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LEGAL ASPECTS OF COPYRIGHT PROTECTION FOR DIGITAL CONTENT IN THE CONTEXT OF GLOBALIZATION

Abstract. Purpose. The purpose of the article is to examine the legal aspects of copyright protection for digital content in the context of globalization and to identify the key trends in the development of legal regulation of digital content based on an analysis of contemporary challenges arising from the global accessibility of digital works. **Methods.** The study employs the analysis method to comprehensively examine scientific approaches and legal provisions related to the protection of intellectual property for digital content in the context of globalization. The synthesis method is applied to integrate diverse aspects and conclusions derived from various sources and studies. The deduction method is used to formulate general statements and conclusions based on the analysis of specific facts and data. The comparison method enables the identification of similarities and differences among approaches and practices concerning copyright protection for digital content. The generalization method is employed to develop overarching conclusions through the analysis, synthesis, and comparison of specific viewpoints, legislative provisions, trends, and empirical data. **Results.** The study demonstrates that globalization has a profound impact on the legal regulation of copyright, simultaneously creating favorable conditions for the dissemination of works and generating new threats, particularly those related to piracy and authorized copying. In the context of globalization, new forms of intellectual property emerge, requiring specific approaches to their legal regulation. The application of advanced technologies can significantly enhance the effectiveness of copyright protection by ensuring control over the distribution of digital content and facilitating the detection of copyright infringements. **Conclusions.** Digital content, as an object of intellectual property, possesses distinctive features that necessitate the adaptation of national legislation to international standards. Globalization simultaneously creates opportunities for the broader dissemination of creative works and poses threats to authors' rights through unauthorized copying and digital piracy. The application of advanced technologies, such as digital watermarks and encryption, can increase the effectiveness of copyright protection. Nevertheless, comprehensive protection requires close international cooperation among states, technology companies, and rights holders to develop and implement effective mechanisms of legal regulation in the digital era.

Key words: copyright, digital content, globalization, intellectual property, legal regulation.

1. Introduction

Copyright encompasses both the author's personal non-property rights and the proprietary rights of copyright holders. It safeguards the author's creative works and is internationally recognized as a fundamental human right. The legal protection of copyright promotes creativity and innovation while ensuring the development of a fair and transparent copyright market in which creators have the opportunity to receive equitable remuneration for their intellectual efforts.

The mechanisms and methods of copyright protection have evolved through different eras. For a long time, the level of copyright protec-

tion depended exclusively on the development of national legal systems. However, in the 20th century, technological and media progress stimulated the international harmonization of copyright legislation. The emergence of international treaties and standards laid the groundwork for the global recognition of the importance of copyright.

In the digital age, copyright faces new challenges, including piracy and the illegal distribution of content, which necessitate the adaptation of legal norms and the search for innovative technological solutions. Changes in legislation and technological advancement are reshaping the modern approach to copyright protection.

Technological progress has given rise to a new phenomenon – digital content – which has fundamentally transformed the ways in which information is created, disseminated, and consumed. Digital content encompasses a wide range of objects, including text documents, images, audio and video files, software, and other forms of electronic data. Similar to traditional creative works, digital content represents an essential outcome of intellectual and artistic activity and therefore requires appropriate protection. Such protection is crucial for fostering innovation, encouraging creators to develop new works, and looking for unique creative solutions and ways of self-expression. With the growing accessibility, speed, and quality of Internet connections, the issue of effective copyright protection for digital content has become increasingly relevant. Illegal copying, piracy, and copyright infringement have become widespread challenges that demand new approaches and solutions. In response, international and national legislation is gradually adapting to these realities, aiming to ensure an adequate level of protection of creators' rights in the digital environment.

Globalization has a profound impact on the protection of digital content rights, creating both opportunities and threats for creators and rights holders. On the one hand, it facilitates the broader dissemination and accessibility of creative works, enabling authors to reach audiences across the world. On the other hand, globalization complicates the control over the use of digital content, as access to such content can be obtained from virtually any location. Technological progress continues to outpace the development of legislative regulations of copyright legislation at both international and national levels, resulting in regulatory gaps that may be exploited to violate rights. Globalization also contributes to the rapid proliferation of illegal content on the Internet, which significantly hampers the fight against piracy. The extensive use of digital platforms and social networks greatly simplifies the distribution of unauthorized copies of works, while anonymizing offenders or making their identification exceedingly difficult. Therefore, effective protection of digital rights in the context of globalization necessitates close international cooperation among key technological actors, digital platforms, social networks, authors, as well as international organizations and national authorities.

In this regard, the scientific examination of the legal aspects of copyright protection for digital content amid globalization becomes relevant. Scholarly insights serve as a foundation for developing legal mechanisms aimed at bridg-

ing regulatory gaps and ensuring adequate protection of creators' rights in the digital era. The analysis of international experience and judicial practice enables the identification of best practices and their adaptation to national legal frameworks. Furthermore, research fosters a comprehensive understanding of emerging technological phenomena that may influence copyright protection. The rapid advancement of artificial intelligence has already provoked widespread debate and a series of strikes, raising the global question of whether humans as creators will be able to compete with AI technologies in the near future.

2. Globalization as a factor in copyright development

Globalization has a profound impact on the evolution of legal regulation of copyright. Although globalization is not a term inherent to legal science, it is an objective global phenomenon that influences legal processes and therefore requires doctrinal thinking.

The scientific literature offers various approaches to defining the concept of "globalization". In general terms, globalization can be understood as a process of integration among states and the unification of their activities. It brings countries closer together, strengthens their interconnections, and stimulates progress – but mainly for developed countries. The unification of legislation leads to the establishment of common rules governing intellectual property relations, which enables the protection of creators' rights beyond national borders (Hrihoriant, 2016).

Globalization is a complex but objective phenomenon that exists independently of individual assessments and attitudes towards it. Globalization generates both favorable trends for copyright protection and poses new risks and threats.

A range of common factors can be identified through which globalization positively influences intellectual property law. For instance, globalization intensifies international cooperation aimed at establishing international organizations and institutions for the protection of intellectual property rights and adopting uniform international rules in copyright. Since threats such as piracy and other forms of copyright infringement are shared gradually, globalization encourages states to develop common approaches and mechanisms to combat these offenses.

Globalization creates a common market characterized by the intensive circulation of copyrights and the exchange of information according to uniform principles. This process is further facilitated by standardized rules for the registration of intellectual property rights.

At the same time, as already noted, globalization generates qualitatively new risks for copyright protection. As markets globalize, the nature of intellectual property offenses also become global. This is driven, in particular, by the growing market value of copyrights and the disappearance of boundaries for digital content on the Internet, which allows such content to be transmitted instantly to any part of the world.

There is no doubt that the pace of globalization accelerated dramatically with the emergence and development of the Internet. Previously, copyrighted works were expressed through physical media, which, while not immune to illegal copying, imposed natural limitations on their distribution. The advent of the Internet, however has given rise to a new type of copyright and related-rights objects that exist solely in digital form. These objects are easily transmitted across the network, but this very mobility makes them particularly vulnerable to infringement.

Taking into account the above, it is necessary to clarify the concept and essence of digital content as a new form of copyright object which has emerged as a result of globalization and the development of the Internet.

3. Digital content: concept and essence

Until 2023, Ukraine had no specific legislation defining the concept of digital content or regulating the peculiarities of its circulation. However, approaches to understanding this phenomenon had been already established at the international level. According to Article 2 of the Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, digital content means data that are produced and supplied in digital form (Directive, 2019). In particular, computer programs, mobile applications, games, music, audiovisual files, and texts can act are recognized as digital content, regardless of whether such data are accessed through downloading or streaming (Directive, 2011).

A key feature of digital content is the ability to exist and be part of economic circulation both on physical (tangible) media and independently of them. In the latter case, its external form of expression is represented by program code. The program code is a unique and original result of human creative and intellectual activity, which makes it possible to identify digital content as a type of creative work (Savanets, Stakhira, 2019).

It is important to clearly distinguish between a work that itself constitutes digital content (for example, a computer game created

as a result of creative activity) and digital content that merely represents a work in digital form (digital recording on a certain medium). When the information carrier of a work has a tangible form, the material rights to that carrier and the author's proprietary rights to the digital content exist separately and independently. At the same time, a number of objects of civil circulation that previously existed only in tangible form have adapted to the latest trends of the digital environment, thereby transforming and losing their physical embodiment. Hyperlinks, e-books, computer games, software, and other intangible digital objects are becoming increasingly widespread.

At the legislative level, the concept of digital content was enshrined recently. First, the Law of Ukraine "On Electronic Commerce" No. 675-VIII dated September 3, 2015, introduced the notion of an electronic form of information presentation – a method of documenting information that involves its creation, recording, transmission, or storage in digital or other intangible form using electronic, magnetic, electromagnetic, optical, or other means capable of reproducing, transmitting, or storing information. The electronic form of information presentation is regarded as a way of documenting information that enables its reproduction in a visual form suitable for human perception. This the groundwork for the subsequent development of legislation regulating the legal validity of information activities on the Internet.

However, the most significant step in regulating digital content was taken on August 10, 2023, with the adoption of the Law of Ukraine "On Digital Content and Digital Services" No. 3321-IX. According to Art. 2 of this Law, digital content refers to data created and provided in digital form. Such content includes, but is not limited to, software, applications, video and audio files, music files, digital games, and e-books.

The legislator prudently refrains from limiting the list of objects recognized as digital content, as the dynamic development of the modern world and rapid technological progress leave no doubt that new forms of such objects will continue to emerge. In this regard, non-fungible tokens (NFTs) serve as a notable example. The introduction of these cryptographic tokens has created new opportunities for participants in the sphere of intellectual property. In particular, right holders are relieved of the bureaucratic burden associated with the registration of intellectual property and the acquisition of protection documents. Furthermore, there is no need for judicial recognition of intellectual property rights in case of dispute or non-recognition. NFTs enable owners to obtain rights to assets

that exist exclusively in the digital environment while simultaneously securing intellectual property rights to works of crypto art. Through the use of tokens, ideas and rights to intellectual property objects can be monetized (Lebedieva, 2021).

When analyzing the phenomenon of digital content, it is also essential consider related legal categories that, although interconnected, possess independent legal significance. Among such categories, particular attention should be paid to the notion of “digital environment”. This concept has been normatively defined by the legislator. According to para. 10 of part 1 of Art. 2 of the Law of Ukraine “On Digital Content and Digital Services”, the digital environment refers to hardware, software, and any network connection used to access digital content and/or digital service, providing the possibility of their use by the consumer.

The digital environment is sometimes compared with related concept of the “information environment”. However, these terms are not synonymous. The notion of the “information environment” primarily emphasizes access to information within the global network, whereas the “digital environment” focuses on the form of presentation, storage, and dissemination of such information (Trotska, 2021).

Another essential category in the context of digital content dissemination and copyright protection on the Internet is “social networks”. From a legal perspective, a social network can be understood as an open-access platform for publishing information that facilitates communication among an unlimited number of users. Unlike ordinary Internet users, social media groups are typically formed according to specific criteria. Such associations arise from different types of social interaction, including personal acquaintance, collaborative work or study, shared hobbies or occupations, similarity of viewpoints, sports interests, etc. (Ohneviuk, 2016).

Social networks possess specific properties that create a favorable environment for the dissemination of digital content. Within these platforms, works protected by copyright and related rights can rapidly reach a wide audience. This is a popular mechanism for creators to increase their visibility. The publication of such works generally does not involve complex bureaucratic procedures. In most cases, authors simply place a link to their intellectual property on their social media profiles. Compared with other traditional distribution channels, such as television, radio, or public events, social networks offer the advantage of enabling the free distribution of digital content to a potentially global audience.

Thus, intellectual property rights have undergone significant changes in recent years: new types of copyright objects have emerged, and the scope and value of intellectual activity have increased substantially. Authors and rights holders now can distribute their works internationally, generating considerable income. These positive changes have enhanced the recognition of intellectual property’s importance in society and underscored its influence across multiple domains, including the economy, politics, legislation, and social relations.

4. Copyright protection for digital content

The development and refinement of relevant legislation have also been driven by the rise in copyright-related offenses, among which piracy is particularly prevalent.

The Law of Ukraine “On Copyright and Related Rights” No. 2811-IX dated 1 December 2022, defines piracy as the reproduction, import into the customs territory of Ukraine, export from the customs territory of Ukraine, and distribution of pirated copies (including software and databases), phonograms, videograms, illegal use of broadcasting programs, camcording, as well as Internet piracy, which refers to the unlawful use of copyright and/or related rights via the Internet.

Online piracy refers to the use and distribution of illegal content for profit or other gain. Such activities cause significant harm on the interests of authors and rights holders. A notable characteristic of piracy, particularly in domestic society, is the widespread social acceptance – or even approval – of the unauthorized use of digital works.

An Internet pirate is not constrained by national borders. The nature of the digital space the use of modern technologies to conduct illegal activities rapidly and on a global scale. This considerably complicates the fight against this phenomenon by states.

The foregoing underscores the importance of proper and effective copyright protection for digital content, encompassing both material and procedural aspects. The material aspect refers to a set of measures that ensure the full restoration of the rights of the copyright holder. In contrast, the procedural aspect is reflected in the actions of state authorities, local self-government bodies, and non-governmental organizations aimed at safeguarding copyright within their respective competences.

To date, Ukraine has established a legislative framework for the effective protection of intellectual property. The methods for safeguarding copyright and related rights are enshrined in the Law of Ukraine “On Copyright and Related Rights” No. 2811-IX dated December 1, 2022. Thus, copyright holders are entitled

to seek protection of copyright and/or related rights before the court through claims not prohibited by law. Such claims may include, *inter alia*, recognition of copyright or related rights; restoration of the pre-violation status; cessation and/or prohibition of actions that infringe or threaten upon copyright and/or related rights.

Ukrainian legislation also guarantees the right to seek material compensation for violations of rights to digital content, for example, by filing claims for the recovery of remuneration established under the legislation on copyright and related rights, as well as compensation for moral harm and damage resulting from such violations. The list of available remedies is not exhaustive.

At the same time, the legally enshrined civil-law mechanisms are insufficient to ensure effective protection of copyright given contemporary technological challenges. Moreover, domestic legislation still contains inconsistencies and contradictions that undermine the effectiveness of copyright protection for digital content. It is also advisable to assess whether the current version of the Criminal Code of Ukraine corresponds to the large-scale changes that have occurred in the field of copyright in recent years. Evident contradictions between the Criminal and Civil Codes further complicate the legal landscape (Kravchenko, Kuznetsova, 2023). As long as copyright violations persist, the improvement of legal protection mechanisms remain a pressing task.

Strengthening the legal protection regime for creative works should be a priority in the development of Ukrainian legislation on intellectual property, particularly regarding copyright. The scientific literature emphasizes the need to adopt a specific legislative act that would regulate copyright aspects on the Internet, as effective protection requires a clear state mechanism to prevent and halt violations, streamline the process of proving infringements, and ensure the accountability of offenders (Kiryliuk, 2017).

The adoption of a special Law “On Digital Content and Digital Services” is an important step. However, the law primarily addresses the regulation of digital services rather than the protection of copyright for digital content. Consequently, it is crucial to introduce clearer and more stringent rules governing the use of intellectual property online, as well as to formalize effective sanctions for violators in case of piracy or other infringements of digital content rights. Some scholars advocate for the establishment of clearly defined boundaries for the use of intellectual property on the Internet without the explicit consent of the rights holder, while remaining within the framework

of existing legislation (Timashov, Lysenko, 2020).

In the context of Ukraine, martial law presents a significant challenge to the effective protection of digital content copyright. The active phase of the war in certain territories of Ukraine significantly complicates the process of protecting the rights of digital content creators. As a result, it is crucial to consider alternative mechanisms for resolving disputes and conflicts on intellectual property. Such mechanisms may include negotiations, mediation, and arbitration, which can help mitigate delays in litigation and facilitate efficient resolution of conflicts under challenging circumstances in the country. Nowadays, they can align with their original purpose: to support the judicial system in ensuring effective protection of rights (Halupova, 2022).

I. Sopilko, V. Filinovich, L.O. Pankova, S.V. Obshalov, K.O. Chaplynskyi (2023) emphasize the expediency of primarily applying out-of-court methods for resolving disputes arising from violations of intellectual property rights and name the following: sending a takedown notice to the violator, the registrant of the domain name and, if necessary, the service provider. As the scholars rightly note, although judicial protection remains a more effective jurisdictional form of safeguarding intellectual property rights, it requires time, effort, and considerable resources.

In our view, the prevention of violations of digital content rights should be based on preventive measures aimed at counteracting copyright infringement on the Internet. To prevent piracy of copyright and related rights online, it is proposed to use Internet authorization mechanism, license agreements, digital watermarks, the provision of a free trial version of software, and technical protection measures (such as encryption and obfuscation of program code). Furthermore, most of these techniques can facilitate the process of evidence collection in court proceedings (Hrihoriant, 2016).

In addition to strictly legal instruments, one should remember about the importance of moral and ethical influence in combating violations of digital content rights. Moral pressure and public condemnation can become decisive factors in reducing mala fide actions in the field of digital content, such as piracy, illegal copying and distribution of copyright materials, and plagiarism. Strategies that engage not only experts and influencers in the field but also active public participation can significantly enhance awareness of the importance of protecting intellectual property rights. Moreover, the use of open databases of violators may contribute to greater transparency and accountability in the digital environment.

5 Conclusion

Thus, the development of digital technologies and globalization significantly affect copyright, simultaneously creating new opportunities for the international dissemination of works and generating threats such as piracy and illegal copying. Contemporary challenges necessitate the adaptation of national legislation to international standards in order to ensure effective copyright protection within the digital environment. Digital content, as an object of intellectual property, possesses distinctive characteristics that require specific approaches to its legal regulation.

The use of advanced technologies can significantly improve the effectiveness of copyright protection, particularly through mechanisms designed to monitor and control the distribution of digital content. Given the rapid pace of technological development in the context of globalization, legislative initiatives concerning digital content and digital services require continuous refinement and improvement to ensure that the rights of creators and right holders are adequately protected and relevant to the contemporary challenges of the digital age.

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ПРАВОВІ АСПЕКТИ ЗАХИСТУ АВТОРСЬКИХ ПРАВ НА ЦИФРОВИЙ КОНТЕНТ В УМОВАХ ГЛОБАЛІЗАЦІЇ

Анотація. Мета. Метою статті є дослідження правових аспектів захисту авторських прав на цифровий контент в умовах глобалізації, виявлення основних тенденцій розвитку правового регулювання цифрового контенту на підставі аналізу сучасних викликів, що виникають у зв'язку з глобальною доступністю цифрових творів. **Методи дослідження.** У дослідженні застосовується метод аналізу для всебічного розкриття наукових підходів та положень законодавства, що стосується захисту інтелектуальної власності на цифровий контент в умовах глобалізації. Метод синтезу був використаний для поєднання різних аспектів та висновків з різних джерел і досліджень. Метод дедукції використовувався для формулювання загальних тверджень та висновків на основі аналізу конкретних фактів та даних. Метод порівняння використовується для визначення схожостей та відмінностей між різними підходами та практиками, пов'язаними з захистом авторських прав на цифровий контент. Метод узагальнення використовувався для формулювання загальних висновків на основі аналізу, синтезу та порівняння конкретних поглядів, законодавчих положень, тенденцій та даних. **Результати.** Дослідження показало, що глобалізація суттєво впливає на правове регулювання авторських прав, створюючи як сприятливі умови для розповсюдження творів, так і нові загрози, зокрема піратство та нелегальне копіювання. В умовах глобалізації виникають нові об'єкти інтелектуальної власності, які вимагають особливих підходів до їх правового регулювання. Використання новітніх технологій може значно підвищити ефективність захисту авторських прав, забезпечуючи контроль за розповсюдженням цифрового контенту та виявлення порушників авторських прав. **Висновки.** Цифровий контент як об'єкт інтелектуальної власності має унікальні особливості, що вимагають адаптації національного законодавства до міжнародних стандартів. Глобалізація створює як можливість для ширшого розповсюдження творчих робіт, так і загрози для прав авторів через нелегальне копіювання та піратство. Використання новітніх технологій, таких як цифрові водяні знаки та шифрування, може підвищити ефективність захисту авторських прав. Однак, для повноцінного захисту необхідна тісна міжнародна співпраця між державами, технологічними компаніями та правовласниками для розробки та впровадження ефективних механізмів правового регулювання в умовах цифрової епохи.

Ключові слова: авторські права, цифровий контент, глобалізація, інтелектуальна власність, правове регулювання.

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FORMS OF PROTECTION OF PERSONAL NON-PROPERTY RIGHTS ENSURING THE SOCIAL EXISTENCE OF A POLICE OFFICER IN UKRAINE

Abstract. Purpose. The purpose of this article is to explore the forms of protection of personal non-property rights that ensure the social existence of a police officer in Ukraine. **Results.** The article examines the legal forms of protection of personal non-property rights that underpin the social existence of a police officer in Ukraine. The relevance of the chosen topic is emphasized, and the basic legal categories are defined. It is established that the protection of personal non-property rights refers to the legally enshrined capacity of an authorized entity to apply legal enforcement measures aimed at restoring the violated non-property right and terminating the actions that infringe upon it. A form of protection of an individual's personal non-property rights that ensure their social existence is recognized as a legislatively established system of coordinated actions undertaken by authorized bodies or the individual whose rights have been violated, aimed at restoring those rights, ceasing the violation, and ensuring compensation for the resulting damage. **Conclusions.** It is concluded that both jurisdictional and non-jurisdictional forms of protection may be applied to safeguard the personal non-property rights that ensure the social existence of a police officer in Ukraine. Jurisdictional forms of protection include judicial protection and administrative procedures, while non-jurisdictional forms encompass self-defense and notarial forms of protection. It is emphasized that the notarial form of protection of personal non-property rights that ensure the social existence of a police officer in Ukraine is preventive in nature, as it aims to safeguard the rights of police officers from future violations. This includes rights such as the promotion of legality and public order, the protection and safeguarding of essential rights and interests of the police officer, and the prevention of potential offenses. Since the object of protection cannot be fully restored, such protection must primarily focus on the prevention of violations of personal non-property rights that secure the social existence of a police officer in Ukraine.

Key words: civil law protection, forms of protection, jurisdictional form of protection, non-jurisdictional form of protection, self-defense, judicial protection.

1. Introduction

Among the key guarantees of the stability of civil legal relations, including personal non-property relations, is the assurance of the right to protection. In order to adequately safeguard human and civil rights, a public authority must exist—one created in the interest of all (Declaration of the Rights of Man and of the Citizen, 1798). A right declared by law but not supported by state enforcement mechanisms may be respected only by unauthorized members of society and thus acquire the nature of a morally protected right—anchored solely in the collective consciousness and reliant on the authority of public power.

We consider convincing the position of I.M. Vahanova, who emphasizes that in today's context, the issue of creating and improv-

ing the system of guarantees for the realization and protection of personal non-property rights of individuals—rights that ensure their social existence—has become particularly significant. The relevance of the topic concerning modern forms of protection of personal non-property rights that ensure an individual's social existence is explained not only by the necessity to define the possible courses and types of behavior available to individuals in response to rights violations, but also by the diversity of scholarly approaches to defining these forms (Vahanova, 2009).

Thus, identifying the forms of protection of personal non-property rights that ensure the social existence of police officers in Ukraine is both timely and of practical importance.

The issue of civil-law protection of personal non-property rights has repeatedly been the sub-

ject of scholarly discourse, including the works of such researchers as: Ch.N. Azimov, I.A. Bezkluby, D.V. Bobrova, T.V. Bodnar, V.I. Borysova, O.V. Dzera, A.S. Dovhert, I.V. Zhilinkova, V.I. Kysil, V.M. Kossak, O.V. Kokhanovska, O.D. Krupchan, N.S. Kuznetsova, I.M. Kucherenko, V.V. Luts, R.A. Maidanyk, V.F. Maslov, H.K. Matvieiev, O.O. Merezhko, O.A. Pidopryhora, O.O. Pidopryhora, O.A. Pushkin, Z.V. Romovska, M.M. Sibilov, S.O. Slipchenko, I.V. Spasybo-Fatieieva, R.O. Stefanchuk, Ye.O. Kharitonov, L.V. Fediuk, A.O. Tserkovna, S.I. Chornochenko, M.L. Sheliutto, Ya.M. Shevchenko, S.I. Shymon, R.B. Shyshka, among others. However, the specific issue of determining the forms of protection of personal non-property rights that ensure the social existence of police officers in Ukraine has largely remained outside the scope of scholarly attention.

The purpose of this article is to examine the forms of protection of personal non-property rights that ensure the social existence of a police officer in Ukraine.

2. Jurisdictional Form of Protection of Personal Non-Property Rights

For the full development of personal non-property relations in society, it is not sufficient to merely grant subjects the ability to exercise their subjective civil rights. It is also necessary to provide them with the means to protect their rights and legally protected interests (Biriukov, 2000).

Ensuring the proper exercise of personal non-property rights is a fundamental condition for the normal functioning of an individual's private life, without which the individual cannot be considered a full-fledged subject of civil legal relations (Berestova, 2008).

This study begins by clarifying the concept of "form" (from the Latin *forma* – appearance, structure), which is a central philosophical category reflecting the internal structure and organization, as well as the mode of interaction between elements and processes of a phenomenon, both among themselves and with external conditions (Yaroshovets, 2012). In civil law, scholars such as A.I. Bazylevych and T.M. Yarova understand the form of civil-law protection of subjective civil rights and interests as a set of internally coordinated organizational measures for the protection of rights, which occur within a unified legal framework and are carried out either by authorized bodies or by the rights-holder themselves (Yarova, 2007).

Based on the foregoing, the form of protection of an individual's personal non-property rights that ensure their social existence should be understood as a legislatively prescribed system of coordinated actions taken either by the authorized bodies or by the individual whose rights have been violated, aimed at restoring such rights, terminating the viola-

tion, and ensuring compensation for the damage caused (Naumenko, 2014).

The protection of personal non-property rights that ensure the social existence of police officers is generally divided into two types: jurisdictional and non-jurisdictional (Kosenko, 2006; Shtefan, 1997).

The jurisdictional form of protection of personal non-property rights that ensure the social existence of a police officer in Ukraine involves the activity of state-authorized bodies to protect violated or disputed rights relating to the objects of personal non-property rights. The essence of this form lies in the individual whose rights and legitimate interests have been violated turning to state or other competent authorities empowered to take necessary measures to restore the violated right and to stop the offense (Zharov, 2000).

The jurisdictional form of protection entails the possibility of protecting civil rights through judicial or administrative procedures (Kulinich, 2016). As a general rule, the protection of civil rights and legally protected interests is carried out through the courts.

3. Judicial Form of Protection of Civil Rights

The judicial form of protection of civil rights is the most effective and advanced mechanism for safeguarding the rights, freedoms, and legitimate interests of participants in civil legal relations. Its effectiveness stems from the court's jurisdiction over all legal relations within the country, the ability to apply legal analogy and analogy of law, and the prohibition against denying justice due to legislative gaps, ambiguity, or contradictions in the legal norms governing the disputed relationship.

Judicial protection of civil rights and interests is the only principle of civil legislation that directly refers to the jurisdictional form of protecting the rights and interests of participants in civil relations in cases of their violation, non-recognition, dispute, or the threat of such circumstances. It also serves as the foundation for the implementation of all other principles of civil legislation in Ukraine.

Regarding the non-jurisdictional form of protection of civil rights, it should be noted that this entails protection through the actions of the rights-holder themselves, without recourse to state or other competent authorities. This form of protection of civil rights—including personal non-property rights that ensure the social existence of a police officer in Ukraine—applies in cases of self-defense and the application of immediate enforcement measures by the authorized individual (Bokovnia, Vasylenko, Huk, 2014).

In civil law doctrine, it is noted that self-defense is the primary non-jurisdictional form of protection of subjective civil rights and interests that are subject to legal protection (Borysova, Spasibo-Fatieieva, Yarotskyi, 2004).

A non-jurisdictional method of protecting intellectual property rights, for example, refers to extrajudicial protection exercised independently by the rights-holder (within the bounds of the law). Such protection must involve only lawful means, such as notifying the infringer of existing copyright, or offering to settle the dispute through negotiations (Bokovnia, Vasylenko, Huk, 2014).

4. Conclusions

In light of the foregoing, it can be concluded that both jurisdictional and non-jurisdictional forms of protection may be applied to safeguard the personal non-property rights that ensure the social existence of a police officer in Ukraine. The jurisdictional form of protection includes judicial protection and administrative procedures, while the non-jurisdictional form encompasses self-defense and notarial protection.

It should be emphasized that the notarial form of protection of personal non-property rights that ensure the social existence of a police officer in Ukraine is preventive in nature, as it safeguards the officer's rights from potential future violations. This particularly applies to such rights as the promotion of legality and public order, the safeguarding and protection of essential rights and interests of the police officer, and the prevention of possible offenses.

Since the object of protection (i.e., the personal non-property right) cannot be fully restored once violated, the priority in such cases should be the prevention of violations of the personal non-property rights that guarantee the police officer's social existence in Ukraine.

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ЗДІЙСНЕННЯ ОСОБИСТИХ НЕМАЙНОВИХ ПРАВ, ЩО ЗАБЕЗПЕЧУЮТЬ СОЦІАЛЬНЕ БУТТЯ ПОЛІЦЕЙСЬКОГО В УКРАЇНІ

Анотація. *Метою* статті є дослідження здійснення особистих немайнових прав, що забезпечують соціальне буття поліцейського в Україні. *Результати.* У статті досліджено здійснення особистих немайнових прав, що забезпечують соціальне буття поліцейського в Україні. З'ясовано, що особисті немайнові права, які належать суб'єкту, є складовою переліку суб'єктивних прав, становлять

реальне суспільне явище, виникають у зв'язку з належністю індивіду немайнових благ і слугують правовим механізмом забезпечення його соціального буття. Наведено ознаки особистих немайнових прав, що забезпечують соціальне буття поліцейського. Встановлено, що особисті немайнові права, що забезпечують соціальне буття поліцейського в Україні належать до групи виключних прав. Наголошено на особливостях здійснення окремих особистих немайнових прав, які забезпечують соціальне буття поліцейського в Україні. Зауважено, що зміст цих прав становить сукупність правомочностей, які належать фізичній особі як носієві вказаних прав. Наголошено на необхідності до немайнових прав зарахувати: право на свободу літературної, художньої, наукової та технічної творчості; право на свободу об'єднань; право на мирні зібрання тощо. **Висновки.** Зроблено висновок, що особисті немайнові права, що забезпечують соціальне буття поліцейського в Україні, належать до групи виключних прав. Зміст цих прав становить сукупність правомочностей, які належать фізичній особі як носієві цих прав. Вони охоплюють як позитивний аспект, що передбачає юридичне визнання за особою права на відповідне немайнове благо (право володіння), та можливість його використання (право користування) у межах, установлених законом, відповідно до призначення такого блага та з урахуванням особистих інтересів поліцейського, так і негативний аспект, який виявляється в праві вимагати від інших суб'єктів утримання від посягань на це благо, тобто забезпечує охорону від порушень. Наведені особисті немайнові права забезпечують соціальне буття поліцейського і мають такі особливості: особистісний характер, немайновість, специфічний об'єкт і цілеспрямування на задоволення фізичних (біологічних), духовних, моральних, культурних, соціальних чи інших нематеріальних потреб (інтересу).

