate branch of government, because for the most part these bodies are not part of the traditional three branches of government (legislative, executive and judicial). Currently, the most progressive example of the application of the indirect model of representation are the countries of Fennoscandia: Finland, Sweden and Norway (not to be confused with Scandinavia or Nordic countries, which traditionally include Sweden, Norway and Denmark), in which the system of representation and parliamentarism of

the indigenous Sámi people is extremely developed and closely intertwined between countries, because the undeniable fact that the Sámi are one people living in all three given states is recognized by the states themselves, and all three Sámi parliaments cooperate fruitfully with each other, even forming a supranational body – the Sámi Parliamentary Council.

Based on the abovementioned, the purpose of this study is to analyze the system of the representation of indigenous peoples according to the direct model of representation on the example of New Zealand, to determine its features and the procedure for the implementation by the Māori people of their right to self-determination, as well as the rights derived from this self-determination.

In order to better understand certain aspects of measures aimed at ensuring the representation of Māori, it is first necessary to carry out a brief overview of this ethnic group, its characteristics and history, in particular, in terms of the place of the Māori people in modern society in New Zealand and the characteristics of their interaction with state authorities and local self-government. as well as representatives of the currently dominant group of the population.

The Māori are the indigenous people of New Zealand, an island nation located in the southwestern part of the Pacific Ocean. Māori belong to the Polynesian group of peoples, which in turn belongs to the Austronesian group of peoples. The peoples of the Austronesian group originate from the island of Taiwan. About 2,500-2,000 years ago, a significant event called the Austronesian expansion took place, during which, thanks to the development of seafaring and navigation, the inhabitants of what was then Taiwan were able to settle a significant territory of the islands of the Pacific region and beyond, namely the islands of Southeast Asia, Micronesia, Melanesia , Polynesia, Madagascar and even part of the coast of Indochina. There is evidence that Austronesian seafarers even reached the shores of South America, as evidenced by the Native American culture of sweet potato cultivation among the Rapanui people of Easter Island.

The earliest settlement of New Zealand occurred between about 1320 and 1350 AD and consisted of several waves of settlers from eastern Polynesia. Over several centuries of isolation, these settlers formed a unique and distinctive people with their own language, culture and customs. It is also worth mentioning that around 1500 AD, part of the inhabitants of New Zealand moved to the Chatham Islands, where, being isolated from the rest of the Māori, they formed a separate Moriori nation. The Chatham Islands are currently part of New Zealand.

The first contact between Māori and Europeans took place in the 17th century AD and quite often resulted in mutual violence. The settlement of New Zealand by European colonists began in the early 19th century AD and was also accompanied by violence and fighting both between Māori and European settlers, and between individual Māori tribes. The arrival of firearms on the islands of New Zealand had a devastating effect on the Māori, which led to an increase in intra-tribal fighting, which went down in history under the name of the Musket Wars, which lasted from 1807 to 1837. About 40,000 Māori died as a result of these wars.

In 1840, Māori chiefs and the British Crown signed the Treaty of Waitangi, in which Māori were recognized as subjects of the British monarch, who retained

ownership of the lands of their traditional residence [10]. Given the difficulties of translation at the time, some provisions of the treaty were interpreted differently by the parties, which in turn led to a protracted war [2]. The New Zealand Wars or Māori wars, which lasted from 1845 to 1872, ended with the total defeat of Māori and the annulment of the Treaty of Waitangi in 1877. Such recognition has taken place in court, in particular in the case of Wi Parata v Bishop of Wellington. In the framework of the case, the judge of the Supreme Court of New Zealand, James Prendergast, indicated that this contract cannot be considered as legally binding, because the Māori signatories of the document were "primitive barbarians" [3, 16]. Another tragedy for Māori was infectious diseases brought by colonists, including measles, smallpox and influenza, which, according to various estimates, killed between 10% and 50% of Māori. At the end of the 19th century, the Māori population was only 40% of the number of representatives of this people at the beginning of the 19th century.

The prevailing view of Māori in the late 19th and early 20th centuries was that sooner or later Māori would be assimilated by representatives of a "more advanced" civilization, but fortunately this did not happen. The number of Māori began to gradually increase, they still constituted a significant minority. The 1960s saw the emergence of a powerful movement for Māori rights and a cultural revival among the people, which eventually led to the establishment of the Waitangi Tribunal by the Treaty of Waitangi Act in 1975. The Tribunal is a permanent body that is created to ensure the rights of the Māori people, which were violated both as a result of the non-fulfillment of the provisions of the Treaty of Waitangi of 1840, and before its conclusion. The Treaty of Waitangi Act has been amended several times, including in 1985, 1988, 1993 and 2006. In 2014, as part of the Te Paparahi o te Raki inquiry, the Tribunal emphasized that Māori had not relinquished their sovereignty in the 1840 Treaty, which was signed by representatives of the people as an agreement between equal parties. Most of the Tribunal's inquiries concern reparations to Māori for historical injustices against them, and result in the recognition of one or another Māori tribe (iwi) as being entitled to land ownership. To date, the total amount of compensation that has taken place is more than NZ$1 million (including the price of the transferred land).

As of today, the number of Māori is about 1 million people, including 775,836 people in New Zealand (according to the 2018 census) and 142,107 people in Australia (according to the 2016 census), also about 25 thousand Māori live in other countries of the world, primarily Great Britain, the United States of America and Canada. According to the 2018 New Zealand Census, Māori make up 16.5% of the country's total population. In the same census, 45.5% of Māori indicated that they had exclusively Māori ancestry, while 43.3% of Māori indicated that they were of mixed Māori-European ancestry. A growing level of tolerance and openness to other cultures is contributing to an increase in the number of people identifying as Māori, as evidenced by the fact that the number of Māori in 2018 increased by 37.2% compared to the 2006 census. An increasing number of New Zealanders of Māori descent are inclined to identify themselves as Māori. This trend is particularly relevant for the younger generations of New Zealand,

because the average age of the general population of New Zealand is 37.4 years, while the average age of Māori in New Zealand is only 25.2 years.

The Māori language belongs to the East Polynesian language group and since 1987, according to the Māori Language Act, it has been the official language of New Zealand along with English. State authorities and local self-government bodies are bilingual, and in the event that one or another employee does not know the Māori language, a person who wishes to receive a service in this language must be provided with a free interpreter by law. According to the 2018 census, 186,000 New Zealanders spoke Māori to some degree, of which, however, only 50,000 said they were proficient and spoke Māori on a daily basis. Most Māori speakers today are bilingual, with only 9,000 people speaking only Māori. Currently, the state and society are taking numerous measures aimed at reviving and strengthening the Māori language, in particular through the creation of Māori-language schools, the study of the language as a subject in educational institutions, the creation of bilingual road signs, the translation of movies and literature into the Māori language, the creation of unique Māori-language content etc.

The tradition of Māori representation in the New Zealand Parliament has a long history. The representation of this people consists of the creation of separate electorates or seats. Thus, during parliamentary elections, the territory of the state is divided simultaneously into general and special Māori electorates [7]. As of 2008, there are 7 such districts: Te Tai Tokerau, Tāmaki Makaurau, Hauraki-Waikato, Waiariki, Te Tai Hauāuru, Ikaroa-Rāwhiti in the North Island and Te Tai Tonga in the South Island. There are also proposals from time to time to create another Māori constituency for representatives of this people who live in Australia but have New Zealand citizenship.

The creation of Māori electorates was first proclaimed by the Māori Representation Act of 1867, which was passed by the 4th New Zealand Parliament. The functioning of these electorates was primarily intended to reduce the level of distrust and violence between New Zealanders of European origin and Māori, given the fact that at the time the bloody Māori wars were still going on. This act solved the problem of impossibility of Māori representation due to the property census established for admission to participate in the elections. The property census primarily consisted in the need for the voter to have land ownership. At that time, de facto most of New Zealand's land was owned by Māori, but the difference in the institution of ownership between colonists and Māori was evident. Māori-owned land was held jointly by them, individual legal titles were not provided for in the nation's legal system, so under current New Zealand law, Māori people were considered not to have privately owned land [15].

The adoption of this act was preceded by a long discussion, during which in some places quite radical and opposite proposals were put forward. In particular, a large number of conservative parliamentarians were generally hostile to the idea of any representation of Māori in Parliament, because they perceived the representatives of this people as "primitive barbarians", while some liberal-minded members of Parliament proposed to secure a third of the seats of the legislative body for Māori [3]. Thus, the decision to create 4 Māori electorates

to elect 4 Māori representatives (one representative from each electorate), on the one hand, satisfied those politicians who did not want to focus on potential Māori voters during the election campaign, because they now voted within other electorates. On the other hand, the provision of even such a modest representation in the Parliament at the time satisfied the ardent supporters of the ideas of equality and recognition of the rights of the indigenous population of New Zealand. At first, all Māori males over the age of 21 at the time of the election were eligible to vote in Māori electorates [12].

Elections in these four electorates were held in 1868, the winners of these races were admitted to the 4th New Zealand House of Representatives. At first, the functioning of separate Māori electorates was envisaged to only last during the transition of Māori from traditional institutions of land ownership to classical European ones [11]. A period of 5 years was set aside for such a transition, however, after that the Māori electorates were not liquidated, elections within them were held as before. Māori electorates were not abolished even after the property census was abolished in 1879. In 1996, the number of Māori electorates was increased to five, in 1999 a sixth electorate was created, and in 2002 their number increased to seven. Under New Zealand electoral law, the population of a Māori constituency must be roughly equal to the population of a regular constituency.

Also of interest is the fact that each Māori has the individual right to choose in which electorate he or she will exercise his or her right to vote: a regular or a special Māori electorate. At the request of the representatives of the indigenous people, they are registered either on the general electoral roll or on the Māori electoral roll. The inclusion of a person on the Māori electoral roll is qualified, in particular, a person who has expressed a desire to exercise his or her right to vote within such an electorate must have Māori ancestry.

Such freedom of choice was not always used during parliamentary elections. In particular, as already mentioned, from 1868 to 1893 only Māori men of legal age had the right to vote, and such a right could be exercised exclusively within the framework of Māori electorates [9]. In 1893, New Zealand (then a colony of Great Britain) became the first country to introduce universal suffrage regardless of gender, allowing women to participate in elections. This, in turn, it was extended to Māori women. From 1893 to 1975 there was a clear rule about whether a person should be entered on the regular or Māori electoral roll. In particular, persons who had more than 50% Māori ethnic origin could only be registered on the Māori electoral roll, while persons who had less than 50% Māori ethnic origin were registered on the regular electoral roll. Thus, the right to choose the electoral roll could belong exclusively to persons who had exactly 50% of Māori ethnic origin (1 parents, 2 grandparents, 4 great-grandparents, etc.). In 1975, the legislation of New Zealand regarding the Māori electoral rolls was revised, priority in this case was given to the actual desire of the person to be included in this or that electoral roll [3F]. Currently, the only requirement for a person to be registered on the Māori electoral roll is the aforementioned requirement that the person be of Māori ethnic origin.

More qualified, in turn, are the requirements for candidates participating in parliamentary races within Māori electorates. In particular, according to the cur-

rent legislation, the candidate is required to be fluent in the Māori language, to know Tikanga Māori (knowledge of Māori customs and traditions, recognition of the people's values), a stable connection of the person with the Māori community and participation in the life of the people.

The Māori people in New Zealand also exercise their right to representation at the local level, being thus involved in the local decision-making process. This right is exercised through the formation of separate Māori constituencies and wards during elections to city, district and regional councils. Voting in local Māori constituencies and wards is carried out by persons included in the aforementioned Māori electoral roll, which is formed primarily for participation in parliamentary elections.

Under the provisions of section 19Z of the New Zealand Local Electoral Act of 2001, cities and districts may have local Māori wards and regions may have regional Māori wards [5]. The creation of Māori constituencies and wards follows a slightly different system than the creation of Māori electorates for parliamentary elections. The functioning of such entities primarily depends on the number of Māori living within the boundaries of one or another municipality.

The reason for the introduction of such a system of representation of the indigenous people of New Zealand was the need to create a system that guarantees actual and not declarative equality for the entire population of the country, because the insufficient level of Māori representation was a fairly common problem on the ground. A similar disappointing situation was confirmed by the results of a study conducted in 2007 by the Department of Internal Affairs of New Zealand, according to the results of which only 8% of candidates elected in local elections were Māori, while the share of elected candidates of European origin was 90%. At the same time, of the candidates who were not selected, 12% were Māori and 84% were of European descent. Considering the fact that Māori made up 14.6% of the state's adult population at the time, the situation of actual inequality of indigenous people in representation at the local level was obvious, as the proportion of Māori candidates elected in local elections was almost half the proportion of Māori in the general population of New Zeeland.

Under the legislation of the time, loc Māori constituencies and wards could be formed by decision of the relevant council or by holding a local or regional referendum. If the council decided to create a Māori constituency, the council was required to notify all voters in the relevant constituency or ward of their right to request a referendum on the matter. The referendum was to be held if the council received a petition signed by at least 5% of the total number of voters of the respective constituency or ward within 89 days. The right to participate in the referendum was given to all voters within constituency or ward, regardless of whether they were on the Māori electoral roll (for parliamentary elections). The results of the referendum were considered final and remained valid for two local or regional elections after the referendum. It was not allowed to raise the question of the creation of Māori constituencies for the relevant term.

This situation led to a kind of crisis, because Māori constituencies and wards were immediately created within some municipalities, while in a number of other territories, this initiative was rejected as a result of a referendum. A signifi-

cant role in this was played by the populist right-wing political parties New Zealand First and Hobson's Pledge (named after the first Governor-General of New Zealand, William Hobson, one of the authors of the Treaty of Waitangi). Party leaders regularly campaigned to encourage voters to demand referendums on the creation of Māori constituencies and wards and to prevent them from being created. The opposite position was taken by the Labor Party and the Māori Party, which tried to abolish the requirement for the holding of relevant referenda.

In particular, in 2010, a group of parliamentarians from the Māori Party proposed to amend the Local Elections Act, which would require the establishment of Māori constituencies and wards all over New Zealand. The share of seats to be distributed within Māori constituencies and wards was to correspond to the share of persons of Māori origin among the total population of the municipality. This proposal, however, was rejected on the grounds of inconsistency with the New Zealand Bill of Rights of 1990, since the seat calculation was based on a formula that did not include the number of persons registered on the Māori electoral roll for parliamentary elections, but simply the number of persons of Māori descent, thus creating a different electoral system separate from parliamentary elections within Māori electorates. It was felt that such legislative changes would inevitably lead to inequality, as not all people of Māori descent expressed a desire to be included on the Māori electoral rolls. Therefore, only Māori on the relevant electoral rolls would be allocated a number of seats proportional to the proportion of all Māori in the general population as a whole, including those of Māori origin not on the Māori electoral rolls, resulting in a mere fact of greater importance of a single vote within Māori constituency or ward.

This situation remained relatively stable for almost twenty years, but everything changed in 2018, when, on the eve of the next local elections, as a result of another attempt by regional councils to create Māori constituencies and wards in five regions of New Zealand, according to the results of a referendum, Māori were denied such a right. These events caused a significant public outcry and discontent among the indigenous population of New Zealand. In late 2020, a group of Māori activists and advocacy group ActionStation collected 10,000 signatures calling for a review of legislation on referendums on the creation of Māori constituencies and wards.

As a result of the abovementioned, the Parliament of New Zealand passed Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 in relation to the provisions on local and regional Māori constituencies. Thus, a number of provisions of the Local Electoral Act were repealed, in particular, the requirement to hold a referendum on the creation of a Māori electoral district in the event that a petition for such a referendum was received by the relevant council. Councils were prohibited from initiating binding referendums on the creation of Māori constituencies and wards. From now on, although such referendums can be initiated in the event of a petition, the decision to hold them is made by the council itself, and such a referendum can have an exclusively advisory nature. The amendments to the Act also introduced a transition period for councils to establish Māori constituencies and wards until the 2022 local elections.

The 2021 amendments to the Local Electoral Act also introduced a new formula for determining the number of seats allocated to Māori constituencies and wards. Currently, the proportion of local and regional council seats allocated to Māori constituencies and wards must correspond to the proportion of Māori electoral roll registered voters out of the total number of voters (registered on both the regular and Māori electoral rolls) [6]. In the formula, the seat of the mayor, who, despite being a member of the council, is elected in a separate vote, is not included in the total number of seats. The number of seats allocated to Māori constituencies and wards is rounded to the nearest whole number after calculation using the formula. If the formula results in zero Māori seats, the council must refrain from forming a Māori constituency.

Māori interests are also represented within New Zealand's executive branch. In particular, the New Zealand government provides for the position of Minister for Māori Development, who exercises governmental oversight over the Ministry of Māori Development. This ministry was established in 1992 under the provisions of the Ministry of Māori Development Act 1991. The purpose of the body is to promote Māori development in the areas of education, training, employment, health and welfare, as well as overseeing the provision of government services to indigenous people. The Ministry of Māori Development emerged from a long history of a number of executive bodies responsible for the relationship between the state and the Māori people.

The first such body was the Department of the Protectorate, which functioned from 1840 to 1846. The Department was headed by missionary and civil servant George Clarke and mediated between Māori and the courts, colonial officials and the military, while protecting Māori rights under the Treaty of Waitangi. The Protectorate Department was abolished in 1846 by Governor George Grey, who was hostile to any idea of Māori representation and the incorporation of the people's traditions and customs into the system of government.

The deterioration of relations between Māori and European colonists, which eventually resulted in the Māori Wars, also led to the creation of another executive institution designed to ensure cooperation between the two populations. In 1861, the Native Department was established, the main tasks of which were the provision of educational services to Māori, health care among the indigenous population, the introduction of a system of governance within Māori society, as well as the assimilation of Māori to a European-type society. Initially, Māori Committees or Rūnanga were established within the Department through which Māori were recruited into the civil service. Also, with the assistance of the Native Department, the Māori school system was established and the aforementioned Māori electorates were introduced. The fruitful work of this department, however, ended with its liquidation in 1893, the authority of this body was transferred to other state institutions.

In 1906, an organ with the same name as the previous one was installed. For the first time in the history of New Zealand, it was headed by an ethnic Māori James Carroll (the son of an ethnic Irishman and a Māori woman). At first, this institution was primarily responsible for the settlement of Māori land issues, as well as the introduction of health care standards among Māori. During the

1930s, the Department's focus was centered largely on securing economic equality and employment rights for Māori, with the result that the standard of living of New Zealand's indigenous population increased significantly and the gap between the welfare of New Zealanders of European descent and Māori narrowed markedly. In 1947, the Native Department was renamed to the Department of Māori Affairs. A peculiar feature of the activities of the Department of Māori Affairs at that time was a shift in the focus of activity, which previously consisted in the integration of Māori into a European-type society, which very often led to the assimilation of Māori and the disappearance of the language and culture of the people. Since then, thanks to the efforts of the department, a number of effective measures have been taken to preserve the Māori language, culture, customs, traditions and identity. In the 1970s, within the framework of the Department of Māori Affairs, an extensive system of local offices was established throughout the country.

In 1989, the Department of Māori Affairs was reorganized into two separate executive bodies: the Ministry of Māori Affairs and the Iwi Transition Agency. The Ministry was entrusted with an advisory function on government policy in the area of ensuring Māori rights, as well as monitoring the implementation of New Zealand's legislation on indigenous people. The agency was primarily designed to promote the development of the Iwi (Māori tribes) and strengthen their role within the wider society of the state.

In 1992, these two bodies were abolished, and the Ministry of Māori Development was formed in their place, which still functions today. Within the framework of the Ministry, an extensive network of local representative offices of the organization has been formed, which perform an advisory and supervisory role in the field of ensuring the implementation of state programs for the development of the Māori people. Over time, the Ministry's activities have largely focused not so much on providing social support for Māori as on supporting employment, entrepreneurship and education among Māori with the aim of overcoming poverty among representatives of this people. In particular, within the framework of activities aimed at overcoming poverty among Māori, since 2018 in cooperation with the He Korowai Trust, the Ministry has successfully implemented a campaign to overcome Māori inequality in the field of home ownership, because until now the share of Māori who own their own homes, is almost half the proportion of European-origin New Zealanders who own their home.

As of today, the Ministry is administered by the Secretary for Māori Development and consists of the Office of the Secretary and four directorates: the Policy Partnership Directorate, the Strategy Governance and Public Sector Performance Directorate, the Regional Partnerships and Operations Directorate and the Organizational Support Directorate. Also Māori Television, Māori Broadcast Funding Agency and Te Tumu Paeroa (Office of the Māori Trustee) are accountable to the Ministry. The latter institution is chaired by a Māori Trustee, appointed by the Minister for Māori Development, and is responsible for managing Māori lands that are not privately owned. The Ministry of Māori Development is chaired by the Minister for Māori Development.

Within the New Zealand court system, there is a separate specialized court, the Māori Land Court, which hears cases related to Māori land. This court was established under the Native Lands Act of 1865 as the Native Land Court. The original purpose of the Court was to facilitate the process of acquiring Māori land to convert traditional Māori land into Māori freehold land [14]. The court established the interests of Māori in the ownership of land, which instead of the customary joint title was given the individual title common to European law [8]. According to the provisions of the Act, a plot of land could have no more than ten co-owners at the same time. The court's activities quite often led to a conflict of interests within the Iwi (Māori tribe), since the lands transferred to the Māori individually henceforth belonged to individual persons and could not be managed according to the traditional Māori land use system, under which such management was carried out by chiefs on behalf of the Iwi. A much bigger problem was that quite often the Court facilitated the sale of land by newly established Māori landowners to European settlers, which inevitably led to the gradual loss of their own land by Māori [13]. The largest buyer of Māori land was the British Crown. In total, 2.7 million acres were sold to the Crown, and 400,000 acres were sold to private individuals. The practice of the Crown buying land from Māori at an extremely low price and then reselling it to Europeans at a much higher price was quite common.