Ключові слова: особисті немайнові права, поліцейський, право на ім'я, право на зображення.

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THE LEGAL NATURE OF ADMINISTRATIVE INSTRUMENTS FOR ENSURING EQUAL RIGHTS AND OPPORTUNITIES IN THE FIELD OF PHYSICAL CULTURE AND SPORTS

Abstract. Purpose. The purpose of this article is to provide a general theoretical overview and analysis of the legal nature of administrative instruments aimed at ensuring equal rights and opportunities in the field of physical culture and sports. **Results.** The article explores the legal nature of administrative instruments that guarantee equal rights and opportunities in the field of physical culture and sports. It analyzes the essence of the administrative and legal foundations of regulation in this area, their normative consolidation, and implementation mechanisms. The specific features of this legal phenomenon are outlined based on scholarly perspectives. The key components constituting administrative instruments in the sphere of public administration of physical culture and sports are identified. It is established that public administration in this domain involves a balance between state regulation and personal autonomy. Administrative instruments serve as a bridge between formal provisions and their practical implementation as tangible guarantees. Accordingly, they represent elements of legal support and constitute a crucial factor influencing the quality of public life by fostering equal access to sports and wellness programs, regardless of individuals' social status, gender, or physical capabilities. **Conclusions.** The study concludes that administrative instruments for ensuring equal rights and opportunities in physical culture and sports are complex, systematic, and multidimensional in nature. These instruments function both as legal norms that define the boundaries of permissible conduct and as value-based mechanisms that reflect societal consensus on the need to uphold social justice and equitable access to sport. The legal nature of administrative instruments encompasses a normative-legal dimension—expressed through their codification in legislation and enforcement—and an organizational dimension, which includes awareness campaigns, monitoring activities, infrastructure development, and the implementation of social programs. The effectiveness of such instruments depends on the coherence and comprehensiveness of state policy, the professional competence of public officials, the quality of the legal framework, and the engagement of civil society. Thus, the legal nature of administrative instruments for ensuring equal opportunities in physical culture and sports integrates both normative and ethical components and must reflect public expectations of fairness and accessibility of sports resources.

Key words: physical culture, sports, administrative instruments, equal opportunities, legal equality, administrative and legal regulation, administrative legislation.

1. Introduction

Ensuring equal rights and opportunities in the field of physical culture and sports is one of the key directions of Ukraine's state policy, consistent with the country's international obligations in the field of human rights and social inclusion. A crucial element of this process is the alignment of national legislation with European standards, which plays a decisive role in the framework of cooperation between Ukraine and the European Union. In

this context, a significant legal instrument for strengthening such cooperation is the *Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other*, signed on 27 June 2014. This Agreement contains provisions that directly or indirectly influence the development of non-discrimination, equality, and inclusion policies, including within the realm of physical culture and sports.

Physical culture and sports play a critical role in fostering a healthy nation, promoting social integration, supporting individual development, and advancing the principle of equality. However, despite the formal codification of norms prohibiting discrimination in this sphere, systemic barriers persist in practice. These barriers continue to limit access to sports infrastructure and physical development programs for certain categories of citizens, particularly persons with disabilities, members of various social groups, women, and youth. The need to analyze administrative instruments for ensuring equal rights and opportunities in this area arises from the necessity of developing effective mechanisms for their implementation. Indeed, administrative and legal regulation serves as a key tool in shaping state policy aimed at eliminating all forms of discrimination, ensuring equal access to sports opportunities, and enhancing the social impact of physical culture.

The issue of administrative instruments for ensuring equal rights and opportunities in the field of physical culture and sports has been explored to varying degrees by numerous scholars, including, in particular: O.M. Bandurka, O.I. Bezpalo, V.T. Bilous, Yu.V. Garust, I.S. Hrytsenko, O.M. Iliushyk, E.O. Kazmyrshyn, T.A. Kobzeva, O.S. Kravchenko, A.M. Kulish, V.V. Liukh, V.I. Melnyk, O.M. Muzychuk, S.I. Lekar, O.I. Nikitenko, S.M. Olkhovska, A.O. Orel, N.S. Panova, I.V. Paterylo, O.O. Usyk, Yu.S. Shemshuchenko, among others. Nevertheless, without diminishing the importance of the aforementioned contributions, the doctrine of administrative law still lacks a comprehensive and in-depth study of the administrative instruments aimed at ensuring equal rights and opportunities in the sphere of physical culture and sports. This gap substantiates the relevance of the present study.

The purpose of this article is to provide a general theoretical overview and analysis of the legal nature of administrative instruments designed to ensure equal rights and opportunities in the field of physical culture and sports.

2. Fundamentals of Ensuring Equal Rights and Opportunities in the Field of Physical Culture and Sports

The analysis of administrative instruments aimed at ensuring equal rights and opportunities in the field of physical culture and sports—often referred to in the doctrine of administrative law as means or methods—should appropriately begin with an examination of the substance of administrative and legal foundations. The term “*principle*” (*zasada*), according to the Dictionary of the Ukrainian Language, is defined as: (1) the basis of something; the fundamental ele-

ment on which something is built or grounded; (2) a core, guiding provision or principle; the foundation of a worldview or rule of conduct; (3) a manner or method of accomplishing something (Bilodid, 1972). Accordingly, administrative and legal foundations in the context of physical culture and sports represent general legal guidelines and basic rules that determine strategic directions and methods of legal regulation within this sector. Viewed from this perspective, such foundations go beyond traditional regulatory frameworks and acquire philosophical significance as mechanisms for achieving social harmony. Establishing equal rights and opportunities in the field under consideration ensures compliance with administrative and legal norms and fosters a societal culture of justice. Administrative instruments, in this regard, are manifestations of legal axiology, wherein state regulation serves as a means of maintaining social balance and safeguarding individual freedom of choice.

N.S. Panova emphasizes that the administrative and legal foundations of state activity are characterized by a set of administrative legal norms that define the core values, principles, objectives, forms, and methods of legislative and executive activity by public authorities (Panova, 2008). In this context, administrative and legal foundations may be interpreted through the lens of legal norms and institutional legal theory, which considers administrative mechanisms as tools for legitimizing state policy in the relevant domain.

The establishment of administrative law norms that define the administrative and legal status of public law subjects—and the formal enshrinement of administrative law principles—would remain abstract theoretical constructs unless accompanied by appropriate and effective instruments of public administration. It is through the use of these instruments that public administration actors enter into administrative legal relations and seek to maximize the protection of rights, freedoms, and legitimate interests of private individuals while simultaneously serving the public interests of the state and society as a whole (Liukh, 2020). In this light, public administration of instruments guaranteeing equal rights and opportunities in physical culture and sports requires a balance between state regulation and personal autonomy. Administrative instruments serve as a vital link between formal legal prescriptions and their materialization in the form of practical guarantees. Thus, they constitute an integral part of legal support and a key factor shaping the quality of public life by fostering conditions for equal access to sports and wellness programs regardless of citizens' social status, gender, or physical abilities.

As rightly noted by I.V. Paterylo, a legal regulatory instrument should be understood as a value-based construct that encompasses a comprehensive spectrum of legal phenomena at various levels, distinguished and analyzed in the context of legal practice needs as well as their functional purpose—that is, those characteristics that define them as instruments for addressing social, economic, or political challenges (Paterylo, 2006). From an axiological standpoint, administrative instruments reflect societal consensus on the necessity of ensuring equitable access to physical activity, irrespective of a person's social status, physical condition, or economic circumstances.

O.I. Bezpaloova further points out that the law is significant not only from a legal standpoint but also as a necessary instrument through which social relations arising in the exercise of the state's law enforcement function by authorized actors are regulated (Bezpaloova, 2014). Thus, the law functions as an active means of influencing social processes through the administrative and legal mechanisms of its implementation.

3. Administrative Instruments for Ensuring Equal Rights and Opportunities in the Field of Physical Culture and Sports

Within the doctrine of administrative law, scholars define a public administration instrument as an external expression of homogeneous groups of administrative actions, similar in nature and legal character, carried out by public administration entities within the limits of legally defined competence, with the aim of achieving a desired public outcome. Such instruments are characterized by several key features: they are external manifestations of the forms of administrative activity; they reflect the legal dynamics (administrative actions) of public governance; they are dependent on the scope of the competence of public administration entities; and their selection is determined by the specific goals set for a particular object of public influence, which prescribes the most effective course of action (Halunko, Dikhtiievskiy, Kuzmenko, Kolomoiets, Kurylo, Stetsenko, 2021).

Therefore, in the context of this study, administrative instruments can be viewed as tools of social equilibrium aimed at supporting the physical and mental well-being of citizens, while also functioning as mechanisms of legal integration and anti-discrimination. This emphasizes both their functional and socio-axiological value within the legal system. At the same time, the effectiveness of such instruments depends on the degree to which they correspond to the actual needs of the population and the presence of control mechanisms to oversee their application.

E.O. Kazmyryshyn interprets the category of “administrative and legal instrument” as a set of legal means (methods) used by public administration to exercise regulatory influence over participants in public relations within the field of public governance (Kazmyryshyn, 2019). Depending on the nature of social needs, administrative instruments may take various forms—from imperative legal prescriptions to flexible procedural mechanisms aimed at maintaining a balance between public interests and the rights of private individuals. Administrative regulation in this field has a dual dimension: it acts both as a legal constraint on unfair practices and as a catalyst for creating an enabling environment conducive to physical development. Thus, administrative and legal instruments define the limits of permissible state influence and shape the social space in which equality of rights and opportunities in sports becomes a practical reality rather than a declarative ideal.

O.S. Kravchenko, in her analysis of administrative and legal instruments for implementing gender policy in Ukraine, identifies the following as key components: the development of legislation on gender equality and non-discrimination between men and women and the monitoring of its implementation; effective functioning of state institutions responsible for enforcing national gender policy; the design and implementation of various social programs and projects aimed at ensuring gender equality and combating gender-based discrimination; and the conduct and publication of research to support equal rights and opportunities for both men and women (Kravchenko, 2024). This analysis is particularly relevant to understanding the mechanisms for ensuring equal rights and opportunities in the sphere of physical culture and sports, as this domain often exhibits some of the most visible manifestations of gender inequality. Administrative instruments thus perform both regulatory and transformative functions, contributing to the removal of barriers in access to sports participation, funding, training opportunities, and leadership positions in sports organizations. Effective application of these instruments in the field of physical culture and sports must be grounded in the principles of equality and transparency, ensuring that every individual has the opportunity to realize their rights and potential in sports activities.

According to A.O. Orel, a distinctive feature of administrative instruments aimed at preventing discrimination based on gender identity lies in their capacity to facilitate the practical realization of human rights amid ongoing socio-legal transformations. These instruments encompass both legal measures (prohibition of discrimination in normative legal acts, super-

vision of compliance, establishment of specialized bodies, etc.) and organizational-legal mechanisms (monitoring, training for public officials, informational and awareness campaigns, etc.). The effectiveness of such measures depends on the quality of the legislative framework, the coordination of public administrative actions, and the level of public awareness (Orel, 2023). Consequently, administrative instruments in the field of physical culture and sports help establish legal frameworks for the protection of equality and contribute to the transformation of societal perceptions regarding gender justice, physical activity, and inclusiveness in sports. Thus, administrative and legal instruments in this area can be viewed as a form of normative intervention aimed at creating equal opportunities for all categories of citizens.

To summarize, administrative instruments for ensuring equal rights and opportunities in the field of physical culture and sports constitute a complex of legal means, mechanisms, and organizational-procedural tools that provide formal legal guarantees for compliance with anti-discrimination norms. These instruments are applied by public administration entities within the bounds of their legally defined competence to ensure the practical implementation of state equality policy in the sphere of physical culture and sports.

4. Conclusion

Thus, the study of the legal nature of administrative instruments for ensuring equal rights and opportunities in the field of physical culture and sports allows us to assert their complex, systematic, and multidimensional character. These instruments serve both as legal norms that establish the boundaries of permissible conduct and as value-oriented mechanisms reflecting a societal consensus on the need to guarantee social justice and equality of access to sports. The legal nature of administrative instruments encompasses both a regulatory aspect—expressed through the codification of relevant norms and oversight of their enforcement—and an organizational aspect, which includes educational initiatives, monitoring practices, the development of infrastructure, and the implementation of social programs.

The effectiveness of administrative instruments depends on the coherence and comprehensiveness of public policy, the level of professional training of public officials, the quality of the regulatory framework, and the activity of civil society. Therefore, the legal nature of administrative instruments for ensuring equal opportunities in the field of physical culture and sports includes both normative and ethical components, requiring consideration of public expectations regarding fairness and the accessibility of sports resources.

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ПРАВОВА ПРИРОДА АДМІНІСТРАТИВНИХ ІНСТРУМЕНТІВ ГАНТУВАННЯ РІВНИХ ПРАВ ТА МОЖЛИВОСТЕЙ У СФЕРІ ФІЗИЧНОЇ КУЛЬТУРИ І СПОРТУ

Анотація. *Метою* статті є загальнотеоретична характеристика та аналіз правової природи адміністративних інструментів гарантування рівних прав та можливостей у сфері фізичної культури і спорту. *Результати.* У статті досліджено правову природу адміністративних інструментів, що забезпечують гарантування рівних прав та можливостей у сфері фізичної культури і спорту. Проаналізовано сутність адміністративно-правових засад регулювання відповідної сфери, їх нормативне закріплення та механізми реалізації. Окреслено специфіку даного правового явища на основі наукових позицій. Визначено ключові елементи, що складають адміністративні інструменти, які застосовуються у сфері публічного адміністрування фізичної культури і спорту. Визначено, що публічне адміністрування інструментів гарантування рівних прав та можливостей у сфері фізичної культури і спорту передбачає баланс між державним регулюванням та особистою автономією, адміністративні інструменти виконують роль своєрідного мосту між формальними приписами та їхньою матеріалізацією у вигляді практичних гарантій. Відповідно, вони є елементами правового забезпечення та важливим чинником, що визначає якість суспільного життя, сприяючи створенню умов для рівного доступу до спортивних та оздоровчих програм, незалежно від соціального статусу, статі чи фізичних можливостей громадян. **Висновки.** Зроблено висновок, про комплексний, системний та багатовимірний характер адміністративних інструментів гарантування рівних прав та можливостей у сфері фізичної культури і спорту. Дані інструменти виступають правовими нормами, що встановлюють межі допустимої поведінки і ціннісними механізмами, які виражають суспільний консенсус щодо необхідності забезпечення соціальної справедливості й рівності доступу до спорту. Правова природа адміністративних інструментів охоплює нормативно-правовий аспект, який виражається у закріпленні відповідних норм у законодавстві та контролі за їх виконанням, і організаційний аспект, що передбачає проведення просвітницьких заходів, моніторингу, формування відповідної інфраструктури та впровадження соціальних програм. Ефективність застосування адміністративних інструментів визначається ступенем узгодженості та комплексності державної політики, рівнем професійної підготовки посадовців, якістю нормативної бази та активністю громадянського суспільства. Відтак, правова природа адміністративних інструментів гарантування рівних можливостей у фізичній культурі та спорті охоплює нормативну та етичну складову, що вимагає врахування суспільних очікувань щодо справедливості й доступності спортивних ресурсів.

Ключові слова: фізична культура, спорт, адміністративні інструменти, рівні можливості, права рівності, адміністративно-правове регулювання, адміністративне законодавство.

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SUBJECTS OF THE ADMINISTRATIVE AND LEGAL MECHANISM FOR FORMULATING STATE POLICY IN THE FIELD OF CIVILIAN FIREARMS CIRCULATION IN UKRAINE

Abstract. Purpose. The purpose of this article is to identify the subjects of the administrative and legal mechanism for formulating state policy in the field of civilian firearms circulation in Ukraine.

Results. The article establishes that the administrative and legal status of the subjects involved in shaping state policy in the area of arms circulation in Ukraine refers to the functional and legal position of a defined system of authorized state bodies and civil society actors. These entities exert public-authority influence over the regulatory processes governing civilian firearms circulation, encompassing the scope of administrative competence in the implementation of state policy and the toolkit for interaction aimed at ensuring public interest in the areas of safety, law and order, and arms control within the territory of Ukraine.

The subjects of the administrative and legal mechanism for formulating state policy in the sphere of civilian firearms circulation in Ukraine include:

- the Verkhovna Rada of Ukraine;
- the President of Ukraine;
- the Cabinet of Ministers of Ukraine;
- the Ministry of Internal Affairs of Ukraine and its structural subdivisions;
- the Ministry of Defense of Ukraine and its structural subdivisions;
- the National Police of Ukraine;
- law enforcement agencies;
- civil society actors;
- additional entities (other government and local self-government bodies, international institutions).

It is emphasized that the Ministry of Internal Affairs of Ukraine serves as the central executive authority endowed with regulatory competence concerning the development of draft legislation, preparation, and issuance of subordinate acts that regulate the acquisition, registration, storage, use, and seizure of firearms.

Conclusions. It is determined that the National Police of Ukraine acts as a subject performing administrative-permissive, law enforcement, preventive, and law-application functions through the issuance of individual administrative acts in the field of civilian firearms circulation, inspection and monitoring of citizens' compliance with arms regulations, as well as contributing to the improvement of state policy by submitting proposals, conducting statistical analysis, developing internal instructions, and participating in interagency and international projects.

The administrative and legal status of civil society actors is revealed as participants in shaping state policy in the field of arms circulation in Ukraine. This includes a system of powers related to public expertise of legislative initiatives, civic oversight of the policy formulation process, and mechanisms of interaction within public-legal relations in the exercise of the right to participate in state-building processes.

Key words: administrative regulation, administrative legal relations, administrative procedures, administrative and legal mechanism, state policy, expertise, firearms, control, legal system, subjects.

1. Introduction

In the context of ongoing security and defense sector reforms, the growing role of citizens in ensuring their own safety and public order, and the active public debate on the potential legalization of certain categories of firearms for civilian use, the examination of the actors involved in the state governance mechanism gains particular relevance.

At the same time, the complexity and political sensitivity of arms circulation necessitate a systematic scholarly understanding of the roles played by executive authorities, law enforcement agencies, local self-government bodies, expert communities, and civil society organizations. A comprehensive study of these actors—their administrative and legal nature and their interactions—is essential for achieving a balance between national security protection and the safeguarding of human rights and freedoms.

The administrative and legal aspects of state policy regarding arms circulation in Ukraine have been comprehensively studied by scholars such as V. Vasyliiev, S. Didenko, O. Drozd, K. Kastornov, M. Komissarov, M. Kulyk, V. Litoshko, V. Makarchuk, V. Otsel, I. Pokhlylenko, R. Serbyn, O. Fomenko, T. Shumeiko, among others.

Nonetheless, firearms circulation in Ukraine remains insufficiently regulated, primarily under the norms of administrative legislation. Therefore, scholarly inquiries into this area are both timely and of significant importance.

The aim of this article is to identify the subjects of the administrative and legal mechanism for formulating state policy in the field of civilian firearms circulation in Ukraine.

2. The Administrative and Legal Mechanism for Formulating State Policy in the Field of Civilian Firearms Circulation

The system of actors should be analyzed through the prism of their legal status. The concept of *legal status* encompasses the position of a specific entity within the system of public authorities, which exercises regulatory influence in a particular sphere of public life based on its competence. The concept of *administrative and legal status* is more specific—it includes elements that allow for the identification of the entity's place within the overall regulatory framework of state influence over particular social relations (Didenko, 2018).

Despite numerous academic studies on the administrative and legal status, there is no universally accepted definition of the concept. Nonetheless, its scientific and practical importance is considerable, especially in light of ongoing reform processes in Ukraine. A correct understanding of this socio-legal construct enables both

individuals and legal entities to secure an appropriate position within society and the state, gain access to a broad range of services and opportunities for self-realization, and delineate the limits of individual freedom, as well as the mutual rights and responsibilities of individuals and public authorities (Humin, 2014).

The *general administrative and legal status* applies to all individuals, whereas the *special administrative and legal status* pertains to persons endowed with specific rights and responsibilities in a particular area of public administration. These special rights and responsibilities typically arise from holding a particular position (e.g., the administrative and legal status of a police officer, civil servant, or military personnel), or through the expression of an individual's will and the issuance of a special permit (e.g., a firearm possession license, hunting permit). The acquisition of special administrative and legal status requires the will of a state body to assign such status to a particular individual or group. In certain cases, an individual will is not necessary for acquiring this status—for example, residents of territories under a special legal regime may acquire such status automatically. The possession of a special administrative and legal status can both expand and restrict a person's rights, such as in the case of residents of territories with special legal regimes (Pushkarova, 2022).

Regarding the status of the subjects of the administrative and legal mechanism for formulating state policy in the sphere of civilian firearms circulation in Ukraine, S. Didenko defines public administration in the area of arms control and use as a set of authorized bodies and officials, designated by law, that are vested with administrative and managerial functions for ensuring the proper circulation and use of firearms. Their activities are based on mandatory administrative principles aimed at serving public interests within the scope of their legal authority. The main task of public administration is the purposeful influence of authoritative entities on a specific area of social life that requires regulation, in accordance with state and societal interests, through the exercise of their legally prescribed competence (Didenko, 2018).

In our view, the administrative and legal status of the actors involved in formulating state policy on arms circulation in Ukraine is the functional and legal position of a defined system of authorized public bodies and civil society entities, which exert public-authority influence on the processes governing civilian firearms circulation. This status encompasses the scope of administrative competence in implementing state policy and the mechanisms of interaction

aimed at realizing the public interest in ensuring security, public order, and firearms control within the territory of Ukraine.

The status, core tasks, organizational principles, rights and duties, and accountability mechanisms in the field of firearms circulation and use should be established in a specially enacted law. Currently, no such dedicated legislation exists, complicating the process of defining the legal status of public administration in this domain. This necessitates the analysis of numerous departmental regulatory acts (Didenko, 2018).

3. Subjects of the Administrative and Legal Mechanism for Formulating State Policy in the Field of Civilian Firearms Circulation in Ukraine

According to O.A. Serykov, the system of entities responsible for the control of non-military firearms circulation consists of a three-tier structure comprising:

1. the highest state authorities, represented by the President of Ukraine, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine;

2. the Ministry of Internal Affairs and its subordinate agencies, including:

- a) the Main Service Center of the Ministry of Internal Affairs;

- b) the Expert Service of the Ministry of Internal Affairs (State Research Forensic Center of the Ministry and regional forensic research centers);

- c) the State Research Institute of the Ministry of Internal Affairs of Ukraine;

3. the National Police of Ukraine and its territorial departments (Serykov, 2023).

In our view, the subjects of the administrative and legal mechanism for shaping state policy in the sphere of civilian firearms circulation in Ukraine include:

- the Verkhovna Rada of Ukraine;
- the President of Ukraine;
- the Cabinet of Ministers of Ukraine;
- the Ministry of Internal Affairs of Ukraine and its structural subdivisions;

- the Ministry of Defense of Ukraine and its structural subdivisions;

- the National Police of Ukraine;
- law enforcement bodies (the Prosecutor's Office, State Bureau of Investigations, Security Service of Ukraine, National Anti-Corruption Bureau of Ukraine, Military Law Enforcement Service of the Armed Forces of Ukraine, among others);

- civil society actors;
- additional entities (other public authorities and local self-government bodies, international institutions).

Each of these subjects should be briefly characterized. In terms of regulatory compe-

tence, the Cabinet of Ministers of Ukraine plays a leading role in norm-setting activities. Nevertheless, certain aspects of firearms circulation are also regulated by other branches of power, such as the Verkhovna Rada and the President of Ukraine. Executive bodies also possess specific legislative powers, with the Ministry of Internal Affairs of Ukraine holding a central position. Its structural subdivisions are of particular importance, as they bear a significant portion of the responsibilities in ensuring the proper functioning of this domain (Didenko, 2018).

In the organization and implementation of control over the circulation of civilian firearms, the Cabinet of Ministers of Ukraine performs a dual function: on the one hand, it acts to implement state policy in the area of civilian firearms control; on the other, it ensures the development and implementation of a set of organizational and legal measures in this field of public relations at the level of central executive authorities (Serykov, 2023).

Thus, the Verkhovna Rada of Ukraine acts as a lawmaking body and exercises parliamentary oversight of the state policy formation process regarding arms circulation. The President of Ukraine defines the priorities of state policy in the areas of national security and public order, thereby shaping the general framework of firearms policy. The Cabinet of Ministers of Ukraine is the principal entity in developing and coordinating the implementation of state policy on firearms circulation among executive authorities.

The leading public administration entities are the executive authorities and their officials, who bear the primary responsibility for ensuring the practical implementation of human and citizen rights throughout the country during the execution of public authority (Halunko, Kurylo, Koroied, 2015). The core powers of the executive bodies are outlined in the Instructions on the Procedure for the Manufacture, Acquisition, Storage, Accounting, Transportation, and Use of Firearms, Pneumatic, Cold, and Deactivated Weapons, Domestically Produced Devices for Firing Cartridges with Rubber or Similar Non-Lethal Projectiles, and Cartridges and Ammunition for Weapons, Main Components of Weapons, and Explosive Materials, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 622, dated August 21, 1998.

Analyzing the legislation, the Ministry of Internal Affairs of Ukraine functions as the central executive authority vested with regulatory competence to develop draft legislative acts, and to prepare and issue subordinate regulations governing the acquisition, registration, storage, use, and seizure of firearms.

The National Police of Ukraine performs administrative-permissive, law enforcement, preventive, and law-application functions through the issuance of individual administrative acts in the field of civilian firearms circulation. It also conducts inspections and control over citizens' compliance with firearms regulations, contributes to improving state policy by submitting proposals, conducting statistical analyses, developing internal guidelines, and participating in interagency and international initiatives.

In the domain of arms circulation, the Ministry of Defense of Ukraine and its structural subdivisions serve as strategically significant actors in the formation and institutional implementation of state policy on national security and defense. Their role partially includes administrative competence in defense governance, administrative oversight, and legal regulation of civilian firearms circulation aimed at maintaining a secure and resilient environment.

The administrative and legal status of Ukrainian law enforcement agencies, as actors in the formulation of state policy on arms circulation, represents an integrated system of statutory powers and administrative tools. These are transformed into coordination, supervisory, investigative, counterintelligence, analytical, and control functions that serve to maintain effective public order, ensure the security of arms circulation, and prevent illegal use of firearms both domestically and internationally.

The primary individual subject of administrative law is the natural person (citizen of Ukraine, foreign national, or stateless person), as the Constitution of Ukraine recognizes the individual, their life and health, honor and dignity, inviolability and security as the highest social value. In this regard, the category of *administrative and legal status* is of particular importance in fully revealing the role and place of the individual in administrative law (Halunko, Kurylo, Koroied, 2015).

The issue of legalizing firearms in Ukraine for civilian use has long been contentious and unresolved, demanding urgent attention from the Verkhovna Rada of Ukraine and executive authorities. The primary rationale for citizens acquiring, carrying, owning, and using firearms is the exercise of the constitutional right to self-defense. The absence of centralized legislative regulation in this domain significantly hinders the resolution of disputes regarding the administration of a proper regime for firearms circulation. Currently, regulation in this area remains limited to outdated, complex, and incoherent subordinate legislation (Didenko, 2017).

Ukrainian citizens are the central subjects in the circulation and use of firearms in Ukraine, as their acquisition, possession, and use of weapons constitute the direct realization of a constitutionally guaranteed right—primarily the right

to self-defense. Public administration must urgently develop an optimal mechanism for the realization of this right through the legalization of firearms in Ukraine (Didenko, 2017).

4. Conclusions

In our view, the administrative and legal status of civil society actors as participants in shaping state policy on arms circulation in Ukraine constitutes a system of powers related to the public evaluation of legislative initiatives, civic oversight of the policy-making process, and mechanisms of interaction within the framework of public-law relations aimed at exercising the right to participate in state-building processes.

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СУБ'ЄКТИ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ФОРМУВАННЯ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЦИВІЛЬНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ В УКРАЇНІ

Анотація. *Мета* статті полягає у тому, щоб визначити суб'єктів адміністративно-правового механізму формування державної політики у сфері обігу цивільної вогнепальної зброї в Україні. **Результати.** У статті визначено, що адміністративно-правовий статус суб'єктів формування державної політики у сфері обігу зброї в Україні – це функціонально-правове становище визначеної системи уповноважених органів державної влади та суб'єктів громадянського суспільства, які здійснюють публічно-владний вплив на процеси регулювання обігу цивільної зброї, що охоплює обсяг адміністративної компетенції в межах реалізації державної політики та інструментарій взаємодії для реалізації публічного інтересу в сфері забезпечення безпеки, правопорядку та контролю за обігом зброї на території України. До суб'єктів адміністративно-правового механізму формування державної політики у сфері обігу цивільної вогнепальної зброї в Україні віднесено такі суб'єкти: – Верховна Рада України; – Президент України; – Кабінет Міністрів України; – Міністерство внутрішніх справ України та його структурні підрозділи; – Міністерство оборони України та його структурні підрозділи; – Національна поліція України; – правоохоронні органи; – суб'єкти громадянського суспільства; – додаткові суб'єкти (інші органи державної влади та місцевого самоврядування, міжнародні інституції). Розкрито, що Міністерство внутрішніх справ України виступає як центральний орган виконавчої влади, що наділено нормативно-регуляторною компетенцією щодо розробки проєктів законодавчих актів, підготовки та видання підзаконних актів, які регулюють порядок набуття, реєстрації, зберігання, використання та вилучення зброї. **Висновки.** Визначено, що Національна поліція України є суб'єктом адміністративно-дозвільної, правоохоронної, превентивної та правозастосовної функції шляхом видання індивідуальних адміністративних актів у сфері обігу цивільної зброї, перевірки та контролю щодо дотримання громадянами умов обігу зброї, удосконалення державної політики через подання пропозицій, статистичного аналізу, розробки внутрішніх інструкцій, участі у міжвідомчих та міжнародних проєктах. Розкрито адміністративно-правовий статус суб'єктів громадянського суспільства як учасників формування державної політики у сфері обігу зброї в Україні, що є системою повноважень щодо громадської експертизи нормотворчих ініціатив, громадського контролю за процесом формування державної політики та механізмів взаємодії у межах публічно-правових відносин з реалізації права на участь у державотворчих процесах.

Ключові слова: адміністративне регулювання, адміністративні правовідносини, адміністративні процедури, адміністративно-правовий механізм, державна політика, експертиза, зброя, контроль, правова система, суб'єкти.

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INTERNATIONAL LAW PROVISIONS AS A PUBLIC LAW SOURCE OF ENSURING LAW AND ORDER IN UKRAINE

Abstract. Purpose. The purpose of the article is to study the role and significance of international law provisions as public law sources of ensuring law and order in Ukraine, as well as to analyse the mechanisms of implementation of international law provisions into national legislation with a view to improving the efficiency of ensuring law and order in the country. **Results.** The article examines the role and importance of international law provisions as one of the key public law sources of ensuring law and order in Ukraine. Emphasis is placed on the growing role of administrative and legal means in ensuring law and order, as they are becoming more effective in terms of prompt response to administrative offences, as compared to criminal law remedies. International law provisions become an important regulator in this field, defining standards of interaction between law enforcement agencies at both the international and national levels. Despite the widespread use of criminal law remedies to combat crime, the importance of administrative law mechanisms in ensuring a prompt and effective response to administrative offences is emphasised. This is due to objective circumstances, such as the increased latency of administrative offences, a greater number of public events and international events, and the need for a faster and less severe response to violations than provided for by criminal law. The importance of rethinking the existing stereotypes in understanding law and order and the need to introduce new methods of its maintenance in the light of international standards is emphasised. It also focuses on the intersectoral approach to the study of law and order, which requires a combination of various legal instruments, both national and international. **Conclusions.** Furthermore, the article considers the issues of implementation of international law provisions into the national legislation of Ukraine, in particular, in the administrative and legal sector, and their role in maintaining law and order. It is proved that international legal provisions play a key role in forming the modern legal environment, ensuring law and order, and protecting human rights. It is emphasised that it is important to harmonise Ukrainian legislation with international standards to ensure effective counteraction to modern challenges in the field of law and order, such as the growth of transnational crime, migration and strengthening of interstate cooperation in the fight against crime.

Key words: international law, public law support, law and order, administrative law, law application, Ukraine, implementation, provisions.

1. Introduction

The trend towards expanding the scope of international law regulatory framework increasingly covers issues that were previously considered to be exclusively an internal affair of any State, not the least of which is the maintenance of law and order and its protection by means of administrative law. It is the intersectoral nature of the studied issue which indicates the specificity of its regulatory sources. On the one hand, law enforcement covers various criminal, criminal procedure, civil, financial and other legal relations. On the other

hand, the use of instruments of a public law (administrative law) nature remains relevant, and recently the emphasis has significantly increased, because this trend is due to objective circumstances, such as the increased latency of administrative offences, a greater number of public events and international sports competitions, and the need for a faster and less severe response to violations than provided for by criminal law, lower social danger of administrative offences compared to crimes, and therefore a higher number of their commission, etc. In this regard, the use of exclusively private law

means of regulating law enforcement entities is unreasonable, which in a certain way directly affects the system of regulatory sources of law enforcement, and therefore requires the use of international law as an important regulator of the system of law and order in Ukraine.

Important aspects of administrative and legal support of law enforcement have been studied by many well-known legal experts. Domestic scientific research is not fragmentary and in this aspect, we should pay tribute to the scientific works by the following scholars: Yu.P. Bytiak, O.V. Petryshyn, V.V. Zavalniuk, O.M. Bandurka, O.F. Andriiko, O.V. Kuzmenko, Y.S. Shemshuchenko, V.B. Averianov, N.R. Nyzhnyk, V.I. Kotiuk, S.V. Kivalov, M.M. Tyshchenko, L.V. Kovalenko, V.V. Abroskin, O.I. Bezpalova, I.S. Drok, O.F. Kobzar, R.V. Myroniuk, O.M. Muzychuk, H.V. Muliar, V.O. Neviadovskyi, A.A. Nikitin, O.S. Yunin, A.O. Sobakar, V.V. Sokurenko, and many others. However, the issue of regulating legal relations in the field of ensuring law and order in Ukraine through the prism of international law provisions has been considered fragmentarily, addressing only certain aspects and not analysing the problem comprehensively.

The purpose of the article is to study the role and significance of international law provisions as public law sources of ensuring law and order in Ukraine, as well as to analyse the mechanisms of implementation of international law provisions into national legislation with a view to improving the efficiency of ensuring law and order in the country.

2. International law provisions as a component of the law-and-order framework

With the main purpose in a modern state being to ensure the full implementation of human and civil rights and freedoms, harmonisation of individual and social tasks, needs and interests of society and the state, law and order in terms of both its content and regulatory orientation should be consistent with these principles, the rule of law and standards of international cooperation. This is due to the intensification of humanitarian cooperation between different countries to better coordinate their actions for the sake of common development interests and the formation of a common European legal space and, ultimately, the creation of an interstate supranational legal system.

International law forms the framework for law and order as a system of provisions and principles governing international relations. These provisions reflect the coordinated will of states and are influenced by the patterns of international relations at a certain stage of civilisation.

Unlike clearly structured national legal systems, the formation of international law is

characterised by a certain fragmentation. This explains why the provisions of international law relating to similar subjects of the legal framework are often formed in parallel within different sources. These provisions are applied by all participants in international relations and international law in various areas - from general aspects of treaty law to specific elements of international law, for example, in the field of human rights, crime prevention, law enforcement, etc.

Therefore, the provisions of international law in their entirety are a complex and dynamic system that is formed and applied at different levels and in different contexts of relations, including those related to ensuring law and order.

Regulating the fundamentals of law and order through the prism of international law is understood as a set or system of legally binding rules that regulate the conduct and relations of states (and other participants in modern international relations). This understanding has always existed, as evidenced by the entire history of the emergence and development of international law. Their emergence and adoption in international practice was mainly due to two closely interrelated practical needs. One of them is the need to ensure the autonomy and independence of social relations, protection of the rights and legitimate interests of their parties, etc.

Current trends in crime, such as its transnational and often global nature, its expansion beyond the borders of individual states, and the absolute and relative growth, especially of organised forms, have necessitated the unification of states' efforts to combat crime through international cooperation.

This cooperation involves both parties to international law and parties to national law. It is aimed at the counteraction not only to international offences and crimes of an international nature, but also to manifestations of transnational crime that encroach on the internal law and order.

The regulatory framework for such cooperation is multisystemic in nature, as it is based on the principles and provisions of two independent legal systems - international and domestic law of the participating states. Domestic law ensures the actual implementation of international obligations at the national level. Moreover, international treaties act as regulators of domestic relations, without being sources of law on them. Instead, domestic legislation plays a dual role: it is both a regulator of such relations and a source of domestic law.

Thus, the fight against modern crime and the protection of law and order require

a comprehensive approach that combines international and national legal mechanisms.

Historically, the first international legal acts generated by this dual need were bilateral international treaties between sovereign states, including those on ensuring law and order at both the international and national (interstate) levels. This is primarily due to the fact that states that have accumulated experience in regulating social relations within their country through various legal provisions (laws, decrees, decrees, etc.) extrapolated their experience in ensuring law and order to regulating their relations with other countries. Therefore, the influence of the national law and order on the international one, as well as the legal influence of domestic law on the international one, began with the first international legal measures of states. This is the interaction of national systems of law with the system of international law that exists to this day.

It should be noted that, in addition to the common practice of regulating certain relations at the interstate level by various treaties, agreements or conventions, international standards are used in the activities of law enforcement agencies as separate important documents, generally recognised international legal provisions that consolidate the status of law enforcement agencies at the global level and establish a list of fundamental rights and freedoms, the obligation of states to respect these rights and freedoms, as well as the limits of activities of such agencies to ensure them.

The need to introduce uniform international standards in the activities of the National Police is due to the growing level of transnational organised crime, significant rates of migration in the world, significant differences in national police training systems, and the problem of ensuring human rights in the activities of law enforcement agencies (Bilichenko, 2020).

The international legal framework establishes and enforces international human rights standards and relevant standards for law enforcement agencies. Such standards have their specific features, as follows:

They are developed and adopted by states of the world through international intergovernmental organisations;

They regulate not only international cooperation between states, but also other entities designated by them (specific state bodies, local authorities, trade unions, public associations, individuals, etc.); they contain the principled approaches and international legal principles of establishment, formation and functioning of certain public and private institutions in the territory of specific states, jointly developed by states;

By their legal nature, they belong to international conventions of a special order;

In the context of globalisation, humanisation and humanisation of international and interstate relations, there is a trend towards expanding the range of entities that develop and adopt international legal standards;

Their adoption has an impact on global legal development, as it not only standardises the approaches of states to regulating important social issues, but also contributes to the development of their national legislation and legal systems (Klochko, 2016; Balinskyi, 2006; Zabroda, 2012).

3. International law provisions in the field of law enforcement

The development of international standards for law enforcement agencies is a complex and objective process that has incorporated the universal experience of creating international law provisions. This process is mainly aimed at protecting human and civil rights.

Therefore, the international regulatory framework creates a comprehensive system of provisions and standards that affect the functioning of national law enforcement systems and the protection of human rights. It is no coincidence that the above standards are considered mainly in the context of ensuring human rights by law enforcement agencies as certain standards, provisions, parameters, which the state is encouraged or obliged to observe and achieve, enshrined in international acts and other international documents. In addition, standards are also considered as general deontological standards, norms and principles that allow, oblige, recommend and are intended for legal professionals regardless of the state boundaries of their professional activity in order to humanise social relations, strengthen law and order in every country of the world (Lutsenko, Hurtova, 2021; Klochko, 2016).

Although law enforcement agencies are guided mainly by state and departmental acts, it is crucial that they take into account international standards for law enforcement. Without compliance with these standards, human rights will remain a mere declaration.

Thus, the provisions of international law in the field of law enforcement are not limited to regulating cooperation between states in the international arena. They also establish obligations for states to streamline their domestic law enforcement systems through the implementation of international standards. These obligations cover the activities of a wide range of institutions: courts (judges), prosecutors, executive authorities in the field of justice, law enforcement and security agencies, the bar and other institutions involved in combating crime or maintaining law and order.

International agreements and documents form the standards for the functioning of these bodies. There is a trend towards an increase in the number of international legal provisions that set standards in areas such as public order, use of weapons and force by law enforcement, criminal justice and treatment of prisoners. Furthermore, resolutions of international organisations, especially the UN and its specialised agencies, are becoming increasingly important in the law enforcement field. Although most of these resolutions are not legally binding, they have a significant impact on the development of national legislation and the formation of international legal provisions. These documents increasingly contain specific recommendations on methods of combating crime and offences.

The following forms of application of international law can be identified in the activities of law enforcement agencies:

First, the generally recognised principles and provisions of international law and international treaties define the general framework for law enforcement in Ukraine. They subordinate it to the rules and obligations assumed by our state in agreement with other countries or within the international community. These provisions are based on the principle of good faith fulfilment of international obligations.

Second, law enforcement agencies are empowered within their competence to directly apply international treaties and international legal provisions recognised by Ukraine. When considering issues regulated by both domestic and international law, they use international standards as a legal basis for decision-making. This may take the form of independent, joint or priority application of international provisions.

Third, in accordance with international treaties, law enforcement agencies establish business contacts with similar agencies of other states, especially in the field of legal assistance and cooperation.

Fourth, law application acts adopted by law enforcement agencies, as well as departmental regulations (instructions, orders) within their competence, may, and in certain cases should, contain references to international treaties and documents of an international legal nature.

Therefore, international law provisions as regulatory sources in the field of law enforcement have the following features that distinguish them from national law enforcement regulators, in particular:

First, they provide for the use of relevant standards of law enforcement and law enforcement activities in international sources;

Second, they are mostly not mandatory but advisory in nature, as international provisions are often the result of a compromise between dif-

ferent countries, recommendations allow states to gradually integrate international standards, and countries retain the right to independently determine their domestic policies and legislation;

Third, the source of most standards of law and order is resolutions of international organisations that establish a model of recommended conduct rather than proper one; Fourth, they contain principles and approaches to international legal principles of certain public and private institutions on the territory of specific states;

Fourth, they contain the principled approaches and international legal principles of establishment, formation and functioning of certain public and private institutions in the territory of specific states, jointly developed by states;

Fifth, their adoption directly affects the global legal order, as it not only standardises the approaches of states to regulating important law enforcement issues, but also contributes to the development of their national law enforcement legislation and relevant legal systems;

Sixth, they have a specific subject matter to be regulated and have a special law enforcement nature associated with the formation of law enforcement agencies based on summarising practical experience;

Seventh, they are not separate and completely independent provisions, as they are closely related to the provisions of other branches and independent institutions of international law, and have a close relationship with international human rights law.

4. Conclusions

Summing up, international provisions play a key role in ensuring law and order at the national and interstate levels, contributing to the harmonisation of legal systems, the protection of human rights, the strengthening of justice, and the prevention of conflicts. They provide a framework for co-operation between states, ensuring unified approaches to law and order and justice. Such international provisions and standards allow law enforcement agencies to perform the tasks of maintaining law and order more effectively and ensuring its administrative and legal protection, as well as protecting rights in the interests of individuals, the state and society, and to effectively influence the exercise of such rights in order to regulate and protect them.

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НОРМИ МІЖНАРОДНОГО ПРАВА ЯК ДЖЕРЕЛА ПУБЛІЧНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ПРАВОПОРЯДКУ В УКРАЇНІ

Анотація. *Метою* статті є дослідження ролі та значення норм міжнародного права як джерел публічно-правового забезпечення правопорядку в Україні, а також аналіз механізмів імплементації міжнародних правових норм у національне законодавство з метою підвищення ефективності забезпечення законності та правопорядку в країні. **Результати.** У статті досліджено роль та значення норм міжнародного права як одного з ключових джерел публічно-правового забезпечення правопорядку в Україні. Особлива увага приділяється зростаючій ролі адміністративно-правових засобів у забезпеченні правопорядку, оскільки вони стають більш ефективними в умовах оперативного реагування на адміністративні правопорушення, порівняно з кримінально-правовими засобами. Норми міжнародного права стають важливим регулятором у цій сфері, визначаючи стандарти взаємодії правоохоронних органів як на міжнародному, так і національному рівнях. Незважаючи на широке використання кримінально-правових засобів для боротьби зі злочинністю, підкреслено значення адміністративно-правових механізмів у забезпеченні оперативної та ефективної реакції на адміністративні правопорушення. Це викликано об'єктивними обставинами, серед яких підвищення латентності адміністративних правопорушень, більша кількість публічних заходів та міжнародних подій, а також необхідність швидшого й менш суворого реагування на порушення, ніж це передбачено кримінальним законодавством. Акцентовано увагу на важливості переосмислення існуючих стереотипів у розумінні правопорядку і необхідності впровадження нових методів його забезпечення у світлі міжнародних стандартів. Особлива увага приділяється міжгалузевому підходу до дослідження правопорядку, що вимагає поєднання різних правових інструментів, як національних, так і міжнародних. **Висновки.** У статті також розглядаються питання імплементації норм міжнародного права у національне законодавство України, зокрема, в адміністративно-правовій сфері, та їх роль у підтриманні правопорядку. Показано, що міжнародно-правові норми відіграють ключову роль у формуванні сучасного правового середовища, забезпеченні правопорядку та захисті прав людини. Підкреслено важливість гармонізації українського законодавства з міжнародними стандартами для забезпечення ефективної боротьби з сучасними викликами у сфері правопорядку, такими як зростання транснаціональної злочинності, міграція та зміцнення міждержавної співпраці у боротьбі зі злочинністю.

Ключові слова: міжнародне право, публічно-правове забезпечення, правопорядок, адміністративне право, правозастосування, Україна, імплементація, норми.

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COMPETENCE OF ENTITIES IN ISSUING SUBORDINATE NORMATIVE LEGAL ACTS IN THE FIELD OF NUCLEAR ENERGY AND RADIATION SAFETY

Abstract. Purpose. The purpose of this article is to define the competence of entities responsible for issuing subordinate normative legal acts in the field of nuclear energy and radiation safety. **Results.** The article explores the competence of various entities in adopting subordinate normative legal acts within the scope of nuclear energy use and radiation safety. These acts are derivative in nature, as they are issued either on the basis of laws, higher-ranking subordinate legal acts (e.g., Presidential Decrees, Cabinet of Ministers' Resolutions, Ministry of Energy regulations), or in accordance with Ukraine's international obligations. It is emphasized that legal regulation in the field of nuclear energy is of strategic importance and requires particular clarity, systematicity, and consistency. The legal landscape in this field includes a wide array of acts—from laws of Ukraine to subordinate normative acts of executive bodies and specialized authorities. However, the diversity in legal status, degree of detail, and legal force of these acts necessitates a thorough analysis of law-making entities and their roles in law enforcement. The author identifies the following entities authorized to issue subordinate normative legal acts in the field of nuclear energy and radiation safety: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Energy of Ukraine, and other government bodies (ministries, agencies, local state administrations) and local self-government bodies. **Conclusions.** The analysis of subordinate normative legal acts in the sphere of nuclear energy and radiation safety confirms their compliance with legislative norms, stability, and, simultaneously, responsiveness and regular updates in line with the real state of nuclear energy. However, attention is drawn to insufficient delineation of powers and competences among state authorities and management bodies, which results in duplication of legal provisions, adoption and implementation of essentially identical acts, and overlap in regulatory activities of ministries and agencies.

Key words: competence, subordinate normative legal acts, nuclear energy, radiation safety, entities.

1. Introduction

Ensuring nuclear and radiation safety is a key component of national policy in environmental protection, public health, and fulfillment of Ukraine's international obligations. Therefore, legal regulation in the field of nuclear energy not only holds strategic significance but also requires high levels of precision, systematicity, and consistency.

The legal framework in this area encompasses a wide range of acts—from laws of Ukraine to subordinate normative legal acts (SNLA) issued by executive and specialized bodies. The large volume of such acts, their varying legal status, detail level, and legal force necessitate an in-depth analysis of the entities involved in law-making and their role in the enforcement mechanism.

This issue is particularly relevant in the context of growing demands for environmental safety, the development of nuclear energy as a component of national energy independence, and the need to harmonize national legislation with international standards.

It is important to note that subordinate normative legal acts in the field of nuclear energy and radiation safety are derivative. Their subordinate nature stems from the fact that they are adopted either on the basis of laws, or on subordinate acts of higher legal force (e.g., Presidential Decrees, Cabinet of Ministers Resolutions, Ministry of Energy directives), or in accordance with Ukraine's international commitments.

The competence to issue subordinate normative legal acts is primarily vested in the highest state authorities: the Verkhovna

Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, as well as other state bodies (ministries, agencies, local state administrations) and local self-government bodies (Kudriavtsev, 2018). Therefore, establishing a clear system of law-making entities and their respective competences is a prerequisite for ensuring legal certainty, a coherent hierarchy of legal acts, and effective functioning of the law enforcement mechanism in the field of nuclear energy and radiation safety. This, in turn, contributes to enhancing the quality of legal regulation, avoiding legal conflicts and duplication of norms, and ensuring proper oversight of safety requirements in the use of nuclear technologies.

2. National Entities with Legislative Initiative in the Field of Nuclear Energy and Radiation Safety

According to Article 91 of the Constitution of Ukraine, the Verkhovna Rada of Ukraine (VRU), in addition to enacting laws, adopts resolutions and other acts by the majority of its constitutional composition (Constitution of Ukraine, 1996). In the sphere under consideration, the VRU primarily adopts procedural resolutions related to the approval, rejection, or return for revision of draft laws. For instance, among the acts regulating public relations in the field of nuclear energy is the **Resolution of the Verkhovna Rada of Ukraine “On the Results of Parliamentary Hearings ‘Energy Policy of Ukraine’” dated June 22, 2000, No. 1826-III**, which instructed the Cabinet of Ministers of Ukraine, in cooperation with the VRU Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety, to define the macroeconomic conditions for the stabilization and development of Ukraine’s fuel and energy complex and to develop the main principles and strategy for long-term energy policy. It also called for the accelerated development of specific laws, such as those on civil liability for nuclear damage and nuclear insurance; and on the physical protection of nuclear materials (NM), nuclear installations (NI), radioactive waste, and other sources of ionizing radiation (SIR) (Resolution of the Verkhovna Rada of Ukraine, 2000). It should be noted that such laws have now been adopted and are in effect.

The **President of Ukraine**, as a rule-making entity, is empowered to issue **decrees and directives** in the field of nuclear energy and radiation safety. According to Article 106 of the Constitution of Ukraine, such subordinate normative legal acts are mandatory throughout the territory of Ukraine (Constitution of Ukraine, 1996). For instance, the **Decree of the President of Ukraine “On the Establishment of the Chernobyl Center for Nuclear**

Safety, Radioactive Waste and Radioecology” dated April 26, 1996, No. 300/96, established a center aimed at supporting the development of international scientific research on the elimination of consequences of nuclear and radiation accidents, decommissioning of nuclear facilities, and ecological rehabilitation of radiation-contaminated environments. Participating institutions include the Ministry of Energy of Ukraine, the Ministry for Emergencies and Protection of Population from the Consequences of the Chernobyl Catastrophe, the Ministry of Education and Science of Ukraine, the Ministry of Environmental Protection and Natural Resources of Ukraine, the Ministry of Health of Ukraine, the State Nuclear Regulatory Inspectorate of Ukraine (SNRIU), the National Academy of Sciences of Ukraine, and other bodies and institutions (Kudriavtsev, 2018).

By **Decree of the President of Ukraine dated June 4, 2011, No. 403/2011**, the **State Nuclear Regulatory Inspectorate of Ukraine (SNRIU)** was designated as the main authority within the system of central executive bodies responsible for forming and implementing state policy on the safe use of nuclear energy. The Decree also approved the **Regulations on its operation**, outlining its principal functions. In 2014, the **Cabinet of Ministers of Ukraine adopted a new version of the Regulations** on the SNRIU (Resolution of the Cabinet of Ministers of Ukraine, 2014).

The SNRIU possesses significant authority in the normative regulation of the industry, particularly in the following areas:

1. It generalizes the practice of applying legislation within its jurisdiction, develops proposals for improvement, prepares drafts of legislative acts, Presidential decrees, and Cabinet resolutions, and submits them to the Cabinet for consideration;

2. It reviews draft laws and other legal acts submitted for its approval by ministries and other central executive authorities, and within its statutory powers, prepares conclusions and proposals regarding draft laws and other legal acts presented to the Cabinet or the Verkhovna Rada by other entities with the right of legislative initiative, including acts of the Verkhovna Rada of the Autonomous Republic of Crimea;

3. It develops national and other programs related to nuclear energy safety;

4. It establishes safety criteria and requirements that are mandatory during the use of nuclear energy. Based on these, the SNRIU approves:

- Nuclear and radiation safety norms and rules;

– Physical protection rules for nuclear installations, nuclear materials, radioactive waste, and other sources of ionizing radiation;

– Legal acts on the organization and maintenance of accounting and control of nuclear materials, the application of nuclear non-proliferation safeguards;

– Safety requirements and licensing conditions for activities involving nuclear energy (Resolution of the Cabinet of Ministers of Ukraine, 2014).

Notable examples include **Order No. 116 dated August 4, 2006**, which approved the *Rules for the Physical Protection of Nuclear Facilities and Nuclear Materials*; **Order No. 156 dated August 28, 2008**, which approved the *General Requirements for Physical Protection Systems of Nuclear Installations and Nuclear Materials*, and the *General Requirements for Physical Protection Systems for Nuclear Materials During Transportation*; and **Order No. 164 dated November 23, 2010**, which approved the *Requirements for the Use of Security Measures in the Physical Protection Systems of Nuclear Installations, Facilities for Handling Radioactive Waste, Other Sources of Ionizing Radiation, and Radioactive Materials*.

Equally significant for ensuring nuclear and radiation safety in Ukraine are several orders issued by the SNRIU in 2015, including:

– **Joint Order No. 206/765 dated November 23, 2015** of the SNRIU and the Ministry of Health of Ukraine, which amended the *Requirements for Determining the Size and Boundaries of the Observation Zone of a Nuclear Power Plant*;

– **Order No. 148 dated August 13, 2015**, which approved the *Requirements and Conditions for Safety (Licensing Conditions) for Conducting Activities Related to the Production of Ionizing Radiation Sources*;

– **Order No. 140 dated July 22, 2015**, which approved the *Nuclear and Radiation Safety Requirements for Information and Control Systems Important to the Safety of Nuclear Power Plants* (Statement on the Policy of the State Nuclear Regulatory Committee of Ukraine in the Field of Ensuring the Safety and Security of the Use of Nuclear Energy, 2024).

In its regulatory activities, the SNRIU actively incorporates best international practices, particularly the safety standards of the IAEA, WENRA, and recommendations from the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) and the International Commission on Radiological Protection (ICRP), as well as other international organizations (Statement on the Policy of the State Nuclear Regulatory Committee of Ukraine, 2024).

Additionally, **site-specific design basis threats** have been developed for all nuclear power plants in Ukraine, and the regulations of the **Interdepartmental Commission on the Protection of Especially Important Nuclear Power Facilities** have been revised (Kudriavtsev, 2018).

We concur with L. Mohilevskiy, who draws the following conclusion regarding the legal nature of Presidential decrees: they occupy a **priority position in the hierarchy of subordinate normative legal acts**; are characterized by **multifaceted and extensive regulation** depending on the scope of the President's functions and powers; are **universally binding** across the entire territory of Ukraine; **comply with the Constitution and laws of Ukraine**; and combine a **unilateral mode of adoption with a collegial process of preparation, preliminary review, certification, and responsibility for implementation** (Mohilevskiy, 2016).

The CMU, in accordance with **Article 113 of the Constitution of Ukraine**, operates based on the Constitution, laws of Ukraine, and decrees of the President. Pursuant to **Article 117** of the Constitution, it issues **binding resolutions and orders** (Constitution of Ukraine, 1996). According to **Article 49 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” dated February 27, 2014, No. 794-VII**, normative acts of the CMU are issued in the form of *resolutions*, while acts concerning organizational and operational matters are issued in the form of *orders*. Regulatory acts of the CMU that fall within the scope of the law are developed, considered, adopted, and published in compliance with the **Law of Ukraine “On the Principles of State Regulatory Policy in the Sphere of Economic Activity”**. CMU acts are signed by the **Prime Minister of Ukraine**.

By its **resolutions**, the CMU has approved, in line with Ukraine's international obligations, documents such as:

– the **State System of Accounting and Control of Nuclear Materials**;

– the **State Register of Ionizing Radiation Sources**;

– the **Procedure for Adoption of Norms, Rules, and Standards in Nuclear and Radiation Safety**; among others (Kudriavtsev, 2018).

Legal scholars have observed, and we agree, that **CMU acts complete the process of concretizing laws or Presidential decrees**. Thus, “...the legislative system acquires the necessary completeness, and legal norms attain specificity and formal clarity” (Vasyliiev, 2009).

However, most subordinate normative legal acts (SNLAs) in the specified domain are adopted by the Ministry of Energy of Ukraine

and other subordinate agencies, particularly the State Nuclear Regulatory Inspectorate of Ukraine (SNRIU). Unfortunately, comparative analysis of regulatory documents issued by these authorities on similar matters reveals that they are often **duplicative**, especially regarding nuclear power plant safety enhancements, definition of safety criteria, requirements and conditions for nuclear energy use, safety expertise for nuclear installations and facilities for radioactive waste (RAW) management, and compliance with international treaty norms in this area (Manzhul, 2009).

Therefore, **SNLAs on nuclear and radiation safety are issued concerning matters falling within the competence of state authorities and regulatory bodies**. Their content allows for the following classification:

(a) Acts containing general provisions applicable across the entire nuclear energy sector, such as norms, rules, procedures, and standards designed to ensure nuclear and radiation safety in Ukraine (e.g., the **Resolution of the Cabinet of Ministers of Ukraine No. 824 of November 13, 2013, On Approval of the Procedure for State Supervision of Compliance with Nuclear and Radiation Safety Requirements**; the **Order of the State Nuclear Regulatory Committee of Ukraine No. 162 of November 19, 2007, On Approval of the General Safety Regulations for Nuclear Power Plants**).

(b) Acts regulating clearly defined sectors within nuclear energy, which may be categorized as those ensuring:

- Safety of nuclear installations (NI);
- Safety during transport of nuclear materials (NM);
- Safety in the management of radioactive waste (RAW);
- Physical protection of nuclear installations and nuclear materials;
- Emergency preparedness.

(c) Acts that define the **competence of structural units of authorized bodies**, their interactions, and the distribution of rights and responsibilities among them. Examples include:

- The **Order of the State Nuclear Regulatory Committee of Ukraine No. 241/05 of June 16, 2004, On Approval of the Protocol on Cooperation in the Field of Regulation of Nuclear Energy Safety between the Ministry of Environmental Protection of Ukraine and the State Nuclear Regulatory Committee of Ukraine**;

- The **Order No. 162 of October 16, 2006, On Approval of Requirements for the Periodicity and Content of Reports Submitted by Licensees in the Field of Nuclear Energy Use**;

- The **Order No. 51 of March 2, 2012, On Approval of Requirements for the Management**

System of the Operating Organization (Operator).

It should be noted that different classification schemes for such acts may be applied depending on the selected criterion.

Importantly, **SNLAs in the field of nuclear energy are systemic in nature**, adopted in close alignment with laws and other legal acts to reinforce their effect, address legal gaps, and improve regulatory mechanisms. For instance, legal regulation of **physical protection of nuclear installations, nuclear materials, radioactive waste, and other sources of ionizing radiation** is based on the **Law of Ukraine No. 2064-III of October 19, 2000, On Physical Protection of Nuclear Facilities, Nuclear Materials, Radioactive Waste, and Other Sources of Ionizing Radiation**, as well as accompanying Rules and Regulations.

The **national system for physical protection** of nuclear materials and facilities comprises a set of organizational and technical measures aimed at preventing unauthorized removal of NM and acts of nuclear terrorism.

SNLAs regulating specific public relations in nuclear energy may be issued either **individually by an authorized body or jointly by multiple top-level government authorities**. An example is the **Joint Order No. 87/211 of May 17, 2004** by the SNRIU and the Ministry for Emergencies and Protection of the Population from the Consequences of the Chernobyl Disaster, *On Approval of the Radiation Accident Response Plan*. This document is intended to ensure coordinated and timely response by management bodies, forces, and means of functional and territorial subsystems of the Unified State Civil Protection System in case of radiation threats or emergencies. It includes the development of emergency response plans for facilities engaged in activities involving radiation or nuclear technologies or the transportation of radioactive materials, a classification of radiation accidents, distribution of responsibilities at facilities, and the roles of the Ministry for Emergencies, the Ministry of Energy, the Ministry of Health, the SNRIU, and other legal directives (Kudriavtsev, 2018).