In order to avoid abuses in this area, the Native Lands (Validation of Title) Act was passed in 1892, which guaranteed Māori decent money if they sold their land. However, even this did not stop the process of selling off Māori land and as of 1939 only 1% of South Island land and 9% of North Island land remained in Māori ownership. Such a disappointing course of events for Māori changed only at the turn of the 1950s and 1960s, when there were significant changes in the public consciousness of New Zealand citizens regarding the awareness of the detrimental effect for Māori of such uncontrolled deprivation of their right to use the lands of their traditional habitat.

In 1954, the Native Land Court was renamed to the Māori Land Court, which was responsible for transforming Māori land claims on land of their traditional use into existing legal land titles. In 1993, the Māori Lands Act was passed. In contrast to previous legislation in this area, from now on the Court did not change the status of lands traditionally owned by Māori on land jointly owned by Māori in general, but specifically determined in its decisions the legal status of each individual plot of land.

As of today, the Court does not have a single main premises, instead a main office is located in Wellington, and the Court can gather in different cities of New Zealand depending on the specific need. Appeals from decisions of the Māori Land Court are heard by the Māori Appelate Court by a panel of three or more Māori Land Court judges. The Māori Land Court and the Māori Appelate Court may apply to the High Court of New Zealand for clarification on matters of law. Such clarifications are mandatory for application by the Māori Land Court and the Appelate Māori Appeal Court. Appeals against decisions of the Māori Appelate Court are heard by the New Zealand Court of Appeal, appeals against decisions of the New Zealand Court of Appeal are in turn heard by the Supreme Court of New Zealand.

Endnotes.

The representation and enforcement of the rights of Māori as an indigenous people in New Zealand over the past two centuries has been characterized by a radical rethinking of the approaches applied by the state to its indigenous inhabitants. If at first the Māori were considered by Europeans as a kind of obstacle and an anachronistic aboriginal society, now in New Zealand the value of preserving the identity, language and culture of the Māori is realized. Māori heritage is seen as an integral part of New Zealand's identity that must be preserved and passed on to new generations.

Today, Māori are represented in all branches of government in New Zealand and actively use a number of special mechanisms that ensure their right as an indigenous people to participate in solving issues related to their own livelihood and community development, as well as a wider range of issues within the framework of the entire New Zealand society. A separate system of electorates, constituencies and wards guarantees Māori representation at all levels, from local and regional to national, and ignoring the needs and interests of Māori is now virtually impossible. This system protects the indigenous people, who are currently a minority in their own homeland, from possible manifestations of discrimination and makes it impossible for Māori to be tyrannized by the majority.

Mandatory and guaranteed representation of Māori and the involvement of representatives of this people in state and local self-government bodies makes it impossible to block the legitimate interests of the people and lobby for decisions that may conflict with such interests, laying a reliable and effective foundation for the further development of the people and the expansion of legally established mechanisms and measures from increasing Māori influence in New Zealand.

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MODERN UNDERSTANDING OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS PROTECTION

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Annotation. The presented work analyzes the relationship between international humanitarian law and human rights, where it is determined that international humanitarian law applies only in the event of an armed conflict. The thesis is defended that the application of the norms of international humanitarian law is determined only by the presence of objective conditions and does not depend on how the warring parties themselves qualify the situation. If an armed conflict occurs between two or more states, such a conflict is qualified as international, even if the warring parties do not recognize the state of war. In the event of an international armed conflict, the four Geneva Conventions and Additional Protocol I are applied. In the event of an armed conflict of a non-international nature that reaches a certain degree of intensity, Additional Protocol II and Article 3 common to the four Geneva Conventions, which contain a set of detailed norms, are applied. International humanitarian law, by its very nature, is designed to be applied in armed conflict, it does not contain a general condition on the possibility of derogating from obligations regarding a number of rights that could be applied in the event of war. Human rights apply, in principle, at any time, that is, both in peacetime and during war. Most international human rights treaties contain provisions that allow states to take steps to derogate from their obligations regarding a number of rights in emergency situations, such as war or other emergency that threatens the life of the nation. Therefore, the realization of many human rights is possible only outside such emergency situations. However, obligations regarding certain human rights cannot be deviated from under any circumstances. Their implementation can never be suspended. These rights form the so-called immutable core of human rights. The invariable core of human rights, the obligations of which cannot be deviated from under any circumstances, does not include a whole series of norms that are provided for by international humanitarian law and which, therefore, will be applied even in individual emergency situations, the occurrence of which itself can serve as a basis for derogation from the same human rights obligations, for example, during war.

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Key words: international humanitarian law, human rights, right to life, pre-trial guarantees, right to go to court, judicial protection of human rights.

The purpose of the article is a comparative and analytical review of the features of international humanitarian law and human rights, determining their relationship.

The state of scientific development of the problem. Analysis of recent research and publications. The analysis of the relationship between international humanitarian law and human rights was carried out by such scientists as E. David, M. Sassoli, A. Bouvier, V. Rusynova and others. Their theoretical work became the basis of this study.

Formulation of the problem. Many years ago, the relationship between human rights and international humanitarian law was a subject of debate among scholars, but this topic is still relevant today. The connection between international humanitarian law and human rights is emphasized and traced in declarations, resolutions, recommendations and other documents adopted within the framework of the United Nations, as well as directly in agreements in the field of human rights, which quite often express ideas and address precisely to those concepts characteristic of international humanitarian law, and vice versa. Therefore, this indicates a close relationship between both concepts, which can be expressed through the decisions of bodies that monitor the implementation of regional treaties in the field of human rights, for example, in the decisions of the European Commission and the Court of Human Rights.

Presentation of the main research material. We consider the concept of international humanitarian law as a set of universally binding legal norms aimed at protecting the victims of international and non-international armed conflicts and limiting the ways and means of waging war. International humanitarian law consists, on the one hand, in the so-called Geneva law (Geneva law), which contains norms for the protection of victims of conflicts, and on the other hand, in Hague law (Hague law), which contains rules for conducting hostilities that belong to the means and ways of conducting hostilities. Let us highlight several basic principles of international humanitarian law. First, international humanitarian law protects those persons who do not take part in hostilities, it can be medical personnel, representatives of the clergy, civilians, and this branch of law also protects those persons who have stopped participating in hostilities (wounded, sick, prisoners of war, shipwrecked persons, and others). Moreover, under the protection of this branch there are certain objects and areas that should not be attacked, for example, hospitals, medical vehicles. Secondly, international humanitarian law distinguishes between combatants and non-combatants, and also prohibits the means and methods of waging war that can cause significant damage to the parties to an armed conflict. The norms of international law regulating the conduct of military operations were largely codified as a result of the work of the two Hague World Conferences in 1899 and 1907. These norms in International Humanitarian Law were called “Hague Law” [1]. The main legislative acts of international humanitarian law are four multilateral international agreements concluded in Geneva. They es-

tablish the humanitarian rules of warfare put forward in 1864 by the Red Cross. The first Geneva Convention (1864) concerns wounded and sick soldiers on the battlefield. The Second Geneva Convention (1906) expands the content of the first in connection with the Hague Conventions of 1899: it concerns the conduct of armed forces not only on the battlefield, but also at sea. The Third Geneva Convention (1929) introduced a new provision, establishing that its terms apply not only to citizens of countries that have ratified the convention, but also to all people regardless of their nationality (not only to the military, but also to the civilian population). The Fourth Convention (1949) for the Protection of Civilian and Military Persons in Time of War was created to establish strict standards for the protection of civilians in hostilities and occupied territories, and to prohibit war crimes after the tragic experience of World War II. The Geneva Convention of 1949 provides for four universal international treaties [2]. In 1977, two additional protocols to the 1949 Convention concerning the protection of victims of international armed conflicts (Protocol I) [3] and the protection of victims of internal conflicts (Protocol II) [4] were adopted. The norms of these conventions, as well as the two additional protocols to them of 1977, were named "Geneva law" in International Humanitarian Law. A significant contribution to the formation and development of international humanitarian law was made and continues to be made by the International Committee of the Red Cross (ICRC), a non-governmental international organization. In many respects, international humanitarian law is being improved at the initiative of the ICRC. Members of the organization carry out extensive practical work to protect victims of armed conflicts in various regions of the world. There is a representative office of the International Committee of the Red Cross in Ukraine [5, p. 33]. At its core, the norms of international humanitarian law are designed to ensure a balance between military necessity and humanity. With this in mind, international humanitarian law prohibits certain actions, for example, actions that are militarily futile and carried out with particular cruelty. Human rights are based on the value of the human person. This approach is enshrined in human rights treaties. These documents focus on the human rights and freedoms inherent in each person, while treaties in the field of international humanitarian law indicate how parties to an armed conflict should treat persons under their authority.

Human rights are divided into individual and group rights, they differ by the time of their emergence (generation of human rights), by spheres of life (personal, political, economic, social and cultural); separate human rights and freedoms, basic (fundamental) and other human rights. All this forms a catalog of human rights. Although the theory of human rights provides for a variety of classifications and approaches, international law establishes the need for legal consolidation of both the list of human rights and freedoms and their unified classification. The main international documents on human rights divide human rights into civil (personal), political, economic and socio-cultural (according to the sphere of public life to which they belong). (International Covenant on Civil and Political Rights of 1966 and International Covenant on Economic, Social and Cultural Rights of 1966) The list of rights and freedoms enshrined in

these documents is in some sense exhaustive, since only an action directed against one is recognized as a violation from the rights specified in the document. So, here we can talk about the legal classification of human rights. Some human rights have no analogues in international humanitarian law. International humanitarian law does not set itself the goal of adapting individual human rights to the conditions of armed conflict. Despite the fact that some rights are provided by both international humanitarian law and human rights, these two fields have different material scope of application in relation to individuals. However, individual rights recognized by both human rights law and international humanitarian law can effectively complement each other, and this complementarity should not be underestimated. It should also be noted that very often the similarities and differences between these two branches of law are not clearly understood. We propose to make a certain analysis of some rights provided for by international humanitarian law and human rights law. As already emphasized, the connection between international humanitarian law and human rights law can be traced only in relation to certain guarantees provided for by human rights law. It seems appropriate to consider some of them and highlight the similarities and differences between human rights law and international humanitarian law and their complementarity. The scope of application of international humanitarian law differs from the scope of application of human rights law, and the basis of the norms of international humanitarian law is the consideration of the specifics of armed conflicts. Thanks to these, as well as some other factors, international humanitarian law, despite the differences between this law and human rights law, can provide additional protection for persons in a situation of armed conflict. We compare how the right to life, the prohibition of torture and inhuman treatment, and pre-trial guarantees are considered in human rights law and international humanitarian law. The right to life is traditionally considered the first and most important human right, which is enshrined in numerous agreements in this area. The right to life is one of the rights that cannot be waived under any circumstances. This right can never be limited or suspended. Any armed conflict is a threat to people's lives. Therefore, a significant part of the norms of international humanitarian law is designed to ensure the protection of life, especially the life of people who do not take part or who have stopped participating in military operations. These individuals cannot be killed, nor can they be attacked. At the same time, international humanitarian law does not provide for the protection of the lives of combatants participating in military operations. It should also be emphasized that international humanitarian law imposes restrictions on the use of execution. International humanitarian law ensures the protection of human life, adapting this protection to the situation of armed conflict. Moreover, it goes further in terms of protecting life than, in fact, the traditional right to life, which is provided for by human rights law. In particular, international humanitarian law prohibits the use of starvation among the civilian population as a method of warfare and the destruction of objects necessary for the survival of the civilian population. International humanitarian law provides for measures that increase the probability of survival of civilians during an armed conflict,

such as the creation of special zones in which no military facilities are located. This right establishes the obligation to pick up the wounded and provide them with the necessary assistance, determines the measures that must be taken in order to ensure the most favorable living conditions for people during an armed conflict. International humanitarian law also contains special norms concerning aid operations and the provision of means necessary for the survival of the civilian population [6, p. 86]. The prohibition of torture and inhuman or degrading treatment is at the core of human rights. International humanitarian law also provides for an absolute prohibition of such acts. It should be emphasized that torture and inhuman treatment are serious violations of the Geneva Conventions and Additional Protocol I, as well as war crimes in accordance with paragraph 5 of Article 85 of this Protocol. Persons who committed or ordered to commit these or other serious violations must be subject to criminal prosecution at the national level. For this state, criminal legislation should be put into effect, which provides for effective sanctions for the commission of war crimes, as well as some principles of stopping these acts, such as, for example, the universal jurisdiction of national courts. Torture and inhuman treatment are also war crimes under the Statute of the International Criminal Court, adopted on 17 July 1998, and therefore may be subject to international prosecution by this new judicial body. On the basis of the Geneva Conventions and their Additional Protocols, serious violations must be stopped only if they were committed during an international armed conflict, and on the condition that the victims of these violations were persons subject to protection. Neither Article 3, common to the four Conventions, nor Additional Protocol II, used in a period of non-international armed conflict, provide for a corresponding obligation. But even in the absence of a contractual obligation to criminally stop acts committed during an internal armed conflict, which, whether committed in a situation of an international armed conflict or not, would qualify as serious violations, states are nevertheless obliged to prosecute them. The domestic legislation of a number of states, such as Belgium, Denmark, Spain, Canada, the Netherlands, Norway, Tajikistan, Finland and Sweden, provides for the cessation of acts that qualify as serious violations of the four Geneva Conventions and Additional Protocol I, regardless of whether they were committed during international or internal armed conflict. Raising the issue of stopping such violations at the international level, it is worth noting that the International Tribunal for the former Yugoslavia has the competence to consider cases related to serious violations committed during a period of non-international armed conflict. According to the Statute of the International Criminal Court, this judicial body is also empowered to consider cases related to serious violations of international humanitarian law committed during the period of internal armed conflict. The Statute of the International Criminal Court provides for four different categories of war crimes. The first two categories of war crimes, based on the content of the Statute of the International Criminal Court, apply to international armed conflicts. The third and fourth categories of war crimes, based on the content of the Statute of the International Criminal Court, are applied to armed conflicts of a non-international nature. In particular, it is about serious viola-

tions of Article 3 common to the four Geneva Conventions of 1949, in particular, ill-treatment and torture. Therefore, the mechanism of mandatory criminal termination, established by international humanitarian law regarding torture and inhumane treatment, strengthens the prohibition of these acts provided for by human rights law. As for judicial guarantees, their importance for the judicial protection of human rights is indisputable. However, most international treaties in the field of human rights do not introduce judicial guarantees to the rights that are part of the immutable core of human rights, from which obligations cannot be deviated under any circumstances. Therefore, the application of judicial guarantees provided by the law of human rights can be suspended in case of war or other emergency situation that poses a threat to the life of the nation. Judicial guarantees occupy a special place in international humanitarian law. The guarantees provided by this law will apply from the beginning of any armed conflict, whether it is an armed conflict of an international or internal nature. Therefore, even in the event of a state of emergency threatening the life of the nation, the application of judicial guarantees provided for by human rights law will be suspended, with the beginning of an armed conflict, these guarantees will be applied again in full, this time through the beginning of the application of international humanitarian law [7, p. 83]. A detailed list of judicial guarantees applicable during an international armed conflict is provided in Article 75 of Additional Protocol I. In the event of an armed conflict of a non-international nature, depending on the degree of intensity of the conflict, the guarantees established by Article 6 of Additional Protocol II, or the general principle, will apply. provided for by Article 3 common to the four Geneva Conventions.

It is worth recalling that the deliberate deprivation of a prisoner of war or other person subject to protection of the right to an impartial and normal trial is a serious violation and a war crime under the Geneva Conventions and Additional Protocol I, and the state is obliged to prosecute in criminal proceedings the persons guilty of such actions. This violation is also listed as a war crime under the Statute of the International Criminal Court and therefore may be subject to international prosecution by this new judicial body.

Conclusions. Analyzing the above, it is necessary to focus attention on the fact that human rights and international humanitarian law have different fields of application. International humanitarian law applies only in the event of an armed conflict and provides for a number of guarantees that reflect the specific features of such conflicts. A significant number of human rights have no analogues in international humanitarian law. However, there are reasonable contradictions between individual human rights and some norms of international humanitarian law. This concerns, first of all, human rights, which are part of the immutable core, the effect of which cannot be limited or suspended under any circumstances. Moreover, international humanitarian law and human rights law complement each other. Certain rights provided for by international humanitarian law strengthen some human rights either because they correspond to human rights that can be suspended in the event of an emergency, or because the norms of international humanitarian law go further in terms of the protection of the individual than the corresponding human rights, etc.

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ÉDUCATION LINGUISTIQUE ET PATRIOTIQUE DES ÉLÈVES DANS LES CLASSES SUR LA LANGUE UKRAINIENNE COMME LANGUE ÉTRANGÈRE : MÉTHODOLOGIE DE FORMATION DE LA COMPÉTENCE LINGUISTIQUE ET CULTURELLE

Romantchouk Svitlana[1]

Annotation. La recherche proposée par S. Romanchuk révèle le rôle de l'éducation linguistique et patriotique lors de l'étude de la langue ukrainienne par les citoyens étrangers. L'auteur souligne l'importance de la formation professionnelle de l'enseignant, sa capacité à présenter le matériel lexical et grammatical d'une manière intéressante. L'article explique comment il est possible de former la dignité nationale, l'amour des traditions et des coutumes, l'histoire de l'Ukraine, c'est-à-dire la compétence linguistique et culturelle. Compte tenu du fait que la langue ukrainienne se distingue parmi les langues européennes par sa paradigmaticité "sophistiquée", l'enseignant a besoin de compétences pédagogiques élevées pour former les compétences des élèves de la compétence spécifiée.

Du point de vue de la compétence professionnelle de l'enseignant de l'enseignement supérieur, l'auteur de l'article qualifie sa culture langagière comme le principal indicateur de compétence pédagogique.

En travaillant avec des étudiants étrangers, il est nécessaire de tirer parti des réalités socio-politiques et étatiques-économiques, qui ne changent pas le statut général de la langue ukrainienne, mais nécessitent une réorientation dans l'enseignement de tous les autres aspects moraux-psychologiques et pédagogiques. discours général lié au problème énoncé. Cela s'applique en particulier aux activités pédagogiques et à la formation des compétences linguistiques et culturelles des étudiants.

L'article explique également comment l'enseignant doit organiser le processus éducatif afin que chaque leçon révèle l'identité nationale, la culture et l'his-

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toire de l'Ukraine. C'est tout à fait pertinent en ce moment, dans les conditions où la langue ukrainienne est le reflet de l'idée nationale, est une sorte d'arme contre l'invasion raciste. Le canevas méthodologique de l'étude de la langue ukrainienne en tant que langue étrangère est présenté sous diverses méthodes et formes, ce qui détermine en fin de compte la formation des compétences linguistiques et culturelles des étudiants.

Le travail révèle le rôle de l'introduction de méthodes innovantes qui améliorent considérablement la qualité de la présentation du matériel pédagogique et l'efficacité de son assimilation par les étudiants, enrichissent le contenu du processus éducatif, augmentent la motivation à étudier la langue ukrainienne et créent les conditions pour une coopération plus étroite entre l'enseignant et les élèves.

Mots clés: éducation linguistique et patriotique, langue ukrainienne comme langue étrangère, compétence linguistique et culturelle, méthodologie d'enseignement.

Formulation du problème. Récemment, l'intérêt des citoyens étrangers pour l'apprentissage de l'ukrainien en tant que langue étrangère a augmenté. À notre avis, cela s'explique par le fait que la langue ukrainienne est devenue non seulement le code de la nation, mais aussi une arme contre l'invasion raciste. Il est agréable de constater que non seulement en Ukraine, mais aussi en Europe et en Amérique, le nombre de clubs de langue pour apprendre la langue ukrainienne a augmenté. Et un rôle important est joué par la langue et l'éducation patriotique. L'article explique comment il est possible de former la dignité nationale, l'amour des traditions et des coutumes, l'histoire de l'Ukraine, c'est-à-dire la compétence linguistique et culturelle. Compte tenu du fait que la langue ukrainienne se distingue parmi les langues européennes par sa paradigmaticité "sophistiquée", l'enseignant a besoin de compétences pédagogiques élevées pour former les compétences des élèves de la compétence spécifiée.

Depuis 2016, l'Institut humanitaire ukrainien propose des cours de formation aux citoyens étrangers pour entrer dans les établissements d'enseignement supérieur de notre pays. Pendant six ans d'enseignement de la langue ukrainienne en tant qu'auteur étranger de cet article, elle a dû faire face à diverses difficultés d'enseignement. Tout d'abord, il est lié à des facteurs linguistiques et culturels. Comme le note à juste titre F.S. Bacevich, lors de l'étude de la langue ukrainienne en tant que langue étrangère, "la compétence linguistique et culturelle se forme – l'un des concepts les plus importants de la communication interculturelle; connaissance des éléments fondamentaux de la culture (coutumes, traditions, réalités nationales, etc.) du pays dans lequel la communication s'effectue ; la capacité du locuteur à détecter des informations spécifiques au pays dans la langue et à les utiliser pour atteindre l'objectif de communication prévu ; la capacité d'effectuer une communication interculturelle, ce qui implique la connaissance des unités lexicales avec une composante sémantique nationale-culturelle (ethnoculturelle) et la capacité de les utiliser de manière adéquate dans des situations de communication interculturelle, ainsi que la capacité d'utiliser des connaissances de base pour

atteindre compréhension dans des situations de communication interculturelle indirecte et directe" [1].

Géographie des citoyens étrangers : Mexique, France, Grande-Bretagne, Algérie, Cuba. Norvège, Haïti, Maroc, Égypte, Inde. De cette illustration, il devient clair qu'il leur est très difficile de maîtriser les modèles grammaticaux de la langue ukrainienne. Mais c'est possible. Dans notre travail, nous essaierons d'analyser les difficultés rencontrées par les étudiants du département préparatoire lors de l'apprentissage de la langue ukrainienne, et nous découvrirons quels "points forts" pédagogiques doivent être utilisés lors de l'enseignement de cette dernière. Nous aborderons ces questions dans le travail et dans le plan étude de l'ukrainien comme langue étrangère pour les anglophones.

O. Potebnia dans son ouvrage "Langue et pensée" notait que "la langue est le code de la nation" [5]. Dans la monographie mentionnée, il souligne à plusieurs reprises que la langue est liée à l'esprit du peuple, à ses traditions. C'est sur le terrain mental que naissent de nombreuses lignes sémantiques parallèles que l'enseignant doit franchir.

Les langues romano-germaniques diffèrent des langues slaves orientales par leur structure, la présence de divers modèles phonétiques et grammaticaux : sifflements, quatre genres, exceptions à la formation du pluriel, cas, etc.

La méthodologie d'enseignement de la langue ukrainienne comme langue étrangère est une science relativement jeune. C'est la raison pour laquelle les enseignants et les méthodologistes sont désormais attentifs aux innovations. Le problème de l'amélioration des formes et des méthodes d'enseignement de la langue ukrainienne en tant que langue étrangère, leur mise à jour constante, leur adaptation aux nouvelles conditions de vie, n'a pas récemment été hors de la catégorie des réels pour l'enseignement supérieur. La science moderne a déjà une certaine expérience dans la résolution de telles questions. Oui, aujourd'hui, il existe déjà un nombre important d'ouvrages dans lesquels l'essence des innovations dans l'enseignement des disciplines humanitaires dans l'enseignement supérieur est considérée. Actuellement, l'enseignant de la langue ukrainienne dans un établissement d'enseignement supérieur est confronté au problème de trouver des moyens d'accroître l'intérêt cognitif des étudiants pour l'apprentissage de la langue, afin de renforcer leur motivation positive à étudier.

Analyse des recherches et publications récentes. En accord avec les positions des auteurs concernant l'essence de la méthodologie d'étude de la langue ukrainienne en tant que discipline scientifique et pédagogique, nous la considérons en même temps comme un domaine de recherche distinct. Le phénomène consistant à percevoir la langue de plusieurs millions de personnes et à connaître la nature de la parole orale et de l'activité de la parole en général est unique. Même aujourd'hui, le statut de la méthodologie linguistique n'a pas reçu son plein développement. Recherche par Ya.A. Komensky, K. Istomin, FI. Buslaeva, O. Potebni, II. Sreznevskyi, A. Bulakhovskyi, dont les travaux sont devenus la base de l'étude de l'état moderne des méthodes d'apprentissage des langues maternelles et étrangères, sont d'importantes sources d'information. Ils offrent l'occasion de comprendre des concepts tels que la langue, la parole, l'activité de la parole, la langue et la culture de la parole, les fonctions de la parole, le développement de

la langue maternelle et étrangère, l'analyse historique et pédagogique de l'essence des méthodes d'apprentissage des langues en tant que phénomène social et politique.

Des recherches importantes dans le domaine de l'enseignement de l'ukrainien en tant que langue étrangère se sont reflétées dans les travaux de ces chercheurs: Ya. Gladyr, I. Zhovtonizhko, T. Yefimova, A. Kulyk, T. Laguta, O. Trostinska, H. Tokhtar, B Sokil et autres . Le problème du choix d'une direction méthodique et d'une approche efficace lors de l'apprentissage de la langue ukrainienne en tant que langue étrangère est pertinent, car la langue ukrainienne aujourd'hui ne fait pas seulement partie de la culture des citoyens étrangers qui obtiennent un enseignement supérieur dans les établissements d'enseignement supérieur ukrainiens, mais c'est aussi une clé de la réussite de la future carrière des étudiants. Atteindre un niveau élevé de maîtrise de la langue ukrainienne n'est pas possible sans une formation linguistique fondamentale dans l'enseignement supérieur.

Se fixer des objectifs. Notre tâche était et reste d'essayer de neutraliser l'aspect politique, de le remplacer par un aspect national, moral-spirituel et psychologique. En tant que principal moyen de communication, la langue est également un facteur de développement spirituel d'une personne, car aucune réaction, action, activité de vie n'existe en dehors du processus vivant de la communication interpersonnelle, de la communication verbale, de la culture d'expression. En travaillant avec des étudiants étrangers, il est nécessaire de tirer parti des réalités socio-politiques et étatiques-économiques, qui ne changent pas le statut général de la langue ukrainienne, mais nécessitent une réorientation dans l'enseignement de tous les autres aspects moraux-psychologiques et pédagogiques. discours général lié au problème énoncé. Cela s'applique en particulier aux activités pédagogiques et à la formation des compétences linguistiques et culturelles des étudiants.

Présentation du matériel principal. Du point de vue de la compétence professionnelle d'un enseignant de l'enseignement supérieur, nous qualifions sa culture langagière comme le principal indicateur de compétence pédagogique. Par conséquent, la méthode d'enseignement de la langue ukrainienne, acquérant le statut de discipline pédagogique, devient une science pédagogique distincte.

En analysant les points de vue des philosophes classiques de la période ancienne et moderne, nous pouvons conclure que les exigences de la personne et de l'activité de l'enseignant ont beaucoup en commun: un haut niveau d'éducation, la moralité de la personne de l'enseignant, qui, à son tour, avec sa haute orientation humaniste générale devrait déterminer l'impact positif global du processus d'apprentissage de la langue ukrainienne sur les étudiants du département préparatoire afin d'assurer l'unité de l'influence sur leur vision et leur attitude positive envers le peuple – les locuteurs natifs de la langue étudiée. Cette opinion a été exprimée de la manière la plus vive par Ya.A. Coménius. Elle consiste dans le fait que "l'enseignant doit travailler de manière à ce que son élève ne reste pas assis en classe sans une pensée dans sa tête et sans un cas (acte) dans ses mains. Tu devrais bien étudier" [4, p. 176].

Si l'on considère la maîtrise d'un enseignant du point de vue de sa volonté d'exercer son activité professionnelle – l'enseignement d'une langue – on peut dis-

tinguer les principaux éléments tels que : la maîtrise de la langue ukrainienne de la connaissance de l'environnement e monde, familiarisation avec les méthodes de sa perception scientifique et compréhension de la place d'une personne dans ce monde; maîtrise de la culture générale de la parole professionnelle ; assimilation d'idées sur le caractère unique des caractéristiques individuelles et d'âge des étudiants du département préparatoire; maîtriser la culture et la technique de la langue et de la parole de manière à pouvoir penser dans cette langue [2].

Depuis aujourd'hui, il y a une réforme du processus éducatif dans les établissements d'enseignement supérieur d'Ukraine conformément aux exigences paneuropéennes pour la qualité de l'éducation : informatisation de l'espace éducatif, processus d'intégration dans l'éducation nationale moderne, établissement d'une coopération entre les Ukrainiens les universités et les établissements d'enseignement européens dans le domaine des activités éducatives et scientifiques, les échanges internationaux d'étudiants, la possibilité d'obtenir un deuxième enseignement supérieur et d'étudier dans le cadre de programmes de maîtrise à l'étranger – l'introduction de technologies, d'approches et de méthodes modernes d'enseignement de la langue ukrainienne en tant que langue étrangère langue dans le processus éducatif devrait améliorer la qualité de l'enseignement et de l'apprentissage de la langue, ainsi que la rapprocher du format européen.

À ce jour, il n'existe pas de classification des méthodes d'enseignement couvrant un large éventail de méthodes traditionnelles et non traditionnelles d'enseignement de l'ukrainien comme langue étrangère. Il est impossible de s'arrêter à l'utilisation de certaines méthodes séparément. C'est pourquoi nous pensons que «ce n'est qu'en combinant les méthodes traditionnelles et non traditionnelles d'enseignement de l'ukrainien comme langue étrangère dans les établissements d'enseignement supérieur que vous pouvez obtenir un résultat élevé» [7]. L'une des possibilités de résoudre le problème consistant à trouver des moyens d'accroître l'intérêt cognitif des étudiants pour l'apprentissage de l'ukrainien en tant que langue étrangère est l'utilisation de technologies innovantes dans l'éducation. L'application d'approches méthodologiques innovantes dans la pratique offre aux enseignants de langues la possibilité de mettre en œuvre et d'améliorer de nouvelles méthodes de travail, d'augmenter l'efficacité du processus éducatif et le niveau de connaissances des étudiants.

Il convient de noter qu'une formation linguistique de haute qualité des étudiants est impossible sans l'utilisation des technologies éducatives modernes. En pédagogie, le terme « innovation » signifie innovation, renouvellement du processus d'apprentissage. De telles méthodes étaient interdites dans notre pays. Ce n'est que dans les années 80 que les enseignants en exercice ont commencé à les utiliser. «Contrairement aux leçons ordinaires, dont le but est de maîtriser les connaissances, les capacités et les compétences, ces leçons tiennent compte au maximum des intérêts, des inclinations, des capacités de chaque élève» [7, p.128]. Dans une telle leçon, nous combinons l'expérience des leçons traditionnelles – perception de nouveaux matériaux, assimilation, compréhension, généralisation – mais sous des formes inhabituelles. Les méthodes pédagogiques innovantes

comprennent : • l'apprentissage assisté par ordinateur (création de présentations dans le programme PowerPoint, utilisation de ressources Internet. Le programme PowerPoint est facile à utiliser, il permet à l'enseignant de créer un résumé de référence animé de la leçon, d'activer une vidéo et un son fragment, affichage en dynamique d'un phénomène, événement qui aidera un étudiant étranger à apprendre facilement un nouveau matériel lexical ou grammatical); méthode du scénario (cette méthode se passe de manuels scolaires. Il s'agit de planification créative, de sélection d'hypothèses, d'expérimentation, de systématisation et de présentation du travail. L'histoire projetée contient également des éléments de théâtre et de jeu de rôle. L'enseignant ne définit que le cadre de l'action et présente des épisodes individuels. Les élèves posent leurs questions et trouvent eux-mêmes les réponses).

Il convient également d'utiliser la méthode des simulations. En particulier, nous parlons d'une variété de jeux d'entreprise de simulation qui donnent aux étudiants la possibilité de mettre en pratique leurs compétences, d'appliquer leurs connaissances afin de résoudre l'une ou l'autre tâche dans un soi-disant «environnement sûr» qui simule des situations réelles, par exemple, en affaires, en travail dans une entreprise. La simulation offre aux étudiants l'occasion de s'essayer à un certain rôle – directeur, président de l'entreprise, donne l'occasion d'explorer le système de travail d'une certaine entreprise. Les participants au jeu se voient confier certaines tâches – augmenter les bénéfices de l'entreprise, conclure un contrat, vendre de manière rentable les actions de l'entreprise, etc. Grâce à la simulation, les étudiants développent des compétences en planification stratégique, développent la capacité de travailler en équipe, de mener des négociations et de convaincre un partenaire commercial.

La méthode suivante est la méthode d'apprentissage par stations (une technique pédagogique dans laquelle les étudiants effectuent des travaux sur du matériel pédagogique organisé sous forme de stations. Les étudiants reçoivent des plans de travail avec des tâches obligatoires et facultatives. En utilisant cette méthode, les étudiants apprennent à planifier leur temps, analyser leur propre réussite scolaire, planifier et réaliser des étapes de travail, s'évaluer correctement. Le travail en stations permet de différencier selon les intérêts des élèves, selon le degré de difficulté de la tâche).

Comme vous le savez, une méthode intéressante pour apprendre l'ukrainien comme langue étrangère est un jeu de rôle. Il s'agit d'un moyen actif d'apprendre la maîtrise pratique de la langue ukrainienne en tant que langue étrangère. Le jeu de rôle aide à surmonter les barrières linguistiques des étudiants, augmente considérablement le volume de leur pratique orale. Le jeu développe l'observation, apprend à faire vous tirez des conclusions, comparez des faits individuels. Le jeu de rôle demande aux élèves de prendre des décisions spécifiques dans une situation problématique au sein du rôle. Les jeux de rôle consistent en un certain nombre de tâches, dans lesquelles le but principal est de parvenir à un accord ou de trouver une interaction avec un partenaire. Dans les jeux de rôle, les relations de rôle social des participants sont nécessairement formées. Les étudiants sont tenus non seulement de résoudre la tâche, mais aussi de jouer correctement leur rôle social.

Afin de former les compétences linguistiques et culturelles des étudiants étrangers, l'auteur utilise également des jeux et des conversations interactifs, qui contribuent à une assimilation plus rapide des connaissances théoriques dans la pratique. Dans le même temps, des textes sur l'Ukraine, ses coutumes, ses traditions et son histoire doivent être sélectionnés afin de susciter chez le public un grand désir d'apprendre chaque jour davantage la langue ukrainienne. Nous comprenons tous que le temps alloué aux cours à l'institut n'est pas suffisant. C'est pourquoi une atmosphère est créée au ZVO où les étudiants étrangers peuvent participer activement à la vie sociale des jeunes, organiser et mener divers projets caritatifs, être conférenciers lors de tables rondes, etc. Cela contribue à une acquisition beaucoup plus rapide du vocabulaire, des unités linguistiques et des modèles grammaticaux étudiés en classe. Seule «l'immersion du langage dans la vie» donne de bons résultats.

Participant à ces méthodes pédagogiques, les étudiants du département préparatoire simulent diverses situations de parole. En particulier, lors de l'étude du sujet «Déclinaisons des noms», nous construisons d'abord des phrases dans les deux langues pour faciliter la compréhension du système de cas. En français et en anglais, on le sait, ce phénomène grammatical n'existe pas. Par conséquent, au début, l'enseignant avait peur: comment expliquer exactement ce modèle, car dans ces langues, les articles et les prépositions prévalent, pas les terminaisons. Saisissant les deux derniers détails grammaticaux comme une «bouée de sauvetage», l'enseignant a pu facilement expliquer le système de cas des deux langues aux étrangers.

Après la phase préparatoire vient la phase pratique, dont le but principal est d'acquérir des compétences en écriture et en lecture. Cependant, l'étape la plus importante est celle de la communication. Par conséquent, l'enseignant crée de telles situations qui aident les auditeurs à créer des dialogues, à parler de la famille, des amis, à décrire la journée de travail, les loisirs, etc. Afin de vérifier la compréhension des informations à l'oreille, l'enseignant lit le texte, puis en discute, ou raconte le début d'une histoire dont la suite est créée par des étrangers.

Comme le notent S. Stempleski et B. Tomalin [9], regarder un long métrage original aide à former des compétences linguistiques et culturelles. Le matériel vidéo peut également inclure une phraséologie pour indiquer des états psycho-émotionnels, car ils sont largement utilisés dans la vie quotidienne. De plus, une tâche de ce type améliorera 4 types d'activité de parole en même temps.

Les scientifiques soulignent que regarder un tel film contribue à: 1) l'activation et l'intérêt des élèves; 2) développement du lexique; 3) consolidation des compétences et capacités grammaticales; 4) développement des compétences et capacités phonétiques; 5) formation et amélioration des compétences d'écoute; 6) travail sur l'écriture (exercices pour le matériel vidéo). I. Yu. Bukhanets [3] pense que cela aide également à apprendre non seulement des phrases et des mots individuels, mais aussi à apprendre la soi-disant situation de communication. Une situation (au sens large) désigne un ensemble de circonstances de la réalité. Mais toutes les situations n'encouragent pas la communication. Par conséquent, une situation de

parole peut être qualifiée de coïncidence de circonstances qui prédisposent une personne à parler.

Une situation de communication a une certaine structure, à savoir : 1) celui qui parle (destinataire) ; 2) celui qui écoute (destinataire) ; 3) communication entre l'expéditeur et le destinataire ; 4) ton de communication (officiel – neutre – amical); 5) objectif ; 6) type de communication, moyens de communication verbale et non verbale ; 7) communication mutuelle (orale/écrite, contact/à distance) ; 8) lieu de communication [6, p.76]. Ces composants sont des changements de situation. Un changement dans l'un des composants entraîne un changement dans l'ensemble de la situation de communication. C'est pourquoi les films et les supports visuels authentiques aident à mieux comprendre une culture et une langue étrangères.

Au cours du processus éducatif, des situations de parole peuvent survenir indépendamment, comme dans la communication réelle. Cependant, l'enseignant peut aussi les proposer.

En conséquence, les situations de parole dans une classe de langue étrangère peuvent être divisées en naturelles et artificielles. Nous voudrions noter que des situations de parole naturelles se produisent souvent au cours du processus éducatif, car elles sont étroitement liées à son organisation, l'impulsion de parole ici est naturelle et les circonstances de la classe, la relation entre l'enseignant et les élèves, les élèves et les camarades de classe sont réel. Cependant, un tel nombre de ces situations spontanées et naturelles est assez limité, et nous ne pouvons pas les utiliser tout le temps, car ce ne serait pas approprié. De plus, ils ne peuvent assurer l'activation de tout le matériel linguistique du programme.

Cependant, les enseignants expérimentés essaient d'élargir l'éventail des situations de parole naturelles. Ils discutent d'événements réels avec les élèves, animent habilement des discussions à partir d'une histoire qu'ils ont lue ou d'un film qu'ils ont regardé pendant Depuis un certain temps, la combinaison de la communication avec une langue étrangère et des outils langagiers acquis, qui sont indiqués dans ce cycle pédagogique, aide les situations de parole éducatives (SNM). La situation de parole éducative diffère de la manière naturelle de créer un stimulus de parole, sans laquelle l'acte de parole est impossible. Dans les situations naturelles, comme mentionné, ce stimulus est créé par des circonstances réelles, et dans NMS l'enseignant le décrit oralement [8].

Nous sommes convaincus que les compétences linguistiques et culturelles peuvent se former et se développer au cours de l'étude des couleurs. L'enseignant distribue des photos et des images de contenu patriotique aux élèves, leur demande de préparer un dialogue et un monologue basé sur ce qu'ils ont vu. De la pratique, nous pouvons dire que l'étude des symboles nationaux de l'Ukraine est efficace. De cette manière, les étudiants étrangers non seulement répètent le matériel grammatical et lexical, mais apprennent également les particularités du vecteur national-patriotique de notre État.

Le drapeau ukrainien et les armoiries peuvent avoir les mêmes schémas de couleurs et signes, mais symbolisent des choses différentes. Un tel dialogue interculturel élargit les horizons des étudiants étrangers, aide à mieux comprendre l'image linguistique du monde des Ukrainiens.

Les diplômés des établissements d'enseignement supérieur, dans les premiers, étudiants du département préparatoire, sont souvent invités aux cours. Ils racontent leur expérience d'apprentissage de la langue, partagent les secrets d'une meilleure mémorisation des structures lexicales et grammaticales. En particulier, ils vous conseillent de tomber amoureux, de trouver un ami ou une petite amie d'Ukraine, de visiter des cinémas qui diffusent des films en langue ukrainienne ; écoutez des chansons nationales et patriotiques, étudiez-les et interprétez-les plus tard. Et il y a beaucoup d'exemples de ce genre dans la pratique de l'auteur. Les étrangers, communiquant en ukrainien dans la vie de tous les jours, le maîtrisent 70% plus rapidement. De telles rencontres inspirent les auditeurs actuels, les motivent à mieux apprendre la langue ukrainienne grâce à des histoires inspirantes sur la culture, les coutumes, les traditions, les héros de l'Ukraine, qui protègent son indépendance.

Conclusions. L'éducation linguistique et patriotique des étudiants étrangers est très importante. Et pour cela, l'enseignant organise le processus éducatif de manière à ce que chaque leçon révèle l'identité nationale, la culture et l'histoire de l'Ukraine. C'est tout à fait pertinent en ce moment, dans les conditions où la langue ukrainienne est le reflet de l'idée nationale, une sorte d'arme contre l'invasion raciste. Le canevas méthodologique de l'étude de la langue ukrainienne en tant que langue étrangère est présenté sous diverses méthodes et formes, ce qui détermine en fin de compte la formation des compétences linguistiques et culturelles des étudiants. L'introduction de méthodes innovantes améliore considérablement la qualité de la présentation du matériel pédagogique et l'efficacité de son assimilation par les étudiants, enrichit le contenu du processus éducatif, augmente la motivation à étudier la langue ukrainienne et crée les conditions d'une coopération plus étroite entre l'enseignant et étudiants.

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CONCEPTS AND TYPES OF INDEPENDENCE OF A JUDGE ACCORDING TO THE LEGISLATION OF UKRAINE

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Annotation. The purpose of the article is to characterize the essence of the independence of judges as a key principle of judicial proceedings, as well as to distinguish types of independence. The article uses a complex of general legal and special legal methods, including analysis and synthesis, generalization, formal legal, logical, dogmatic, etc. It is emphasized that the importance of legal principles (fundamentals) as one of the most important sources of law is well recognized and emphasized in legal theory. Nevertheless, the concept of legal principle is still controversial and not clear to many. It has been established that various perceptions of the term "principle" refer to its various essential manifestations. Thus, this concept can be interpreted through a professional lens, namely considering the profession of the person who interprets the term: scientist (doctrinal use), judge (jurisprudential use) and legislator (legislative use). Lawyers use the expression "principle" in different contexts: as an element of discipline (principles of private rights), as a value (principle of correctness), as a tool (principle of contradiction), but above all as an abstract rule applicable to certain concrete cases.

The article defines the features of the legal framework. Namely: normativity (fixed in normative legal acts), regulatory character (legal basis for the emergence of one or another type of legal regulation and to a large extent determine this due to its normative character) and objective conditionality (correspondence to the essence of social relations, economic, political, and ideological processes taking place in society). It has been proven that independence is the main principle and value of the judicial system, as well as a measure of its effectiveness. The function of independence derives from the distribution of power between the branches of the state to protect citizens in disputes with the state. However, the emphasis on independence also stems from the rationale for the existence of the judiciary to fairly resolve any disputes in a predominantly confrontational environment. It is proposed to distinguish two types of independence of courts:

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external independence (independence from other branches of government, officials and officials, independence from political forces and the judge's beliefs) and internal independence (independence from conflicts of interest, independence from the head of the court and other influential judges, employees of the court apparatus).

Key words: judiciary, principles of law, principles of judiciary, independence of a judge, internal independence, external independence.

The basis of the research is always the study of theoretical, terminological, as well as legal principles on this or that issue. That is why we consider it necessary to start our research with the study of the conceptual and categorical apparatus. First, the concept of "fundamentals" or "principles", which is key in the context of this study. In our opinion, these concepts are synonymous and do not have significant substantive differences. That is why, in the context of this study, we will use both concepts.