Other government bodies also adopt SNLAs regulating specific legal relations in the use of nuclear energy and radiation safety. For instance, **Order No. 241 of December 14, 2000**, by the **Ministry of Ecology and Natural Resources of Ukraine**, approved the *Rules for Ensuring the Safety of Nuclear Materials, Radioactive Waste, and Other Sources of Ionizing Radiation*. Furthermore, a **joint instruction approved by the Ministry of Defense of Ukraine and the Security Service of Ukraine (SBU) on January 13, 2014, No. 24/6, On the Procedure for Interaction**

between the State Emergency Service of Ukraine and the SBU in the Field of Emergency Prevention and Response, sets out coordination mechanisms in case of emergencies—particularly hazardous events at nuclear power plants or other nuclear facilities that may jeopardize nuclear safety, cause emergency shutdowns, or result in loss of control over nuclear materials.

Interaction between the **State Emergency Service of Ukraine (SESU)** and the **SBU** includes:

- Information exchange on threats or emergencies;
- Joint operational meetings between leadership of SESU and SBU across regions;
- Joint implementation of national and regional action plans;
- Command-staff and tactical-special exercises, joint training sessions, and other actions stipulated by current legislation.

The Instruction further outlines the main joint activities, organizational structure, and implementation procedures (Order of the Ministry of Defense of Ukraine and the Security Service of Ukraine, 2014).

According to the **Order of the Ministry of Internal Affairs of Ukraine No. 625 of July 3, 2014, On Approval of the Regulations on Military Units and Subdivisions for the Protection of Important State Facilities and Special Cargoes of the National Guard of Ukraine**, the designated military units and subdivisions are tasked with **guarding and defending nuclear installations (NI), nuclear materials (NM), radioactive waste (RAW), other sources of ionizing radiation (SIR) owned by the state, important government facilities, and special cargoes.**

Most subordinate normative legal acts (SNLAs) in the field of nuclear energy and radiation safety are harmonized with international regulatory documents (rules, standards, requirements, etc.). Unlike other fields, **international rules and standards in this domain are generally binding.** The most influential international organizations include the **International Atomic Energy Agency (IAEA)**, as a universal organization, and regional bodies such as the **European Atomic Energy Community (EURATOM)** and the **European Organization for Nuclear Research (CERN).**

3. The Role of International Organizations in the Field of Nuclear Energy and Radiation Safety

The **IAEA** is an intergovernmental organization established under the auspices of the United Nations in 1956. According to its Statute, the IAEA aims to **promote the peaceful use of atomic energy and prevent its use for military purposes.** Analysis of its statutory

functions shows the IAEA's main responsibilities include:

- Supporting the development and application of peaceful nuclear energy;
- Providing technical and material assistance to countries in need;
- Promoting nuclear research and the practical use of nuclear energy;
- Disseminating information across all aspects of nuclear technology;
- Training professionals in peaceful nuclear energy use.

The IAEA also enforces a **safeguards system to prevent nuclear proliferation**, ensuring its assistance (materials, technologies, or data) is not used for military ends. Other IAEA functions include the **development of nuclear safety plans, decommissioning of nuclear installations, radiation protection**, and peaceful uses of **isotopes in medicine, pharmacology, agriculture, and industry**, as well as **theoretical research in nuclear physics** (Statute of the International Atomic Energy Agency, 1999).

EURATOM, founded in 1958 by the original six members of the European Economic Community (France, West Germany, Italy, Belgium, the Netherlands, Luxembourg), is a **European atomic energy community** and a **treaty-based international organization.** It aims to **pool the resources of nuclear energy and coordinate national programs**, facilitate the peaceful use of nuclear energy, develop nuclear industries, ensure control over nuclear energy use, and conduct joint research (Kudriavtsev, 2018).

Since **2016**, Ukraine has been a member of **CERN**, the European Organization for Nuclear Research, which was established in 1952 and formally ratified in 1954 by 12 countries. It now includes **7,000 researchers of 80 nationalities from 500 scientific centers and institutes.** CERN's mission is to **avoid military use of nuclear research**, operate international laboratories for high-energy particle studies, and **publish and share the results of experimental and applied research** (Kozak, Kovalevskiy, Kutaini, 2007).

Member states of these organizations have adopted **key multilateral agreements in the field of nuclear and radiation safety**, including for NPPs. These international conventions include provisions comparable to IAEA safety standards and are **legally binding for signatories.** Despite their formal recommendatory status, **many countries treat such international documents as de facto binding** due to their importance in ensuring nuclear safety.

Significant IAEA documents include:

- **Fundamental Safety Principles**, which define the overarching safety goals and principles;

– **Safety Requirements**, a comprehensive set of enforceable requirements for protecting people and the environment;

– **Safety Guides**, which provide practical guidance on applying safety standards and regulatory requirements (Organismo internacional de energía atómica, 2009).

4. Conclusions

The study of subordinate normative legal acts in the field of nuclear energy and radiation safety demonstrates **their compliance with national legislation**, stability, and at the same time, responsiveness and continuous updating in accordance with the actual state of nuclear energy in Ukraine.

However, there remains **insufficient delineation of powers and competences among state authorities and administrative bodies**, particularly in the normative regulation of nuclear power plant operations. This leads to **duplication of regulations**, issuance and implementation of **virtually identical normative acts**, and **parallel law-making by ministries and agencies**, which undermines the coherence and effectiveness of nuclear legal governance.

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КЛАСИФІКАЦІЯ ПІДЗАКОННИХ АКТІВ ЯК ІНСТРУМЕНТ ПІДВИЩЕННЯ ЕФЕКТИВНОСТІ ПРАВОЗАСТОСУВАННЯ

Анотація. Мета. Аналіз критеріїв класифікації підзаконних нормативно-правових актів. **Результати.** У статті досліджується проблема ефективності застосування підзаконних нормативно-правових актів крізь призму їх класифікації. Автор наголошує, що систематизація та класифікація підзаконних актів відіграють ключову роль у забезпеченні цілісності правового регулювання, узгодженості між різними рівнями нормативного забезпечення та передбачуваності для суб'єктів правовідносин. Визначено, що відсутність чіткої класифікації може призводити до правової неви-

значеності, колізій і зниження авторитету права в цілому. Проаналізовано існуючі підходи до класифікації підзаконних актів за різними критеріями: за суб'єктом видання, за юридичною силою, за сферою дії, за функціональним призначенням. Запропоновано уточнення класифікаційної системи з урахуванням сучасних тенденцій нормотворчої діяльності та зростання ролі відомчих регуляторних актів. Аргументовано, що впровадження уніфікованого класифікаційного підходу сприятиме підвищенню якості правозастосування, полегшить орієнтування у правовому полі, а також дозволить ефективніше здійснювати правовий контроль та аналіз регуляторного впливу. **Висновки.** На підставі аналізу наукової літератури з проблематики класифікації підзаконних нормативно-правових актів автор приходить до висновку, що у вітчизняному науковому полі майже відсутні протиріччя щодо їх поділу за такими критеріями, як: 1) суб'єкти нормативної правотворчості; 2) юридична сила; 3) предмет регулювання; 4) час дії; 5) обсяг дії; 6) дія за колом осіб. Більшістю авторів визначаються локальні підзаконні нормативно-правові акти. Констатовано, що позитивним є виокремлення деякими науковцями таких критеріїв, як характер правотворчої компетенції (в межах власної компетенції та в порядку делегованих повноважень); порядок прийняття (виданні одноособово, прийнятті колегіально, спільно декількома органами). Автор резюмує, що нові підходи до класифікації підзаконних нормативно-правових актів є свідченням значного наукового інтересу учених до їх правозастосування та сприяє його ефективності. Проте необхідною є уніфікація класифікаційних критеріїв, чітке визначення у правовій науці того, за якими критеріями класифікація підзаконних нормативно-правових актів повинна здійснюватися.

Ключові слова: класифікація, підзаконні нормативно-правові акти, правозастосування.

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ISSUES IN THE NORMATIVE FRAMEWORK OF STATE SUPERVISION OVER THE ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES AND OFFICIALS IN UKRAINE

Abstract. Purpose. The purpose of this article is to identify and outline the range of problems in this area, which may serve as a foundation for future scholarly contributions and the development of initiatives for a comprehensive improvement of the mechanisms for its implementation. **Results.** The study draws attention to the directions for developing the examined area, as outlined in the *Concept for the Reform of Local Self-Government and the Territorial Organization of Power in Ukraine*. It is established that this Concept has so far failed to achieve the objectives it originally set. The provisions of the Draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On Local State Administrations’” (No. 4298 of 30 October 2020) and several other legislative acts concerning the reform of the territorial organization of executive power in Ukraine are analyzed. It is revealed that despite the undoubted relevance and necessity of this legislative initiative, the draft contains a number of controversial provisions. The study demonstrates that the normative and legal framework for state supervision over the activities of local self-government bodies in Ukraine requires further improvement in line with European standards. This includes the adoption of legislative acts to regulate the legal status of the *prefect*, expansion of public oversight mechanisms, enhancement of transparency and accountability of local authorities, and ensuring an appropriate balance between the autonomy of local self-government and state oversight. Special emphasis is placed on the role of the prefect as a key figure in ensuring the legality of decisions adopted by local self-government bodies, in exercising delegated state powers, and in coordinating interaction between the state and local communities. Taking into account European experience, the prefect institution must have clearly defined powers that do not contradict the principle of local self-government autonomy and should remain accountable to state bodies within the framework of legality and proportionality of intervention. **Conclusions.** The article concludes that the normative and legal framework for state supervision over the activities of local self-government bodies in Ukraine requires further improvement in accordance with European standards. This includes: adoption of legislation regulating the legal status of the prefect, expansion of public control mechanisms, improvement of the transparency and accountability of local government bodies, and ensuring a proper balance between the autonomy of local self-government and state supervision.

Key words: state supervision, local democracy, local self-government, normative and legal framework, organization and functioning, issues of legal regulation, local affairs governance.

1. Introduction

It is worth noting that due to the complexity and multi-dimensional nature of the relationships arising in the process of organizing and functioning of local self-government bodies, the norms governing and implementing state supervision are diverse in their legal domain. These norms may fall within the scope of constitutional, administrative, financial, civil, labor, or municipal law. According to their role in the mechanism of implementing state supervision over the activities of local

self-government bodies and officials, these norms are classified into substantive and procedural ones (Sokha, 2024).

Substantive norms establish the purpose and scope of permissible and required behavior of the entities exercising state supervision, their structural units, and their officials and staff within the relevant legal relations. Procedural norms define the legal procedure, order, and conditions for the exercise of the functions and powers provided for by substantive norms, thereby

granting this process a legal and, to some extent, organizational form (Sokha, 2024).

At the same time, the practical application of both substantive and procedural norms of current legislation reveals a number of gaps and inconsistencies that undermine the effectiveness of the normative and legal framework for the exercise of state supervision over the activities of local self-government bodies and officials in Ukraine. Therefore, the purpose of this article is to identify and outline these problems, which may serve as a relevant scholarly contribution toward the development of initiatives for a comprehensive improvement of the mechanisms of its implementation.

2. Normative and Legal Features of the Foundations of State Supervision over the Activities of Local Self-Government Bodies and Officials in Ukraine

The Constitution of Ukraine establishes two systems of power at the local level: local state administrations, which serve as local executive authorities, and local self-government as the form of public authority exercised by territorial communities. The Basic Law guarantees local self-government and thus does not permit its substitution by local state administrations. Accordingly, the issue of interaction between local executive authorities and local self-government bodies—and the need to create a model of administration that combines broad local democracy with a stable, responsible, and effective state policy at the local level—has become particularly pressing (Maistro, 2012).

In turn, the *Concept of the Reform of Local Self-Government and the Territorial Organization of Power in Ukraine*, approved by Order No. 333-r of the Cabinet of Ministers of Ukraine dated April 1, 2014, envisaged the introduction of a mechanism through which both local state administrations and the population would exercise control over the provision of public services by local self-government bodies and territorial subdivisions of central executive authorities. This approach effectively transformed local state administrations from general competence bodies into supervisory and oversight entities within the system of executive power, with the added function of coordinating the activities of territorial units of central executive authorities in the respective regions (*Order of the Cabinet of Ministers of Ukraine On Approval of the Concept of Reforming Local Self-Government and the Territorial Organization of Power in Ukraine*, 2014).

However, it is necessary to agree with experts who note that despite the reforms implemented, Ukraine remains the only European country that lacks a mechanism for monitoring the legality of decisions adopted by local self-government bodies. The current legislation—namely, the *Law of Ukraine "On Local Self-Government in Ukraine"* and the *Law of Ukraine "On Local State Administrations"*—does not contain

detailed procedures for exercising such oversight. In other words, a comprehensive mechanism ensuring legality in the activities of local self-government bodies on behalf of the state is absent (*Ensuring the Legality of Decisions of Local Self-Government Bodies: When, How, and Why? Discussion Results*, 2024).

Currently, local self-government bodies are not subject to oversight by a specially authorized state authority. As a result, the function of supervision is, in practice, delegated to the territorial community. While public oversight may be effective, it remains a rarely used mechanism due to a lack of legal regulation and public awareness. Professional state supervision over the activities of local self-government bodies remains relevant even under the conditions of decentralization (Minakova, 2023).

The situation is further complicated by the introduction of martial law, under which local state administrations have been transformed into military administrations. Local self-government bodies are now required to report to and consult with the heads of military administrations on certain matters. This arrangement has further complicated and obscured the regulation of relations between various levels of local self-government and state representatives. Therefore, there is an urgent need for high-quality legislation that, first, would establish mechanisms for oversight and supervision of community-level decisions, thereby enhancing their capacity, and second, would clearly delineate the spheres of competence and interactions among different levels and branches of government to ensure legality in the functioning of local self-government in Ukraine (*Ensuring the Legality of Decisions of Local Self-Government Bodies: When, How, and Why? Discussion Results*, 2024).

It is worth noting that work began in 2020 on a draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Local State Administrations’” (No. 4298 of October 30, 2020) and other legislative acts concerning the reform of the territorial organization of executive power in Ukraine. This draft was prepared by the Verkhovna Rada Committee on State Building, Local Governance, Regional Development, and Urban Planning. As stated in the explanatory note, “The purpose of the draft law is to create the legal prerequisites and foundations for the functioning of local state administrations of the prefectural type, pending relevant amendments to the Constitution of Ukraine (regarding decentralization of power), and to align legislation on local state administrations with the contemporary challenges faced by officials of regional and district state administrations in the exercise of their constitutional powers within the respective regions and districts. Another goal is to implement the constitutional provisions concerning the functioning of a system for ensuring legality

in the activities of local self-government bodies and officials, with the aim of reinforcing a system of checks and balances in terms of compliance with the Constitution and laws of Ukraine by all subjects of public power in the state. The objective of the draft law is to establish the legal foundations for the activities of reorganized district and regional state administrations in accordance with current socio-political and financial-economic realities, and to restore the functioning of the system for ensuring legality in the activities of local self-government bodies and officials in Ukraine, as enshrined in Part 2 of Article 144 of the Constitution of Ukraine” (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

At the same time, despite the attempt to regulate the issue of state supervision over the activities of local self-government bodies, the draft law contains a number of highly ambiguous and, in some places, internally inconsistent provisions. For instance, according to Part 3 of Article 16 of the Law (as proposed in the draft), “the powers related to ensuring legality include powers to ensure legality and public order, the observance of human and citizens’ rights and freedoms, the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive authorities by territorial bodies of central executive authorities operating within the respective administrative-territorial units, as well as the implementation of the Constitution and laws of Ukraine by village, settlement, city, and district-in-city councils, their executive bodies, village, settlement, and city mayors, as well as regional and district councils.”

However, under Article 119 of the Constitution of Ukraine, the powers concerning:

1. implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive authorities (paragraph 1);
2. legality and public order, observance of citizens’ rights and freedoms (paragraph 2);
3. interaction with local self-government bodies (paragraph 6) – are established as separate and independent powers. Therefore, the Constitution does not authorize local state administrations (LSAs) to *ensure the implementation of the Constitution and laws of Ukraine by village, settlement, city, district-in-city councils, their executive bodies, mayors, and regional or district councils.*

Moreover, as can be inferred from paragraph 6 of Article 119 of the Constitution of Ukraine, LSAs are to *interact* with local self-government bodies. Given the guarantees of local self-government enshrined in Articles 5, 7, 140, 142, and 143 of the Constitution, such interaction suggests

not subordination, but partnership between two equal subjects of public authority through which the people exercise power as its sole source.

Part 2 of Article 144 of the Constitution of Ukraine, which stipulates that decisions of local self-government bodies may be suspended on the grounds of their non-compliance with the Constitution or laws of Ukraine and referred to a court, was originally intended as a tool of general prosecutorial oversight in the absence of administrative justice in Ukraine. However, since the establishment of the administrative judiciary system and the constitutional redefinition of the Prosecutor’s Office—no longer empowered to conduct general oversight of legal compliance—this constitutional provision has not been developed further in legislation (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

In this context, it is worth recalling that the *Draft Law on Amendments to the Constitution of Ukraine regarding the Decentralization of Power* (Reg. No. 2217a of July 1, 2015) proposed the introduction of the *prefect* institution, with powers to:

1. oversee compliance with the Constitution and laws of Ukraine by local self-government bodies;
2. coordinate the activities of territorial bodies of central executive authorities and supervise their compliance with the Constitution and laws of Ukraine (*Draft Law on Amendments to the Constitution of Ukraine (regarding the decentralization of power)*, 2015).

The introduction of the prefect post in Ukraine is intended to balance national interests with the rights of local self-government (Minakova, 2023). The draft law received a positive opinion from the Constitutional Court of Ukraine and was preliminarily approved by the Verkhovna Rada of Ukraine. However, the constitutional procedure for its adoption was not completed, and the draft was withdrawn from consideration.

Thus, in our view, without corresponding constitutional amendments defining the legal status of local state administrations, it is premature to authorize them to supervise the implementation of the Constitution and laws of Ukraine by village, settlement, city, and district-in-city councils, their executive bodies, mayors, and regional and district councils, or to coordinate the activities of territorial bodies of central executive authorities and oversee their compliance with the Constitution and laws of Ukraine (*Draft Law on Amendments to the Law of Ukraine ‘On Local State Administrations’ and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organization of Executive Power in Ukraine*, 2020).

3. Implementation of European Standards in Ukraine

It is important to clarify that the purpose of the prefect institution is to ensure constitutionality, the rule of law, and legality within the respective administrative-territorial unit, as well as to guarantee human and citizen rights and freedoms, which define the content and direction of state activity as a whole (Hanushchak, Chypenko, 2015). The prefect, as a representative of state authority, does not obstruct any activities of local self-government bodies but challenges genuinely unlawful acts. Should the prefect abuse this right without proper grounds, questions regarding their competence and, consequently, the advisability of holding the position arise. At the same time, as noted by French experts, the issue of dismissing a prefect can be raised at any time without prior notice or explanation to the prefect themselves (Hanushchak, Chypenko, 2015). Therefore, a key characteristic of the prefect is that they act as a supervisory authority over local self-government bodies; however, this does not imply unchecked power or arbitrariness, as effective restrictions on their activities are envisaged (Minakova, 2023).

Accordingly, to ensure effective state supervision and oversight of compliance with the Constitution and laws of Ukraine by local self-government bodies, the necessity arises to adopt a series of normative legal acts regulating the activities of the prefect institution in Ukraine. The prefect should play a key role in ensuring the legality of decisions made by local self-government bodies, executing delegated state powers, and coordinating interactions between the state and local communities. Taking into account European experience, the prefect institution must have clearly defined powers that do not contradict the principle of local self-government autonomy, and must remain accountable to state authorities within the bounds of legality and proportionality of intervention.

Additionally, it is appropriate to briefly highlight some other issues, including, for example: – For the full transition to a decentralized, multi-level governance system, Ukraine must amend the Constitution to formally enshrine the legal basis of local self-government and state authority. Such amendments will clearly define the division of powers between the state and local self-government but will only be possible after the legal regime of martial law is lifted (*Conclusion on the “Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine”*, 2024); – Until constitutional amendments are made, a clear separation should be established between: (a) subdivisions of local state administrations responsible for coordinating territorial subdivisions of central executive authorities; (b) subdivisions respon-

sible for supervision of legality; and (c) subdivisions performing certain local self-government functions. This functional demarcation will facilitate the gradual transformation of local administrations into prefectural-type bodies in the future (*Conclusion on the “Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine”*, 2024); – I. Bodrova points to the lack of implementation of European standards in this area (Bodrova, 2019), since according to Article 8 of the European Charter of Local Self-Government, any administrative supervision over local self-government bodies may only be exercised in accordance with procedures and cases established by the constitution or law (European Charter of Local Self-Government, 1985). Consequently, it must be acknowledged that the existing legal regulatory model governing state supervision over local self-government relations contradicts the requirements of the Constitution and laws of Ukraine, supranational acts, as well as the principle of legal certainty—given that the applicable Resolution No. 339 “On Approval of the Procedure for Control over the Implementation by Local Self-Government Bodies of Delegated Powers of Executive Authorities,” among other issues, is generally an outdated act (Kryvnyi, Staryna, 2024).

In our view, the proposal to adopt the Law of Ukraine “On State Control over the Activities of Local Self-Government Bodies” is well-founded, as it aims to eliminate the existing legislative gap in regulating the mechanism of such control. However, the issue of public oversight will remain legally unregulated (Kryvnyi & Staryna, 2024).

4. Conclusion

In conclusion, this study reiterates that the normative and legal foundations of state supervision over the activities of local self-government bodies in Ukraine require further improvement in accordance with European standards. This includes the adoption of legislative acts to regulate the status of the prefect, the expansion of mechanisms for public oversight, the enhancement of transparency and accountability of local authorities, as well as ensuring an appropriate balance between the autonomy of local self-government and state supervision.

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ПРОБЛЕМИ НОРМАТИВНО ВИЗНАЧЕНИХ ЗАСАД ЗДІЙСНЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ ОРГАНІВ І ПОСАДОВИХ ОСІБ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ

Анотація. Метою статті є окреслення кола таких проблем, що стане доречним науковим доробком задля розробки ініціатив комплексного вдосконалення механізмів його реалізації. **Результати.** Звернено увагу на визначені напрями розвитку досліджуваної сфери Концепцією реформування місцевого самоврядування та територіальної організації влади в Україні. Констатовано, що донині вона не вирішила поставлених завдань. Піддано аналізу положення проекту закону України про внесення змін до Закону України «Про місцеві державні адміністрації» (№ 4298 від 30 жовтня 2020 року) та деяких інших законодавчих актів України щодо реформування територіальної організації виконавчої влади в Україні. Виявлено, що попри його беззаперечну актуальність та доцільність, він містить низку суперечливих положень. Доведено, що нормативно-правові засади державного контролю за діяльністю органів місцевого самоврядування в Україні потребують подальшого вдосконалення відповідно до європейських стандартів. Це включає ухвалення законодавчих актів щодо врегулювання статусу префекта, розширення механізмів громадського контролю, підвищення рівня прозорості та підзвітності місцевих органів влади, а також забезпечення належного балансу між автономією місцевого самоврядування та державним наглядом. Особливо зауважено, що префект має відігравати ключову роль у забезпеченні законності рішень органів місцевого самоврядування, виконанні делегованих державних повноважень та координації взаємодії між державою і місцевими громадами. Враховуючи європейський досвід, інститут префекта повинен мати чітко визначені повноваження, що не суперечать принципу автономії місцевого самоврядування, а також бути підконтрольним державним органам у межах законності та пропорційності втручання. **Висновки.** Зроблено висновок, що нормативно-правові засади державного контролю за діяльністю органів місцевого самоврядування в Україні потребують подальшого вдосконалення відповідно до європейських стандартів. Це включає ухвалення законодавчих актів щодо врегулювання статусу префекта, розширення механізмів громадського контролю, підвищення рівня прозорості та підзвітності місцевих органів влади, а також забезпечення належного балансу між автономією місцевого самоврядування та державним наглядом.

Ключові слова: державний контроль, місцева демократія, місцеве самоврядування, нормативно-правові засади, організація та функціонування, проблеми правового регулювання, управління місцевими справами.

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PHILOSOPHICAL AND LEGAL FOUNDATIONS OF COMMUNAL FEDERALISM: BETWEEN AUTONOMY AND UNITY

Abstract. Purpose. The purpose of the article is to provide a comprehensive philosophical and legal interpretation of *communal federalism* as an original Ukrainian paradigm of state organization that combined the ideas of local autonomy, institutional subsidiarity, and national unity; to reconstruct its intellectual origins, identify its key principles (in particular, community solidarity, legal pluralism, and the contractual nature of federation), and substantiate its potential for modern democratic state-building and the renewal of Ukraine's legal system. **Results.** The article is devoted to the philosophical and legal analysis of the concept of *communal federalism* as a unique Ukrainian paradigm of state organization that integrates the ideas of local autonomy, community solidarity, legal pluralism, and the contractual nature of public authority. The research reconstructs the intellectual origins of this concept, primarily in the works of Mykhailo Drahomanov and his followers, and traces its formation at the intersection of European federalist traditions and Ukrainian self-governing experience (the *veche* institution, Magdeburg law, and Cossack democracy). The author emphasizes that, unlike imperial or centralist models, *communal federalism* is based on the principle of the presumption of community capacity – the ethical and legal recognition of the community as a subject capable of self-government, the creation of local law, and participation in shaping the national political space. **Conclusions.** The paper analyzes the distinctions between American, European, and Ukrainian models of federalism, emphasizing that the Ukrainian variant was not the result of an agreement between political centers but rather a form of self-organization of a subjugated nation under conditions of imperial domination. The concept of the community emerges as an alternative to the centralized state – one in which the state coordinates rather than dominates. The potential of *communal federalism* for contemporary Ukraine is revealed as a factor in the renewal of the constitutional order, the implementation of decentralization policy, the strengthening of community participation in decision-making processes, and the enhancement of legal legitimacy. Special attention is paid to the problem of the discrediting of the term *federalism* in the modern Ukrainian context, and the necessity of its rehabilitation through profound historical and doctrinal reconsideration is substantiated.

Key words: communal federalism, local autonomy, community, subsidiarity, legal pluralism, solidarity, political unity.

1. Introduction

In the modern constitutional discourse of Ukraine, there arises an urgent need to revisit historical models of state organization through the prism of the values of democracy, subsidiarity, and legal unity. Of particular relevance is the philosophical and legal analysis of the concept of *communal federalism* as a historical paradigm that combined the ideas of self-government, territorial autonomy, and national unity. The ideas formulated by Ukrainian thinkers of the late nineteenth and early twentieth centuries – in particular, M. Drahomanov, O. Terletsyky,

S. Podolynskyi, I. Franko, and M. Hrushevskyi – constituted a response to the challenges of imperial centralization and reflected the Ukrainian people's aspiration for self-realization within a pluralistic legal system.

Communal federalism embodied profound philosophical premises, including the concept of personal freedom as the foundation of collective coexistence, the primacy of the community over the state, and the natural right to autonomous governance. At the same time, this model did not reject the necessity of national unity; rather, it proposed unity as the result of a con-

tractual association of communities based on voluntariness and mutual responsibility.

Modern interpretations of federalism in Ukraine are often distorted by political manipulations and external threats, which has led to the term acquiring predominantly negative connotations. However, the refusal to engage in a comprehensive philosophical and legal analysis of Ukrainian federalist thought deprives national jurisprudence of an important intellectual foundation.

The relevance of examining the content of *communal federalism* stems from the need for ideas that combine the legal autonomy of political actors with the unity of values, principles, and mechanisms of the rule-of-law state. This combination was inherent precisely in the concept of *communal federalism*, which merits modern reconsideration. The re-evaluation of this paradigm is important not only from a historical and legal standpoint but also as a potential source of institutional innovation in the context of decentralization and the reform of local self-government in Ukraine.

Accordingly, the study of the philosophical and legal foundations of *communal federalism* opens new horizons for understanding the relationship between individual freedoms, territorial autonomy, and the unity of public authority. It is also essential to reveal the internal logic of this concept, which makes it possible to regard federalism not as a mechanical structure for the division of powers but as a philosophy of legal order that arises from local initiative and a political culture of participation.

From a scholarly perspective, there is thus a need for a comprehensive academic analysis of the ideological foundations, philosophical implications, and legal models embedded in *communal federalism*, as well as its significance for the contemporary state-building of Ukraine.

The methodological basis of this research consists of the works of A. Halkin, V. Diachuk, O. Ilyina, K. Markov, T. Panchenko, O. Khomenko, and others.

The purpose of the article is to provide a comprehensive philosophical and legal interpretation of *communal federalism* as an original Ukrainian paradigm of state organization that combines the ideas of local autonomy, institutional subsidiarity, and national unity; to reconstruct its ideological origins, identify its key principles (in particular, community solidarity, legal pluralism, and the contractual nature of federation), and to substantiate its potential for modern democratic state-building and the renewal of Ukraine's legal system.

2. Foundations of Communal Federalism

Federalism, as a philosophical and legal category, emerges in response to the need to har-

monize autonomous forms of existence of political and social entities with centralized forms of power. Its historical and legal origins are to be found in the tradition of contractual law and the idea of shared sovereignty, which took shape in Western political and legal thought during the transition from feudal decentralization to the modern state. In its classical form, federalism presupposes the legal coexistence of several levels of public authority within a single state entity, where competences are distributed according to the principle of subsidiarity and sovereignty is divisible (Galkin, 2002; Markov, 2020).

A foundational role in the development of the theoretical underpinnings of federalism was played by the works of European thinkers such as Montesquieu, John Locke, James Madison, and Alexander Hamilton, who laid the conceptual framework for the division of powers, the political equality of federal subjects, and the legal balance between the center and the periphery. In the United States, federalism emerged as a response to the necessity of uniting independent states into a single polity while preserving their political distinctiveness. The American model is based on a clear delineation of powers between the federation and the states, enshrined in the 1787 Constitution, which at the time became a unique model of federal governance (Diachuk, 2014).

In the European context, federalism evolved more gradually and heterogeneously. In Switzerland, Germany, Austria-Hungary, and Belgium, federal or quasi-federal elements developed as a response to multinational, religious, and cultural diversity. At the same time, European federalism often had an imperial character and served as an instrument for maintaining centralized control over autonomous entities, which did not always correspond to democratic ideals (Diachuk, 2014).

In this context, the Ukrainian federalist tradition – in particular, the concept of *communal federalism* – holds special significance, as it developed not as a form of compromise between a dominant nation and its provinces but as a form of self-organization of a subjugated nation under conditions of imperial oppression. This determined the deep philosophical and legal motivation behind the idea – not merely to decentralize power, but to reconstitute the very paradigm of interaction between the community and the state.

Communal federalism, which originated in the works of Mykhailo Drahomanov and his intellectual followers, was formed at the intersection of legal positivism, liberalism, social constructivism, and ethical personalism. The foundation of this model was the conviction

that the smallest yet sovereign unit of political life is the *hromada* (community) – an organized association of citizens endowed with the right to self-government, its own legal system, tradition, and political representation (Drahomanov, 1878). Thus, the community is not an object of state power but its primary subject.