The importance of legal principles (fundamentals) as one of the most important sources of law is well recognized and emphasized in legal theory. Nevertheless, the concept of legal principle is still controversial and not clear to many [6, P. 109]. The next step of our research should be the characterization of the essential features of legal principles. The first of them is their normativity, i.e., legal principles in Ukraine must be established normatively and, accordingly, cannot exist without their external expression – a regulatory legal act. The normativity of legal principles is also important for natural legal principles to acquire real pragmatic features. Scientists, focusing on normatively established legal principles, differently determined the levels of such consolidation. After all, some researchers believed that consolidation of legal principles is possible not only directly in the legislative act, but also indirectly. Thus, legal principles were understood to be those that can be enshrined in general legal norms (normative principles), constitutions, preambles of laws, codes or represent their own law and permeate the inner content of legal norms. Other jurists, considering legal principles, do not focus on their normative establishment, because they interpret them as basic ideas that define a specific branch of law [2, p.71].

The second feature of legal principles is their regulatory nature since legal principles precede the emergence of one or another type of legal regulation and largely determine it due to their normative nature. This determines their similarity. Only the general legal principle "everything that is not directly prohibited by law is allowed" formulated now in the conditions of the formation of the legal state and civil society made possible the existence of a generally permitted type of legal regulation. And the principle "everything that is not expressly permitted by law is prohibited" became the basis of general prohibition-like legal regulation [5].

The third essential feature of the principles of law is their objective determination. The objective conditionality of legal principles, which is also their characteristic, is interpreted as the correspondence of the essence of social relations, economic, political, and ideological processes taking place in society. That is, legal principles are those legal phenomena that directly connect the content of law

with its social foundations – those laws of social life on which this legal order is built and which it establishes. This dependence determines the nature of legislation, the content of legal norms, methods, and methods of law enforcement. For example, such a general social principle of the organization of political power as the principle of people's power presupposes the existence of such a principle of law-making as the active and broad participation of the people and their representatives in the legislative bodies of the state. This conditionality allows the principles to form the essence of law, the essential features and peculiarities of the legal system or other social systems [3, p. 346].

Having considered the content of the concept, types, and signs of legal principles in general, we suggest focusing attention on one of the fundamental principles of the judiciary – the principle of judicial independence. The importance and significance of this principle is confirmed by the fact that it is enshrined in the Basic Law of our country. Thus, according to Article 126 of the Constitution of Ukraine, the independence and inviolability of judges are guaranteed by the Constitution and laws of Ukraine. Article 6 of the Law of Ukraine "On the Judiciary and the Status of Judges" specifies this provision and emphasizes that, when administering justice, courts are independent from any illegal influence. Courts administer justice based on the Constitution and laws of Ukraine and on the principles of the rule of law. Appeals to the court of citizens, organizations, or officials who, according to the law, are not participants in the judicial process, regarding the consideration of specific cases by the court, are not considered, unless otherwise provided by law. Interfering with the administration of justice, influencing the court or judges in any way, disrespecting the court or judges, collecting, storing, using, and disseminating information orally, in writing or in any other way with the aim of discrediting the court or influencing the impartiality of the court, calls for non-compliance court decisions are prohibited and result in liability established by law. State authorities and local self-government bodies, their officials must refrain from statements and actions that could undermine the independence of the judiciary. To protect the professional interests of judges and resolve issues of the internal activity of courts in accordance with this Law, judicial self-government operates [13].

Given the importance of this principle, it has been the subject of scientific analysis by many scientists. If we analyze the positions of foreign scientists, Frans van Dijk notes that independence is the main principle and value of the judicial system, as well as a measure of its effectiveness. This is expressed in many major documents. The function of independence derives from the distribution of power between the branches of the state to protect citizens in disputes with the state. However, the emphasis on independence also stems from the rationale for the existence of the judiciary to fairly resolve any disputes in a predominantly confrontational environment. Courts make far-reaching decisions about people and their lives. The parties, often very unequal in resources and power, disagree and fight, often in a very tense and emotional atmosphere. Simply put, they want to win (or at least not lose) and are often willing to go to extremes to achieve it. This confrontational aspect distinguishes the judiciary from most other professional organizations

and places the independence of the judge at the fore. A judge cannot be an effective arbitrator unless he is independent and impartial, and the parties consider him to be so [8, p. 17].

However, as J. Lowndes aptly notes, the principle of judicial independence means more than just the concept of impartiality: it requires that there be an environment that ensures that the judiciary fulfills its "central, distinctive function (which is) independent and impartial judicial decision and perceived as performing this important function. It primarily "refers to the relationship between the judiciary and the two other branches of government which serve to ensure that the court functions and is perceived to function impartially." It is important to note that the principle of judicial independence refers not only to the ability (both actual and perceived) of the judiciary within the structure of government to perform its judicial function as the third arm of government but extends to the ability to perform this function without any external influence, including other members of the judicial system. Judicial independence, in addition to the independence of judges, also implies the independence of court officials from each other [12, p. 23].

Independence means being free from the interests of the state, that is, the executive and legislative powers, and from the parties in any dispute. When considering whether judges (and therefore courts) are independent, the relevant factors are the way the judge is appointed, the length of the term of office, safeguards against external pressure, and the appearance of independence. There are other nuances in the judicial system, such as how to prevent junior judges from deferring to more senior colleagues in hopes of career advancement. These issues are handled differently by different regimes. All of them to a greater or lesser extent contribute to actual judicial independence, that is, the freedom of a judge to decide a case freely and fairly [9].

Impartiality is closely related to independence. Again, it is fundamentally important that the judge decide the case based on the available evidence, free from influence, bias, or prejudice, whether factual or apparent. Usually, judges take an oath upon taking office. For example, in Great Britain it means to administer justice "without fear or favor, favor or ill will". There are subjective criteria (which arise from the bias or impartiality of a particular judge) and objective criteria (whether the composition of the court provides a sufficient guarantee of impartiality) to assess impartiality. These approaches may merge in one case or another.

An example of this was the Pinochet case in Great Britain, where the House of Lords overturned its decision on the grounds that one of the judges involved had links to a campaign organization which apparently compromised his independence. It follows that judges must disclose any personal interest in any case in which their impartiality may be called into question and, if necessary, recuse themselves [18].

As for the position of domestic scientists, one of the prominent constitutionalists, V. Kopeichikov, claimed that the independence of judges is manifested in the fact that they only obey the law and exerting any influence on them is unacceptable [1, p.171].

The founder of the Ukrainian constitutional and legal doctrineV. Pohorilko rightly emphasized that the independence of judges is an important condition for the independence and authority of the judiciary, the ability to objectively administer justice, protect the rights and legitimate interests of citizens in full compliance with the law [14, p. 538].

V. Chornobuk believes that the independence of judges should be ensured by guaranteeing the real economic independence of the judicial branch of government. This refers to the material and technical support of courts, proper remuneration of judges and employees of the judicial apparatus, creation of appropriate conditions for participants in the judicial process [4, p. 44].

According to M. Kozyubra, the independence of judges is not a privilege of the judiciary, but one of the most important achievements of human culture and civilization. The level of judicial independence is a kind of litmus test for the level of civilization, state democracy, establishment of the rule of law [10, p. 60]

O. Kryzhova focuses attention on the independence of judges as part of the independence of the judicial system as a whole and emphasizes that the independence of the judiciary and judges is one of the most important European legal norms, which is directly related to the establishment of the rule of law and is enshrined in European national and supranational legal sources. Mandatory components of the independence of the judiciary are the independence of the judiciary from other state authorities, the independence of the judge in the judicial system and outside its borders in the administration of justice, the responsibility of each judge and judicial authority, material, technical and human support for the administration of justice [11, p.15].

Analyzing the independence of judges in the context of its positioning as a legal and social value, Yu. Polyansky claims that the principle of independence of judges is one of the most important principles of both the judicial system regarding the status of judges and the judicial system during the consideration of specific cases in court [15, p. 80].

In addition, regardless of the numerous interpretations of the independence of judges, its manifestations, and attributes, it is important to remember that the independence of judges is not absolute, it is limited by the law, the procedural boundaries within which judicial power is exercised. The independence of judges is legitimate only in the implementation of the judge's procedural activities. The legislator uses the term "independence" only when describing the components of the judge's status, when it comes to the judge's authority in the implementation of judicial proceedings, that is, the procedural aspect of judicial activity. The principle of independence of the judge does not apply outside the court, the main consideration of the case. The content of the independence of judges also includes the element of personal independence of judges (that is, the presence of certain moral and psychological qualities in a judge that contribute to the realization of the judge's right to decide the case independently). The independence of a judge implies independence both from external (from factors outside the judicial system) and from internal (from factors within the judicial system itself) influence on the process of a judge deciding in a case [16, p. 149].

In our opinion, this position is quite rational, since every right or additional guarantee always borders on the temptation to violate them. And a judge's violation of his independence inevitably affects the violation of the rights and legitimate interests of not only individual citizens, because in general it discredits the fact of trust in the judicial system. And thus, it nullifies the thesis "about the legal state of Ukraine", because the state cannot be legal if the problem of trust in the judicial system has a systemic and deep nature.

Therefore, the independence of a judge is one of the main requirements of a democratic legal state, which is achieved through: 1) separation of courts from other authorities; guarantee of their budgetary financing; 2) the right of citizens to access the court and the prohibition of other authorities to limit this right; 3) guarantee of remuneration of judges; 4) procedural guarantees of consideration of cases, freedom of evaluation of evidence. This fundamental requirement does not have an absolute nature, since the judicial system, the principles of the judicial system, the scope of the powers of the courts are determined by laws [7, p. 365].

The next important stage of our research is the determination of the constituent elements of judicial independence. S. Timchenko is convinced that the independence of judges consists of the following elements: 1) external independence (independence from the influence of external factors, primarily legislative and executive power); 2) the internal component of independence (independence from factors influencing the judicial system itself); 3) moral independence of judges; 4) unconditional subordination of judges to the law [19, p. 145].

According to N. Shulgach, the independence of a judge implies independence from both external (from factors outside the judicial system) and internal (from factors within the judicial system) influence on the process of the judge deciding on a case [17, p. 228].

External independence means the independence of the judiciary from political power (executive and legislative) and all other non-judicial bodies. Although there must necessarily be some relationship between the judiciary and politics (the executive), as stated in the commentary to the Bangalore Principles, "such relationship should not interfere with the freedom of the judiciary to decide individual disputes and the law to maintain and to appreciate the Constitution.

Internal independence focuses on guarantees aimed at protecting individual judges from undue pressure from the judiciary: from other judges and, above all, from high-ranking judges. Senior judges may, for example, supervise the administration of the courts (depending on the organization of the court system), but they should in no way influence the substance of the judges' decision-making.

Institutional independence as a part of internal independence refers to the institutional and legal mechanisms developed by the state ex ante to protect judges from undue pressure and influence. From this perspective, the most important factors relate to the way judges are recruited, evaluated, and disciplined, the administration of the judiciary and the administration of the courts. Usually, these aspects are regulated by the Constitution or special laws on the judiciary. However, the fact is that institutional independence can operate in different

ways depending on the context in which it operates and does not in itself guarantee that judges behave independently. Therefore, it is necessary to consider not only institutional structures, but also the specific behavior of judges. This issue concerns the individual independence of judges, that is, their state of mind and specific behavior, which depends, among other things, on their professional socialization and how they have internalized professional values. Although institutional independence is a necessary condition for individual independence, the two concepts are distinct. Both dimensions are needed: both the individual judge and the court must be independent and perceived as independent. As stated in the commentary to the Bangalore Principles: "An individual judge may have this state of mind, but unless the court over which he or she presides is independent of the other branches of government in matters essential to its functions, the judge cannot be said to them are independent [18].

In our opinion, the structural elements of judicial independence are external independence, i.e., independence from other branches of government, officials and officials, independence from political forces and judge's beliefs. Regarding internal independence, it is independence from "internal" negative and "positive factors" (conflict of interests, independence from the head of the court and other influential judges).

Summarizing, we would like to note that independence is the main principle and value of the judicial system, as well as a measure of its effectiveness. The function of independence derives from the distribution of power between the branches of the state to protect citizens in disputes with the state. However, the emphasis on independence also stems from the rationale for the existence of the judiciary to fairly resolve any disputes in a predominantly confrontational environment. It is proposed to distinguish two types of independence of courts: external independence (independence from other branches of government, officials and officials, independence from political forces and the judge's beliefs) and internal independence (independence from conflicts of interest, independence from the head of the court and other influential judges, employees of the court apparatus).

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EXECUTION OF PROPERTY PUNISHMENTS BY LAW ENFORCEMENT AGENCIES IN UKRAINE

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Anntation. In terms of legal theory, Ukraine, as the main structural element of the political system, carries out the state policy the aim of which is provided in the Constitution of Ukraine. This policy is demonstrated in different directions, defining the main objectives and content of the state activity in all areas of public relations. One of the structural elements of the state policy is legal policy, the main task of which is to create an effective system of social relations regulation by legal means. Depending on its orientation, this policy is divided into subtypes that typically correspond to law branches. However, there are inter-species of legal policy, which unite under a common goal. To these species the policy of the fight against crime belongs, the backbone element of which is a criminal law policy. The criminal law policy, being a structural element of policy in the fight against crime, has the task of developing and implementing measures to fight crime, using criminal law means, and perhaps, primarily – through penalties, including property penalties. The methodological basis of the study is the dialectical method that was used during the investigation and which revealed and resolved conflicts taking place in society; it showed the dialectical relationship of structural elements of criminal law policy in the field of property punishment in Ukraine with features that are unique to specific legal state formations. Using the method of generalization, we were able to obtain characteristics of the criminal law policy in the field of property penalties in general and its elements. Genetic method allowed us to answer questions about the origins of phenomena, that is to determine facts which led to the appearance of the phenomenon. Such method is used, for example, deal-

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ing with questions of genesis of the system of property penalties. With the use of formal legal method the basic legal concepts of study were define, as well as their signs and classification. Nowadays, there are various approaches to understanding property penalties in the scientific literature. Taking into account their characteristics, we offer to use the following approach. All penalties that to some extent are intended to impact on wealth of the sentenced we offer to name "punishment of material nature." The latter, in turn, can be divided into two groups. To the first of them we offer to include those with central punitive effect directed to the above material value. In the future, we offer to name them "property penalties" and attribute a fine and confiscation of property to them. Other penalties, that have a certain impact on wealth of the convicted, but this effect is not the basic purpose of punishments mentioned (for instance, remedial work and service restrictions for military personnel), we offer to call "other punishments of the material nature. "Based on the concepts and features of the property penalties mentioned above, we consider that only a fine and confiscation of property can be attributed to the latter. Our research will be dedicated to the analysis of the criminal law policy in the area of their application.

Key words: policy, penalties, fine, confiscation of property, remedial work, service restrictions for military personnel

In terms of legal theory, Ukraine, as the main structural element of the political system, carries out the state policy the aim of which is provided in the Constitution of Ukraine. This policy is demonstrated in different directions, defining the main objectives and content of the state activity in all areas of public relations. One of the structural elements of the state policy is legal policy, the main task of which is to create an effective system of social relations regulation by legal means. Depending on its orientation, this policy is divided into subtypes that typically correspond to law branches. However, there are inter-species of legal policy, which unite under a common goal. To these species the policy of the fight against crime belongs, the backbone element of which is a criminal law policy. The criminal law policy, being a structural element of policy in the fight against crime, has the task of developing and implementing measures to fight crime, using criminal law means, and perhaps, primarily – through penalties, including property penalties.

The methodological basis of the study is the dialectical method that was used during the investigation and which revealed and resolved conflicts taking place in society; it showed the dialectical relationship of structural elements of criminal law policy in the field of property punishment in Ukraine with features that arc unique to specific legal state formations. Using the method of generalization, we were able to obtain characteristics of the criminal law policy in the field of property penalties in general and its elements. Genetic method allowed us to answer questions about the origins of phenomena, that is to determine facts which led to the appearance of the phenomenon. Such method is used, for example, dealing with questions of genesis of the system of property penalties. With the use of formal legal method the basic legal concepts of study were define, as well as their signs and classification.

Penalties that affect the property status of the convicted person we subsequently recommend to call "punishments of material nature", which, in turn, we divided into two groups. To first we offen to include penalties the, primary effect of which is aimed at money, property or other tangible assets of the convicted. This mentioned group we offer to call "property penalties". The main features (characteristics) of property penalties include the following:

1. Criminal penalties as those provided in Art. 51 Criminal Code of Ukraine;

2. The principal effect of these penalties aimed at money, property or other tangible assets of the convicted.

From the analysis of the content and esence of Chapter X of the Criminal Code of Ukraine to the property, penalties they include only a fine and confiscation of property. To the second we offer to include penalties, the main effect of which is not directed at the money, property or other tangible assets of the convicted, but they in the process of implementation, along with other legal restricfions provide for this kind of impact. We recommend to call this group "other penalties of material nature." Their main features (characteristics) of material nature other penalties include the following:

1. These are criminal penalties as those provided in Art. 51 Criminal Code of Ukraine;

2. The principal effect of these penalties is not focused on money, property or other tangible assets of the convicted, but they are in the process of implementation, along with other legal restricfions provide for this kind of influence.

From the analysis of the content and essence of Chapter X of the Criminal Code of Ukraine, other penalties may include corrective labour and service restrictions for military personnel. The refusal of the above positions on our part is due to the fact that, as noted above, despite the actual leveling of the large part of measures (legal restricfions) to persons sentenced to correctional labor, property charges continue to be only supporting means of influence on the convicted, only complementing and enhancing personal sanctions, including a ban to retire from work when they wish and travel outside Ukraine, the obligation to inform the probation service about changing residence, appear for registration to probation officer from time to times etc. For the same reasons, in our view, service restrictions for military personnel shouldn't be considered material panishment. Equally far-fetched are given arguments that to property penalties we include only property confiscation, while "a fine can't be called property as direct impact in the performance of this type of punishment is not aimed at property or property rights (such as, with confiscation of property), but at the financial interests of the convicted. " Thus, based on the characteristics and essences of the property punishment in modem criminal law, we offer to define "property penalties" as follows: property punishment – a criminal penalty, the main impact of which is aimed at extracting money, property or other property of the convicted.

At present there is no established approach to understanding the concept of "property penalties". If we can group basic approaches to this issue, the views of scientists can be divided into two main groups: those that identify the concept of "property penalties" with the concept of "punishment of material nature"

(eg, Veselova, Zagudayev, Kozyryeva, Davlatov) and those who do not try to deline"property penalties" at all (eg, Tsokuyeva and Yashkina and are calling their works "criminal sanctions of material nature, types, evolution and prospects" and "punishments of property nature " do not attempt to define or identify declared concepts and their characteristic features). V. Veselova provides other opinion, criticizing cited above definition, offers her own: "The punishment of material nature is a measure of criminal influence, applied on behalf of the state to convicted persons to destroy the anti-social orientation of his/her mind and achieve other objectives, set by the criminal law "[1].

According to Yu. Zahudayev "punishments of material nature are a state enforcement measures established in the criminal law, applicable be the court on behalf of the stale to people who have committed crimes, that express public condemnation of the act and the identity of the perpetrator and have a certain restrictions on prisoners in primarily by limiting their property interests "[2].

V. Kozyryeva says that under the penalties of material nature we should understand "measures of state coercion which are set law on criminal liability and upon conviction shall be applied to people convicted of a crime and are sentenced to limit rights to meet their property interests" [3]. With proposed above definitions, we can conclude that the classification of certain penalties to the "punishment of material nature" depends on what exercise they impact on wealth of the convicted, regardless of whether it takes central (basic) place or is just one of the means. Therefore, we offer to classify a fine, property confiscation, corrective labor (Soviet researchers' approach) and service restrictions for military personnel (modem researchers' approach, for example, Stashys, Kozyryev, Davlatov). It appears that the approach described above is not completely accurate and concerns this problem generally. Denying that all the above penalties to some extent affect the financial situation of the convicted person, it is important to study the question, what is the main objective of these penalties. For example, Vladimir Kozyryev says that all the material nature of punishment (including corrective work and service restrictions for the military) is characterized by a common main feature that "the main element of punitive punishment is to limit (fine, corrective labor, office restraint) and deprive (confiscation) of property rights of the convicted person "[3].

Even more extreme position is Stashys, who believes that "fine as an independent sentence is represented by a simple fine (is monetary penalty, which is calculated at the statutory income tax exemption and is applied by the court in cases and amounts established in the Criminal Code of Ukraine) and its special varieties – corrective labor and official restraint for military personnel. Correctional work in modem conditions, having lost a significant portion of other human limitations that were inherent in the Soviet period, also pose, in essence, monetary penalty, calculated in the prescribed percentage of the monthly salary of the convicted and imposed by the court in cases stipulated by the Criminal Code of Ukraine, and time limits set in its Special Section. Likewise official restraint is characterized – punishment that according to many Ukrainian criminologists is a special kind of remedial work and is applied to specific categories of people – soldiers, except conscripts' [4].

In our opinion it's difficult to, agree with the following statements. Thus, there is no doubt that the sentence of correctional labor and in the form of official restrictions for military personnel include items of property and as well as personal legal restrictions, moreover, provided legal restriefions are not intended to implement the main impact of these penalties on money, property or other tangible assets of the convict, unlike, for example, from modern fine or confiscation of property or by fixed in Ruska Pravda sentence of flow and looting where property part was part, along with part related to the impact on the identity of the perpetrator, the nature of the impact on the guilty person. It should be noted that the dispute over the classification of certain penalties to the category of proprietary traders is a long time discussion. The most active dispute can be considered correctional labor. Already in the early years of the sentence of correctional labor (as it was first introduced by the guiding principles of the criminal law of the RSFSR in 1919 and the Criminal Code of the RSFSR and 1922), there was a debate on the merits of correctional work and the possibility of referring it to the property punishment. For example, M. Isayev [5] subjected to harsh criticism the term "corrective labor", considering it nothing but a "property penalty", "disguised fine, levied in installments." According to Z. Tadevosyan who shared this view [6], "corrective labor work is somewhere between fine and probation. "We can not pay attention to the more extreme positions on this issue expressed by W. Myenshahin in 1938. Analyzing the nature of corrective labor work as a form of punishment, the author came to the conclusion that the latter is nothing more than "a lighter form of penalty as the appropriate amount of the fine is not paid immediately "[7].