A distinctive feature of *communal federalism* lies in its emphasis on the interrelation between personal freedom, collective autonomy, and social responsibility. Unlike the American model, in which federalism is constitutionally institutionalized and aimed at the division of powers, the Ukrainian model proposes an *organic federalism* built upon trust, solidarity, and the social contract between the community and the state. In this respect, it resonates with the philosophical ideas of Pierre-Joseph Proudhon, who viewed federalism as a path to liberation from centralized bureaucracy.

The philosophical and legal content of *communal federalism* also encompasses the idea of legal pluralism, according to which communities possess the right to develop their own legal systems within the framework of national coordination. This approach rests upon the historical tradition of Ukrainian self-governance – *veche* assemblies, Cossack democracy, and Magdeburg Law – which functioned as forms of legal autonomy in various historical periods.

Importantly, the ideas of *communal federalism* were not an abstract theory but had clearly defined political and legal objectives. They became the foundation of the programmatic documents of Ukrainian political parties of the late nineteenth and early twentieth centuries – above all, the Ukrainian Radical Party – and influenced the constitutional projects of the Central Rada period. The idea of federalism thus emerged as a means of legitimizing the aspiration for autonomy within multinational empires and as a project-oriented model of a new Ukrainian statehood.

In summary, the philosophical and legal foundations of *communal federalism* integrate the concepts of autonomy, legal pluralism, human rights, solidarity, and subsidiarity. This allows it to be regarded not merely as a historical doctrine but as a relevant instrument for reforming the contemporary state system of Ukraine, particularly in the context of challenges associated with the restoration of territorial integrity, constitutional transformations, and decentralization.

One of the defining characteristics of *communal federalism*, which distinguishes it from other models of federalism, is its unique understanding of the relationship between autonomy and unity. Unlike traditional federal systems, in which autonomy is perceived as

a decentralized distribution of powers between the center and the regions, in the communal model autonomy is understood as the natural right of the community as a social organism to self-development, self-government, and the formation of a local legal culture.

In the political and legal thought of Mykhailo Drahomanov and his followers, autonomy neither negates nor opposes unity. On the contrary, autonomy is regarded as an organic component of unity – its initial and necessary element. In this sense, *unity* is not identified with unitarism or centralism but acquires a new meaning: a network of horizontally connected communities cooperating on the basis of agreement, solidarity, and the voluntary delegation of powers. This model of unity resonates with the ideas of Jean-Jacques Rousseau's social contract, though the emphasis shifts from the state as the bearer of sovereignty to the community as the primary subject of law.

In European contexts, autonomy was most often either a privilege granted to specific territories (as in Scotland or Catalonia) or an instrument of limited self-government within a centralized state. In the communal tradition, however, autonomy is interpreted not as a concession from the center but as an *a priori* right of the community that precedes the state (Drahomanov, n.d.). This philosophical position fundamentally transforms the notion of subordination within the system of government: the state is not the source of rights but an arbiter that coordinates the free coexistence of communities.

The legal category of *unity* in communal federalism carries no imperial connotations. It is not aimed at the unification or fusion of diverse entities but, on the contrary, seeks to ensure the coexistence of multiple forms of legal, cultural, and political life. The ideas of legal pluralism and cultural diversity were integral to Drahomanov's paradigm, in which he defended the notion of a "free union of equal peoples" as the foundation of the future political order.

In this regard, it is important to emphasize that the *community* and the *nation* within the framework of communal federalism are not opposed to one another. According to Drahomanov, the nation is a fellowship of communities united by a shared cultural memory, moral principles, and a common aspiration for freedom (Khomenko, 2003). This approach stands in opposition to the ethnic or bureaucratic nationalism that dominated political projects of the imperial era. In the communal conception, national unity does not arise from centralization but from solidarity that grows from below – through the interaction of communities.

A significant contribution of the communal paradigm is also the *principle of mutual respon-*

sibility. In this model, the state does not possess absolute power; its function is to serve the community, to act as the guarantor of its rights, and to provide an institutional mechanism for resolving inter-community disputes. Accordingly, communities not only possess rights but also bear responsibility for maintaining unity, ensuring internal order, protecting individual rights, and upholding common agreements. This creates a balance between autonomy and unity without excessive verticalization of power (Panchenko, 2011).

In this context, it is also appropriate to recall the *principle of subsidiarity*, widely applied in modern European law, particularly in the practice of the European Union. Subsidiarity implies that issues should be resolved at the level closest to the citizen – that is, locally – and only when this level proves incapable should the matter be transferred upward. *Communal federalism* anticipated this doctrine, articulating it already in the nineteenth century, long before its formal incorporation into the foundational documents of the EU.

Finally, an essential aspect of the interaction between autonomy and unity in *communal federalism* is the *contractual nature* of the political system. The community enters into federative relations with other communities and with the state not as a result of subordination, but through a conscious political act in the form of a public agreement. This contractual nature resembles the Swiss model of federalism, in which each canton enjoys considerable autonomy, retains its own legal system, and serves as a source of legitimacy for the national order.

In summary, the philosophical and legal balance between autonomy and unity proposed within *communal federalism* has the potential to reframe contemporary approaches to the constitutional organization of Ukraine – particularly in the context of post-war reconstruction, regional diversity, and the urgent need for an effective model of decentralization.

In the conceptual dimension of *communal federalism*, the community is not merely an administrative-territorial unit but, above all, an *ethical and legal subject* endowed with inherent dignity, the right to self-realization, and responsibility toward both society and the state. This represents a fundamental expansion of the functional understanding of the community that prevailed in imperial legal doctrines – notably in the Russian Empire – where the community was regarded primarily as a tax-collecting mechanism or a subsidized unit of a centralized system.

Within the framework of *communal federalism*, as formulated by Mykhailo Drahomanov and his intellectual successors, the commu-

nity possesses all the features of a legal person under public law: it has an independent will, holds authority to establish local norms, manages communal resources, forms representative bodies, possesses the right to conclude agreements, and participates in shaping higher levels of government (Drahomanov, 1878). This conception corresponds to the modern understanding of the *institutional autonomy* of public-law entities.

The ethical and legal interpretation of the community within this model rests upon the values of solidarity, legal mutual respect, equality, and participation. The community does not confine itself to narrow local interests but acts as a participant in a broader national and civic project. In this sense, it embodies the *ethic of responsibility* in Max Weber's understanding – one that combines freedom of action with moral obligation toward the collective.

The symbiosis of ethics and law was already embedded in the historical forms of Ukrainian self-governance – from Cossack councils to Magdeburg Law – where the community functioned as the primary arbiter of justice, the source of elected leadership, and a participant in inter-communal alliances. In the communal model, these traditions were not merely reproduced but reinterpreted through the lens of political philosophy and legal theory as fundamental elements for the construction of a democratic federation.

3. Specifics of Communal Federalism

A distinctive feature of the concept of community within the framework of *communal federalism* lies in its equivalence to the notion of personhood. The community possesses the right to dignity, the inviolability of its boundaries, and protection from the usurpation of its powers by higher levels of authority. Thus, the community acts not only as a subject of political will but also as a bearer of moral status (Kolodii, 2002). This approach anticipates modern legal doctrine, in which territorial units are regarded as participants in the constitutional legal order endowed with their own set of guarantees.

Communal federalism proceeds from the presumption of the community's capacity. This means that the community is capable of effectively exercising public authority, adopting normative decisions, and providing public services without excessive state intervention. Consequently, the model of self-government is constructed not as a “delegated state” but as an equal partnership in which the community possesses a natural right to initiative, while the state bears the duty of facilitation.

In legal terms, this model may be implemented through the constitutional enshrine-

ment of the community's rights as a subject with a unique status, as well as through a clear delineation of competences between communities, regional entities, and central institutions. In this context, particular significance is attached to provisions concerning fiscal autonomy, personnel policy, local lawmaking, and regional justice.

Politically, the community functions as a nucleus of social integration. Through the mechanisms of local self-government, the principle of participation is realized – a principle which, within the philosophy of *communal federalism*, assumes the nature of an ontological norm: only that system of governance is legitimate in which communities possess genuine influence over decision-making. Accordingly, the community is not merely a legal entity but also a school of democracy, a space for cultivating political culture and legal consciousness.

From the perspective of its social dimension, the community is the bearer of identity. It preserves language, traditions, and social practices and is formed on the basis of familial, territorial, and historical ties. Such identity does not conflict with national identity but rather enriches it, rendering the nation polyethnic, pluralistic, and open to dialogue. This constitutes a key distinction between *communal federalism* and ethnonational or centralist models of statehood.

In summary, the community within *communal federalism* is not merely a political cell of the state but a full-fledged participant in the legal process, a bearer of ethical imperatives, and a source of legitimacy for public authority. Its elevated status – both theoretically and practically – may serve as a cornerstone for constructing a decentralized and democratic Ukraine. It is through the restoration of the community's legal subjectivity that a model of the state may emerge in which autonomy is not opposed to unity but becomes its foundation, guarantee, and formative principle.

Following 2014, when Russia annexed Crimea and launched hybrid aggression against Ukraine in the Donbas, the idea of federalism in Ukrainian political and legal discourse underwent a profound transformation. It began to be associated with the instrumentalization of separatism, destabilization, and artificial antagonism between regions and the center, thus becoming linked to threats to national unity and sovereignty. However, such interpretation has overshadowed the centuries-old Ukrainian federalist tradition, particularly its communal variant, which sought not disintegration but, on the contrary, the strengthening of statehood through robust self-government and social solidarity.

The relevance of reinterpreting *communal federalism* as a philosophical and legal doctrine

is increasing amid several concurrent processes: first, the modernization of the public administration system in the context of European integration; second, the implementation of decentralization and administrative-territorial reform; and third, the adaptation of the legal system to the challenges of martial law and post-conflict transformation. Under these circumstances, there arises a need to develop a new model of unity based not on vertical domination but on horizontal trust, mutual responsibility, and legal solidarity.

The conceptual potential of *communal federalism* for the contemporary legal doctrine of Ukraine lies in its capacity to transcend the dichotomy between *unitarism* and *federalism* by introducing a qualitatively new approach – legal subsidiarity – which ensures both integrity and effective local autonomy. This principle, enshrined in Article 5 of the Treaty on European Union, enables the formation of a system of public governance adaptable to the socio-cultural, economic, and security characteristics of diverse regions (Treaty establishing the European Community, 2005).

In its modern interpretation, *communal federalism* does not deny the existence of centralized institutions of authority; rather, it seeks to harmonize them with communal structures, forming a model in which the center does not suppress but coordinates, does not impose but supports. In wartime conditions, such a concept enables stability through broader community involvement in decision-making, resource mobilization, and the organization of humanitarian and security infrastructure. For instance, communities play a crucial role in hosting internally displaced persons, supporting volunteer initiatives, and organizing local defense efforts.

In the legal context, *communal federalism* offers specific mechanisms: the contractual nature of vertical relations between levels of authority; constitutional guarantees of a minimum set of communal powers; the establishment of a municipal ombudsman as an institution for protecting community rights; and the equitable allocation of financial resources between the center and local authorities based on the principle of budgetary justice.

In the field of constitutionalism, this implies a revision of constitutional design toward a so-called “federation without federation,” wherein a unitary state functions with a constitutionally guaranteed multilevel system of public authority. Such models have been successfully implemented in Italy, France, and Poland – states that remain formally unitary yet possess constitutionally protected autonomies, decentralized administration, and legal subjectivity of territorial units.

Given its historical experience of communal initiatives (from *zemstvos* to the cooperative movement) and its multilayered legal tradition, Ukraine possesses a unique opportunity to develop its own concept of *social federalism*, founded upon the community not merely as a bearer of local interests but as the ethical foundation of political unity (Ilina, 2011). This requires not only political will but also thorough doctrinal elaboration – which constitutes the practical significance of revisiting *communal federalism*.

In the modern political and legal context, it is equally important to rehabilitate the very term *federalism* as a legal category by freeing it from the ideological distortions imposed by Russian propaganda. This necessitates a distinction between *federalism* as a form of state organization – which may indeed pose risks under imperial influence – and *federalism* as a principle of public authority organization aimed at strengthening legitimacy, participation, and effectiveness. It is precisely *communal federalism*, in its moral, philosophical, and legal interpretation, that exemplifies this second, constructive, and inclusive type of federalist thought.

This also opens a pathway for the advancement of legal education, where the ideas of *communal federalism* may serve as the foundation for academic courses in municipal, constitutional, and administrative law. The incorporation of the works of Mykhailo Drahomanov, Serhii Podolynskyi, Oleksandr Terletskyi, and other thinkers into educational curricula will contribute to the formation of a holistic legal worldview that integrates democratic traditions with national legal identity.

4. Conclusions

Thus, the concept of “**communal federalism**” holds a unique place in the history of Ukrainian state and legal thought as a form of synthesis between the idea of local autonomy and the principles of political unity. Unlike imperial and centralized models, this paradigm is founded on the philosophical principles of subsidiarity, community solidarity, legal pluralism, and the contractual nature of power relations.

It has been established that *communal federalism* was formed under the influence of European and American federalist traditions, yet it was deeply adapted to the Ukrainian cultural and historical context. Under contemporary conditions, its ideas gain particular significance as an alternative to radical centralism and as an intellectual counterbalance to destructive pseudo-federalist projects.

In our view, the philosophical and legal comprehension of federalism as a **principle**

rather than merely a **form of state organization** opens up new opportunities for the modernization of public authority without threatening state integrity. *Communal federalism* contributes to the development of an effective model of community participation in decision-making, enhances legal legitimacy, and strengthens social cohesion.

Its integration into the modern discourse of legal doctrine may serve as a foundation for further reform of the constitutional order and regional governance. At the same time, overcoming long-standing biases associated with the term “*federalism*” is possible only through a profound historical and legal re-evaluation, in which the communal approach serves as a key intellectual and philosophical resource.

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ФІЛОСОФСЬКО-ПРАВОВІ ЗАСАДИ ГРОМАДІВСЬКОГО ФЕДЕРАЛІЗМУ: МІЖ АВТОНОМІЄЮ ТА ЄДНІСТЮ

Анотація. *Метою* статті є всебічне філософсько-правове осмислення «громадівського федералізму» як оригінальної української парадигми державного устрою, що поєднувала ідеї місцевої автономії, інституційної субсидіарності та національної єдності; реконструкція її ідейних витоків, виявлення ключових принципів (зокрема солідарності громад, правового плюралізму, договірної природи федерації) та обґрунтування її потенціалу для сучасного демократичного державотворення й оновлення правової системи України. **Результати.** Стаття присвячена філософсько-правовому осмисленню концепції «громадівського федералізму» як унікальної української парадигми державного устрою, що поєднує ідеї локальної автономії, солідарності громад, правового плюралізму та договірного характеру публічної влади. Дослідження реконструює інтелектуальні витoki цієї концепції, насамперед у творчості Михайла Драгоманова та його послідовників, і простежує її формування на перетині європейських федералістських традицій та українського самоврядного досвіду (віче, Магдебурзьке право, козацька демократія). Автор підкреслює, що на відміну від імперських або централістських моделей, «громадівський федералізм» базується на принципі презумпції спроможності громади як етико-правового суб'єкта, здатного до самоуправління, творення локального права та участі у формуванні національного політичного простору. **Висновки.** У роботі проаналізовано відмінності між американською, європейською та українською федералістськими моделями, акцентуючи на тому, що український варіант не був результатом домовленості між політичними центрами, а формою самоорганізації поневоленої нації в умовах імперського домінування. Концепт громади постає як альтернатива централізованій державі, де держава координує, а не домінує. Розкрито потенціал «громадівського федералізму» для сучасної України – як чинника оновлення конституційного ладу, реалізації політики децентралізації, посилення участі громад у процесах ухвалення рішень і зміцнення правової легітимності. Окрему увагу приділено проблемі дискредитації терміна «федералізм» у сучасному українському контексті, та обґрунтовано необхідність його реабілітації через глибоке історико-доктринальне переосмислення.

Ключові слова: громадівський федералізм, місцева автономія, громада, субсидіарність, правовий плюралізм, солідарність, політична єдність.

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FROM SYNTHETIC REALITY TO JUDICIAL REALITY: PROCEDURAL CHALLENGES OF "DEEPAKES" AND THEIR SOLUTIONS IN THE AGE OF ARTIFICIAL INTELLIGENCE

Abstract. Purpose. The modern justice system is facing an existential challenge posed by the rapid development of generative artificial intelligence (AI) and its ability to create hyper-realistic audio and video materials, known as "deepfakes." The capability to fabricate compelling yet entirely false evidence, such as video confessions, audio recordings of conversations, or photographs from a crime scene, undermines the fundamental principle of evidence law the reliability and authenticity of proof. This threat is twofold. On one hand, deepfakes can be used to wrongfully accuse innocent individuals or to help the guilty evade responsibility. On the other hand, a mirror phenomenon arises the "Liar's Dividend," where a party to a proceeding can discredit entirely authentic digital evidence by baselessly claiming it is an AI-generated forgery. This creates informational chaos, erodes trust in the evidentiary basis and the justice system as a whole, and presents the legal community with an urgent task of developing adequate countermeasures. The purpose of this article is to propose a comprehensive procedural and evidentiary model aimed at enhancing the justice system's resilience to digital evidence manipulation, based on an analysis of the technical, legal, and ethical aspects of the deepfake problem in litigation. This purpose is achieved by addressing the following objectives: analyzing the limitations of existing rules for evidence authentication; examining the relevant provisions of the EU AI Act and their insufficiency for resolving the problem in judicial proceedings; and formulating an innovative hypothesis for a combined countermeasure mechanism that balances the rights of the parties and ensures access to justice.

Research methods. The methodological basis of the article comprises general scientific and special legal methods. The formal-legal method was applied to analyze the norms of evidence law, particularly the U.S. Federal Rules of Evidence and the EU AI Act. The comparative-legal method allowed for the juxtaposition of regulatory approaches in different legal systems. The system-structural method was used to develop a comprehensive countermeasure mechanism that combines procedural, evidentiary, and financial elements. The methods of analysis and synthesis were employed to process scholarly publications and formulate coherent conclusions.

Results. The article proves that neither traditional rules of evidence authentication nor new legislation like the EU AI Act can fully address the problem of deepfakes in judicial proceedings. The EU Act, while establishing important transparency obligations, relies on the good faith of content creators and fails to counter the malicious use of deepfakes to falsify evidence. The principal outcome of the research is the development of an original three-component model:

1) a two-tiered standard of authentication with a burden-shifting framework, which is activated only after the challenging party provides a minimal, good-faith basis for its doubts; 2) strengthening the role of the judge as an active "gatekeeper of evidence" who decides the issue of authenticity at a preliminary stage; 3) implementing a flexible mechanism for allocating the high costs of digital forensics to ensure equal access to justice.

Conclusion. The current evidentiary paradigm requires urgent adaptation.

The proposed comprehensive model, which combines evidentiary, procedural, and financial incentives, is more effective than attempts to solve the problem solely through technology or piecemeal legislative changes. The author proposes: 1) at the EU and national levels, to initiate the development of harmonized procedural norms that implement the proposed model; 2) for professional legal associations, such as the Council of Bars and Law Societies of Europe (CCBE), to develop ethical guidelines on countering the "Liar's Dividend"; 3) for judicial training institutions, such as the European Judicial Training Network (EJTN), to introduce specialized training for judges and prosecutors on handling digital evidence in the age of AI.

Key words: deepfakes, artificial intelligence, evidence authentication, admissibility of evidence, Liar's Dividend, EU AI Act, judicial proof.

1. Introduction

The Fourth Industrial Revolution, unfolding before our eyes, has brought not only technological progress but also new, previously unimaginable threats to fundamental societal institutions. One of the most vulnerable has been the institution of justice, the foundation of which is trust in facts and evidence. The emergence and rapid proliferation of generative artificial intelligence (AI) and, in particular, "deepfake" technology, have heralded a new era where the line between reality and its synthetic imitation is becoming increasingly blurred (Vig, 2024). The ability of AI to generate photos, audio, and video that are virtually indistinguishable from real ones creates a perfect tool for manipulation and falsification in judicial proceedings.

The problem is not limited to the risk of fabricated evidence appearing in a case file. Equally dangerous is the reverse effect, aptly termed by scholars as the "Liar's Dividend". This term describes a situation where the very existence of deepfake technology allows unscrupulous litigants to cast doubt on any genuine digital evidence by baselessly claiming it is artificial (Citron & Chesney, 2019). As a result, judges and juries find themselves in a state of profound uncertainty, which can lead to a "reverse CSI effect" a total skepticism towards all digital evidence, undermining trust in the justice system itself. This dual challenge presents legal science and practice with the important task of developing a new evidentiary paradigm capable of adapting to the realities of the digital age and protecting the truth-finding process from manipulation.

2. Analysis of Recent Research and Publications

The issue of deepfakes' impact on the judiciary is actively discussed in foreign, predominantly American, legal doctrine. Researchers have broadly divided into two camps.

Proponents of the first, such as Riana Pfefferkorn, believe that existing procedural norms, particularly the U.S. Federal Rules of Evidence (FRE), are flexible enough to counter new threats. They emphasize that the combination of authentication rules (FRE 901), judicial oversight (FRE 104, 403), and the adversarial process (cross-examination, expert witnesses) creates a sufficient filter (Pfefferkorn, 2021).

In contrast, another group of scholars, including Jim Hilbert, argues that the unique nature of deepfakes, which perfectly imitate reality, requires the creation of new, specialized rules.

Their proposals range from raising the standard of proof for authentication to transferring the authority to determine authenticity from the jury to the judge (Sohrawardi & others, 2020; Hilbert, 2019).

Of particular note is the so-called "Deepfake Defence", which poses a serious ethical and evidentiary dilemma for judges (Dixon, 2024).

Rebecca Delfino's work deserves special mention, as he focuses on the problem of access to justice, arguing that the high cost of digital forensics creates a "pay-to-play" system, where only wealthy parties can afford to effectively prove or disprove the authenticity of evidence (Delfino, 2024).

At the same time, despite the depth of analysis of individual aspects, the problem of creating a comprehensive mechanism that would simultaneously counter the direct use of deepfakes, the abuse of the "Liar's Dividend," and the problem of unequal access to justice remains unresolved. Furthermore, most research focuses on the U.S. legal system, while the analysis of the latest European legislation, particularly the EU AI Act, and its relationship with evidence law remains fragmented. This article is dedicated to addressing this complex problem and filling the indicated gap.

3. Purpose and Objectives of the Scientific Research

The purpose of this research is to develop and substantiate a comprehensive procedural and evidentiary model aimed at neutralizing the threats posed by "deepfakes" and AI-generated disinformation to the justice system.

To achieve this purpose, the following objectives were set:

1. To analyze the technical nature of deepfakes and identify the key challenges they pose to traditional methods of evidence authentication.
2. To examine existing legal norms and judicial practice (using the U.S. as an example regarding the handling of challenged digital evidence and to identify their weaknesses).
3. To analyze the provisions of the EU Artificial Intelligence Act concerning deepfakes and determine the limits of its applicability in the context of judicial proof.
4. To formulate and substantiate an innovative three-component model of procedural response that combines evidentiary, procedural, and financial elements.
5. To develop specific recommendations for European and national legislators, professional legal associations, and judicial training institutions on the implementation of the proposed model.

4. Scientific Methods Used

The methodological basis of the research consists of a system of philosophical-worldview, general scientific, and special legal methods of cognition. The dialectical method allowed for the examination of the deepfake problem in its development and the interconnection of its technical, legal, and ethical aspects. The for-

mal-legal method was used to analyze the content of legal norms, particularly the U.S. Federal Rules of Evidence and the EU AI Act. The comparative-legal method was useful in contrasting regulatory approaches and judicial practices in different jurisdictions. The system-structural method formed the basis for developing a holistic model for countering deepfakes, consisting of interconnected elements. The methods of analysis and synthesis were employed to process scholarly sources, identify key ideas, and generalize them in the conclusions and proposals.

5. Presentation of the Main Research Material

The essence of the technical challenge lies in the continuous improvement of the generative adversarial networks (GANs) underlying deepfakes. Each new iteration of the algorithms learns from the mistakes of the previous ones, making passive detection methods (searching for visual artifacts, anomalies) increasingly unreliable. This creates a situation of a constant "arms race," where the legal system, being inherently more inert, risks always being one step behind the technologies of falsification.

For the law, this means that relying solely on an expert's technical opinion regarding the authenticity of a recording becomes dangerous. If today an expert can detect a forgery by a barely noticeable flicker of the skin around the eyes, tomorrow a new algorithm will learn to imitate this aspect as well. Therefore, the legal response should focus not on finding a silver bullet" in the form of a perfect detector, but on creating a robust procedural framework that can withstand the pressure of technological uncertainty. This procedure must ask the right questions: not only "Is this recording a fake?" but also "What is the origin of this file?", "Is there an unbroken chain of its custody?", "What motives and opportunities did the party presenting it have to alter it?"

The EU Artificial Intelligence Act is a revolutionary step in regulating technology, but its architecture is primarily aimed at market regulation and consumer protection, not the reform of evidence law (European Parliament, 2024). The key provision, Article 50, which requires the labeling of deepfakes, is based on a presumption of good faith. It is effective against pranksters, marketers, or even some media outlets, but it is completely powerless against a person who purposely creates false evidence for use in a criminal proceeding to evade punishment for a serious crime. Such a malicious actor will never voluntarily label their creation as a deepfake.

The classification of AI systems for justice as "high-risk" is also an important but insufficient step. It regulates the use of AI by judicial

authorities (e.g., for case analysis), but it does not address the situation where AI-generated content enters the process from the outside, as evidence from one of the parties.

Thus, the Act creates an important foundation but leaves a critical gap concerning the adversarial process of proving authenticity. This gap must be filled by special procedural rules.

To fill this gap and create an effective countermeasure system, a three-component model is proposed, which should be implemented through harmonized legislation.

The need to combine technological and legal approaches for the authentication of evidence is a central thesis of modern research (Goldstein & Lohn, 2024).

Component 1: A Two-Tiered Standard of Authentication with a Burden-Shifting Framework.

This mechanism is designed to strike a balance between preventing forgeries and protecting against baseless accusations of fakery.

First Tier (Basic Authentication): The party submitting digital evidence (video, audio) performs the standard authentication procedure. This could be the testimony of the person who made the recording or another person who can confirm that the recording is a fair and accurate representation of the events. At this stage, a presumption of authenticity applies.

– **Activation of the Second Tier:** The opposing party may challenge the evidence, claiming it is a deepfake. However, to prevent the abuse of the "Liar's Dividend", a simple assertion is insufficient. The challenging party is required to provide the court with a minimal, "good faith" evidentiary basis for its doubts. This does not require a full expert report but must be more than a mere allegation. Examples of such a basis could include:

– A preliminary report from a technical specialist pointing to specific visual or audio anomalies.

– Evidence of an alibi for the person depicted in the video, making their presence at the specified time and place highly improbable.

– An indication that the file shows signs of editing, has inconsistent metadata, or has breaks in the chain of custody.

– **Second Tier (Heightened Authentication):** Only after the court finds that such a good-faith basis exists does the burden of proving authenticity shift to the party that submitted the evidence. However, the standard of proof is now significantly higher. The party must not only provide a witness but also likely engage an expert to confirm the file's integrity and provide evidence of an unbroken chain of custody from the moment of its creation to its submission in court.

Component 2: Strengthening the Judge's Role as an Active "Gatekeeper of Evidence".

The question of the authenticity of challenged digital evidence, given its technical complexity and potential to confuse the jury, should be decided exclusively by the judge in a preliminary hearing. This will allow for the filtering out of baseless claims and prevent evidence of questionable authenticity from being considered by the jury. The judge must be given clear authority to assess not only the evidence itself but also the reliability of the methods and technologies used by experts for its analysis, guided by criteria of scientific validity.

Component 3: A Flexible Mechanism for Allocating the Costs of Expertise.

Digital forensic expertise is extremely expensive, creating significant inequality between parties with different financial capabilities. To ensure genuine access to justice, courts must be empowered to flexibly allocate the costs of such expertise. Instead of automatically imposing the costs on the losing party or the party that initiated the expert examination, the court should consider a range of factors:

- The financial situation of the parties.
- The reasonableness of the claim of forgery.
- The outcome of the authenticity determination.

For example, if a party's claim that a piece of evidence is a deepfake proves to be justified, the court may impose the costs of the expertise on the opposing party, which attempted to mislead the court. Conversely, if the claim is found to be baseless and shows signs of abuse of rights, all related costs are imposed on the initiator of such a claim. This will create a powerful economic incentive for the parties to act in good faith.

6. Conclusions

This research concludes that the threat posed by "deepfakes" to the justice system is systemic and therefore requires an equally systemic response. Piecemeal technological solutions or minor legislative changes cannot fully solve the problem. Only a comprehensive approach that combines procedural rules, evidentiary standards, and economic incentives can create a resilient and adaptive justice system.

The proposed three-component model (a two-tiered standard of authentication, an enhanced role for the judge, and flexible cost allocation) constitutes such a comprehensive solution. It is aimed not at a complete ban or ignorance of digital evidence but at creating a reliable procedure for its verification that protects against both forgeries and baseless accusations, while ensuring equal access to justice.

Prospects for further research in this area are multifaceted. First, empirical research is needed to examine the impact of deepfakes and the "Liar's Dividend" on how professional judges and juries in different jurisdictions perceive and evaluate evidence. Second, it is essential to develop specific methodological recommendations and training programs for judges,

prosecutors, and lawyers based on the proposed model. Third, an important area is the further analysis of international cooperation in the exchange and mutual recognition of digital evidence, particularly in a context where the risk of forgery is transnational. Finally, the development of authentication technologies, such as standardized digital watermarks and blockchain systems for recording provenance, requires constant legal monitoring for their possible integration into evidence law.

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ВІД СИНТЕТИЧНОЇ РЕАЛЬНОСТІ ДО СУДОВОЇ ДІЙСНОСТІ: ПРОЦЕСУАЛЬНІ ВИКЛИКИ «ГЛИБИННИХ ФЕЙКІВ» ТА ШЛЯХИ ЇХ ВИРІШЕННЯ В ЕПОХУ ШТУЧНОГО ІНТЕЛЕКТУ

Анотація. Сучасна система правосуддя зіткнулася з екзистенційним викликом, зумовленим стрімким розвитком генеративного штучного інтелекту (ШІ) та його здатністю створювати гіперреалістичні аудіо- та відеоматеріали, відомі як «глибинні фейки» (deepfakes). Можливість сфабрикувати переконливі, проте цілком неправдиві докази, такі як відео зізнання, аудіозаписи розмов чи фотографії з місця злочину, руйнує фундаментальний принцип доказового права - достовірність та автентичність доказів. Ця загроза є подвійною. З одного боку, дїпфейки можуть бути використані для безпідставного обвинувачення невинних осіб або для уникнення відповідальності винними. З іншого боку, виникає дзеркальний феномен — «дивіденд брехуна» (Liar's Dividend), коли сторона процесу може дискредитувати цілком автентичні цифрові докази, безпідставно заявляючи, що вони підробкою, створеною ШІ. Це створює інформаційний хаос, підриває довіру до доказової бази та системи правосуддя загалом, ставлячи перед юридичною спільнотою нагальне завдання з розробки адекватних механізмів протидії.

Мета цієї статті полягає в тому, щоб на основі аналізу технічних, правових та етичних аспектів проблеми дїпфейків у судочинстві запропонувати комплексну процесуально-доказову модель, спрямовану на підвищення стійкості системи правосуддя до маніпуляцій із цифровими доказами. Мета досягається через вирішення завдань: аналіз обмеженості існуючих правил автентифікації доказів; дослідження релевантних положень Акту ЄС про штучний інтелект та їх недостатності для вирішення проблеми в судовому процесі; формулювання інноваційної гіпотези щодо комбінованого механізму протидії, який збалансує права сторін та забезпечує доступ до правосуддя.

Методи. Методологічну основу статті склали загальнонаукові та спеціально-юридичні методи. Формально-юридичний метод застосовано для аналізу норм доказового права, зокрема Федеральних правил доказування США та Акту ЄС про ШІ. Порівняльно-правовий метод дозволив зіставити підходи до регулювання в різних правових системах. Системно-структурний метод використано для розробки комплексного механізму протидії, що поєднує процесуальні, доказові та фінансові елементи. Методи аналізу та синтезу застосовувались для опрацювання наукових публікацій та формування цілісних висновків.

Результати. У статті доведено, що ані традиційні правила автентифікації доказів, ані нове законодавство, як-от

Акт ЄС про ШІ, не здатні повною мірою вирішити проблему дїпфейків у судовому процесі. Акт ЄС, хоч і встановлює важливі зобов'язання щодо прозорості, покладається на добросовісність творців контенту і не протидіє зловмисному використанню дїпфейків для фальсифікації доказів.

Основний результат дослідження полягає у розробці авторської трикомпонентної моделі: 1) дворівневий стандарт автентифікації з механізмом перекладання тягаря доведення, що активується лише після надання стороною-опонентом мінімального добросовісного обґрунтування своїх сумнівів; 2) посилення ролі судді як активного «охоронця доказів», який вирішує питання автентичності на досудовому етапі; 3) впровадження гнучкого механізму розподілу високих витрат на цифрову експертизу для забезпечення рівного доступу до правосуддя.

Висновки. Сучасна доказова парадигма потребує термінової адаптації. Запропонована комплексна модель, що поєднує доказові, процесуальні та фінансові стимули, є більш ефективною, ніж спроби вирішити проблему виключно через технології чи точкові зміни до законодавства. Автором пропонується: 1) на рівні ЄС та національних юрисдикцій розпочати розробку гармонізованих процесуальних норм, що імплементують запропоновану модель; 2) професійним юридичним об'єднанням, таким як Рада адвокатських та правничих товариств Європи (CCBE), розробити етичні настанови щодо протидії «дивіденду брехуна»; 3) судовим навчальним закладам, таким як Європейська мережа підготовки суддів (EJTN), впровадити спеціалізовані тренінги для суддів та прокурорів щодо роботи з цифровими доказами в епоху ШІ.

Ключові слова: глибинні фейки, штучний інтелект, автентифікація доказів, допустимість доказів, дивіденд брехуна, Акт ЄС про ШІ, судове доказування.

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ENCOURAGING LEGAL NORMS AS A TOOL FOR THE REALIZATION OF HUMAN RIGHTS: A THEORETICAL AND LEGAL ANALYSIS

Abstract. Purpose. The purpose of this study is to provide a comprehensive theoretical and legal analysis of encouraging legal norms as a tool for the realization of human rights, to clarify their nature and place within the mechanism of legal regulation, to develop a cross-sectoral classification and criteria of effectiveness, as well as to formulate proposals for improving legislation and the practice of their application. **Research methods.** The research methodology is based on a systematic review of scientific sources and conceptual approaches, which made it possible to formulate well-grounded conclusions and develop practical recommendations. **Results.** The study identifies and distinguishes encouraging norms from other legal prescriptions, proposes a cross-sectoral classification, and outlines mechanisms of their influence. Examples of application in constitutional, criminal, administrative, and civil law are systematized. Criteria of quality and a methodology for evaluating effectiveness are formulated, along with practical recommendations for improving regulation. **Scientific novelty.** The novelty of this research lies in refining the definition of an “encouraging norm,” developing a cross-sectoral classification and a model of its influence on the realization of rights; substantiating the “stimulating function” of the Constitution and systematizing sectoral incentives (criminal, administrative, civil); introducing quality criteria and a methodology for evaluating effectiveness with proposals for harmonization with the standards of the European Court of Human Rights and the EU acquis, as well as transparent monitoring of their application. **Conclusions.** It is concluded that encouraging legal norms constitute an important element of the legal system, linking individual interests of the person with public interests of society and the state. They not only secure opportunities for the realization of human rights but also foster positive motivation for lawful and socially beneficial behavior. At the constitutional level, encouraging norms are aimed at supporting personal development, guaranteeing social and economic rights, and stimulating civic activity, thereby creating a balance between individual freedom and responsibility to society. In sectoral legislation, encouraging norms manifest themselves in criminal, administrative, and civil law, performing humanistic, preventive, and stimulating functions. In criminal law, they ensure conditions for resocialization and cooperation with the state; in administrative law, they motivate both civil servants and citizens to participate actively in public life; in civil law, they support the freedom of contract, good faith of the parties, and the protection of intellectual creativity results.

Key words: encouraging legal norms, human rights, realization of rights, Constitution of Ukraine, criminal-law incentives, administrative-law incentives, civil law, freedom of contract, good faith, intellectual property, legal consciousness and legal culture, resocialization, proportionality.

1. Introduction

Traditionally, legal regulation is associated with prohibitions, restrictions, and coercive measures. However, such an approach is one-sided and does not fully reflect the potential of law as a means of harmonizing relations between the individual, society, and the state.

The problem lies in the insufficient theoretical elaboration and practical application

of encouraging norms within the domestic legal system. Despite their existence in the Constitution of Ukraine and in sectoral legislation (criminal, administrative, and civil law), there is no clear concept of their place and role in the mechanism of human rights realization. Their interaction with traditional regulative and protective norms, as well as their influence on the formation of legal consciousness, legal

culture, and social activity of citizens, remains insufficiently studied.

Thus, the relevance of the problem is determined by the need for an in-depth theoretical and legal analysis of encouraging norms as a tool for the realization of human rights, their systematization, and the improvement of mechanisms of their application in the context of democratic transformation of Ukrainian society.

The issue of encouraging legal norms is widely reflected in the works of Ukrainian and foreign scholars, who consider them in the context of general theory of law and sectoral regulation—constitutional, criminal, administrative, and civil law—as well as through the prism of the psychology of legal behavior and the formation of legal consciousness. At the same time, there is still a lack of theoretical and legal analysis of encouraging norms as a tool for the realization of human rights, clarification of their nature, and determination of their place within the mechanism of legal regulation.

2. The Concept and Characteristics of Legal Encouragement

In the context of this study, legal encouragement can be defined as forms of positive assessment by the state of voluntary and socially beneficial behavior of an individual, enshrined in legal norms and accompanied by the granting of certain material or moral benefits. They serve as a specific instrument for stimulating lawful activity, combining the individual interests of a person with the interests of society and the state (Barabash, Kotukha, 2023).

The key features of legal encouragement are: the positive assessment by the state of conduct that complies with legal norms and contributes to social welfare; the voluntary nature of actions that constitute the grounds for encouragement; merit as a criterion for receiving encouragement; and a strong psychological impact that fosters stable internal motivation for lawful actions (Kozachuk, 2010).

Due to these characteristics, encouraging norms become an effective legal mechanism for the realization of human rights. They not only contribute to the actual enforcement of constitutional rights and freedoms but also to the active involvement of citizens in socially significant activities. In this context, legal encouragement creates positive motivation through the prospect of obtaining legislatively defined advantages – ranging from additional social guarantees and benefits to moral recognition.

It is important to emphasize that encouragement has not only an individual but also a social dimension. It influences the environment, creating an effect of emulation: examples of encouraged actions become a reference point for other members of society. This fosters a favorable psy-

chological climate in which an individual develops an internal need to act actively, lawfully, and responsibly.

The Constitution of Ukraine enshrines a set of both traditional and modern guarantees of human and citizen's rights and freedoms, which provide everyone with the opportunity to choose their own model of behavior, to enjoy economic, socio-political freedoms, and social benefits in personal and collective interests. In this context, encouraging legal norms play an important role, as they not only secure rights but also stimulate their active realization by granting additional opportunities, benefits, or preferences.

In our view, encouraging norms at the constitutional level are manifested in several directions. First, they support and stimulate personal development. For instance, Article 23 of the Constitution of Ukraine (Constitution of Ukraine, 1996) proclaims the right of everyone to the free development of their personality, provided that in doing so they do not violate the rights and freedoms of others. Such a provision has not only a declarative but also a stimulating character, as it creates conditions for the harmonious self-expression of an individual. It encourages a person to realize their potential, securing their freedom in choosing life orientations, professional or creative paths. Thanks to such a stimulus, constitutional provisions are transformed into a real instrument of legal and social development. At the same time, this constitutional guarantee reflects the balance between individual freedom and social responsibility: a person is free in their self-development, yet their activities must not harm others or restrict their rights. Thus, Article 23 demonstrates a distinctive feature of encouraging legal norms – the creation of a favorable space for personal growth under conditions of mutual respect and rule of law. This provision also performs an important educational function: it motivates citizens to lawful behavior, fosters legal culture, and strengthens social integration, since through individual self-realization society as a whole is enriched. In this context, legal encouragement appears not only as an individual good but also as a factor of social development that reinforces democratic values and contributes to the building of a rule-of-law state.

Second, these are guarantees of social and economic rights. The Constitution of Ukraine enshrines the right to work (Art. 43), education (Art. 53), social protection (Art. 46), and health care (Art. 49) (Constitution of Ukraine, 1996). These provisions not only establish legal guarantees but also perform an encouraging function: the state motivates citizens to actively participate in public life by

creating conditions for obtaining additional benefits – from social payments and privileges to educational and medical opportunities. Constitutional provisions in the sphere of social and economic rights have a distinctly stimulating character. They orient citizens toward obtaining education, improving qualifications, professional activity, and social responsibility, since each person who realizes their rights in these areas receives additional advantages – professional development, access to social guarantees, health care, or pension provision. This reveals one of the key features of encouraging norms: they combine individual interest with social benefit.

Moreover, such norms create the preconditions for the formation of social solidarity. When the state guarantees everyone the right to decent working conditions, education, or health care, this not only ensures individual needs but also strengthens citizens' trust in the state as a guarantor of justice. As a result, a dual stimulating effect arises: the individual is motivated to realize their rights, while the state benefits from more active, educated, and socially protected citizens capable of contributing to the development of society.

Third, these norms stimulate civic activity. Article 38 of the Constitution of Ukraine guarantees the right to participate in the administration of state affairs; Article 36 guarantees the right to freedom of association in political parties and public organizations; and Article 54 guarantees freedom of literary, artistic, scientific, and technical creativity (Constitution of Ukraine, 1996). Such provisions encourage individuals to become actively involved in political, social, and cultural life, creating legal incentives for self-realization in various spheres. Their stimulating character lies in the fact that they provide individuals with additional opportunities to realize their potential through participation in public and state life. Constitutional guarantees of civic activity create preconditions for the development of democracy, since citizens, exercising their right to vote, to associate, or to engage in creativity, simultaneously influence social processes and become co-creators of legal order.

Furthermore, such norms perform an educational function: they motivate individuals not to be passive observers but to take direct part in shaping state policy, cultural environment, and scientific progress. This contributes to the development of legal consciousness and increases trust in democratic institutions. In a broader dimension, stimulating norms at the constitutional level creates a space for the formation of civil society, where personal activity and initiative become essential val-

ues. This demonstrates that the Constitution of Ukraine not only establishes rules of coexistence but also encourages individuals to be active participants in social change, which directly corresponds to the principles of the rule-of-law state.

3. Specific Features of the Consolidation of Incentive Norms in Sectoral Legislation

In this context, it should be noted that the institution of incentive norms is also reflected in sectoral legislation, in particular in criminal law. The Criminal Code of Ukraine is traditionally associated with restrictions, prohibitions, and punishments. At the same time, its structure enshrines a number of incentive norms that play an important role in shaping law-abiding behavior and in implementing the principles of humanism and justice. Such norms create legal incentives for socially useful activity, even if a person has already committed a crime. Their main manifestations include release from criminal liability, exemption from punishment or its mitigation, as well as special incentives for cooperation with the state.

In particular, release from criminal liability is provided in cases of active repentance (Art. 45), reconciliation of the offender with the victim (Art. 46), change of circumstances (Art. 48), and expiration of limitation periods (Art. 49). These provisions encourage individuals to admit guilt, compensate for damages, and restore social justice without the application of strict sanctions. Another manifestation is exemption from punishment or its mitigation, expressed in parole (Art. 81), substitution of the unserved part of a punishment with a milder one (Art. 82), release of pregnant women and women with young children (Art. 83) (Criminal Code of Ukraine, 2001). Such norms take into account individual life circumstances and promote the resocialization of convicts. An important type of incentive norms is special incentives for cooperation with the state: in a number of criminal offenses (e.g., provisions on terrorism, banditry, bribery), exemption from criminal liability is provided for individuals who voluntarily report a crime, assist in its disclosure, or help prevent it. This motivates offenders to cooperate with law enforcement authorities while ensuring the protection of public interests.

Therefore, incentive norms in the Criminal Code of Ukraine have a dual nature. On the one hand, they serve as a tool for the realization of human rights, as they allow avoiding excessive criminal repression by taking into account humanistic and social factors. On the other hand, they perform a preventive function, since they encourage offenders to reform, cooperate with the state, and restore the violated rights of victims.

Modern administrative legislation contains a considerable number of incentive norms that perform a stimulating function aimed at increasing the efficiency of public administration and fostering civic engagement. In the field of civil service and public administration, administrative law provides for a system of moral and material incentives: letters of appreciation, awarding certificates of merit, early conferral of ranks, bonuses, as well as advanced training at the state's expense. Such measures motivate civil servants to perform their duties with high quality, increase their sense of responsibility, and set a positive example for others. In addition, executive authorities and local self-government bodies apply various types of incentives to citizens who make significant contributions to the development of the community or the state. This may include awarding honorary titles, presenting state and departmental distinctions, granting benefits or social guarantees, in particular to combatants, volunteers, and large families. Such incentives promote the development of civic consciousness and an active life position.

A special example can be found in the norms of the Code of Ukraine on Administrative Offenses, where Article 22 (Code of Ukraine on Administrative Offenses, 1984) provides the possibility of replacing an administrative sanction with an oral warning. This is a peculiar form of moral encouragement that motivates individuals to refrain from further offenses, demonstrating that administrative law may apply not only punitive but also educational methods of influence. At the same time, incentive norms of administrative law are also manifested in the support of citizens' initiatives and public associations: through scholarships for talented youth, grants for community projects, and support for cultural and scientific initiatives. All this helps create an atmosphere of trust and cooperation between the state and society.

Unlike criminal or administrative law, the primary purpose of civil law is not coercion, but the creation of conditions for the independent determination of the parties' conduct and the exercise of their rights. In this context, incentive norms acquire special significance, as they are aimed at supporting and stimulating active lawful behavior, developing private initiative, and protecting the results of intellectual activity. An important manifestation of incentive norms in the sphere of exercising rights is the principle of freedom of contract, enshrined in Articles 6 and 627 of the Civil Code of Ukraine (Civil Code of Ukraine, 2003), which allows the parties to freely determine the conditions of interaction, choose the form

of contract, and even create new types of contracts not provided for by legislation, provided they do not contradict the law. Such a norm has a stimulating character, as it encourages subjects of civil turnover to demonstrate creativity, initiative, and independence in regulating their legal relations, thereby ensuring the flexibility of the legal system and promoting the development of market relations. Equally important is the principle of good faith in civil relations (Arts. 3, 13), which acts not only as a restriction but also as a stimulus: participants who act in good faith enjoy a higher level of protection of their rights, including in judicial practice. This means that the exercise of rights is carried out through the encouragement of behavior that corresponds to moral and legal values, fostering an environment of trust between the parties. A separate place is occupied by norms regulating intellectual property rights (Book Four of the Civil Code of Ukraine), which create incentives for the development of science, technology, culture, and art. They guarantee authors and inventors both property and personal non-property rights, including the right to remuneration, recognition of authorship, patent protection, etc., thereby forming a motivational basis for creative activity and contributing to the innovative development of society.

4. Conclusions

Incentive norms of law constitute an important element of the legal system, combining the individual interests of a person with the public interests of society and the state. They not only establish opportunities for the exercise of human rights but also form positive motivation for lawful and socially useful behavior. At the constitutional level, incentive norms are aimed at supporting personal development, guaranteeing social and economic rights, and stimulating civic engagement, thereby creating a balance between individual freedom and social responsibility.

In sectoral legislation, incentive norms are manifested in criminal, administrative, and civil law, performing humanistic, preventive, and stimulating functions. In criminal law, they provide conditions for resocialization and cooperation with the state; in administrative law, they motivate both civil servants and citizens to actively participate in public life; in civil law, they support freedom of contract, good faith of the parties, and the protection of intellectual property results.

Thus, incentive norms serve as a tool not only for securing but also for the practical realization of human rights. They contribute to the development of legal consciousness, the enhancement of trust in democratic institutions, the formation of civic engagement,

and the strengthening of legal culture, which are essential conditions for building a rule-of-law and socially responsible state.

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ЗАОХОЧУВАЛЬНІ НОРМИ ПРАВА ЯК ІНСТРУМЕНТ РЕАЛІЗАЦІЇ ПРАВ ЛЮДИНИ: ТЕОРЕТИКО-ПРАВОВИЙ АНАЛІЗ

Анотація. *Метою* роботи є комплексний теоретико-правовий аналіз заохочувальних норм як інструменту реалізації прав людини, з'ясування їх природи та місця в механізмі правового регулювання, розроблення міжгалузевої класифікації й критеріїв ефективності, а також формулювання пропозицій щодо вдосконалення законодавства та практики їх застосування. **Методи.** Методика дослідження базується на системному опрацюванні наукових джерел і концептуальних підходів, що дало змогу сформулювати обґрунтовані висновки та виробити практичні рекомендації. Results. У результаті дослідження визначено заохочувальні норми та відмежовано їх від інших правових приписів, запропоновано міжгалузеву класифікацію й окреслено механізми їх впливу. Систематизовано приклади застосування у конституційному, кримінальному, адміністративному та цивільному праві. Сформульовано критерії якості й методик оцінювання ефективності, а також подано практичні рекомендації щодо вдосконалення регулювання. Наукова новизна полягає в удосконаленні визначення «заохочувальної норми», розроблено міжгалузеву класифікацію та модель її впливу на реалізацію прав; обґрунтовано «стимульовальну функцію» Конституції й систематизовано галузеві заохочення (кримінальні, адміністративні, цивільні); запроваджено критерії якості та методик оцінювання ефективності з пропозиціями гармонізації зі стандартами Європейського суду з прав людини та *acquis* ЄС і прозорого моніторингу їх застосування. **Висновки.** Зроблено висновок, що заохочувальні норми права становлять важливий елемент правової системи, що поєднує індивідуальні інтереси особи з публічними інтересами суспільства і держави. Вони не лише закріплюють можливості для реалізації прав людини, але й формують позитивну мотивацію до правомірної та соціально корисної поведінки. Конституційний рівень заохочувальних норм орієнтований на підтримку розвитку особистості, гарантування соціальних і економічних прав та стимулювання громадянської активності, що створює баланс між свободою індивіда та відповідальністю перед суспільством. У галузевому законодавстві заохочувальні норми проявляються у кримінальному, адміністративному та цивільному праві, виконуючи гуманістичну, превентивну й стимулюючу функції. У кримінальному праві вони забезпечують умови для ресоціалізації та співпраці з державою, в адміністративному – мотивують як державних службовців, так і громадян до активної участі у публічному житті, у цивільному – підтримують свободу договору, добросовісність сторін та захист результатів інтелектуальної творчості.

Ключові слова: заохочувальні норми прав, права людини, реалізація прав, Конституція України, кримінально-правові заохочення, адміністративно-правові заохочення, цивільне право, свобода договору, добросовісність, інтелектуальна власність, правосвідомість і права культура, ресоціалізація, пропорційність.

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INSTITUTIONAL CONTINUITY OF THE LEGAL IDEAS OF UKRAINIAN POLITICAL PARTIES IN THE CONTEXT OF THE NATIONAL LEGAL TRADITION

Abstract. Purpose. The purpose of the article is to conduct a comprehensive analysis of the institutional continuity of the legal ideas of Ukrainian political parties in the context of the national legal tradition, to identify the mechanisms of transmission and adaptation of political and legal concepts in party programmatic documents and practical activities, and to determine their influence on the formation of modern legal culture and state-building processes in Ukraine. **Results.** The article presents an in-depth study of the institutional continuity of legal ideas developed by Ukrainian political parties of the late 19th – early 20th centuries within the framework of the national legal tradition. The research reveals how, in the absence of state independence, Ukrainian political parties served as carriers of fundamental values and principles that shaped the trajectory of Ukrainian legal discourse. The analysis focuses on the key legal ideas of that period – popular sovereignty, local self-government, federalism and decentralization, guarantees of human rights and freedoms, and national-cultural autonomy – as reflected in party programs, publicistic writings, parliamentary activity, and the work of cultural and educational associations. Special attention is paid to the institutional mechanisms ensuring the preservation and transmission of legal ideas: programmatic documents, party press, representative bodies of authority, civic organizations, personnel continuity, and educational institutions. These channels not only preserved the substantive content of the ideas but also enabled their adaptation to changing political and legal conditions, thereby creating a foundation for their reproduction in subsequent stages of Ukrainian history. The article demonstrates that the modern legal framework of Ukraine has inherited a range of provisions embedded in the party concepts of the early 20th century: the affirmation of popular sovereignty, democratic electoral procedures, guarantees of minority rights, the principle of subsidiarity in the system of local self-government, and the priority of human rights and freedoms. It also analyzes how these ideas were integrated into the Constitution of Ukraine, sectoral legislation, and political practice, in conjunction with modern international legal standards. **Conclusions.** The research findings confirm that the institutional continuity of legal ideas constitutes not only an object of historical and legal analysis but also a factor influencing the formation of national legal identity, ensuring the stability of legal development and strengthening state resilience during periods of crisis. The author substantiates that preserving and developing this continuity amid globalization processes and armed aggression against Ukraine is a crucial prerequisite for the sustainable development of Ukrainian statehood and legal culture.

Key words: institutional continuity, legal ideas, Ukrainian political parties, national legal tradition, popular sovereignty, local self-government, legal culture.

1. Introduction

The late 19th and early 20th centuries marked a period of intensive political institutionalization of the Ukrainian national movement, during which a system of political parties was formed and consolidated on clearly defined ideological, organizational, and legal foundations. The programmatic documents of these parties not only reflected their response to current political challenges but also created

an intellectual and conceptual basis for future models of state organization, the legal system, and social relations. The legal ideas embedded in these programs were deeply connected with the earlier development of Ukrainian political and legal thought, drawing upon the traditions of Cossack constitutional projects, the legal norms of the Hetmanate, and the institutions of community self-government that had evolved over centuries.

From a scholarly perspective, it is essential to identify and explain the mechanisms of institutional continuity of these legal ideas – that is, to determine how they transitioned from the level of party concepts to that of state and legal institutions, shaping the national legal tradition. In this context, it is important to understand how ideas formulated under conditions of statelessness managed to preserve their relevance and influence law-making during the period of the national liberation struggles of 1917–1921, as well as in the interwar and later periods.

The relevance of this research is determined by several factors. First, the study of institutional continuity helps to explain the persistence of Ukrainian legal culture, which integrates national traditions and European legal doctrines. Second, it provides insight into how political parties of the late 19th and early 20th centuries laid the foundations for modern democratic institutions – the parliament, local self-government, and legal guarantees of human rights. Third, the analysis of this process allows for a deeper understanding of the role of legal ideology in the formation of national statehood under conditions of limited or absent sovereignty.

The study of the institutional continuity of legal ideas of Ukrainian political parties is also relevant in the context of contemporary state-building, as Ukraine faces the challenge not only of preserving but also of reinterpreting its national legal tradition amid European integration and globalization. It is also significant for the development of legal theory, as it contributes to clarifying the concept of legal continuity and identifying its distinctive features within the national context.

The methodological foundation of this research includes the works of T. Andrusyak, B. Halayko, O. Hrabyl'nikova, L. Ilyn, O. Severinova, O. Sukhyi, Ye. Chornoshtan, and V. Yaremchuk. Their studies provide valuable analytical tools for understanding the continuity of legal ideas in the programs of Ukrainian political parties through the prism of the national legal tradition.

The purpose of this article is to conduct a comprehensive analysis of the institutional continuity of legal ideas of Ukrainian political parties in the context of the national legal tradition, to identify the mechanisms of transmission and adaptation of political and legal concepts in party programmatic documents and practical activities, and to determine their influence on the formation of modern legal culture and state-building processes in Ukraine.

2. Formation of Ukrainian Political Parties

At the turn of the 19th and 20th centuries, the Ukrainian political and legal envi-

ronment witnessed the process of formation and institutional consolidation of political parties, which, despite the absence of statehood, played an essential role in preserving and transmitting the national legal tradition. Under the conditions of the incorporation of Ukrainian lands into the Austro-Hungarian and Russian Empires, the party movement became one of the key instruments for representing public interests, political self-organization, and legal self-awareness of Ukrainians. Political programs, declarations, statutes, and other party documents enshrined ideas that had a direct impact on the formation of legal consciousness, political culture, and concepts of state-building.

Among the Ukrainian political parties of Galicia, Bukovyna, and Transcarpathia at the end of the 19th and the beginning of the 20th centuries, a special place belonged to the Ukrainian National Democratic Party (UNDP), the Ukrainian Radical Party (URP), the Christian Social Party, and the Ukrainian Social Democratic Party (USDP) (Sukhyi, 1998). It is also worth noting the Ruthenian-Ukrainian Radical Party, which was the first political institution on the territory of Ukraine but subsequently dissolved, serving as a foundation for the creation of the aforementioned parties.

In Dnipro Ukraine (Naddniproshchyna), where political activity was strictly limited by tsarist censorship and police control, significant ideological influence was exerted by the publicistic and programmatic works of Mykola Mikhnovskiy, Dmytro Antonovych, Serhii Yefremov, and Yurii Lypa. As a result, in 1891 a secret Ukrainian political organization, the *Brotherhood of Tarasivtsi*, was founded in Kharkiv, playing an important role in shaping and strengthening the ideological foundations of the Ukrainian national movement (Halaiko, 2016). Its activities contributed to the development of political awareness and the elaboration of programmatic principles that later became one of the conceptual sources for the establishment of the General Ukrainian Non-Party Democratic Organization. The operation of the Brotherhood not only promoted the dissemination of ideas of cultural and national revival but also laid the ideological and organizational foundations for the emergence of full-fledged political parties in Dnipro Ukraine.

In fact, in 1900, the Revolutionary Ukrainian Party (RUP) was established – the first classical political party in Dnipro Ukraine. By the time of the 1905 Revolution, around ten political parties were active in the region, although their average lifespan was relatively short.

All political parties of Western Ukrainian lands and Dnipro Ukraine developed their political discourse on the basis of the core elements

of the national legal tradition: the national idea, the idea of popular sovereignty, federalism (in various interpretations), the recognition of inalienable human and national rights and freedoms, and the principles of autonomy and self-government.

To specify these legal traditions, the foundational element was the **national idea**, which in the programs of Ukrainian political parties reflected the aspiration to integrate the ideals of state independence and cultural identity into political practice. Party documents gradually evolved from declarative protection of national rights toward comprehensive programs combining socio-economic, cultural, and state-building objectives. Particular attention was devoted to language, education, and local self-government as key instruments of national consolidation. The influence of European political and legal ideas contributed to the modernization of the concept of the national idea, granting it a more systematic and institutional character (Sukhyi, 1998).

Another recurrent concept in the programs of most Ukrainian political parties was the **idea of popular sovereignty**. For the UNDP and the URP, it was associated with the demand for parliamentary democracy, universal suffrage, and the establishment of representative bodies endowed with legislative authority and capable of overseeing the executive branch. In legal terminology, this demand signified the institutional entrenchment of the principle of **popular sovereignty** through mechanisms of both direct and representative democracy. The USDP, in turn, emphasized the socio-economic dimension of popular sovereignty, linking it to the expansion of workers' rights, the introduction of social guarantees, and the participation of the working class in political processes.

As for **political concepts**, the dominant among them were **federalist theories**, following the ideas of Mykhailo Drahomanov, who believed that Ukrainian statehood should be based on the principles of broad autonomy for territorial communities within a federative union. The UNDP, in its program, recognized the expediency of granting the Ukrainian lands autonomous status within a federalized Austro-Hungarian Empire, while part of the URP leadership favored a federal model on an all-Russian basis with guarantees of cultural and national autonomy (Chornosh-tan, 2012). The Christian Social Party, guided by Catholic social doctrine and the **principle of subsidiarity**, proposed a model of a decentralized state in which communities and regions would retain priority in resolving their own affairs, while higher levels of government would intervene only when necessary.

Another fundamental dimension of party ideology was the **concept of human rights and national rights**. These were often integrated into the broader framework of the national idea but varied in content depending on each party's ideological orientation. Party documents enumerated a set of fundamental rights and freedoms – freedom of speech, press, assembly, association, conscience, the right to national and cultural development, and the use of the native language in schools, courts, and public administration (Iaremchuk, 2012). These provisions reflected the aspiration toward the **legal institutionalization** of the essential elements of national identity. From a legal standpoint, this implied the consolidation of subjective public rights and guarantees of their judicial protection, which was significant not only within the domestic legal system but also in the context of international recognition of minority rights.

When speaking about the practical elements of legal organization, a special place in party programs was occupied by the idea of local self-government. Most parties advocated the right of territorial communities to independently resolve issues of local importance, to manage communal property, local finances, and infrastructure. In the legal sense, this implied the development of municipal authority based on the principles of electivity, accountability, and financial autonomy, which directly correlated with the traditions of Magdeburg Law and Cossack self-governance.