Despite the above arguments and the level of scientists who expressed them, more reasoned and balanced is the view of researchers who opposed the assignment of property to correctional labor punishment. For example, J. Bushuev, who specifically identifiet a list of features (elements) that were intended to describe the essence of the mentioned penalty and separate it from the legislation provided for penalties property. To these mentioned features the author relates "the fact of punishment as conviction of a crime means negative moral and political assessment of a person on behalf of the state, the emergence of conviction, retention of earnings, ie property legal restriefions, labor legal restriefions, the change of the type and nature of work upon conviction to correctional work, the loss of their own rights released from work, etc.", As you can see, the property item is only one of the several, and it is not the most significant.

Analyzing the criminal and penal legislation and practice, we can state the actual leveling of the most of the above elements, which allows us to talk about the approach of correctional labor, in essence, to property penalties. At the same time, it is difficult to agree with Tsokuyeva [8], who believes that, due to the aforementioned reasons, "today remedial work has actually turned into cash collection of installment for a period from two months to two years".

Based on the concepts and features of the property penalties mentioned above, we consider that only a fine and confiscation of property can be attributed to the latter. At the same time, referring to property penalties sentence of correctional labor and punishment in the form of official limits to military per-

sonnel, can not be justified. Despite the fact that these two elements provide for punishment of property (financial) impact on the prisoners, but this effect is complementary aimed only at strengthening basic legal restrictions aimed at the person convicted. At the same time, property punishments basically have just property (financial) legal restrictions and impact on a person convicted plays only a subsidiary (additional) character.

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CATALAN INDEPENDENCE REFERENDUM: POWER OF UNIONISTS OR INDEPENDENTS?

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Annotation. The aim of the article is to explore the political and ideological confrontation between two concepts of the existence of the Kingdom of Spain – unionism and independence On the one hand, the activities of supporters of independence regarding the holding of a legitimate referendum on the independence of Catalonia and the creation of its own state are analyzed, and on the other hand, the opposition to such a scenario by supporters of a single state – unionists. The dispute between the two concepts exists not only in Spain's political life but also in Spain's society, which reflects the general trends of the existence of a dialogue about the future of the Kingdom of Spain. The importance of fully understanding the internal political situation in Spain and finding a compromise between opposing opinions is substantiated. The repeated referendum on independence in Catalonia and subsequent plans for its legitimization prove the political tense between Madrid and the regions.

Key words: Catalonia, referendum, separatism, self-determination, ethnicity

Introduction. In the modern world, the ideas of separatism are becoming popular again and causes the internal political instability in some states. The Kingdom of Spain is a vivid example where the influence of such ideas on the political life has a decisive effect. For quite a long time, one of the Spain's regions – Catalonia – has been striving for independence from its metropolis. Catalonia manifests such aspirations in the form of a referendum on independence and in further political steps to legitimize it.

The referendum, as one of the legitimate tools for obtaining one's own state, has significant impact on the social and political life of Catalonia. The nationalist parties of Catalonia, which are the majority in its parliament, define the auton-

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omy and independence of the region as their main goals. In political science, such people are called independents. Instead, representatives of the central government (unionists) advocate the unity of the state in the current form of the monarchy. The modern political life of Catalonia is built on the opposition of these two trends – independence and unionism. Official Madrid is trying in every possible way to oppose the nationalists in the regions, using various methods.

The dualism of state-building ideas often hinders its stability and strategic planning for the future. Moreover, the lack of dialogue and search for compromises only deepens the gap between representatives of different political elites. An analysis of the ideas and actions of representatives of unionism and independence allows us better understand the positions of both sides and to determine the prospects of such a confrontation for the Kingdom of Spain.

Results and discussion. Catalonia's desire for independence has long been no surprise to anyone. Moreover, it can be noted that the issue of independence and autonomy of Catalonia divides people exactly into two camps – those who support the right of their people to self-determination and those who do not support it and advocate the integrity of the state. At first glance, everything looks very simple, but is it really so?

In political science, it is customary to divide such people according to their views into independents and unionists. Independents (from the Latin «independents») is a political trend that dates back to the time of the English bourgeois revolution in the 17th century, the main goal of which is to advocate for full autonomy and independent management of one's own community [20]. Thus, supporters of the independence and secession of Catalonia are called independents. Unionists are completely opposite to them in political views. Unionists is a general name for parties and political movements that advocate union or unification with certain institutions. Unionists first became popular also in Great Britain from the beginning of the 17th century [31]. However, modern political scientists single out the concept of «Spanish unionism», which is directly related to the internal political situation in the Kingdom of Spain.

Spanish unionism is a term used in the context Basque nationalism and the Catalan independence movement; political opposition to separatism or secession and favors the existence of the Kingdom of Spain as a united state with a single nation [25]. There is a fierce confrontation between the independents and the unionists in the political and social life of Spain and in this way a significant influence is exerted on the internal and foreign policy of the country.

The idea of holding Catalonia's referendum on the independence is always on the agenda of both its supporters and its opponents. The first ideas about secession and a referendum arose back in the 2000s and already in 2014 the first attempts to hold it took place. Shortly before that, on January 23, 2013, the Parliament of Catalonia voted by 85 votes «for» and 41 «against» for the «Declaration on Sovereignty and on the Right of the Catalan People to Self-Determination» [13]. This document states that «he people of Catalonia must, through democratic legitimacy, become a sovereign political and juridical subject». The declaration includes the following main principles: sovereignty, legitimacy, transparency, dialogue, social cohesion, Europeanism, the role of the Catalan Parliament and its

participation in political and social processes [2]. However, this document was never recognized by the central government of Spain, moreover, on May 8, 2013, the Constitutional Court of Spain suspended its effect [5].

One way or another, the attempts of the independents did not stop and already on December 12, 2013, the government of Catalonia (especially nationalist parties) had determined the date and formulated the main question that should be put to a referendum. The date was chosen for November 9, 2014, and only two questions were asked: «Do you want Catalonia to become a state?» and «If Yes, do you want this state to become independent?» [9]. However, this «expression of will» was again blocked by the Spanish government and the Prime Minister of Spain, Mariano Rajoy, said that «such a referendum will be declared illegal and this decision is not subject for any discussion». Later, the Supreme Court of Spain again banned such a «show of will», but the vote, nevertheless, took place. 81% of respondents voted for independence, but the turnout of these respondents was only [24]. This result shows us that the majority of Catalans are against both gaining independence and holding a referendum on independence as a tool to achieve their goals. It is worth noting that criminal cases were initiated against the organizers of the referendum. First of all, it concerned the president of Catalonia, Artur Mas, who ruled the autonomous region from 2010 to 2016 [29]. In 2016, Mas was succeeded by Carlos Puigdemont.

The period between the 2014 referendum and the 2017 referendum cannot be called calm. During this period, various political debates between unionists and independents took place, reinforced by street protests in various cities: Barcelona, Bersa, Lleida, Salta and Tarragona. The government of the Generalitat did not stop trying to hold a referendum and already in 2017, another such referendum was held, but the consequences of this vote had a significant impact on Catalonia's future.

The starting point of those events was September 2016, when Carlos Puigdemont announced that Catalonia would hold a referendum on self-determination and independence with or without the consent of the Spanish government [8]. Puigdemont's associate Oriol Junqueras made a statement in which he noted the following: «We, Catalans, want our own state; to be another state within the EU. Many countries in Europe were formed after a referendum on independence. We want to do the same as many Europeans – to vote freely for our freedom» [16]. The same question was put to the vote: «Would you like Spain to become an independent state in the form of a republic?» After that, the Spanish central government again responded to such attemps – «this referendum will not take place, as it is illegal» [29].

Anyway, the referendum took place on October 1, 2017, although it was banned by the Spanish Supreme Court. On the eve of the referendum, in order to stop the vote, the central Spanish authorities seized ballots, conducted searches, detained dissenting protesters and used force [28]. Such actions provoked a furious protest among citizens of other countries and human rights organizations. In particular, former Belgian Prime Minister Charles Michael called on the parties to stop violence and return to dialogue [10].

According to the data provided by the Catalan authorities, 90% of respondents voted «for» independence, while the turnout was only 43% [6]. This result once again emphasized that not all residents of Catalonia dream of independence and most of them are skeptical even of attempts to declare a separate state or hold such referendums. The day after the referendum, Carlos Puigdemont announces its obvious result – the creation of an independent state of Catalonia.

However, the reaction of the central authorities did not take long and on October 14, 2019, the Supreme Court of Spain sentenced nine of the twelve defendants in the case of «overthrow of the state regime and attempts coup», including Carlos Puigdemont and his associates. Puigdemont fled from the justice to Belgium, where he sought political asylum and he declares his government a «government in exile» [19].

It is worth noting that the reaction of other Spain's regions to the referendum on independence, which in one way or another strive for independence, also seems to be rather ambiguous. The main support for the referendum came from the same radical movements in Spain. For example, the Basque Autonomous Community and its regional parliament with a nationalist majority showed full support for the referendum and condemned the position its illegality [18]. On September 16, residents of San Sebastian and Bilbao went to mass demonstrations to express their solidarity with people of Catalonia [14]. The terrorist organization ETA also fully supported the referendum and even suggested other «free» regions to do the same [4]. The Parliament of Navarre was a little more cautious and got away with only an indirect statement about «condemning the de facto absorption of Catalan decentralization by the Spanish government» [17]. We can note that this is rather diplomatic and restrained statement without excessive radicalization, in contrast to the position expressed by the Basque Country. In contrast to Navarre, the district of Galicia was more decisive in its statements and, like the Basque Country, also went to mass demonstrations for supporting the referendum in Catalonia. About 3,000 people expressed their solidarity with the aspiration of the Catalans [21]. We see that among the potentially dangerous separatist districts of Spain, the reaction to the referendum on independence in Catalonia causes a different reaction and a practical unwillingness to repeat the same scenario in their districts. Calls for independence in these regions are reduced to clearly political and populist slogans.

If we talk about the EU reaction, their position is quite united and clear. The governments of Belgium, Crete, France, Germany, Hungary, Lithuania, Portugal, Great Britain and the USA unanimously expressed the position that Spain should remain a single state and called on all parties to dialogue [11]. Undoubtedly, such statements indicate that the European Union is interested in preserving Spain as a single state within its internationally recognized borders and does not consider any scenario in which the secession of any district would take place.

Some time after the referendum, which the Spanish central government declared illegal, in 2020 Catalan nationalists and the Spanish government coalition agreed to hold a dialogue on Catalonia's political future. At the same time, the main task of Catalan nationalists was the full legalization of the independence referendum which was held in 2017 [7]. The plan of the central government was

to expend the financial and political autonomy of Catalonia, but it should remain part of the Kingdom [22]. The 15-member contact group aimed to meet once a month and hold joint plenary sessions every six months. Although, these plans did not succeed due to the struggle of nationalist parties, which did not want to go to peace negotiations, but most likely, they want to continue promoting the idea to hold another referendum on independence [3].

All plans for a peaceful settlement of the Catalan crisis were canceled by the COVID-19 pandemic, which temporarily suspended this process. Nevertheless, this negotiation process is quite important progress in the Catalan crisis at this stage and during the entire period of its active phase.

However, it is clear that some radical nationalist political parties in Catalonia, such as the Catalan European Democratic Party (PDeCAT) and the Catalan Republican Left (ERC), do not want to make concessions to Madrid and are going to continue their policy of complete separation and formation of their state. These two parties even formed a joint parliamentary coalition in the Catalan generality called «Junts pel Si» or «JxSi» (from the Catalan «Together Yes») until 2017, but after the unsuccessful, in their opinion, independence referendum in 2017, the Catalan Republican Right party decided not to participate in this coalition anymore and left it [1].

It is worth mentioning another odious nationalist party that quite openly promotes the secession of Catalonia – the Popular Unity Candidacy (CUP). The most radical part of this party is the young wing called «Arran». They are quite harsh in their rhetoric, namely: they have very bad attitude towards the monarchy as a form of government and the most important thing is that their demands for independence extend not only to Catalonia, but also to all the so-called «Catalan countries» – Valencia, the Balearic islands, Roussillon and Eastern Aragon [23].

The position of unionists in Spain regarding the separatist regions is clear and unwavering – Catalonia, the Basque Country, Galicia, Navarre and others must remain part of the Kingdom. One of the biggest supporters of this paradigm is the former Prime Minister of Spain (1996–2004) Jose Maria Asnar. In the documentary «Secret Conflict in Spain», he clearly voices his opinion on the need for a united Spain. «It is true that the Spanish signed an agreement in 1978 according to which Spain from a centralized country becomes decentralized. However, for some politicians this is not enough. Nationalism is currently a problem for all Europe. This is the revival of old nationalist movements. They suddenly realized that they are relevant and promote politics that had not happened before. If the political situation in the country weakens, it helps such movements to revive and become popular. The Spanish nation has weakened in recent years and this is a rather unpleasant prospect» [16].

Most researchers define Asnar as a supporter of strict centralization. One of the historical researchers, Alfonso Guerra, expresses the opinion that «the idea of independence in Catalonia and the Basque Country really spread during the second term of Jose Maria Asnar. The more centralized, pro-Spanish and authoritarian it became, the more nationalism flourished» [12]. The same opinion is held by a number researchers of the “Catalan crisis” phenomenon. Norberto Picot, former secretary of the «Podemos» (political party), notes that «democracy

is a system built on respect for the law. When an illegal referendum is organized, it is disrespect for the law» [27].

Analyzing such statements, we can draw conclusions that violent centralization and harsh suppression of national minorities may, sooner or later, lead to a social explosion and threaten its national security. Jaime Pastor, a professor of political theory at the National University of Distance Education in Madrid, that «nationalistic feeling cannot be easily removed, you can only try to respect the feelings of other nationalities; the majority of the world's population has some nationalistic feelings» [26]. We cannot deny the fact that any multinational state, such as Spain, will always face the struggle of national minorities for their rights on the one hand and a central government seeking to centralize its power on the other. The main task will remain only the choice of each citizen and the policy regarding some balance of interests among different positions.

The division of Spaniards into unionists and independents does not consist only in the political positions of the parties and their officials, but also by following the trends of public opinion in different parts of the Kingdom. We see rather opposite opinions in the documentary film «Secret Conflict in Spain», where people are asked their personal opinion about the unity of the state or its possible division based on national characteristics. The author of the film conducts survey in Barcelona and Madrid before football matches. It is worth noting that the football teams «Barcelona» (Barcelona) and «Real» (Madrid) are also some element of opposing political positions, because their fans quite often do not like and do not accept each other. In some places, these two clubs are called an unofficial symbol of struggle between the center and the regions or between unity and separation.

The opinions expressed by the people of Madrid about Catalonia in this documentary are mostly like this: «These people are not Spanish. They are Catalans and that's all», «A person is only Catalan or Spanish, but not both at the same time», «Catalonia is not Spain. This is Catalonia's problem because they want to be independent», «In Barcelona they burnt the Spanish flag because they don't like Spain. That's why we call them «los polacos» (from the Spanish «sincere supporters of Catalonia, who are quite biased toward it»)», «Spain today is a puppet in the hands of Catalonia and the Basque Country», etc. Moreover, many Spaniards, who are supporters of the idea of unionism, consider the period of Franco's rule as positive, because any national ideas were undermined and there was complete unity of the country. A 60-year-old woman says: «Franko did a lot. Spain is united and blessed by God. One Spain is great and free! » [16].

The ambiguity of such opinions once again emphasizes the problem of sharp opposition between unionists and independents. Catalan independence is a desire for independence and creation of its own state, which is manifested not only in the individual ideas of right-wing radical parties, but is supported by concrete actions to achieve it.

Conclusions. The term «Catalan independence referendum» can describe the entire political life of Catalonia and, simultaneously, one of the biggest problems of modern Spain. Such a «referendum» has already become a symbol of the struggle between unionists and independents, between the desire for self-deter-

mination and the desire to live in a single state. The polarity of opinion in Spanish society suggests that the struggle of national minorities for their own «referendums» will not end soon. The problem is only about the presence of a «special» opinion in Catalonia or in Madrid, the main obstacle for Spain's future is the lack of concrete dialogue on such issues. It seems that the regions do not hear each other or they do not want to seek a compromise. Unscrupulous politicians often play on the national feelings of various minorities, using them for their own purposes and fanning the flames of hatred between them.

Spain is a country with a long and ambiguous history and its political life is even more ambiguous. There have always been national contradictions. Catalan referendums on independence are just gaining momentum and we will definitely see some attempts to hold such a referendum again in the future and, finally, get what they want. At the moment, the future of Spain as a unified state is under threat, which rarely anyone can notice and react to it in time. The lack of a nationwide dialogue and a well-thought-out strategy for existing the «Catalan crisis» deepens the gap between unionists and independents. Further contradictions of national minorities with the center will only deepen this gap and the only way out of it should be the search for a compromise. Nowadays, the integration of public opinion and the interests of the state is the way out of «Catalan crisis».

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CRIMINAL LEGAL CHARACTERISTICS OF THE SUBJECT OF ILLEGAL USE WITH THE PURPOSE OF OBTAINING PROFITS FROM HUMANITARIAN ASSISTANCE, CHARITABLE DONATIONS OR FREE ASSISTANCE

Shapovalova Nataliya[1]

Annotation. During the martial law, a significant number of changes were made to the legislation of Ukraine to regulate the new relations caused by the full-scale war. I would like to positively note the fact that, despite the huge range of tasks that required a quick response, the Verkhovna Rada of Ukraine was able to quickly respond to new social realities and, among other things, made changes to the Criminal Code of Ukraine, introducing criminal liability for collaborative activity and illegal the use for profit of humanitarian aid, charitable donations or free aid, determining the circumstances that exclude the criminal illegality of the act and providing combat immunity in the conditions of martial law. During war, ensuring the right to an adequate standard of living, including adequate food, clothing, and shelter for everyone, is primarily the duty of the state. States parties to the International Covenant on Economic, Social and Cultural Rights are obliged to take appropriate measures to ensure the realization of this right. humanitarian aid, charitable donations and free aid should be understood as defined by the Law of Ukraine "On Humanitarian Aid" and the Law of Ukraine "On Charitable Activities and Charitable Organizations". For the correct qualification, it is essential to establish all the elements and essential features of the composition of the criminal offense. In the context of our research, we would like to focus on the essence of the subject of this socially dangerous act. In Article 201-2 of the Criminal Code of Ukraine, only "goods (items) of humanitarian aid" and "such property" appear, accordingly, the misuse of humanitarian aid provided in the form of works or services is not punishable under Article 201-2 of the Criminal Code of Ukraine

In our opinion, such legislative "selectivity" leads to the deformation of legal categories and is a clear manifestation of the leveling of the principle of le-

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gal certainty, which is a component of the principle of the rule of law. This also applies to gratuitous aid (provision of humanitarian aid without any monetary, material, or other types of compensation to donors), which can also be provided in the form of performing works and providing services. In addition, analyzing the legal definition of "free aid" it becomes clear that it is a type of humanitarian aid. Therefore, the legislator in the disposition of the article should have limited himself to the concept of "humanitarian aid" and not to artificially oversaturate the legal norm with terminology. In our opinion, such inaccuracies are caused by a rather complicated period and limited terms of adoption of the legal norm, which provides for responsibility for the illegal use for the purpose of obtaining profit from humanitarian aid, charitable donations, or free aid.

Key words: the subject of a criminal offense, things of the material world, humanitarian aid, charitable donation, free aid, goods, volunteers.

New social realities, events of both a positive and negative nature inevitably lead to the emergence of new social relations. Thus, since the beginning of the military aggression in the East of Ukraine in 2014, domestic legislation has undergone important changes, in particular: in the context of determining the status of temporarily occupied territories, the procedure for crossing the border between regions controlled by Ukraine and those that are temporarily occupied (1); regarding the legal status of persons who lived on the territory of Luhansk and Donetsk regions and the Autonomous Republic of Crimea (2); legal status of forced migrants (3); order of operation of joint forces (4); legal responsibility for offenses against the foundations of national security (5) and others. In addition, the war in Ukraine created a new reality to which all institutions and the public had to adapt. Two issues have been particularly acute since the first days of the war: the cooperation of the population with the occupiers (1) and the fulfillment of the duty to protect the Motherland, the independence and territorial integrity of Ukraine (2) [1, p. 38].

During the martial law, a significant number of changes were made to the legislation of Ukraine to regulate the new relations caused by the full-scale war. I would like to positively note the fact that, despite the huge range of tasks that required a quick response, the Verkhovna Rada of Ukraine was able to quickly respond to new social realities and, among other things, made changes to the Criminal Code of Ukraine, introducing criminal liability for collaborative activity and illegal profit-making use of humanitarian aid, charitable donations or free aid, determining the circumstances that exclude the criminal illegality of the act and provide combat immunity in the conditions of martial law.

In times of war, ensuring the right to an adequate standard of living, including adequate food, clothing, and shelter for all, is the primary responsibility of the state. States parties to the International Covenant on Economic, Social and Cultural Rights are obliged to take appropriate measures to ensure the exercise of this right [2].

Delivery of humanitarian aid in a humanitarian crisis is an established international practice. At the same time, when carrying out such actions, which may be associated with a risk to life, there are features of charitable activity. The special

influence of the psychological component, which is a consequence of humanity's transition from an industrial to an information system, has become a feature of modern conflicts. Therefore, the role of charity has grown tremendously today. As one factor, it may affect the end of the war [3, p. 4].