It should be noted that the content of party programs was not static – it evolved under the influence of historical events: the Revolution of 1905–1907, the reforms in Austria-Hungary (the introduction of universal male suffrage in 1907), the First World War, and the national liberation struggles of 1917–1921. Gradually, the emphasis shifted toward the necessity of an independent Ukrainian statehood as the only guarantee for the realization of political and civil rights. This transformation reflected the transition from autonomist and federalist programs to a distinct concept of sovereignty.

Importantly, even within different ideological frameworks – conservative, socialist, or Christian-democratic – one can trace a common legal foundation derived from national tradition: the priority of civil rights, orientation toward democratic procedures, and the recognition of the importance of self-government. This demonstrates the existence of stable elements of legal culture that persisted and were reproduced in various political forms.

Speaking about the factor of institutional continuity of the legal ideas of Ukrainian political parties of the late nineteenth and early twentieth

centuries, it was not an accidental or chaotic process, but rather a regular consequence of the interaction of multiple political-legal, sociocultural, and organizational factors. It refers to a complex system of channels and forms through which the ideas enshrined in programmatic documents and political journalism were preserved, adapted, and transmitted from one generation of political actors to another, maintaining their conceptual core while acquiring new interpretations in response to the changing historical context.

The first and most evident mechanism of continuity was represented by party programmatic documents – statutes and pre-election manifestos. In the legal sense, these documents performed the function of quasi-normative acts in the sphere of intra-party regulation and, at the same time, served as a public commitment to the electorate. Through their written codification, party ideas gained stability and could be reproduced in the future. For example, the principles of popular sovereignty, autonomy, and federalism proclaimed in the programs of the Ukrainian National Democratic Party (UNDP) or the Ukrainian Radical Party (URP) later resonated in the political declarations of the Central Rada period, demonstrating a direct link between the doctrinal provisions of the party period and the normative acts of the national liberation era.

The second significant channel of continuity was political journalism and the party press. Under conditions of limited access for Ukrainians to legal forms of political activity, the press (newspapers, journals, brochures) became an instrument not only of political agitation but also of shaping legal consciousness. The works of M. Drahomanov, I. Franko, M. Mikhnovsky, and V. Lypynsky contained a systematic exposition of politico-legal concepts that were preserved in collective memory and reproduced in the activities of subsequent political forces. The legal significance of this phenomenon lay in the fact that journalism created a doctrinal foundation upon which legislative initiatives or constitutional projects could later be justified.

The third institutional mechanism of continuity consisted in representative bodies of power. In this regard, it should be noted that while in Austria-Hungary the practice of such bodies had existed since 1861, following constitutional reforms and the establishment of provincial diets (Ilyn, 2013), in the Dnieper region a similar practice was realized only during the Revolution of 1905–1907 and did not acquire a systematic character. The participation of Ukrainian party figures in the work of these representative institutions contributed to the transfer of political ideas from the realm of theoretical programs into the realm of law-making activity. For instance,

Ukrainian deputies in the Galician Sejm regularly introduced proposals aimed at expanding the rights of the Ukrainian language, developing education, and supporting rural communities, thereby reflecting the principles declared in party programs (Ilyn, 2017). Thus, parliamentary activity became a kind of mechanism for the “normative codification” of ideas originating in the party milieu.

The fourth channel was represented by public organizations and cultural-educational societies closely linked to party structures. *Prosvita*, *Ruska Besida*, and cooperative unions performed the function of informal institutions of civil society which, while not political parties in the strict sense, contributed to the preservation and dissemination of legal ideas (Andrusiak, 1999; Andrusiak, 2010). Here, the effect of “institutional inertia” was at work: even after the prohibition or weakening of a given party’s activity, organizations affiliated with it continued to cultivate its legal discourse, particularly concerning self-government, cooperation, and human rights.

The fifth mechanism can be defined as personal continuity through political leadership and cadre succession. In many cases, political figures who began their careers within one party later joined other associations or occupied state positions, retaining and adapting the ideas previously acquired. This contributed to their integration into a broader political and legal space. A clear example of this can be found in the activities of former members of the URP and UNDP within the structures of the Central Rada and the governments of the Ukrainian People’s Republic, where they continued to uphold the principles of parliamentary democracy and local self-government.

As a result, it can be stated that the institutional mechanisms of continuity of the legal ideas of Ukrainian political parties of the late nineteenth and early twentieth centuries were multi-level and interrelated. They encompassed both formal (programmatic documents, parliamentary activity, organizational statutes) and informal (political journalism, cultural-educational societies, cadre succession) channels, ensuring the resilience of the national legal tradition under conditions of political dependence. This institutional architecture of continuity not only preserved ideas in a historical perspective but also created the preconditions for their actualization in the new state and legal realities of the twentieth and twenty-first centuries.

3. The Modern Legal Space Formed by Ukrainian Political Parties of the Late 19th – Early 20th Century

The modern Ukrainian legal space is the result of a multidimensional historical

and legal process in which the institutional continuity of legal ideas formed by Ukrainian political parties of the late 19th – early 20th centuries played a significant, albeit not always consciously recognized, role. The aforementioned ideas of popular sovereignty, the priority of human rights and freedoms, the principles of federalism and decentralization, and guarantees of national and cultural autonomy have naturally transformed and adapted to new political circumstances, yet preserved their ideological core, shaping the value-based legal foundations of modern statehood.

First and foremost, the influence of the principle of popular sovereignty can be traced, which was central to the programs of most Ukrainian parties at the beginning of the 20th century and is now enshrined in Article 5 of the Constitution of Ukraine, which states that “the people are the bearer of sovereignty and the only source of power in Ukraine” (Constitution of Ukraine, 1996). The historical understanding of popular rule as a combination of direct and representative democracy is reflected in modern forms of referenda, local initiatives, public hearings, as well as in the electoral system. This continuity manifests itself not only in legal texts but also in the public’s persistent perception of the legitimacy of power solely through the people’s will.

Equally important is the influence of the tradition of local self-government. In the modern legal framework, this tradition is embodied in Chapter XI of the Constitution of Ukraine, in the Laws “On Local Self-Government in Ukraine,” “On Voluntary Association of Territorial Communities,” as well as in the concept and practice of the decentralization reform of 2014–2020. The idea that the community is the primary subject of public authority and that local self-government bodies are institutional representatives of its interests reproduces the party principles of a century ago almost unchanged in their fundamental essence. At the same time, modern legal mechanisms (budgetary autonomy, the right of communal ownership, local taxes and fees) can be viewed as the legal embodiment of what party leaders of the early 20th century expressed in more general political categories.

Another example is the legal idea of national and cultural autonomy, which in historical party programs was understood as a guarantee for ethnic and cultural communities to preserve and develop their language, education, religion, and traditions. In modern Ukraine, this idea is implemented in the constitutional guarantees of the rights of national minorities (Article 11 of the Constitution), in the Laws “On National Minorities in Ukraine,” “On Education,” “On Ensuring the Functioning of the Ukrainian

Language as the State Language,” as well as in ratified international treaties, including the Framework Convention for the Protection of National Minorities of the Council of Europe. Despite a significantly different international legal context, the substance of this guarantee has preserved historical continuity, although it has been modernized in accordance with contemporary human rights standards.

Institutional continuity is also evident in the concepts of territorial organization and decentralization of power, which were the subject of lively debate among Ukrainian parties of the late 19th – early 20th centuries. Today, they are reflected in the model of a unitary state with elements of extensive municipal autonomy. The rejection of the federal model after the restoration of independence in 1991 did not diminish the influence of the historical federalist discourse. It persisted in the form of demands for subsidiarity, multilevel governance, and the division of competences between state and local authorities.

No less significant is the influence on the system of human rights and freedoms, which in modern Ukraine is based on a complex of constitutional guarantees and international commitments but has historical roots in party programs that proclaimed freedom of speech, press, assembly, the right to strike, and freedom of conscience, among others. Contemporary human rights legislation, particularly procedural guarantees (the right to a fair trial, presumption of innocence, access to legal assistance), can be regarded as an expanded and detailed embodiment of those principles formulated in political documents over a century ago.

An additional aspect of continuity lies in electoral law. Historical party programs actively defended the principle of universal, equal, and direct suffrage as well as secret voting. In modern law, these principles are enshrined in the Constitution and the Electoral Code of Ukraine. Moreover, the practice of election campaigns and public monitoring of elections confirm that the value of a democratic electoral procedure has become an element of legal culture formed not only in the post-Soviet period but also in a much earlier historical stage (Hrabylnikova, 2012).

It is important to emphasize that the institutional continuity of legal ideas does not imply their full identity in substance; it refers primarily to value-based and legal continuity. The historical context, legal forms, and even the international environment of Ukraine have changed, yet the key principles have remained. This continuity ensures relative stability of legal development even during crisis periods – from the political transformations of the early 1990s to the full-scale Russian aggression in 2022.

Modern challenges – warfare, the need for judicial reform, anti-corruption efforts, integration into the EU, and others – raise the question of preserving national legal identity in the context of globalization. In this regard, the continuity of the ideas of early 20th-century political parties serves as a factor that helps avoid mechanical copying of foreign models and allows combining international standards with national legal traditions. For instance, the implementation of the rule of law principle in modern Ukrainian legislation draws on Western European sources but also correlates with the historical Ukrainian tradition of legal limitation of power, which existed in the Cossack legal order and was reflected in the party concepts of the early 20th century.

The influence of institutional continuity can also be observed in legal doctrine and academic research, where historical ideas of the party movement are reinterpreted and adapted to modern needs. Legal scholarship uses these ideas as material for comparative legal analysis, reform modeling, and substantiating the need to preserve cultural and legal heritage (Severinova, 2019). Thus, the concepts of subsidiarity, legal autonomy of the community, and equality of citizens regardless of ethnic origin are today being integrated into legal policy as elements of European integration.

4. Conclusions

Consequently, the influence of the continuity of legal ideas of Ukrainian political parties of the late 19th – early 20th centuries on the modern legal space is systemic and comprehensive. It encompasses the constitutional foundations, sectoral legislation, the institutional architecture of public authority, and legal culture. The preservation, comprehension, and creative application of this continuity in the processes of law-making and law enforcement serve as an essential factor in ensuring the stability and sustainable development of the Ukrainian state, particularly in the context of profound political and legal transformations.

Under current challenges – armed aggression, globalization processes, and integration into the European Union – the conscious utilization of the historical legacy of Ukrainian political parties can strengthen national legal identity and enhance the resilience of the state.

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ІНСТИТУЦІЙНА СПАДКОВІСТЬ ПРАВОВИХ ІДЕЙ УКРАЇНСЬКИХ ПОЛІТИЧНИХ ПАРТІЙ У КОНТЕКСТІ НАЦІОНАЛЬНОЇ ПРАВОВОЇ ТРАДИЦІЇ

Анотація. *Метою* статті є комплексний аналіз інституційної спадковості правових ідей українських політичних партій у контексті національної правової традиції, з'ясування механізмів трансляції та адаптації політико-правових концепцій у програмних документах і практичній діяльності партій, а також визначення їхнього впливу на формування сучасної правової культури та державотворчих процесів в Україні. *Результати.* Стаття присвячена комплексному аналізу інституційної спадковості правових ідей українських політичних партій кінця XIX – початку XX ст. у контексті національної правової традиції. Дослідження розкриває, як в умовах відсутності державної незалежності, українські політичні партії виступали носіями базових цінностей і принципів, що визначали напрям розвитку українського правового дискурсу. У центрі уваги перебувають ключові правові ідеї цього періоду – народовладдя, місцеве самоврядування, федералізм і децентралізація, гарантії прав і свобод людини та національно-культурної автономії, які отримали відображення у партійних програмах, публіцистиці, парламентській діяльності та діяльності культурно-освітніх товариств. Особливу увагу приділено інституційним механізмам збереження та трансляції правових ідей – програмним документам, партійній пресі, представницьким органам влади, громадським організаціям, кадровій наступності та освітнім інституціям. Показано, що ці канали забезпечували не лише збереження змісту ідей, але й їхню адаптацію до змінюваних політичних і правових умов, створюючи підґрунтя для їх відтворення у наступних етапах української історії. У статті доведено, що сучасний правовий простір України успадкував низку положень, закладених у партійних концепціях початку XX ст.: закріплення народного суверенітету, демократичних виборчих процедур, гарантій прав національних меншин, принципу субсидіарності у системі місцевого самоврядування, пріоритету прав і свобод людини. Проаналізовано, як ці ідеї були інтегровані у Конституцію України, галузеве законодавство та політичну практику у поєднанні з сучасними міжнародно-правовими стандартами. *Висновки.* Результати дослідження підтверджують, що інституційна спадковість правових ідей є не лише об'єктом історико-правового аналізу, але й чинником, який впливає на формування національної правової ідентичності, забезпечує стабільність правового розвитку та підвищує стійкість держави у кризові періоди. Автор обґрунтовує, що збереження і розвиток цієї спадковості в умовах глобалізаційних процесів та збройної агресії проти України є важливою передумовою сталого розвитку української державності та правової культури.

Ключові слова: інституційна спадковість, правові ідеї, українські політичні партії, національна правова традиція, народовладдя, місцеве самоврядування, правова культура.

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CULTURAL LEGITIMATION OF LEGAL REFORMS: THE ROLE OF LEGAL CULTURE IN THE ADAPTATION OF STATE FUNCTIONS

Abstract. Purpose. The purpose of the article is a comprehensive theoretical and legal study of the role of legal culture as a factor of cultural legitimation of legal reforms, as well as the identification of its impact on the adaptation of state functions to contemporary global challenges. The focus is on clarifying how the value-based, communicative, and behavioral aspects of legal culture ensure public support for reforms, contribute to their legitimation and integration into the national legal system, and form new guidelines in the field of public policy and state governance. **Research methods.** The methodological framework of the study is based on an integral analysis and systematization of modern theoretical and legal knowledge, which made it possible to formulate well-grounded scientific conclusions and propose practical approaches to solving the identified problems. A wide range of scientific methods was applied in the course of the study: from general scientific (analysis, synthesis) to special legal methods, including comparative-legal, normative-legal, institutional, and prognostic. This methodological toolkit ensured comprehensive coverage of the subject matter, interdisciplinary depth, and analytical completeness in the examination of the phenomenon under study. **Results.** The study established that legal culture is not only the context of the functioning of the legal system but also an active factor in adapting state functions to the dynamics of contemporary global transformations. It was revealed that cultural legitimation of legal reforms acquires key significance in the conditions of the growing role of value orientations, citizens' legal consciousness, and public trust. It has been proven that the effectiveness of state reforms largely depends on the conformity of their normative content to the established cultural codes and practices of legal behavior formed within a specific society. The research outlines the main risks of formalism, value vacuum, and communicative gap, which reduce the level of legitimacy of reforms and hinder their societal acceptance. Examples of the adaptation of state functions (humanitarian, social, regulatory) under the influence of transformations of legal culture in the context of war, European integration, and digitalization are analyzed. Emphasis is placed on the importance of civil society participation, the development of legal education, and the formation of an effective state communication policy as practical mechanisms for strengthening the cultural legitimation of legal changes. **Conclusions.** It is concluded that the cultural legitimation of legal reforms emerges as a key factor in the successful adaptation of state functions to the challenges of modernity. Legal culture, being a dynamic system of values, attitudes, and practices, not only reflects the level of maturity of the legal system but also directly influences the perception, support, or rejection of reforms within society. A stable legal order is possible only on the condition that law is legitimized not merely formally but also culturally—through dialogue with society, legal education, institutional openness, and support for democratic values. Effective implementation of legal reforms in a culturally diverse and dynamic society requires the harmonization of normative changes with the cultural codes prevailing within the community. For this reason, legal policy must integrate mechanisms of legal education, civic participation, and communication strategies as integral instruments of cultural legitimation. Such an approach not only strengthens public trust in the state but also ensures the sustainability and depth of transformations in the sphere of public authority.

Key words: legal culture, cultural legitimation, state functions, legal consciousness, normative transformation, public administration, social integration, legal communication, legal education.

1. Introduction

States face the necessity of updating their functions in accordance with new societal expectations. However, the effectiveness of such changes largely depends not only on the normative content of reforms but also on the degree of their legitimacy in the eyes of society. In this context, legal culture acquires particular significance as a factor of cultural legitimation of legal reforms. A lack of sufficient attention to the value-based and communicative dimensions of law, together with the decline in legal consciousness and trust in state institutions, makes it impossible to fully implement even formally well-designed legal innovations. The existing gap between the normative activity of the state and the cultural expectations of citizens creates risks of formalism, legal nihilism, and the blocking of reforms at the level of societal perception. This necessitates a comprehensive theoretical and legal understanding of the role of legal culture as both a precondition and a mechanism for legitimizing the functional renewal of the state.

In the scholarly literature, legal culture is viewed as one of the key factors in legitimizing legal norms, supporting reforms, and adapting state functions to environmental changes. Particular attention is paid to its structural elements—legal consciousness, value orientations, and cultural practices.

Contemporary studies focus on the role of legal culture in strengthening trust in law, overcoming formal legal order, and ensuring social integration. At the same time, the issue of cultural legitimation of legal reforms remains insufficiently explored in the context of the systemic transformation of state functions. The impact of the cultural environment on the institutional effectiveness and normative quality of reforms has also not been adequately addressed, which determines the scientific relevance of the chosen research direction.

2. Principles of Cultural Legitimation of Legal Reforms

The category of cultural legitimation of law emerges as a concept that reflects the deep interconnection between legal reforms, the law-making activity of the state, and the system of values, beliefs, and symbols inherent in a particular society. Unlike formal legitimation, which relies on legal compliance with laws or procedures, cultural legitimation is based on the perception of law as just, appropriate, and morally justified within the worldview coordinates of the community. Such legitimation is not only a normative but also a profoundly axiological and socio-cultural process that encompasses the entire spectrum of interactions between the individual, society, and the state.

Legal culture, as a key component of the cultural legitimation of law, integrates elements of legal consciousness, value orientations, traditions, mental perceptions, and legal practices. It serves as a kind of filter through which society perceives and evaluates not only existing legal norms but also the processes of law-making and law enforcement. Thus, the legitimacy of law is formed not only within the boundaries of procedural compliance but also through the harmonization of legal decisions with the socio-cultural context.

Of particular importance is identifying the relationship between the level of development of legal culture and the ability of the state to implement effective legal reforms. A high level of citizens' legal consciousness contributes not only to better acceptance of norms but also to more active participation in the formation and legitimation of legal changes. Conversely, a low level of legal culture leads to ignorance, resistance, or imitative perception of legal innovations, which results in the erosion of trust in the legal system (Hrytsai, 2023).

The cultural component in the mechanisms of law-making and law enforcement is manifested in the need to take into account local traditions, symbolic practices, and moral-ethical coordinates when making legal decisions. Law devoid of cultural grounding risks becoming an instrument of external pressure rather than an internally acceptable regulatory system. For this reason, the idea of cultural adaptation of law is gaining ground in contemporary doctrine—a mechanism that allows combining the universal principles of the rule of law with the unique cultural matrices of national development.

In our view, the future of effective law lies in the combination of formal normativity with profound cultural legitimation. This means that the reformist activity of the state should be oriented not only toward compliance with international standards but also toward being culturally comprehensible and acceptable to the addressee of the law, i.e., the citizen. In this context, legal culture becomes not merely a background factor but an active instrument of legal transformation (Alexy, 2021). Legal culture, as a complex socio-cultural construct, includes a value-normative level (attitudes toward justice, human rights, and the rule of law), a cognitive level (knowledge of law, its functions, and mechanisms of operation), and a behavioral level (models of interaction with the legal system, the degree of compliance with norms, and participation in law-making processes). Each of these levels determines the extent to which society is prepared to accept new legal norms and whether it perceives them as necessary, reasonable, and just.

One of the defining mechanisms for the implementation of legal reforms is trust—both in institutions and in the content of the proposed changes. A high level of legal culture creates conditions for building such trust, as it ensures awareness of the value-based meaning of reforms and the inclusion of citizens in the process of discussion and support of law-making. Conversely, in conditions of a fragmented or conflictual legal culture, reforms may be perceived as imposed, technocratic, or repressive, which significantly complicates their implementation (Tkachuk, 2023).

The social and axiological prerequisites for supporting or rejecting reforms are directly linked to the extent to which reform initiatives correspond to the basic expectations and values of citizens. If a reform resonates with dominant notions of justice, dignity, and freedom, it has a higher chance of being accepted, even despite its complexity or unpopularity. In contrast, dissonance between the content of reforms and societal legal consciousness generates distrust, resistance, and formalism in implementation.

We argue that every profound legal transformation must be not only institutionally prepared but also culturally motivated. This means that alongside the development of the normative content of reforms, socio-communicative efforts should be made, aimed at explanation, dialogue, and involving citizens in the process of legitimizing law. In this context, legal culture is not a passive backdrop but a driving force of legal modernization, ensuring the sustainability and effectiveness of legal changes (Zumbansen, 2021).

The adaptation of state functions under the influence of legal culture is one of the key vectors of the modern transformation of public authority, especially under conditions of profound social changes, cultural shifts, and global challenges. Legal culture, as a multidimensional phenomenon that encompasses a system of values, legal consciousness, and practices of interaction with law, significantly influences the content, hierarchy, and methods of implementing the main functions of the state (Havryliuk, 2022). This is particularly relevant to functions such as the social, humanitarian, and regulatory, which in contemporary society are increasingly acquiring an axiological and cultural dimension.

Cultural codes are deep collective representations of dignity, solidarity, and justice that determine which state functions should be prioritized, in what manner, and with what degree of legitimacy. Thus, in societies dominated by collectivist values, the humanitarian vector of state policy prevails, while in cultures with an individualist orientation, the regulatory function acquires an autonomous, procedural

character. In the Ukrainian context, where legal culture is shaped simultaneously by European aspirations and a post-totalitarian legacy, the process of adapting state functions acquires particular complexity and ambiguity (Bakalinskyi, 2022).

3. The Role of Legal Culture in the Adaptation of State Functions

Legal culture serves not only as a recipient but also as an active shaper of the functional orientations of the state. It is through society's awareness of rights and duties, the significance of public authority, and the principles of legal interaction that expectations toward the state are formed, which it must take into account in its functional strategy. New functions, such as communicative, service, and integrative ones, emerge in response to the social demand for the state not merely as an authority, but as a partner that shares community values.

Striking examples of culturally conditioned adaptation of state functions can be observed in Ukraine over the past decade. In the context of war, the humanitarian function of the state has acquired not only priority importance but also new content, understood as activity aimed at preserving human dignity, protecting vulnerable groups, and consolidating the nation (Levchenko, 2022). The European integration course, in turn, requires the harmonization of legal values, particularly in the aspects of the rule of law, inclusiveness, and gender equality, which transforms the regulatory function of the state. Digitalization, as a global civilizational shift, has posed the task of updating the functional toolkit, specifically the development of e-governance, strengthening transparency and accountability of authorities, and the formation of citizens' digital rights.

Thus, legal culture appears not merely as a background, but as a driving force of the state's functional renewal. Its content, structure, and dynamics determine not only the scope and forms of the implementation of functions but also their legitimacy, sustainability, and compliance with social expectations. As a scholar, I am convinced that without taking the cultural dimension into account, state functionality will inevitably remain formal, detached from the real needs of society (Hurenko, 2022).

The challenges of cultural legitimation of legal reforms represent one of the least studied, yet critically important, areas in contemporary legal scholarship. First of all, it is necessary to indicate the threat of formalism in law-making, when normative changes are produced without proper consideration of the axiological and socio-cultural context. This approach leads

to the emergence of a “value vacuum,” in which law loses its ability to act not only as a regulator but also as a bearer of social identity. Legal acts devoid of cultural rootedness often remain declarative and ineffective in real legal life (Magen, Morlino, 2020).

The second challenge is the gap between elite and mass legal culture. While professional legal elites may orient themselves toward high legal standards, liberal-democratic values, and unified European approaches, a significant part of the population may remain within the frameworks of traditionalism, legal nihilism, or paternalistic perceptions of authority. This imbalance prevents the full acceptance of reforms by society, reduces trust in law, and creates risks of legitimacy collapse when legal innovations encounter passive or active resistance (Sen, 2020).

The third challenge is, above all, the institutional weakness in ensuring the cultural integration of reforms. State institutions often lack a systemic vision of a cultural strategy to accompany legal changes: mechanisms of legal enlightenment, public participation in law-making processes, and the adaptation of legal practices to regional and mental specificities are missing. As a result, law is “imported” without proper translation into the language of values, which makes it alien to citizens.

Recognition of these challenges provides grounds for the conclusion that the cultural legitimation of reforms requires not only legal and political, but above all, anthropological and communicative solutions. Without fostering a profound legal dialogue between the state and society, and without working with citizens’ legal consciousness, values, and perceptions, any reform risks remaining outside the sphere of legitimate acceptance. Here, legal culture emerges not as an external factor but as a constitutive condition of the viability of the legal order (Dorsen, Rosenfeld, Sajó, Baer, 2021).

Practical mechanisms of cultural legitimation of legal reforms constitute a necessary link between formal law-making and the actual recognition of law as a legitimate regulator of social life. One of the key instruments in this process is legal education and upbringing, aimed at developing critical legal thinking, respect for law, and understanding of its axiological nature (Vitman, 2023). Effective legal socialization requires the integration not only of knowledge about law but also of skills to discern justice, responsibility, and legality within specific legal practices. In this context, it is particularly important to strengthen the role of legal education at all levels—from school-level legal awareness to professional training of experts in legal support of reforms.

The state’s communication policy regarding legal reforms is also critically important. Without institutionally secured legal dialogue, reforms risk being perceived as imposed “from above” and losing cultural legitimacy. The state must develop mechanisms of transparent, inclusive, and adaptive communication with citizens concerning the substance and purpose of changes. Communication should not be propagandistic but explanatory, employing culturally relevant meanings and models of lawful behavior, particularly through educational platforms, social media, and public consultations.

Finally, an important factor is the involvement of civil society in the process of shaping and implementing reforms. The legitimacy of modern law is impossible without the participation of those whom it is designed to regulate. Participation tools such as public discussions, legal forums, expert councils, and e-governance must be transformed from formality into a real mechanism of cultural recognition of the legal order. Such participation fosters not only legal awareness but also a sense of shared responsibility for changes within the state (Sajo, 2021).

Thus, the legitimation of legal reforms in the cultural dimension cannot be reduced to purely legal or administrative procedures. It presupposes the continuous rooting of law in social values, symbols, and practices, which makes legal culture not merely a condition but an active factor of the transformation of the legal order (Burdiak, 2023).

4. Conclusions

It is concluded that the cultural legitimation of legal reforms emerges as a key factor in the successful adaptation of state functions to contemporary challenges. Legal culture, as a dynamic system of values, attitudes, and practices, not only reflects the maturity of the legal system but also directly influences the perception, support, or rejection of reforms by society. A stable legal order is possible only if law is legitimized not merely formally but also culturally—through dialogue with society, legal education, institutional transparency, and support for democratic values.

The effective implementation of legal reforms in a culturally diverse and dynamic society requires harmonizing normative changes with the prevailing cultural codes. Therefore, legal policy must integrate mechanisms of legal education, civic participation, and communication strategy as integral instruments of cultural legitimation. Such an approach not only enhances public trust in the state but also ensures the sustainability and depth of transformations within the sphere of public governance.

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КУЛЬТУРНА ЛЕГІТИМАЦІЯ ПРАВОВИХ РЕФОРМ: РОЛЬ ПРАВОВОЇ КУЛЬТУРИ В АДАПТАЦІЇ ДЕРЖАВНИХ ФУНКЦІЙ

Анотація. Метою статті є всебічне теоретико-правове дослідження ролі правової культури як чинника культурної легітимації правових реформ, а також виявлення її впливу на адаптацію функцій держави до сучасних глобальних викликів. У центрі уваги – з'ясування того, яким чином ціннісні, комунікативні та поведінкові аспекти правової культури забезпечують суспільну підтримку реформ, сприяють їх легітимації та інтеграції в національну правову систему, а також формують нові орієнтири у сфері публічної політики та державного управління. **Методи.** Методологічна основа дослідження побудована на цілісному аналізі та систематизації сучасного теоретико-правового знання, що дозволило сформулювати виважені наукові висновки і запропонувати практичні підходи до вирішення поставлених проблем. У ході дослідження було застосовано широкий спектр методів наукового пізнання: від загальнонаукових (аналізу, синтезу) до спеціально-юридичних, зокрема порівняльно-правового, нормативно-правового, інституціонального та прогностичного. Такий методичний арсенал забезпечив комплексне охоплення тематики, міждисциплінарну глибину та аналітичну повноту розгляду досліджуваного явища. **Результати.** У результаті проведеного дослідження встановлено, що правова культура є не лише контекстом функціонування правової системи, а й активним чинником адаптації функцій держави до динаміки сучасних глобальних трансформацій. Виявлено, що культурна легітимація правових реформ набуває ключового значення в умовах зростання ролі ціннісних орієнтацій, правосвідомості громадян і суспільної довіри. Доведено, що ефективність державних реформ значною мірою залежить від відповідності їх нормативного змісту усталеним культурним кодам і практикам правової поведінки, що сформувалися в конкретному суспільстві. У дослідженні окреслено основні ризики формалізму, ціннісного вакууму та комунікативного розриву, що знижують рівень легітимності реформ і блокують їхнє сприйняття суспільством. Проаналізовано приклади адаптації функцій держави (гуманітарної, соціаль-

ної, регулятивної) під впливом трансформацій правової культури в умовах війни, євроінтеграції, цифровізації. Наголошено на важливості участі громадянського суспільства, розвитку правової освіти, формування дієвої комунікаційної політики держави як практичних механізмів підвищення культурної легітимності правових змін. **Висновки.** Зроблено висновок, що культурна легітимізація правових реформ постає як ключовий фактор успішної адаптації державних функцій до викликів сучасності. Правова культура, будучи динамічною системою цінностей, установок і практик, не лише відображає рівень зрілості правової системи, але й безпосередньо впливає на сприйняття, підтримку або відторгнення реформ у суспільстві. Стійкий правопорядок можливий лише за умови, що право легітимізується не лише формально, а й культурно через діалог із суспільством, правове виховання, інституційну відкритість і підтримку демократичних цінностей. Ефективна реалізація правових реформ у культурно розмаїтому та динамічному соціумі потребує гармонізації нормативних змін з культурними кодами, що панують у суспільстві. Саме тому правова політика повинна інтегрувати механізми правової освіти, громадянської участі й комунікаційної стратегії як складові інструменти культурної легітимізації. Такий підхід не лише посилює довіру до держави, а й забезпечує сталість і глибину трансформацій у сфері публічної влади.

Ключові слова: правова культура, культурна легітимізація, функції держави, правосвідомість, нормативна трансформація, публічне управління, соціальна інтеграція, правова комунікація, правове виховання.