According to the principles of international humanitarian law, humanitarian aid is measures to protect and care for people in humanitarian crisis situations that go beyond basic medical care. Humanitarian aid is organized mainly after emergency situations and humanitarian crises and is primarily aimed at saving lives, alleviating suffering, providing decent assistance to people, overcoming difficult circumstances, preventing the emergence, or spread of epidemics, etc. The main tasks of humanitarian aid are preservation of human life; aiding meet basic human needs (water, food, housing); provision of basic hygienic and medical care [4, p. 53].

In addition, regardless of the difficult life circumstances, unfortunately, in society, even in the conditions of war, the threat of manifestations of deviant behavior remains. It is necessary to be prepared for the fact that established norms and rules do not apply in the zone of military confrontation. You should also not rely on unconditional compliance with the norms of national legislation and international law – but this does not mean that you should not know these norms. Sooner or later, wars will end, war crimes will be investigated, and the guilty brought to justice. Even the military leadership is far from always able to ensure proper living conditions for the population in difficult-to-control territories [5, p. 10].

Thus, among other things, the desire to make a profit in conditions of war may intensify in some places, and the lack of proper state control or the possibility of implementing state control leads to an increase in the number of cases of abuse of law. Under the conditions of martial law, the amount of humanitarian aid, charitable donations and free aid that came to Ukraine from various sources significantly increased, which became a prerequisite for the illegal use of humanitarian aid, charitable donations, or free aid for profit. Another factor that led to the "popularity" of committing this socially dangerous act was the dishonesty of the participants in charitable activities and the abuse of the special rights granted to them in connection with the conduct of such activities, which was widely revealed during the hostilities in Ukraine [6].

That is why on March 24, 2022, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Liability for Illegal Use of Humanitarian Aid" was adopted [7]. According to this law, the Criminal Code of Ukraine was supplemented with a new article 201-2 "Illegal use for profit of humanitarian aid, charitable donations or free aid."

The disposition of this norm is blanket, because note 1 to the article clearly states that "Humanitarian aid, charitable donations and free aid should be understood as the concepts defined by the Law of Ukraine "On Humanitarian Aid" and the Law of Ukraine "On Charitable Activities and Charitable Organizations".

For the correct qualification, it is essential to establish all the elements and essential features of the composition of the criminal offense. In the context of our research, we would like to focus on the essence of the subject of this socially dangerous act.

The modern understanding of the subject of a criminal offense was initiated back in the Soviet period, when V. Tatsii, A. Trainin emphasized that the subject of a crime is that in connection with or based on which crimes are committed [8, c. 179].

M. Panov was convinced that the subject of the crime includes only separate material subjects [9, p. 72]. M. Korzhansky refers to the object of a crime as a certain material object in which, through physical or mental influence, certain parties, properties of social relations are revealed (the object of the crime), which causes socially dangerous damage in the sphere of these social relations [10, p. 173]. Thus, during the Soviet period, the opinion about the "material nature" of the subject of the crime prevailed. Finally, the criminal offense is committed with the aim of attacking and damaging (destruction, damage, etc.) a specific material asset. And "influence" in the classical sense can be exercised only on what is objectively available, that is, on subjects of the material world [11, p. 12].

Nowadays, in the era of the information society, the subject of a criminal offense ceases to be perceived exclusively as things of the material world. If we interpret the subject of the criminal offense analyzed by us, it becomes clear that it has a material form of expression.

As for the specific types of subjects of illegal use for the purpose of profiting from humanitarian aid, charitable donations or free aid defined by the legislator, it is important to interpret the essence of the concepts "humanitarian aid", "free aid", "charitable donation".

According to Article 1 of the Law of Ukraine "On Humanitarian Aid", humanitarian aid is targeted free aid in monetary or in-kind form, in the form of irrevocable financial aid or voluntary donations, or aid in the form of works, provision of services provided by foreign and domestic donors with humanitarian motives to recipients of humanitarian aid in Ukraine or abroad, who need it in connection with social insecurity, material insecurity, difficult financial situation, emergence of a state of emergency, in particular due to natural disasters, accidents, epidemics and epizootics, environmental, man-made and other disasters , which pose a threat to the life and health of the population, or serious illness of specific individuals, as well as to prepare for the armed defense of the state and its defense in the event of armed aggression or armed conflict. Humanitarian aid is a type of charity and must be directed in accordance with the circumstances, objective needs, consent of its recipients and subject to compliance with the requirements of the Law of Ukraine "On Charitable Activities and Charitable Organizations" [12]. According to Article 3 of the Law of Ukraine "On Charitable Activities and Charitable Organizations" [13] the areas of charitable activity are:

1) education;

2) health care;

3) ecology, environmental protection, and animal protection;

4) prevention of natural and man-made disasters and elimination of their consequences, assistance to victims of disasters, armed conflicts, and accidents, as well as refugees and persons in difficult life circumstances;

5) custody and care, legal representation, and legal assistance;

6) social protection, social security, social services, and poverty alleviation;

7) culture and art, protection of cultural heritage;
8) science and scientific research;
9) sports and physical education;
10) human and citizen rights and fundamental freedoms;
11) development of territorial communities;
12) development of international cooperation of Ukraine;
13) stimulating the economic growth and development of the economy of Ukraine and its individual regions and increasing the competitiveness of Ukraine;
14) assistance in the implementation of state, regional, local, and international programs aimed at improving the socio-economic situation in Ukraine; 15) promotion of defense capability and mobilization readiness of the country, protection of the population in emergency situations of peace and war [13].

In general, humanitarian aid can be classified according to the following characteristics: a) depending on the form of providing humanitarian aid: money, goods, services, works; b) depending on the type of in-kind aid in the form of humanitarian aid: irrevocable material aid or voluntary contribution; c) depending on the subject of humanitarian aid: foreign or domestic donors; d) for the purpose of humanitarian aid, which in turn is divided into general (social insecurity, material insecurity, difficult material situation, emergence of an emergency situation, especially as a result of natural disasters, accidents, epidemics and animal diseases, ecological, anthropogenic) and targeted, i.e. from specifying specific recipients, in addition to this, you can apply only in accordance with the law [14, p. 20].

At the same time, since Article 201-2 of the Criminal Code of Ukraine only includes "goods (items) of humanitarian aid" and "such property", accordingly, improper use of humanitarian aid provided in the form of works or services is not punishable under Article 201- 2 of the Criminal Code of Ukraine [15, p. 115].

In our opinion, such legislative "selectivity" leads to the deformation of legal categories and is a clear manifestation of the leveling of the principle of legal certainty, which is a component of the principle of the rule of law. As emphasized by O. Dudorov and R. Movchan, this also applies to free aid (the provision of humanitarian aid without any monetary, material, or other types of compensation to donors [15, p. 114]), which can also be provided in the form of performing works and providing services. In addition, analyzing the legal definition of "free aid" it becomes clear that it is a type of humanitarian aid. Therefore, the legislator in the disposition of the article should have limited himself to the concept of "humanitarian aid" and not to artificially oversaturate the legal norm with terminology. In our opinion, such inaccuracies are caused by a rather complicated period and limited terms of adoption of the legal norm, which provides for responsibility for the illegal use for the purpose of obtaining profit from humanitarian aid, charitable donations, or free aid.

As for the essence of a "charitable donation", in accordance with Article 6 of the Law of Ukraine "On Charitable Activities and Charitable Organizations", it is a free transfer by a benefactor of funds, other property, property rights to the ownership of beneficiaries to achieve certain, predetermined goals of charitable activity [13], which we have already named. Characterizing the subject of

illegal use for the purpose of obtaining profit from humanitarian aid, charitable donations or free aid, we consider it necessary to focus on common cases when unscrupulous entrepreneurs or volunteers work for the purpose of evading customs payments or for the purpose of accelerating (facilitating) the passage of customs control of food products , things, vehicles, etc., bought with their own funds and issued as humanitarian aid, especially for the transfer of forces, but left for themselves for the future or realized, thereby motivating the purchase entirely at their expense (and not with money received as donations or charity contributions) and therefore they sincerely believe that they are not breaking the law. But such activity is nothing but a waste of humanitarian aid, and therefore falls under Article 201-2 of the Criminal Code of Ukraine "Illegal use of humanitarian aid, charitable donations, or free aid for the purpose of obtaining profit."[16, p. 188].

Another example of the illegal use of humanitarian aid, charitable donations or free aid for profit is the case in the city of Dnipro, when an illegal scheme for receiving and conducting external and internal humanitarian aid worth millions of hryvnias was exposed. Thus, the SBU employees established that two residents of Dnipro organized a program of illegal receipt and delivery of humanitarian aid for their own profit. Volunteers of one of the charitable foundations received humanitarian aid from the countries of the European Union. Ukrainian manufacturers also engaged in charity – they wrote letters asking them to help with their own products for the needs of the Armed Forces of Ukraine and territorial defense. The participants of the program received humanitarian aid and distributed it to rented warehouses. The sale of humanitarian goods was carried out through trading points and wholesale bases of the Dnipropetrovsk region. For the formal "write-off" of products and reporting to suppliers, thank-you letters were prepared from "Teroborony" units and military associations [17].

Quite often, the subjects of the analyzed criminal offense are vehicles. For example, in the Chernivtsi region, a group of people imported cars into the customs territory of Ukraine under the guise of humanitarian aid. But instead of using them for their intended purpose, they were sold to interested parties. Law enforcement officers recorded the facts of the sale of four such vehicles: Nissan Navara Rally Raid, Mercedes-Benz ML, Mitsubishi L200 and Toyota Rav4 for a total amount of about half a million hryvnias [18]. It is not uncommon for military equipment to be illegally used to profit from humanitarian aid, charitable donations, or free aid. Thus, in the Lviv Oblast, criminals organized an illegal program of importing ammunition into Ukraine allegedly for the needs of military personnel and later sold it, misappropriating the funds. The equipment, the total cost of which is about 25 million hryvnias, was brought to Ukraine under the guise of humanitarian aid. The organizer and curator of the criminal plan was a resident of Lviv region – he "solved" the problem of obtaining permits in military units for the unimpeded transportation of equipment across the border, allegedly for their delivery to the soldiers of the Armed Forces of Ukraine. Subsequently, they sold the equipment obtained in this way body armor, appropriating the funds received [19].

It is important to note that the subject of illegal use for profit of humanitarian aid, charitable donations or free aid has a value expression. Thus, the legislator, using in part 1 of Article 201-2 of the Criminal Code of Ukraine the phrase "... committed in a significant amount", set a minimum limit for the total value of humanitarian aid, charitable donations or free aid, the presence of which can be brought to criminal liability in this case: as of today, it is UAH 434,175 and more – up to this amount, qualification will obviously take place according to other norms of the Criminal Code of Ukraine (articles 190, 191). In addition, in accordance with part 2 and 3 of Article 202-1 of the Criminal Code, responsibility is provided for committing illegal use for profit of humanitarian aid, charitable donations or free aid in a large amount and an especially large amount, respectively. The essence of these concepts is disclosed in Note 2 to Article 202-1 of the Criminal Code of Ukraine. Yes, a large size as of now is 1 million 240 thousand 500 UAH and more, and an especially large size is 3 million 721 thousand 500 [16, p. 183].

Summarizing the above, we would like to emphasize that the criminalization of the illegal use for profit of humanitarian aid, charitable donations or free aid has become a timely legislative step. At the same time, even despite the existence of a criminal law prohibition of this act, the number of cases of its commission continues to grow. To ensure that guilty persons are brought to criminal responsibility, the establishment of signs of a criminal offense in their actions plays a key role. The subject of this socially dangerous act plays a significant role among the signs of illegal use for profit of humanitarian aid, charitable donations, or free aid. In our opinion, even though the subject of the specified criminal offense has a normative expression, the legal construction of the subject itself is not perfect, because it violates the principle of legal certainty.

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UKRAINIAN TERRITORIES UNDER OCCUPATION – EVENTS, COLLABORATIONISM, MANAGEMENT

Shmanatov Mykyta[1]

Annotation. The article analyzes the process of the Russian occupation of Ukrainian territories at the initial stage of the February 24 invasion: the attitude of the occupiers and local authorities, the formation of collaborationist structures, the formation of the occupation administration. The analysis is carried out on the basis of large cities of the occupied territory of the South-East of Ukraine. The reaction of local legal authorities to the occupation was revealed, the political background of those who agreed to cooperate with the occupation troops in the captured cities was analyzed. An attempt was made to identify the main motives for cooperation. The article assumes how the mentioned factors influence the actions of the occupiers, what subsequent actions should be expected from the occupying forces and administrations in the current situation. An attempt was made to predict the primary areas of activity of the occupation administrations and further scenarios for the development of the situation in the occupied Ukrainian territories. The article identifies problems that require a deeper and more detailed approach.

Key words: war in Ukraine, occupation, collaborationism, Ukraine, security threats, life under occupation.

At the end of February 2022, the Russian Federation invaded the territory of Ukraine, beginning a new phase of the Russian-Ukrainian war. During heavy fighting, part of Ukraine became temporarily out of control of the legitimate Ukrainian authorities. The area of the occupied territory has changed and continues to change as long as the war between Ukraine and Russia continues.

If in mid-March 2022 Russian troops were still in the north of Ukraine, then in mid-April they were forced to retreat due to successful resistance from the Armed Forces of Ukraine. From the beginning of the new phase of the war until today, active hostilities continue in two directions – East and South. It was in

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these areas, and especially in the South, that despite active resistance, the occupying forces were able to capture some areas with towns, villages and other settlements.

The territory where a significant part of Ukrainian citizens remained is in the occupation reality, which poses challenges and threats to the local population and the sovereignty of Ukraine. At the same time, the occupiers faced the problem of territory management and relations with the local administration and the population [1].

Taking into account the destabilization of the international system, which was finally activated after the Russian invasion of Ukraine, it is possible to notice how tension began to grow in other points of conflict of interests – Taiwan, Nagorno-Karabakh, Kosovo, the Middle East.

Therefore, the events that happened in Ukraine, related to the occupation, control over the population and the establishment of illegal power in the occupied territories are important for understanding – what was the relationship between the occupiers and the legitimate authorities at the earliest stage? How were the occupation administrations formed, and who led them? What activities can be expected in the near future in the occupied territories?

Analysis of research on the topic of occupation

The topic of the occupied territories during the war is actively studied by scholars of political, historical, social and economic directions. The problem contains many aspects and is at the intersection of these sciences. It is possible to allocate some basic subjects to which researches of occupation are devoted, among them: (1) military events and defense issues; (2) the role of political leaders and individuals; (3) resistance movement; (4) economic aspects of occupation; (5) collaborationism, administrative structure on the occupied territories; (6) information and propaganda policy, political (occupation) communication in the occupied territories; (7) everyday life in the occupation, the relations between the population and the occupiers, “local dimensions”; (8) war crimes and repressions against local authorities, various categories of the population.

One of the most brutal and destructive wars in history, World War II – is still studied by scientists in each of the identified areas. The topic of occupation of modern Ukrainian territories during the Second World War is in the focus of domestic researchers. The works of Honcharenko, Kunitsky, and Lysenko are devoted to the formation of the system of local occupation structures [2]. Interactions of Nazi and local civilian occupation authorities are devoted to the works of Dereiko [3], Kashevarova [4]. The works of Shahraichuk and Slobodyanyuk are devoted to the regional dimension of occupation and everyday life, the resistance movement [5], Azarkh [6]. Everyday life in the occupation, its so-called “local dimension”, has relatively recently been studied on a par with “global topics” such as hostilities, the role of the individual, and the phenomenon of collaborationism. An example of research on local dimensions of occupation is the work of V. Shaikan, which focuses on the daily life of the local population [7].

Since the beginning of the Russian-Ukrainian war in 2014, scientists and research institutions have been studying the problems associated with it, including occupation. Political and Legal Analysis and the Concept of the "Russian-Ukrainian War" Proposed by Professor Vasylenko, Former Judge of the International Criminal Tribunal for the Former Yugoslavia [8]. Evidence of the presence and participation of the Russian military in the war on the territory of Ukraine is covered by materials and compilations of human rights and non-governmental organizations, such as the Ukrainian Helsinki Human Rights Union [9].

A comprehensive analytical description of events in eastern Ukraine in 2014–2019 is presented in the report of the team led by M. Pashkov in cooperation with the Razumkov Center, the Institute of History of Ukraine, the Institute of Economics and Forecasting of the NAS of Ukraine and others [10]. The project materials partially cover the socio-economic component and information policy in quasi-state entities in the occupied territories. Articles, scientific conferences and monographs are devoted to the military-political situation in Ukraine, Russian aggression and source analysis on the war in Ukraine [11].

Problem.

With the beginning of the second phase of the Russian-Ukrainian war on February 24, the theme of the war in Ukraine became central in the world media and public consciousness and went beyond the political dimension. The area of the territories occupied by the Russian Federation increased from 7% by 2022 to about 20% [12] more than 2.9 times, which actualizes the attention to the subject of occupation.

There are many events and processes taking place in the occupied territories, which are indicative for understanding the nature of war, political and armed confrontation, and the political situation around Ukraine. Those little-studied and undisclosed phenomena that has started in Ukraine in 2014 are being repeated to an even greater extent in the recently occupied territory. This time the territory is much larger, includes a much larger part of the population, so the events will be larger. From hybrid involvement and attempts to disguise it in the war with Ukraine, Russia has moved on to open invasion and occupation. So now the Russian Federation is not trying to hide its intentions to seize Ukrainian lands.

At present, there is no clear data on what form the Russian Federation wants to keep the occupied territories. In the public space, there is information about possible direct incorporation into the Russian Federation, possible formation of several quasi-state formations similar to the Donetsk and Lugansk model, and formation of one large quasi-state formation on the basis of all occupied territories. However, the occupation has already de facto taken place, and population live in a radically different occupation reality, which requires attention to these territories.

In any case, it is important to trace how the occupiers behaved toward the legitimate Ukrainian authorities on the ground? How did local administrations respond to the occupation? Based on the answers to these questions – how was the occupying power organized in the occupied territory after February 24? Who agreed to cooperate with the occupiers and what were their motives? Since the cooperation of local public figures helps to form a picture to justify military actions.

Figure 1. Map of the area of occupied territory, as of 29.07.2022 [13].
Source: https://storymaps.arcgis.com/stories/36a7f6a6f5a9448496de641cf64bd375

Occupied cities of the South-East of Ukraine

On February 24, Russian troops invaded the territory of Ukraine from several directions, including the territory of the occupied Crimean peninsula. In the southern direction, during the first weeks, they managed to occupy a number of cities: Genichesk, Skadovsk, Nova Kakhovka, Gola Prystan, and others.

Table 1. The biggest occupied cities in the southeast.

City	Date
Nova Kakhovka	February 24 [14]
Melitopol	February 26 [15]
Berdianks	February 28 [16]
Kherson	March 2
Enerhodar	March 4
Mariupol	February 27 – May 20

In the South-East the defense of Mariupol became the longest. Beginning on February 27, the city came under fire and was partially occupied by Russian troops. Defending the city, Ukrainian forces were blocked on the territory of the Azovstal **steel** plant. The defense lasted until the 20s of May. **As Table 1 shows**, the largest cities of the entire occupied territory were occupied by Russian troops at the start of the invasion.

After the military occupation

In the occupied territories, the Russian command faced the problem of establishing local government in the face of mostly negatively disposed population. This problem encompassed two components:

- Creating a local administrative apparatus – finding and appointing locals to administrative positions, forming a picture of «legitimacy of power»;
- Organizing and conducting information and propaganda activities in order to isolate the population from the Ukrainian information space and replace it with its own**.**

The second component is related to the first. The faster and more reliably pro-Russian local and regional administrations are established, the sooner the Russian government will be able to disguise its propaganda activities under local events and information flows of "natural origin." So, the military-civilian administrations created in the occupied territories must perform administrative tasks, as well as become a repeater of the Russian information product aimed at the inhabitants of the occupied territories. Without imitating the existence of local government, it is much more difficult to hide or shift the emphasis from the occupation origin of the activities of the Russian Federation in the eyes of the population.

The contact of the occupiers with the existing local administrations was important. We can assume that in case of a positive response to the occupation, it could have greatly simplified the presence and processes for preparing a further offensive. To analyze the situation at the initial stage of the occupation, **a Table 2 was compiled with data on the reaction of mayors and the occupying power in relation to them after the capture of cities.**

Table 2. Behavior of mayors and the occupying power in relation to them after the capture of cities.

City	Mayor	Belonging to the party	The current situation
1	2	3	4
Nova Kakhovka	Volodymyr Kovalenko	Non-Party	After the occupation he was forced to "go on vacation", after some time he continued to work. He did not support the occupying forces.
Nova Kakhovka	Dmytro Vasyliev, Secretary of the City Council	"Opposition platform – for life"	Captured after the occupation, he refused to cooperate with the occupiers
Kakhovka	Vitaliy Nemerets	Servant of the People	He refused to cooperate and left the city
Melitopol	Ivan Fedorov	formerly "Cossack People's Party"	He refused to cooperate and was abducted

1	2	3	4
Berdiansk	Oleksandr Svidlo (acting mayor)	Opposition platform – for life	He stated that he did not cooperate with the occupiers, worked remotely, on the pages in social media last post were published on March. What with Mayor is unknown for now.
Kherson	Ihor Kolykhaev	Igor Kolykhaev's party "We have to live here"	He refused to cooperate, tried to work in the occupation while there was an opportunity. On June 28, he was abducted for refusing to cooperate with collaborationists.
Enerhodar	Dmytro Orlov	"For the future"	He refused to cooperate and was forced to evacuate.
Mariupol	Vadym Boychenko	"Vadym Boychenko's block"	He refused to cooperate and was forced to evacuate.

According to the data **in Table 2**, Ukrainian city officials en masse refused to cooperate during occupation. Mayors either evacuated and tried to manage affairs remotely, or tried to perform duties on behalf of Ukrainian local authorities until the occupation military command appointed their leaders from among the collaborators.

One method of exerting pressure on local authorities was the kidnapping of mayors. In addition to government representatives, local activists, journalists, military officers, and people known for their pro-Ukrainian stance were harassed and persecuted. In the Kherson region alone, as of April 2022, according to the head of the Kherson regional prosecutor's office, Vladimir Kalyuga, 137 people had been kidnapped, the fate of 87 of whom is unknown [17].

For example, the Occupiers kidnapped the secretary of the local council of Nova Kakhovka and the mayor of Melitopol. The mayor of Gola Prystan, Alexander Babych, was kidnapped and held captive for more than three months [18]. The mayors of Kherson and Nova Kakhovka tried to continue working on behalf of the Ukrainian authorities despite the occupation. However, the administration was soon shut down by Russian troops. In fact, the legitimate local authorities were simply forbidden to work. Later, the mayor of the largest occupied city of Kherson, Igor Kolykhaev, was also kidnapped by the Russian military and possibly by the Russian Federal Security Service for refusing to cooperate with the newly appointed head of the occupied Kherson region [19].

With such a reaction from the local authorities, the occupiers had to look for and appoint new personnel who could support the change of power.

Occupation administrations

When local authorities refused to support the occupiers, the occupiers began to form an alternative pro-Russian administration. In cities and villages, the military leadership elected and unilaterally appointed "new" leaders of cities and other settlements.

In this context, information on party affiliation and previous experience of collaborationists who agreed to head the administrations in the occupied territories was **analyzed in Table 3**.

Table 3. Occupation administrations.

City	Occupation administration	Belonging to the party/background
Nova Kakhovka	Volodymyr Leontiev, head of the occupation civil administration [20]	had no any political experience
Kakhovka	Pavlo Filipchuk, self-proclaimed mayor	former member of the "Party of Regions", "Opposition Bloc", former deputy of the city council
Melitopol	Halyna Danilchenko, self-proclaimed mayor	former member of the "Party of Regions", "Opposition Bloc", former deputy of the city council
Berdiansk	Oleksandr Saulenko, self-proclaimed mayor	He was never elected to the city council. He ran for the "Union of Left Forces" and "For the Future" parties.
Kherson	Oleksandr Kobets, self-proclaimed mayor	He did not hold any political position. Former employee of the KGB of the USSR, SSU (SBU – ukr.) according to the Center for Journalistic Investigations [21]
Enerhodar	Andriy Shevchyk, self-proclaimed mayor	former member of the "Party of Regions", "Opposition Platform for Life", deputy of the city council
Mariupol	Kostiantyn Ivashchenko, self-proclaimed mayor	"Opposition platform – for life", deputy of the city council
Khersons'ka oblast	Volodymyr Saldo, self-proclaimed head of the Military-Civil Administration of the Kherson Region	former member of the "Party of Regions", "Volodymyr Saldo Bloc", former mayor of Kherson
Zaporiz'ka oblast	Yevhen Balytskyi, self-proclaimed head of the occupation of the military-civil administration of the Zaporizhia region	former member of the "Party of Regions", "Opposition Bloc", former deputy of Ukrainian Parliament (Verkhovna Rada), businessman.
Zaporiz'ka oblast	Volodymyr Rohov, self-proclaimed member of the occupation council of the military-civil administration of Zaporizhia region	He had no political experience, one of the "anti-Maidan organizers" in the city in 2014. After 2014, emigrated to the Russian Federation.

At the initial stage of the occupation, the Verkhovna Rada Commissioner for Human Rights Liudmyla Denisova stated that there was information about the occupiers' planning of holding an illegal referendum in the occupied territories [22]. However, as of June, no imitation of the referendum had taken place in any of the occupied territories since 24 February. Instead, there was an imitation of the resumption of the administrative apparatus. In each relatively large settlement of the occupied territories of Kherson and Zaporizhia regions, "heads" of cities and oblasts were unilaterally appointed.

The procedure for appointing collaborators to positions had its own peculiarities in the Donetsk region. In Mariupol, Donetsk region, there was a meeting with the participation of the head of the Donetsk occupation administration (so-called DPR), Denis Pushylin. **With the participation of several local deputies and representatives** of the formerly occupied territories of the region, they appointed the so-called "mayor" of Mariupol. He was an deputy from the party "Opposition platform – for life" Kostiantyn Ivashchenko [23].

After the occupation, military commandant's offices were established in Kherson and Zaporizhia oblasts. Under their leadership, administrative buildings were seized in settlements, checkpoints, control regimes and rules of conduct for Ukrainian citizens were established.

Volodymyr Saldo, a former member of the "Party of Regions" and former mayor of Kherson in 2002–2012, who lost the 2018 mayoral election, was appointed by Russian military commander as head of the Kherson Oblast civil-military administration. According to the Center for Journalistic Investigations, Oleksandr Kobets, a former member of the KGB of the USSR and the Security Service of Ukraine, was appointed Kherson mayor.

Yevhen Balytsky, a former member of the "Party of Regions" and the "Opposition Bloc", has been appointed head of the Zaporizhia oblast civil-military administration. Halyna Danylchenko, also former member of the "Party of Regions" and the "Opposition Bloc", has been appointed mayor of the occupied city of Melitopol.

Oleksandr Saulenko became the self-proclaimed mayor of Berdyansk, a person unknown in political circles before the occupation of the city. He was never elected to local government. It is known that in the past he was a member of the "Union of Left Forces" party, which proclaimed Ukraine's neutral status as a foreign policy guideline.

It should be noted that after the beginning of the invasion of Ukraine, the Ukrainian government has begun the process of banning some political parties, mainly pro-Russian and opposition to the current state course. As of June 2022, the activities of 11 parties, oriented towards Russia, have already been banned [24], including the largest – "Opposition bloc", "Opposition platform – for life". The property and assets of these parties became the property of the state. The government's reaction followed as a response to the open collaboration of some party members with the occupation troops.

Discussion.

So, in the occupied territories, the military leadership of the Russian Federation forcibly ceased the activities of the legitimate Ukrainian authorities and sin-

gle-handedly appointed collaborationists to lead. As we can see **in the Table 3** we have studied several such cases, in major cities in occupied south-east Ukraine. Among those personalities who agreed to cooperate with the occupying forces and led the administrations::

- no legally acting mayor or head of the region;
- half had no any political experience;
- six – are members of the former «Party of Regions». The «Party of Regions» is one of the dominant parties in Ukrainian political life until 2014. In 2014, the party's total focus on Russia led to a revolutionary situation and a complete change of power in the country. As a result, the party suffered reputational damage was transformed into new opposition political projects, such as the «Opposition platform for life» and the «Opposition bloc». The new political projects continued to take a pro-Russian stance, the course of the former «Party of Regions» and opposed Ukraine's foreign policy after the events of 2014;
- one person, a member of the «Union of Left Forces» party, had not previously been elected to local governing bodies;
- one person – a former member of the secret services of the KGB of the USSR and the SSU (SBU – in ukr.), according to available media information;
- two «heads» of occupation military-civilian administrations, former members of the «Party of Regions»;
- another self-proclaimed member of the military-civil administration of Zaporizhia region is a participant in the «anti-Maidan protests», who emigrated to Russia in 2014. He calls for the occupation of the entire territory of Ukraine and the destruction of the legitimate government.
- two collaborationists at the time of the invasion were current deputies of city councils; four were elected to elected positions in the past.

Based on this data, we can suppose what served as the main motivation for these people:

1. gaining leadership positions in the occupation structures, which they could not get during their political activities, due to the loss of the necessary level of public support after the events of 2014;
2. obtaining leadership positions that they could not obtain due to lack of any political success or lack of political experience;
3. the realization of its aspirations for orientation towards the Russian Federation as a manifestation of hostility towards Ukraine's foreign policy, its «pro-Western orientation»;
4. hope to receive further support and opportunities from the occupiers through collaborationism activities.

In any case, there is noticeable motivation to cooperate with the occupying forces in order to improve their own situation and realize their ambitions in the new occupation reality. This category of people agreed to cooperate, knowing that the legitimate authorities refused to cooperate and their activities were forcibly stopped by the occupiers. Therefore, in this case we could talk about the formation of new artificial illegal administrations, and not about the support of the invasion by some local legitimate authorities.

After reviewing the chronology of events after the occupation in the major cities of south-eastern Ukraine, we can also suggest a general sequence of actions by the occupiers in the invaded territory. In the Kherson and Zaporizhia regions, the establishment of the occupation administration proceeded as follows:

1. Key administrative buildings have been seized, all state symbols of Ukraine have been eliminated;
2. military administrations, such as a military occupation commandant's office, were established in the occupied territories;
3. local authorities were primarily pressured to compel their cooperation;
4. in case the authorities refused to cooperate (100% of cases analyzed) – search for potential collaborators from among loyal local deputies or influential people; in their absence – anyone who would agree to take the position;
5. meetings were organized with employees of the local and regional administration, at which the occupation military commandant unilaterally appointed collaborators – the new mayor and head of the region;
6. The employees of the city and regional administrations were confronted with the fact – either to continue to perform duties with the new leadership, or to resign and remain without means of survival, under occupation. Which means putting in conditions of forced cooperation [25], [26].

The information presented is a starting point that draws attention to the problem. An analysis of the situation in several large cities may be the beginning of a deeper analysis throughout the whole occupied territory over a longer period of time. That would allow expanding, clarifying or correcting the conclusions.

Conclusions.

We find out that if the Russian side was counting on the support of the local authorities, it is safe to say that it has failed. Under such circumstances, they tried to engage at least some more or less local public figures in the occupied territories. In all the occupied cities there is a similar pattern of occupier behaviour, which we have tried to outline. We have also analysed data on some of the individuals who have agreed to cooperate with Russia and have led the occupation administrations. Based on information about their experience and some political background, we tried to identify the main motives for such cooperation.

Based on the work done, a few key conclusions can be drawn:

1. There was no mass support for the occupiers at local government level.
2. Only a small number of current local politicians agreed to the collaboration at the start stage. The formation of puppet administrations took place extremely hastily and gives the impression of a fragile, chaotic one. In this connection, even small, local tasks of the invaders can be solved much longer than expected.
3. Some of the collaborators are former deputies of local and regional councils and members of opposition political parties who did not hide their orientation to the Russian Federation and their negative attitude to the current foreign policy of Ukraine.
4. Some of them openly expressed their position long before the occupation. The potential risks associated with their socio-political activities and

political sentiments were not taken into account, which allowed them to wait unhindered for the arrival of Russian troops and to cooperate with the military leadership;

5. The collaborationists fully owe their assignment to the Russian occupation structure. This means that they are completely dependent and will carry out orders without hindrance by imitating local administrative activities;

Given the situation that is emerging and the activities related to the organisation of power in the occupied territories, we can try to assume the future activities of the occupation administrations. It most likely will be aimed at strengthening information and propaganda activities. The purpose of the information and propaganda policy on the occupied will probably be aimed at preparing the population for further territorial changing outside the Ukrainian state; strengthening positive meanings around Russia and pro-Russian sentiments and negative meanings related to the legitimate Ukrainian government, pro-Ukrainian sentiments and the idea of an independent Ukraine.

However, as the war continues and the Armed Forces of Ukraine regularly report preparations for a counterattack and conduct local offensive operations, this does not allow either the occupation military commandant's office or local collaborators to feel at ease. Under such conditions, an attempt at further incorporation or "administrativeization" of the occupied Ukrainian territories by the Russian authorities would be problematic.

But even in conditions of instability, the occupiers will try to isolate the occupied territories from the Ukrainian information, economic, political and social space as much as possible. Using collaborators as intermediaries, they will try to spread Russian influence as long as the overall situation allows.

The further situation on the frontlines, the activities of the Ukrainian authorities in relation to the population in the occupied territories, socio-political attention to its problems and instrumentalization of relations with the population of the occupied territories will be crucial for liberating the occupied territories and restoring peaceful life in south-eastern Ukraine.

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COMMUNICATION BETWEEN CIVIL SOCIETY AND THE JUDICIARY IN THE CONTEXT OF FOREIGN EXPERIENCE

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Annotation. Based on the generalization of foreign experience of communication between the judiciary and civil society in foreign countries (Great Britain, Denmark, Serbia, Lithuania, Latvia, the Netherlands), it is substantiated that in modern democratic states, the communication activity of the judiciary is considered to be one of its most important functions, which not only ensures publicity and openness of proceedings, but, in a broader sense, represents an integral part of the concept of access to justice, transparency of the trial and public confidence in the judiciary. It is proved that the classical liberal model of participatory democracy has been replaced by a dialogical model of deliberative communication based on the principles of partnership and equality of parties. The major components of the information space of communication between courts and the public as well as the structural elements of formalized communication strategies are summarized and characterized. Strategic planning of communication activities as a continuous process of information exchange, which involves all society layers, is proved to be a dominant approach at the present stage of society development. The main components of the information space of communication between courts and the public are highlighted, and the structural elements of a formalized communication strategy are characterized. It is emphasized that the planning of communication activities of the judiciary and individual courts is made with consideration of the context of a particular national state, its legal and court systems, their specific features, existing problems and challenges, as well as a complex of political, economic, social, legal, ideological, cultural and other aspects that affect the communication of the judiciary and civil society to varying degrees.

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Key words: models of informative communication, communication strategy of the court, information space, formalized communication strategy, transparency.

Introduction. Over the past ten years, Ukraine has been undergoing another successive stage of judicial reform. The purpose of the reform is to establish an independent, fair judiciary based on trust of citizens. Proper communication between the judiciary and civil society is an important pledge of effective reform of the judiciary in Ukraine and, at the same time, a premise for restoring trust of the citizens. It is through communication that the judiciary demonstrates to society and other branches of power what its competencies, authority and independence are applied to and how its integration into society is carried out. For civil society, the importance of communication is primarily determined by the ability to obtain appropriate information about the organization and functioning of the judiciary. It is also important that communication contributes to a deeper understanding of courts as a "cornerstone of democratic constitutional systems" as well as realizing the restrictions in their activities. At the same time, the communication between the judiciary and civil society in democratic countries is significantly different. The optimization of communication between civil society and the judiciary in Ukraine necessitates studying foreign communication experience and borrowing positive practices, given the peculiarities of the Ukrainian judicial system.

According to the report of the European Commission for the Efficiency of Justice (CEPEJ), modern society exists in a world of communication where the work of public authorities, including the judicial system, is subject to constant public debate, and where criticism is expressed with less deference and more readiness than in the past. As a result, justice cannot, as it was in the past, confine itself any longer in an ivory tower, deliver judgements without taking into account how these will be received and understood, and look down at the people' and media's agitation with detachment and diffidence [5]. In addition, successful implementation of the communication function is an important premise for the development of civil society, democratization of its institutions and legitimization of judicial control over the activities of public administration bodies and state of public relations' development in general. This is especially true for constitutional proceedings, which are directly related to political authorities and traditionally faced with significant pressure exerted by those authorities.

The analysis of the current foreign experience of the communication practice between the state, including its judicial system, and civil society at the current stage of public relations' development shows that in most countries of the world such interaction is based on the concept of dialogic communication, which involves not only institutional actors (state, judicial administration, judges), but also ordinary citizens, public associations and non-profit organizations of the "third sector". Moreover, recognition by states of civil society and relevant non-profit organizations as equal partners in dialogue due to innovative processes in public relations and political communication has resulted in the formation of the modern network society, uncontrolled and insubordinate to the state, which plays an important role in the real political and legal processes both at the national and

international levels [13, p.120-121]. Under such circumstances, the theoretical understanding of the European and international experience of communication between the judiciary and civil society is of particular relevance.

The analysis of recent research and publications shows that the problems of communication between the judiciary and civil society through the light of the principles of transparency, openness, accessibility of justice were considered in the works by the following scholars, namely: V. Horodovenko, S. Holovatyi, A. Demichev, S. Ivanytskyi, P. Kablak, L. Karnazova, V. Kravchuk, D. Kulieshov, E. Maiboroda, I. Marochkin, I. Nazarov, V. Oliinyk, Yu. Potapov, S. Prylutskyi, Ya. Romaniuk, O. Fomin, S. Shevchuk. Some aspects of the directions, forms and content of communication between civil society and the judiciary in foreign countries are reflected in the researches of V. Bezchasnyi, S. Bkhatacharia, M. Velikonia, P. Vink, I. Hrytsenko, A. Yovanovych, N. Yovanovych, H. Yefremova, K. Kovryzhenko, R. McGregor, M. Myronenko, O. Ovsiannikova, N. Torkhova, P. Fernando, M. Khelman and others. At the same time, despite an increased research interest in the issues of communication between the judiciary and civil society, the problems of shaping the information space of communication between courts and the public as well as of formalized communication strategies and their structural elements have been insufficiently studied.

The purpose of our paper is to study the current foreign experience of communication between civil society and the judiciary, identify its development and improvement trends.

Research materials and methods. In order to achieve scientific objectivity of the results, a complex of philosophical, general scientific, and specific scientific approaches as well as cognition methods was applied. Among the used methodological approaches that determine the general research direction there are civilizational, dialectical, systemic, and axiological ones. The civilizational approach aimed to study the peculiarities of communication between the judiciary and civil society in foreign countries given their cultural, social, historical, and legal features. The axiological approach was used to understand transparency, accessibility, and openness as fundamental values of democracy. When determining the content of communication strategies, the main provisions of a dialectical approach were predominantly used. In the paper, the general scientific principles (historicism, unity of the logical and the historical, objectivity, determinism, concreteness) and methods were used. In particular, the systemic and structural methods were applied in order to highlight the model of formalized communication strategy; the historical method was used in the study of the evolution of court communication activities; the disclosure of information interaction was made with the use of the functional method. Doctrinal, formal-legal, and comparative-legal methods were among the specific scientific approaches used in the research.

Results and discussion. For a long time, the activities of the judicial branch of government have been among the most closed and inaccessible to the general public. This fact can be attributed to the so-called “Kilmuir rules” established by the Lord Chancellor of England and Wales, Lord Kilmuir, in 1955. According to these rules, members of the judiciary were forbidden to appear on television

and on the radio without consent of the Lord Chancellor. Explaining his decision, Lord Kilmuir stated: "So long as a Judge keeps silent, his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism" [1]. In this view, engagement of judges in public debate was a risk factor that undermined the implementation of the principles of judicial independence and authority.

In the 1980s and 1990s, the loss of public confidence in the judicial system, judicial scandals that occurred in some countries as well as an emerging demand for more democratic and transparent accountability of judges led to the need to revise the traditional model of limited interaction of the judiciary with the public. For instance, in Belgium, public distrust in the police and the court, dissatisfaction with the judicial system performance as well as numerous errors in the trial of the high profile Marc Dutroux case caused massive demonstrations, with more than 300 000 people marching in the streets of Brussels [1]. During the protests, which were called the White March, citizens demanded a proper investigation of the case, facts of corruption in the law enforcement system, including penetration of criminal elements into its structure, as well as the reform of the judicial system, which demonstrated low efficiency and lack of independence and impartiality.

A similar situation arose in the United States, where, according to Archibald Cox, there has been a "long and distinguished tradition of bashing judges that have threatened both decisional and institutional judicial independence" [10, p.129]. This practice gained in scope in the 1990s and resulted in courts' search for ways to develop and improve communication with the public in order to form a better understanding of the essence and significance of judicial activities in society and ensure real judicial independence.

The starting point of a qualitatively new content of the problem of courts' communication with the public was the specifics of the European political and legal development in the XX century, which was characterized by increased attention to human rights, partial rejection of the national state priority and, particularly, the creation of supranational bodies and judicial institutions empowered with extraterritorial competence. The activity of the European Court of Human Rights (ECHR) is a striking example of this change. Thus, the judgment in the case of Borgers v. Belgium says that the increased sensitivity of the public to the fair administration of justice significantly affects the evolutionary process of fair trial, a basic right enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms [8]. Moreover, in the sense of the above decision as well as the court's previous case-law, the communicative aspect indirectly guarantees fairness and impartiality of the court, effectiveness of its social purpose implementation and, in a broader sense, public confidence in the judicial system as a whole. At the same time, it should be noted that absolutization of the communicative function of the judicial system can adversely affect the effectiveness of judicial institutions and fairness of justice. Increased public attention to certain cases, manipulative media influence and formation of distorted or erroneous public opinion

can become a factor of indirect pressure on judges and undermine their impartiality and independence.

A similar view is shared by Judge Storme, who, in his dissenting opinion on the decision in the case of Borgers v. Belgium, emphasizes on the extreme danger of introducing the new notion of "increased sensitivity of the public", which has no link with the previous case-law, in procedural activities of the court; this notion cannot be considered a substantial ground for either instant change or abrogation of the case law. In addition, Judge Martens further notes that such general statements in any particular case require proper factual justification [8]. That is the reason why public monitoring of justice in one form or another should not interfere with the implementation of procedural activities and, moreover, act as a means of extra-procedural audit of court decisions.

Special attention should be paid to the issue of the models of informative communication between the judiciary and civil society. According to O. Zaitsev, in the practice of political administration and public relations, under the significant influence of which the communication activity of the judicial system has developed, the institutionalization of public dialogue was accompanied by criticism of the liberal democracy model, where electoral procedures and formation of a representative system of power have been the core points for a long time. All these have ultimately resulted in the alienation of broad segments of the population from real participation in public affairs administration, decrease in voters' activity and the legitimacy of power in general [13]. As far as the judicial system is concerned, the absolutization of the electoral rule actually put it outside the public sphere and public dialogue, since in most countries the election of judges is carried out according to a special procedure different from the procedure of elections to representative bodies, where the influence and weight of the public is minimal, the representatives are not subject to re-election, which significantly reduces their dependence on the public. It is obvious that under such circumstances, the judicial system remains mostly closed for the public, with public dialogue and debate being limited to unilateral information on issues of ultimate importance.

The solution to this problem was found in the combination of the fundamental values of electoral democracy with the mechanisms and procedures of participatory and deliberative democracies, which significantly expanded and institutionalized numerous dialogue procedures and practices. The mechanisms and technologies of public relations (PR) in the field of public administration were supplemented with GR-technologies, in which representatives of society and business are the dialogue initiators [13]. Such interaction is based on dialogic deliberative communication, which allows building relations between the process subjects on the principles of partnership and discursive equality, taking into account different opinions and positions, and, therefore, enhancing mutual trust.

The modern concept of public relations focuses on "establishing feedback in the course of regularly informing the public about the activities of individuals, organizations, and collectives". At the same time, correction and constant accounting of public opinion, expertise and consulting are of most relevance, which enables shaping a harmonious communication space, organizing interaction on

the basis of dialogic, coordinated and mutually beneficial communication [14, p. 310]. For judges and justice, such activities are of particular importance, since the establishment of constructive dialogue and transparent cooperation with civil society institutions contributes to the formation of an open image of the court, a clear and transparent decision-making mechanism, which eliminates a possibility of dual, erroneous or openly falsified interpretation of judicial activities, and effective protection of the rights, freedoms and legitimate interests of citizens.

Further expansion of globalization and active development of information society have provided new opportunities for courts in communication with society. As Johnston rightly points out, despite the parallel introduction of restrictions primarily related to the need of ensuring the security and secrecy of private life during the trial, the existence of various information and media communication channels, qualitative review of the role and importance of journalists in covering judicial activities contribute to providing greater publicity and transparency of justice, frequently to its detriment [7, p. 526].

The researcher identifies three main phases in the evolution of courts' communication activities, which together shape the modern information space for interaction between courts and the public, in particular:

1) the press – the news media's coverage of courts. Currently, giving priority exclusively to communication of the judicial system with representatives of the mass media has become ineffective due to the loss by the media of its monopoly position in the information field, decline in the quality of their work and significant competition with other information resources;

2) media liaison – the creation of special structural units or positions in courts that perform the function of representation and public relations;

3) media management – the development of independent means of publicity that are available to courts via the internet, in particular social media and networks.

Further development of information society with a rise in the number and volume of information flows, increased importance of information in the lives of both ordinary citizens and the general public, and expansion of opportunities for information dissemination have resulted in the need to revise the traditional ideas and approaches to communication activities, including the judiciary. In particular, in most European countries, there observed a gradual departure from the one-sided information model of communication, which is characterized by informing the public without providing feedback and absolute dominance of the media as the main channel of communication, and the affirmation of the need for strategic planning of communication activities as a continuous process. Thus, in the Guide on Communication with the Media and the Public for Courts and Prosecution Authorities, the CEPEJ emphasizes that "judicial institutions cannot simply improve their communication on ad-hoc basis, regardless of the purpose. On the contrary, communication should be part of a general strategy and it should inform the public not only on the proceedings handled, but also on the judicial activity as a whole" [5]. With this approach, communication covers all society levels, and its means and

goals vary depending on the characteristics of the target audience subject to information impact.

This opinion is shared by the European Network of Councils for the Judiciary (ENCJ), whose recommendations read that "all countries are encouraged to develop a proactive media approach. This approach should be focused on individual court cases as well as the judicial system and principles of law" [6]. These tasks are carried out through development and implementation in national legislations of special communication strategies that summarize the strategic goals of judicial systems and contribute to coordinating efforts of various judicial bodies and institutions.

In a generalized form, formalized communication strategies contain the following structural elements.

Communication goals – achievements of the judicial system in the medium or long term related to the general priorities and challenges the judiciary is faced with. For instance, the goal of the UK Judicial Office, responsible for corporate relations and communication with the media, is supporting the judiciary by promoting and safeguarding judicial independence to maintain confidence in the rule of law [9]. Other goals of communication may include increasing the transparency and accountability of the judicial system, ensuring the effective operation of the judicial system, creating a positive image of the court and enhancing its authority in society, competent and adequate informing of the public about the cases under consideration and existing problems in the legal system of the relevant state.

Communication tasks – specific types of activities aimed at achieving the goal set. Most often, such areas are as follows: informing the public about the professional activities of the court; increasing the stability of the judicial system to manipulative influences from the political establishment, financial and industrial groups, the media and other interested parties and structures; promoting public confidence in the court; establishing a positive image of the court [11]. In contrast to the goals, which are characterized by a high degree of generalization and abstraction, the set of tasks varies depending on the general context of the political and legal system of the state and the actual problems of the relevant judicial system.

Principles – the basis for the formation of a consistent and stable communication system. Thus, the reform of the Danish judicial system was based on the following values: everyone has a right to be treated with respect; judicial independence is a requirement for due process; responsibility and credibility in all matters; transparency, dialogue and collaboration [12]. In addition, in different countries, among the principles of communication there are confidentiality and professionalism (Lithuania), strategic thinking, goal orientation, equal opportunities, feedback (Latvia).

Target groups – communities of individuals united by common characteristics. Given that the ultimate goal of communication is to change the consciousness and/or behavior of the information recipient, this element of the communication strategy is of great practical importance, since it allows identifying the orientation of values, specific needs and expectations of the audience, accurate

planning communication activities and determining priority communication channels. The list of target groups in most countries is the same and covers the following society segments: the judicial community; public authorities; related jobs and the legal community; participants in proceedings; the public, that is, public associations, activists, citizens; mass media; foreign partners (judicial authorities of other countries, international organizations and judicial institutions).

Core messages – the main idea designed to be conveyed to different target audiences and adapted to various communication activities and tools. For instance, in her speech, Radmila Dragičević Dičić formulates the following generalized core messages to be conveyed in the communication process: 1) courts are fair, impartial, and independent; 2) courts exist to protect citizens and their rights; 3) courts are transparent and accessible; 4) judges are held to the highest levels of accountability; 5) equal justice under law courts [4]. At the same time, separate core messages should be formulated for each target audience in order to reflect the specific features, values, needs and expectations of the relevant social group.

Communication activity – a set of activities to implement communication goals. Communication activities can combine both general actions to solve several goals (press releases, informing the population, etc.), and special ones that are specified depending on the goal (cooperation with non-governmental organizations in combating human trafficking, initiating discussions on specific issues of family matters and other relevant topics, introducing mentoring and volunteering in courts). At the same time, an excessively overloaded list of activities can lead to a decrease in the quality of strategy implementation and leveling of its effectiveness.

Communication channels – the tools for information transmission. Thus, the Judicial Office of the United Kingdom is responsible for developing and maintaining the following main channels of communications: a) intranets – the judicial intranet (including managing judicial subscriptions, providing technical support to users and sending out regular alerts) and the Judicial Office intranet; b) websites – including the public-facing Judiciary of England and Wales website; c) publications – typesetting and arranging the printing and publication of judicial and Judicial Office publications [3]. In addition, communication can be carried out through the media, individual massages, direct communication initiatives, as well as social media and networks.

Communication indicators – it is advisable that quantitative indicators to measure the effectiveness of communication activities (for instance, the number of publications, articles, comments in the media, court visitors, etc.) and qualitative indicators to determine the extent of the main strategic goal achievement (increase in the level of trust by certain percentage) should be established. For instance, the strategic document for the Court Communication Strategy in Lithuania states that the result to be achieved is an increase of confidence in court by 15% over the four years of strategy implementation, according to the annual National Survey “Vilmorus” [11].

Coordination and monitoring – the Consultative Council of European Judges (CCJE) notes that a role of coordinating the various local initiatives, as well as

promoting nation-wide "outreach programs", should be given to the independent body. This independent body may also, by incorporating the use of professionals with prepared resources, satisfy more sophisticated information needs issuing from policy makers, academics, public interest groups [2]. Also, it should be emphasized that coordination as a principle of judicial communication is an important aspect that ensures its effectiveness.

At the same time, it should be noted that currently European countries have no unified approach to the form and content of communication strategies. A number of states have developed and adopted separate communication strategies for the judicial system/justice sector (Serbia, Lithuania, Latvia) or individual courts, while others have integrated communication activities into the overall strategy of the judicial system (the Netherlands), or without adopting separate documents, they have recognized the need for proactive communication and developed a set of relevant solutions (Great Britain, Scandinavian countries) [11]. It is important that the planning of communication activities of the judiciary and individual courts is carried out with consideration of the context of a particular national state and judicial system, its specific features, communication skills and challenges, as well as a complex of political, economic, social, legal, ideological, cultural and other aspects that somehow affect the work of the court and the way it is perceived by the public.

Conclusions. For a long time, the judicial system has been viewed as the branch of state power, which was almost completely closed for public debate. This was caused both by a specific nature of judicial activity, which, given the functions assigned to it, somehow appeared to be closely linked with the most controversial social relations and acute problems of their development, and by the need to defend actual independence of judicial institutions and employees from external influence, which has traditionally been significant, especially in relation with cases and disputes that draw wide response. In many countries, some systemic errors in the organization of the judicial system caused the opposite effect, consequently increasing the demand for reforming the vulnerable components of this government branch, particularly in the areas of promoting its openness and strengthening the general public confidence in it. Nowadays, the communication activity of the judicial system is defined as one of its major functions, which contributes both to the effectiveness of judicial activities in general and to its compliance with some fundamental principles of judicial proceedings, such as clarity, openness, transparency, free access to justice.

In the course of the judiciary's communication function development, it became obvious that the classical liberal model of democracy, which operated for a long time, was no longer effective, since it is based on the absolutization of the electoral rule, which is very far from the practical aspects of the judicial system's organization and operation. This has resulted in the establishment of a dialogical model of deliberative communication, which is based on the principles of partnership and equality of subjects and allows articulating and considering different, sometimes opposite views.

In its most general form, the modern information space of communication between courts and the public involves three main components, name-

ly: the press, media liaison, and media management. At the present stage of society's development, strategic planning of communication activities as a continuous process of information exchange covering all levels in society can be considered to be a dominant approach. Externally, its implementation is manifested in the development and approval of various communication strategies aimed at informing the public not only about cases considered by courts, but also about judicial activities in general. The communicative aspect indirectly guarantees fairness and impartiality of the court, effectiveness of its social purpose implementation and, in a broader sense, public confidence in the judicial system as a whole. Planning of communication activities of the judiciary and individual courts is carried out with consideration of the context of a particular national state, specifics of its judicial system, complex of political, economic, social, legal, ideological, cultural and other aspects that affect the communication of judicial authorities and civil society to varying degrees.

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FORMATION AND DEVELOPMENT OF THE KYIV CITY COUNCIL AS A LOCAL SELF-GOVERNMENT BODY

T. Havrylenko[1]

Annotation. The scientific article is devoted to the study of the formation and development of the Kyiv City Council as a body of local self-government. The article discloses the issues of legislative regulation of the activities of the Kyiv City Council, the history of its emergence and functioning as a local self-government body. The article identifies the problems of functioning of the Kyiv City Council and provides options for their elimination.

Key words. Kyiv City Council, local self-government body, establishment of Kyiv City Council, development of local self-government in the city of Kyiv, local self-government.

Formulation of the problem. Municipal administration in Kyiv has a thousand-year history and has been traced since the formation and functioning of community and tribal self-government of territorial communities, this is a peculiar period of clans and tribes of ancient Slavs that were territorially located within the territory of modern Kyiv. Community and tribal self-government is based on customary law, on the basis of which issues of local importance were decided and community officials were elected.

The local councils of ancient times, the so-called verves, had wide autonomy, were governed by customary law, and later by the Kopny law based on the Kopny statute, which regulated community meetings, the election of elders, Kopny judges and other officials. The main functions of the community are management of land issues, economic activity and election of officials. However, we identified this period as the first in the list of periods of evolution of the Kyiv City Council. It should be noted that it is from this period that the development of the community's economic activity has been traced, which as a result led to the expansion of the community's territory, and later - to the formation of the state itself [1].

Presenting main material. In the period up to 882, the formation and development of the Kyivan princely state is traced, this period is characterized by the dual power of municipal administration, because along with the local

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self-government body, the prince also appoints the head of the municipal government. The so-called period of community self-government is known for the fact that officials of the Kyiv community are elected at the people's assembly of the city – Viche.

Municipal power was characterized by the presence of the administration, under the names Tysiatskyi and Sotskyi, which were headed by Kyiv princes. A similar story is covered in mythology, for example, the story about the princes Kius, Askold and Dir.

The state of the Grand Duke of Kyiv, dating from 882 to 1132, is characterized by the establishment of Rurik's descendants as the leader (prince) of the Varangians, Viking warriors who sailed from Scandinavia along the Dnieper to Constantinople. It is important that during this period Kyiv was the capital of Kyivan Rus. In the city of Kyiv, power was exercised by the tyastskyi - the head of the city's princely administration, who dealt with local issues and land issues. Sotskyi and desatniki worked in the corresponding administration, who performed the functions of the judiciary and administrative management. The bodies of local self-government were urban communities, which, by making decisions at meetings (Viche), resolved issues of local importance, formed local bodies, and resolved the issue of wars [2, p. 8-17].

In the period 1132–1239, the age of the ruins of the city of Kyiv begins, immediately after the death of the son of Volodymyr Monomakh - Prince Mstislav, as a result of which there was simply no local self-government body in Kyiv, which led to the looting of the city, which was carried out by the princes themselves. In one of them, in 1169, the city was actually burned, and important artifacts were stolen, including icons belonging to the city [3, p. 58–64].

In 1239, King Danylo Halytsky annexed Kyiv to the Galicia-Volhynia state. And since 1240, Khan Baty destroyed Kyiv with his own horde, as a result of which the city was under the Mongol-Tatar yoke, and the city was ruled by the Khan Baskaks, who paid a large tribute to the city.

Since 1325, the city was jointly ruled by Lithuania and the Golden Horde. And during this period, Kyiv was headed by the Grand Duke of Lithuania Gedimin. However, it was not possible to manage the city together with the Golden Horde. And there was no question of local self-government, representatives of the Golden Horde did not give such an opportunity.

The armies of the three Horde khans had already been defeated under the Blue Waters, and since 1362 they have been on Ukrainian soil. That is how the Lithuanian Age began in the city of Kyiv. And in Kyiv, Grand Duke Olgerd of Lithuania presided. The result of the Lithuanian era in the city of Kyiv is the accession to the Grand Duchy of Lithuania, the development of local self-government through the Kyiv Viyt, which was elected by the city itself. Structurally, the Kyiv Viyt headed by the Kyiv Prince is the capital body of local self-government of the Kyiv Principality within the Grand Duchy of Lithuania. In 1471, Kyiv authorities were liquidated, and by 1569, the city was ruled by the governors of the Grand Duke of Lithuania [3, p. 58–64].

During the period of Magdeburg law on the lands of Kyiv, since 1494, the city of Kyiv received city administration and the "Charter of Charter" of 1494,

which granted power to the prince and expanded the rights of the territorial community in the city.

According to the granted Magdeburg law, the city community could introduce a system of city self-government, which equated Kyiv with Western European cities. Customary (common) law was abolished, a body of city self-government was elected – a magistrate headed by a mayor, which consisted of two boards – a council (administrative body) and a bench (judicial body), the rights of local state administration were limited. Residents of the city received the right to be elected to the magistrate and to deal with administrative, financial, economic, legal, judicial, military affairs, etc. The city treasury consisted of taxes and customs duties, funds from the lease of city property. Prices were also regulated by the Kyiv Magistrate, the latter also maintained so-called social institutions, hospitals, educational institutions, etc [4, p. 85].

The next evolutionary period of the local self-government body in the city of Kyiv is the inclusion of the city in the Polish-Lithuanian Commonwealth, as a result of which in 1569 the Union of Lublin was concluded between Lithuania and Poland and a single state of the Polish-Lithuanian Commonwealth was formed, which included Lithuania, Poland and Ukraine. Power in the city once again passed centrally to the voivode, who was appointed by the Polish king. However, despite this, the local self-government body functioned, the Magistrate was elected, engaged in administrative, financial, economic, legal and judicial matters; regulated the prices of goods; set taxes; reported to the community about the city's income and expenses [5, p. 731].

The next evolutionary period is the national liberation struggle of the Ukrainian people, in which from December 1 to 4, 1648, Kyivans revolted against the Polish garrison, drove out the pro-Polish Vito Khodyk, the nobility, and the Catholic clergy, and accordingly, the newly elected Vito Kyrylo Mehedenko headed the City Magistrate. These were the times of Bohdan Khmelnytskyi in Ukraine, who planned to turn Kyiv into the political center of the Ukrainian Cossack state. And the local administration during the time of the Cossack state had the form of a regimental-hundredth system, under which an elected magistrate functioned, who headed a viit, and a centralized position from the hetman was the colonel of the Kyiv regiment. However, the status and territorial affiliation of the city of Kyiv were not determined for a long time [6, p. 64-68].

In 1655, the city of Kyiv was occupied by the troops of the Muscovite kingdom due to the lack of certainty in the negotiations between the Commonwealth of Nations and the Muscovite kingdom. It was a period of ruins for Kyiv, but despite such events, the local self-governing body operated during the occupation - an elected magistrate headed by a voivode and a burgomaster, local administration was carried out by the Moscow voivode.

As a result of the Truce of Andrusiv in 1667, Ukraine was divided along the Dnieper River, Kyiv remained on the territory of Poland, but during the next partition under the "Eternal Peace" in 1686, Kyiv still passed to the Muscovite Empire. Poland received 1 million Polish zlotys for Kyiv, that is, Kyiv was actually sold [6, p. 67-68].

Local self-government actually existed during this period and until 1710, because Tsar Peter I appointed only a voivode to the city together with Moscow military men, but he did not prohibit local self-government, and with his charters of 1689, 1699, 1700 and 1710, he confirmed the rights of the Magistrate.

The next period was when Kyiv was under the rule of the Muscovite kingdom, and later – under the rule of the Russian Empire, because in 1710, as a result of the Battle of Poltava, the power of the Muscovite kingdom was strengthened, and Kyiv became part of it, and due to its convenient territorial location on the right bank of the Dnieper, it became a strategic a bridgehead for the further expansion of the Moscow kingdom to the west. In the context of local self-government, the Kyiv province was formed, headed by the governor-general, and at that time the local self-government bodies of Kyiv, which operated according to Magdeburg law, were gradually supplanted by the administration appointed by the central government, the Moscow tsars. And in 1764, the Hetmanship was abolished on Ukrainian lands, and accordingly, an attack on the autonomy of cities and local self-government began at the same time. By the royal decree of 1764, the Kyiv magistrate was placed under the control of the Kyiv governor-general [3, p. 58–61].

By the royal decree of 1775 "On the annexation of Kyiv to Little Russia", the city of Kyiv was put under the control of the governor-general of Little Russia, and in 1781 the Kyiv governorship was established. The Kyiv magistrate had only one function - judicial power over the townspeople [3, p. 58–61].

In 1785, during the reign of Catherine II, Kyiv actually lost its autonomous status and independent governance. Later, the Russian tsars Paul I (in 1796) and Alexander I (in 1801) partially returned some elements of city self-government to Kyiv under Magdeburg law. However, on December 23, 1834, Tsar Nicholas I issued a decree "On the reorganization of the administration of the city of Kyiv", the city lost its autonomy, Magdeburg law was finally eliminated.

Until 1917, the bodies of Kyiv city public administration were: city election meetings, city council, city administration. City election meetings elected the City Duma. The city council elected the city administration consisting of the mayor, members of the city administration and the secretary. The election of the mayor was approved by the Minister of Internal Affairs of the Russian Empire.

During the revolution and civil war, the city was governed by one person: commissars from the Provisional Government, commissars from the Central Council, heads of the Bolshevik military-revolutionary committees, military commandants of the Bolshevik troops of Russia, city chieftains under Hetman Skoropadskyi, city chieftains under General Denikin, military commandants of the Polish army, secretaries of revolutionary committees [7, p. 19].

During the times of the Ukrainian People's Republic, an attempt was made to reform local self-government on the European model. According to the Constitution of the Ukrainian People's Republic (of April 29, 1918), communities were granted the rights of broad self-government, but already in 1920, after the overthrow of the Directory, Bolshevik power was established in Ukraine. The Bolsheviks choose the city of Kharkiv as the capital of Ukraine, and Kyiv becomes a Soviet province - the center of Kyiv province.

In the Soviet period, after the establishment of the Bolshevik regime in Ukraine, the bodies of local self-government were liquidated and replaced by the bodies of the "proletarian dictatorship" - revolutionary committees. In 1932, the Kyiv region was formed and Kyiv became the regional center, and in 1934 Kyiv again became the capital [8, p. 37].

With the adoption of the Stalinist Constitution of the USSR on December 5, 1936, all councils received the status of organs of state power, but the actual management on the ground was carried out by local party bodies under the leadership of the central bodies of the CP(b)U and VKP(b).

During the Second World War, the city of Kyiv was occupied by the troops of Nazi Germany from September 19, 1941 to November 6, 1943. The harsh occupation regime of the Third German Reich was introduced in the city. The civil Kyiv city administration headed by the head of the city administration (the burgomaster) acted as a body of local self-government.

In the post-war period, the local government in Kyiv actually belonged to the Kyiv City Committee, on whose recommendation managers were appointed to all managerial and economic positions in the city, and the first post-war elections to the Kyiv City Council of Workers' Deputies took place in December 1947.

However, due to the centralization of state and local power, the voting of deputies at sessions of the Kyiv City Council was of a formal nature.

For the first time in the post-Soviet period, democratic elections to the Kyiv City Council were held on March 4, 1990. The elections of deputies of the Kyiv City Council of the first convocation were held on the principles of free, universal, equal and direct suffrage by secret ballot, and the real revival of local self-government in the city of Kyiv began after the adoption of the Declaration on State Sovereignty of Ukraine (from July 16, 1990) and the Law of Ukraine " About local councils of people's deputies and local and regional self-government" [3, p. 58–61].

For the city of Kyiv, a significant event was the adoption of the Law of Ukraine "On the Capital of Ukraine – the Hero City Kyiv", which defines not only the principles of the formation and functioning of the Kyiv city government, but also the system of organizational and financial guarantees from the state regarding the implementation of Kyiv's capital functions. The Law on the Capital, together with other laws, gave the citizens of the city the right to directly elect the Mayor of Kyiv and deputies of the Kyiv City Council. Since 1990, Kyiv residents have elected deputies to the Kyiv City Council 8 times.

Conclusions. Thus, it is worth summarizing that local self-government in Kyiv was at almost every historical stage of development, periods of evolution. In some periods, the body of local self-government was declarative, in some periods it was effective and efficient, but Kyivans always had the opportunity to solve issues of local importance.

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