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LEGAL EDUCATION AS A RESPONSE TO THE TRANSFORMATION OF SOCIAL ORIENTATIONS: CHALLENGES OF GLOBALIZATION

Abstract. Purpose. The purpose of this article is to carry out a comprehensive theoretical and legal analysis of legal education as a key mechanism for adapting individuals and society to the transformation of social orientations in the context of globalization. The study aims to clarify the essence, objectives, and functions of legal education, to determine its potential in preserving democratic legal consciousness, in fostering civic responsibility, as well as to substantiate strategic approaches to improving legal policy in the sphere of cultivating legal culture in the era of digital transformations and global challenges. **Results.** The conducted research confirmed that legal education is a key mechanism for shaping the legal identity of an individual, especially in conditions of shifting global value orientations and the transformation of the social environment. It was established that legal education is not limited merely to the transmission of legal knowledge but forms the foundations of legal culture, critical thinking, a sense of social responsibility, and the capacity for conscious compliance with the rule of law. Considering the influence of globalization, legal education is viewed as an important instrument for strengthening legal subjectivity in the age of digital uncertainty and informational distortions. It was determined that contemporary forms of legal education should encompass both institutional (educational, governmental, civic) channels and informal ones – in particular, social campaigns, legal volunteering initiatives, and digital legal enlightenment. It was also established that the digital environment itself creates both new opportunities (accessibility, innovativeness, interactivity) and challenges (risk of manipulation, legal populism, informational disorientation). In this context, special importance is attached to the development of a coherent legal policy in the sphere of education, oriented towards democratic values, the rule of law, and respect for human dignity. **Conclusions.** It is concluded that in the context of globalization, legal education emerges as a key instrument for adapting society to new value and legal challenges. The transformation of social orientations, digital hybridization of the information space, and the growing influence of transnational ideologies necessitate the strengthening of legal culture as the foundation of democratic legal order. In this regard, legal education performs not only an informational but also a worldview function – shaping critical thinking, the ability to legally assess social phenomena, and a stable sense of legal responsibility. The findings demonstrate that legal education must be institutionalized at the level of state policy through the development of a national strategy, integration at all levels of education, advancement of informal channels of legal enlightenment, and the use of digital technologies. Such an approach will not only raise legal awareness but also prevent legal nihilism, legal disorientation, and cultural relativism.

Key words: legal education; legal culture; globalization; social orientations; legal awareness; legal nihilism; democratic identity; informational influence; civic responsibility; digital legal enlightenment.

1. Introduction

Under the influence of informational oversaturation, digital mobility, hybrid threats, and cultural fragmentation, traditional legal norms are being devalued, legal nihilism is growing, and a superficial attitude towards the law is being formed, viewing it as a merely technical or repressive instrument. In such

circumstances, legal education loses its exclusively educational function and transforms into a strategic instrument for fostering civic responsibility, maintaining democratic identity, and strengthening the legitimacy of legal order. Within the system of education, public authorities, and civic institutions, there is a clear need for updating approaches to legal education,

taking into account new challenges, including the digital age, the strengthening of individualism, and the increasing influence of uncontrolled information flows.

Thus, a scientific problem arises: how can legal education be rethought and modernized as an effective tool for adapting the individual to the transformed social reality, particularly through the formation of legal culture, immunity against manipulation, and active civic engagement under conditions of democratic governance?

Contemporary research emphasizes the importance of legal education as a mechanism for affirming the rule of law, non-discrimination, human rights, and social justice. At the same time, there exists a certain fragmentation in covering the dynamics of changes in social orientations under the influence of globalization and digital transformation, which directly affect the effectiveness of traditional forms of legal education. Some scholarly approaches highlight the need for renewing legal policy in the field of legal enlightenment, taking into account the challenges of the information era, in particular, the spread of legal nihilism, ethical relativization, and the decline in legal awareness.

Despite the considerable scope of research, the issue of adapting the system of legal education to new global realities remains unresolved. There is a lack of comprehensive analysis of the role of legal education as a response to the transformation of value orientations in society, as well as effective models for integrating legal knowledge, skills, and values into the formation of a new generation of legally conscious citizens. These very aspects require in-depth theoretical and legal examination.

2. Legal Education in Legal Scholarship

In contemporary legal discourse, legal education is presented as an integral component of the overall socialization of the individual, aimed at shaping an internal attitude towards law, an awareness of its value, and the necessity of observing legal norms. In the Western legal tradition, this phenomenon is often interpreted through the prism of legal consciousness or the legal culture of civil society, which underscores its crucial role in ensuring the stability of the legal order.

In legal scholarship, legal education is defined as a process of purposeful influence on the consciousness of the individual with the aim of fostering lawful behavior, increasing legal competence, and cultivating respect for law as a social regulator. In democratic states, this process has a dual orientation: on the one hand, it is directed at the individual (the subject), and on the other, at reproducing legal values within society as a whole.

Functionally, legal education performs a number of tasks: informing about rights and obligations, fostering skills of lawful behavior, cultivating legal responsibility, as well as ensuring a critical attitude toward legislation from the standpoint of human rights. In this context, legal education is an instrument for forming not merely a disciplined law-abiding citizen, but an active subject of legal relations capable of interacting with the state on the basis of responsibility, participation, and partnership (Murashyn, 2019).

It is important to emphasize the close interconnection between legal culture and legal education. Legal culture is not an automatic result of education – it is formed through the systematic influence of social, legal, and educational environments. Legal education serves as a dynamic mechanism for reproducing legal culture in new generations, functioning as an instrument of its transmission, adaptation, and actualization under conditions of changing social context (Tyshchenko, 2022). In view of this, legal education should be regarded not as an auxiliary but as a fundamental element of state policy in the sphere of consolidating the rule-of-law state and sustaining democratic social order.

Modern society is undergoing profound transformational processes conditioned by globalization factors, which affect not only the economy and politics but also significantly reshape social attitudes, moral priorities, and the legal consciousness of the individual. Legal scholarship increasingly notes that globalization produces new models of identity, creates alternative sources of norm-making (in particular, algorithmic, corporate, and international), and blurs the traditional boundaries between national and transnational legal systems (Delmas-Marty, 2009).

One of the key consequences of globalization is the reduction of stability in normative orientations, which contributes to growing legal disorientation. The individual often fails to adapt to the dynamics of change, leading to the fragmentation of legal consciousness: legal norms lose their ethical authority, giving way to instrumental or situational assessments. This results in a situation in which law is perceived not as a value, but as a tool easily replaced by social practices or technological algorithms.

The transformation of social orientations is especially evident in processes of ethical devaluation and normative relativism. Contemporary culture, oriented toward individualism, consumerism, and technological rationality, increasingly sidelines the traditional humanistic foundations of the legal system. This creates risks of reinforcing legal nihilism, particularly

among young people, who often interpret law not as an instrument of justice but as a restriction on freedom (European Commission. *Education and Training Monitor 2023*).

Under such circumstances, the role of legal education becomes critically important as a compensatory mechanism capable of cultivating critical thinking, ethical resilience, and the ability to make responsible choices in a context of value pluralism. Legal education must be transformed from an informative tool into an integrative process that unites law, morality, and social interests into a coherent system, able to withstand global challenges and strengthen the legal identity of the individual in a transformed social reality.

In an era of global instability, informational oversaturation, and value fragmentation, legal education acquires a qualitatively new role – it performs not only an educational or formative function but also becomes an adaptive mechanism ensuring the legal resilience of society. Current research in the field of legal policy convincingly demonstrates that legal education can become an institutional response to civilizational challenges such as legal nihilism, hybrid threats, and the erosion of identity caused by informational influence (Barabash, 2012).

In conditions of value instability, legal education performs an adaptive function, ensuring the formation of fundamental perceptions of law not as a formalized norm but as an instrument of social balance, responsibility, and participation. It is precisely through legal education and training that the restoration of trust in state institutions and the embedding of democratic practices in the daily behavior of citizens become possible.

One of the key vectors of legal education in contemporary conditions is the preservation of democratic identity. This concerns not only knowledge of the content of rights and freedoms but also the development of legal thinking, ethical reflection, and a critical stance toward manipulative information. In a globalized world dominated by transnational flows of information, capital, and norms, legal culture emerges as the foundation of national resilience that resists assimilation, informational engineering, and cultural erosion (Boiko, 2021).

The formation of responsible citizenship is an equally important component. In an era of hybrid threats – both military-political and informational-cultural – legal education must extend beyond the academic sphere and encompass all levels of social interaction. This entails building social immunity to disinformation, manipulation, and normative devaluation through the consistent engagement of citizens in legal dialogue, participation in

shaping public policy, and practices of mutual accountability between the state and society.

Thus, in a globalized society, legal education is not only a pedagogical task but also a component of the strategic security of a democratic state seeking to preserve its value autonomy, legal stability, and social solidarity (*Global Citizenship Education: Topics and Learning Objectives*, 2015).

Legal education is no longer exclusively the prerogative of educational institutions or state authorities – it is transforming into a cross-sectoral practice implemented in various social environments, often beyond the framework of classical formalized instruction.

Institutional mechanisms of legal education today include the system of formal legal education, legal awareness programs in schools, the activities of justice bodies, local self-government authorities, ombudsman institutions, and civil society organizations. In democratic legal systems (particularly in EU member states, Canada, and Japan), increasing attention is paid to the integration of legal knowledge into general educational standards, the creation of national strategies for legal education, and the development of public legal aid hubs (Koziubra, 2010). Such strategies recognize the cultivation of a legally conscious citizen as an integral part of social stability and the rule of law.

Digital technologies are fundamentally transforming the methods of legal education. E-learning platforms, legal consulting services, social networks, podcasts, and interactive mobile applications are increasingly used as channels for disseminating legal knowledge. As G. Shaffer notes, the digitalization of legal learning opens the way to the personalization of legal knowledge while simultaneously highlighting the need for critical media and legal literacy. However, risks must also be taken into account: informational oversaturation, fragmented knowledge, and the threat of superficial understanding of complex legal concepts.

Informal legal enlightenment also holds significant weight, encompassing volunteer initiatives, school legal clubs, public campaigns raising awareness of human rights, electoral processes, and anti-discrimination measures (Fletcher, 2020). These forms are flexible, tailored to specific audiences, and capable of creating spaces of trust and dialogue. They also perform a function of social mediation by bridging the gap between formal law and the everyday practice of its application.

Therefore, modern legal education is a comprehensive system based on institutional cooperation, digital tools, and informal practices, capable not only of disseminating knowl-

edge but also of shaping a responsible, active, and legally conscious individual. Its effectiveness is determined not by the number of informational campaigns but by the quality of value-based assimilation of the principles of law within the context of modern democratic community life (*Global Citizenship Education: Topics and Learning Objectives*, 2015).

3. Problems of Legal Education at the Present Stage of State Development

The current state of legal education reveals a number of problems that systematically limit its effectiveness and social impact. First and foremost, it is necessary to highlight the insufficiency of regulatory support in this field, which is manifested both in the vagueness of conceptual foundations and in the absence of clear legislative regulation of the mechanisms of legal education. In most states, including Ukraine, the regulatory framework that defines the status, functions, instruments, and actors of legal education remains fragmented and declarative. As B. Cotterrell emphasizes, the legal effectiveness of normative mechanisms directly depends on their capacity to be embedded in the institutional and cultural fabric of society – something that is often lacking in the sphere of legal education (Cotterrell, 2005).

Another significant problem is the fragmentation of state policy in this domain. The lack of long-term strategies, the low level of inter-agency coordination, and the absence of indicators for evaluating the effectiveness of legal enlightenment programs result in the dispersion of efforts and the failure to achieve a systemic effect. Initiatives in the field of legal education, as a rule, remain situational, non-institutionalized, and dependent on political conjuncture or international donor support (Barabash, 2012). This contradicts the principle of consistency in legal policy, which is fundamental for the sustainable formation of legal culture.

A further challenge is the contradiction between global trends in legal development – such as the universalization of human rights, digitalization of education, and the strengthening of citizen participation in law-making – and local social practices, which sometimes preserve archaic or paternalistic conceptions of the role of law. As a result, legal education encounters perceptual barriers, where democratic values, the rule of law, and individual freedoms remain alienated from the daily experience of broad strata of the population (Tamana, 2001).

Effective legal education in conditions of dynamic social transformation requires not fragmentary initiatives but a holistic, strategically oriented state policy. Above all, there is an urgent need to develop a **national strat-**

egy for legal education that would define objectives, principles, performance indicators, and mechanisms of cross-sectoral coordination (Pavliček, 2018). Such a strategy should be based on constitutional values, European human rights standards, and the principles of sustainable democratic development. Only a rationally structured society, grounded in legal communication, is capable of sustaining long-term democratic stability – and legal education is precisely the instrument for shaping this type of societal discourse (Rudenko, 2020).

The next step must be the integration of legal education into all levels of formal education. This concerns not only the teaching of the fundamentals of law in schools or legal disciplines at universities but also the consistent development of legal thinking and value-based attitudes toward law as an instrument for the protection of freedom, justice, and social responsibility. This approach requires institutional cooperation between the Ministry of Education, civil society, and professional legal institutions (Kolodii, 2015). The corresponding reform of educational programs should be grounded in an interdisciplinary approach that combines legal, ethical, civic, and digital competences.

A key precondition for the implementation of a systemic approach is the development of the institutional capacity of public authorities, educational institutions, civil society organizations, and the media. This entails the establishment of specialized structures, the improvement of staff qualifications, the elaboration of modern methodological materials, and the launch of innovative digital platforms for legal enlightenment. According to M. Rosenfeld, the effectiveness of legal education is determined not only by its content but also by the institutional environment within which the legal socialization of the citizen takes place (Rosenfeld, 2009).

In this context, legal education must move from the periphery of legal policy to its core, being recognized as a key element in supporting the rule of law, constitutional patriotism, and the legitimacy of public authority in the conditions of global challenges and value turbulence.

4. Conclusions

Legal education in the context of globalization emerges as a key instrument for adapting society to new value-based and legal challenges. The transformation of social orientations, the digital hybridization of the information space, and the growing influence of transnational ideologies necessitate the strengthening of legal culture as

the foundation of democratic legal order. In this regard, legal education performs not only an informational but also a worldview function – shaping critical thinking, the ability to legally assess social phenomena, and a stable sense of legal responsibility.

The findings of the study demonstrate that legal education must be institutionalized at the level of state policy through the development of a national strategy, its integration into all levels of education, the promotion of informal channels of legal enlightenment, and the use of digital technologies. Such an approach will not only enhance legal awareness but also prevent legal nihilism, legal disorientation, and cultural relativism.

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ПРАВОВЕ ВИХОВАННЯ ЯК ВІДПОВІДЬ НА ЗМІНУ СОЦІАЛЬНИХ ОРІЄНТИРІВ: ВИКЛИКИ ГЛОБАЛІЗАЦІЇ

Анотація. *Мета* статті полягає у здійсненні комплексного теоретико-правового аналізу правового виховання як ключового механізму адаптації індивіда і суспільства до змін соціальних орієнтирів в умовах глобалізації. Дослідження спрямоване на з'ясування сутності, цілей та функцій правового виховання, встановлення його потенціалу у збереженні демократичної правосвідомості, формуванні громадянської відповідальності, а також обґрунтування стратегічних підходів до вдосконалення правової політики у сфері виховання правової культури в епоху цифрових трансформацій і глобальних викликів. **Результати.** Проведене дослідження підтвердило, що правове виховання є ключовим механізмом формування правової ідентичності особи, особливо в умовах зміни глобальних ціннісних орієнтирів і трансформації соціального простору. Установлено, що правове виховання не обмежується суто передачею юридичних знань, а формує засади правової культури, критичне мислення, почуття відповідальності перед суспільством та здатність до свідомого дотримання норм права. З огляду на вплив глобалізації, правове виховання розглядається як важливий інструмент укріплення правової суб'єктності в епоху цифрової невизначеності та інформаційних

викривлень. З'ясовано, що сучасні форми правового виховання повинні охоплювати як інституційні (освітні, державні, громадські) канали, так і неформальні зокрема соціальні кампанії, правові волонтерські ініціативи, цифрове просвітництво. Встановлено, що саме цифрове середовище створює як нові можливості (доступність, інноваційність, інтерактивність), так і виклики (ризик маніпуляцій, правовий популізм, інформаційна дезорієнтація). У цьому контексті особливої ваги набуває створення узгодженої правової політики у сфері виховання, що орієнтована на демократичні цінності, верховенство права та повагу до людської гідності. **Висновки.** Зроблено висновок, що правове виховання в умовах глобалізації постає як ключовий інструмент адаптації суспільства до нових ціннісних і правових викликів. Зміна соціальних орієнтирів, цифрова гібридизація інформаційного простору, зростання впливу транснаціональних ідеологем зумовлюють необхідність посилення правової культури як фундаменту демократичного правопорядку. У цьому контексті правове виховання виконує не лише інформаційну, а й світоглядну функцію формує критичне мислення, здатність до правової оцінки соціальних явищ і стійке відчуття правової відповідальності. Результати дослідження засвідчують, що правове виховання має бути інституціоналізоване на рівні державної політики через створення національної стратегії, інтеграцію в усі рівні освіти, розвиток неформальних каналів правового просвітництва та залучення цифрових технологій. Такий підхід дозволить не лише підвищити правосвідомість, а й запобігти правовому нігілізму, правовій дезорієнтації та культурному релятивізму.

Ключові слова: правове виховання; правова культура; глобалізація; соціальні орієнтири; права освіта; правовий нігілізм; демократична ідентичність; інформаційний вплив; громадянська відповідальність; цифрове правопросвітництво.

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LEGAL CONSCIOUSNESS IN UKRAINE AFTER 2022: RENEWAL OF CONTENT AND VALUE ORIENTATIONS

Abstract. Purpose. The purpose of this study is to identify the specific features of the transformation of legal consciousness in Ukrainian society after 2022, in particular, the changes in its content and value orientations in the context of socio-legal challenges. **Research methods.** The methodology is based on a comprehensive analysis and generalization of theoretical and scholarly research, followed by the formulation of reasoned conclusions and practical recommendations. **Results.** For the first time, the study demonstrates that legal consciousness in Ukraine after 2022 has not transformed into a fundamentally “new” form but has undergone a renewal of its value orientations, acquiring a crisis-mobilization and integrative character. Its role has been defined as a factor in strengthening legal culture, civic engagement, and the protection of the principles of the rule of law under conditions of wartime challenges. The research shows that after 2022, Ukrainian legal consciousness has preserved its basic structural elements while updating its system of values. It has acquired a mobilization and integrative nature, reinforced the functions of civic participation, legal culture, and orientation toward the rule of law and justice. These changes manifest in the growing role of volunteerism, public initiatives, and digital participation tools, which contribute to strengthening trust in state institutions and enhancing the legal resilience of society. At the same time, legal consciousness increasingly performs the function of adapting the legal system to wartime challenges and European integration processes, becoming a key factor in the modernization of legal order and the development of democratic statehood. **Conclusions.** It is concluded that legal consciousness under present conditions emerges as a key element of legal reality, integrating knowledge of law, the assessment of its content, and the readiness to act in accordance with legal norms. Social transformations after 2022 have endowed it with renewed content, strengthening its mobilization and integrative potential. The functions of legal consciousness are manifested not only in the reflection and evaluation of legal phenomena but also in its ability to shape behavioral models, stimulate civic engagement, and uphold the rule of law. It is becoming an instrument of harmonizing social relations, affirming justice, and reinforcing trust in state institutions. In this regard, legal consciousness acts as a mediator between law “on paper” and its practical implementation, ensuring the effective functioning of the legal system even under crisis conditions.

Key words: legal consciousness, functions of legal consciousness, legal culture, legal values, legal behavior, social transformations, rule of law, justice, democratic institutions, Ukraine after 2022.

1. Introduction

An important theoretical basis for this research is the work of M. Ye. Cherkas, which provides a comprehensive analysis of the structural elements of legal consciousness and defines its functions as relatively autonomous. Accordingly, the primary focus of this study is on the characterization of these functions in Cherkas’s interpretation, specifically through the lens of transformations that have occurred since 2022, taking into account new socio-legal

challenges and the processes of European integration in Ukraine. Such an approach makes it possible not only to actualize the traditional interpretation proposed by M. Ye. Cherkas but also to identify how the functions of legal consciousness change in their content and significance under the influence of new social values, the development of legal culture, and the intensification of civic participation. Special attention is devoted to the value-orientational and regulatory functions, which, after 2022, acquired

a clearer applied dimension, becoming effective instruments for activating citizens, strengthening legal order, and upholding the rule of law in crisis situations.

The works of I. Sharavara and M. Cherkas provide an essential foundation for the present study, as they contain a thorough theoretical explanation of the essence, structural components, and functional designation of legal consciousness. However, further scholarly development is required regarding the renewal of the content and value orientations of legal consciousness after 2022, particularly in the context of wartime challenges, civic activity, and the processes of European integration.

2. The Content of Legal Consciousness as a Form of Social Consciousness

Legal consciousness, as a form of social consciousness, in our view, remains relatively stable in its essence, preserving its basic structural elements—knowledge of law, the assessment of its content, and the readiness to act in accordance with legal norms. However, social transformations shift its value accents and priorities.

Although legal consciousness does not change its nature depending on the historical period, it adapts to new challenges. After 2022, we do not observe the emergence of an entirely “new” legal consciousness, but rather the renewal of its value content. This renewal is manifested in the increasing importance of its functional dimension, in particular, the ability not only to reflect legal reality but also to actively influence the formation of behavioral models, stimulate civic engagement, raise the level of legal culture, and direct social processes toward adherence to the principles of the rule of law, justice, and equality.

As I. Sharavara rightly points out, legal consciousness occupies a key place in legal reality: it not only shapes legal reality but also represents the result of the comprehension and assimilation of the legal life of society and the legal relations existing within it. It constitutes an integral system of knowledge about law, internal evaluation of current legislation, as well as views and ideas regarding its improvement. It encompasses representations, beliefs, emotions, and attitudes that determine one’s perception of law, the understanding of its role in the life of the state and society, the awareness of human rights, and the responsibility toward other individuals, the state, and the community (Sharavara, 2015).

We share this position, as legal consciousness is indeed the key link between abstract legal norms and the actual life of society. It forms a bridge between law “on paper” and its practical implementation, since it is precisely through the prism of personal convictions, values, and life

experience that an individual determines how to perceive, interpret, and apply legal norms. Its strength lies not only in the ability to reflect legal reality but also in its potential to influence its transformation. In conditions of social change and challenges, legal consciousness becomes an effective instrument of mobilizing society to protect rights and freedoms, to uphold the rule of law, and to strengthen trust in state institutions. It is particularly important that it combines rational knowledge with emotional-value orientations, since only in such unity is law perceived not as external coercion, but as an internal need to act fairly and responsibly.

The functions of legal consciousness may be defined as the principal directions of its influence on legal reality and the perception of its phenomena, which are realized in specific forms and modes, reflecting the social role and purpose of this phenomenon. They exhibit several characteristics:

- they indicate the directions of interaction of legal consciousness with other elements of legal reality;
- they are realized through various forms—verbal and non-verbal, logical and emotional-value-based, institutionalized and informal;
- they express the social purpose of legal consciousness;
- their subject matter concerns specific phenomena of legal reality (Cherkas, 2008).

We consider this definition to successfully reflect the essence of the functions of legal consciousness, as it simultaneously combines both structural and substantive approaches. M. Ye. Cherkas emphasizes that these functions do not exist in isolation but are realized through diverse forms of interaction with legal reality—from purely logical to emotional-value-based, from officially institutionalized to informal.

Of particular importance is the emphasis on the social purpose of the functions, as it allows legal consciousness to be viewed not merely as an individual psychological phenomenon but as a factor that influences legal order, legal culture, and the development of society.

In our view, after 2022, such an understanding has become even more relevant, since the emotional-value dimension and informal mechanisms of influence (volunteering, civic initiatives, public acts of solidarity) have significantly enhanced the role of legal consciousness in the practical protection of rights and freedoms, and not only in their theoretical comprehension. This indicates that the functions of legal consciousness can no longer be regarded exclusively within the framework of the classical academic model—they have acquired a crisis-mobilization and integrative character, responding to new socio-legal challenges.

3. Characteristics of the Functions of Legal Consciousness

In practice, the functions of legal consciousness are closely interrelated and overlapping, often manifesting simultaneously, which makes their separate analysis largely a theoretical convention. Their scope and content depend on the approach to classification and the research objective. In scholarly literature, both generalized schemes (reflective, regulatory, and creative functions) and more detailed models are proposed, including cognitive, evaluative, ideological, normative-prognostic, law-modeling, legal-educational, and other functions (Cherkas, 2008).

According to M. Ye. Cherkas, the reflective function of legal consciousness consists in recording and reproducing the phenomena of legal reality and current legislation through a system of knowledge, concepts, representations, evaluations, and views. Its implementation takes place in the process of cognition, evaluation, and reflection, that is, the individual's awareness of their own place and role in legal reality.

The cognitive aspect of this function contributes to the formation within legal consciousness of a certain complex of legal knowledge, ideas, categories, and concepts, which are the result of intellectual activity. Thanks to this, a person perceives law not only through direct everyday observations but also through an understanding of the deeper patterns of legal life, including those driving factors and mechanisms that remain beyond direct perception (Cherkas, 2008).

In the context of changes that have occurred after 2022, the reflective function of legal consciousness has acquired special significance. It not only records and reproduces the phenomena of legal reality and current legislation through a system of knowledge, concepts, representations, evaluations, and views, but also reflects the transformations of legal life caused by martial law, armed aggression, and the processes of European integration of Ukraine. Its implementation occurs through cognition, evaluation, and reflection, which, under conditions of crisis challenges, involves not only the individual's awareness of their place and role in legal reality but also the rethinking of personal and collective responsibility for upholding the principles of the rule of law, justice, and equality.

The cognitive aspect of legal consciousness today forms a renewed set of legal knowledge, ideas, categories, and concepts that reflect both national and international experience in responding to the challenges of war. This makes it possible to perceive law not only through the prism of everyday observations but also through an understanding of the deeper patterns of legal life, including the mechanisms that ensure the resilience of the legal order

and the effective protection of human rights under extraordinary circumstances.

Examples of the functioning of legal consciousness can be clearly traced in Ukraine's current conditions. Thus, the reflective function is manifested in society's ability to assess the legality of mobilization measures by correlating them with the Constitution and current legislation; in citizens' attitudes toward international sanctions against the aggressor, which are perceived as confirmation of the legitimacy of the struggle for state sovereignty; as well as in the understanding of the lawfulness of restrictions during martial law, such as curfews or limitations on freedom of movement, which are recognized as lawful protective measures. At the same time, the cognitive function is expressed in the acquisition of new knowledge and the expansion of legal outlook: through legal education received via media and online platforms during evacuation, the registration of internally displaced person status, or obtaining international aid; through the study of the case law of the European Court of Human Rights, which promotes a better understanding of the principles of fair trial and human rights protection; and through the dissemination of knowledge about war crimes, when civic organizations conduct training for journalists and volunteers, explaining the differences between the concepts of "terrorist act," "genocide," and "war crime."

Legal consciousness also performs a creative function, which consists in the active and practical engagement of the individual with legal reality. It is manifested in the ability to form new legal ideals, concepts, and relations that become embedded in the normative-value system of law. This function is most clearly realized in the field of law-making, since the legislative process not only reflects social changes and adapts law to the needs of society but also represents an active manifestation of consciousness and value orientations influencing the development of the legal system (Cherkas, 2008).

The creative function of legal consciousness has acquired particular significance after 2022. On the one hand, citizens are increasingly involved in shaping legal ideals—from participation in volunteer initiatives to influencing legislative changes. On the other hand, public authorities and legal professionals are compelled to develop new approaches to the interpretation and application of legal norms in order to ensure their fairness, clarity, and effectiveness under extraordinary conditions. This proves that legal consciousness ceases to be a purely theoretical phenomenon and becomes a real instrument of modernization of legal life. A striking manifestation of the creative function of legal consciousness was the adoption of new laws regarding the status of military personnel and their families. These changes were driven both by

the demands of society and by the awareness of the need for fair legal regulation of social guarantees during wartime. At the same time, civic organizations and human rights defenders actively participated in drafting these initiatives, which illustrates the interaction between social legal consciousness and state law-making.

The reflexive function of legal consciousness consists in the individual's exercise of intellectual self-control and critical self-assessment of their own legal behavior. It allows not only the correlation of one's actions with the requirements of the law but also the evaluation of their conformity with moral and social values (Cherkas, 2008).

It should be noted that the reflexive function is one of the most important mechanisms for forming a responsible legal culture. It is precisely through reflection that a person becomes capable of realizing the consequences of their decisions and correcting their behavior. After 2022, this function has become even more relevant, since in wartime society faces daily choices where law, morality, and justice interact in complex and contradictory forms. For example, a volunteer engaged in the distribution of humanitarian aid evaluates their actions not only in terms of compliance with reporting rules and legality but also from the standpoint of justice: whether the aid truly reaches those who need it most. Such self-assessment of one's activity is an expression of the reflexive function, which strengthens trust in social institutions and upholds the rule of law even under crisis conditions.

In general, legal consciousness performs a regulatory function in the process of law enforcement: it manifests itself in the resolution of legal cases, the adoption of law-enforcement acts, and the making of various types of concrete legal decisions. In this context, professional legal consciousness holds particular importance, as it ensures the proper level of legal evaluation and the adoption of balanced decisions (Cherkas, 2008).

We consider the regulatory role of legal consciousness to be central to the functioning of the legal system, as it determines whether laws will be applied fairly and consistently or will instead be transformed into an instrument of arbitrariness. The professional legal consciousness of lawyers, judges, advocates, and other legal practitioners carries out a special mission—ensuring a balance between the letter of the law and the principles of justice. After 2022, this function has acquired new significance, since under martial law law enforcement requires heightened responsibility and attentiveness so as not to allow violations of human rights under the pretext of security. For instance, when a judge considers a case concerning the liability of a person subject to military duty for violating mobilization rules, he or

she must not only formally apply the statutory norm but also take into account specific life circumstances (such as health status or family conditions). Here, professional legal consciousness assists in rendering a decision that is not only lawful but also just, thereby preserving public trust in the judiciary.

The evaluative function of legal consciousness lies in the fact that any legal knowledge is inevitably accompanied by an emotional attitude towards it. Individuals or communities assess the law, its principles, norms, and institutions, as well as the behavior of subjects of legal relations. The outcome of such evaluation is the categorization of actions as lawful or unlawful. Particularly dangerous is unlawful behavior on the part of officials or representatives of law enforcement bodies, as it undermines the principle of legality (Cherkas, 2008).

In our view, the evaluative function is of exceptional importance, since it shapes either trust or distrust in law and state institutions. If people observe that legal norms are applied fairly, this strengthens the rule of law. Conversely, when officials themselves violate the law, society begins to perceive law as a mere formality, thereby eroding the legitimacy of authority. After 2022, society has paid especially close attention to the actions of law enforcement agencies in cases related to war crimes or corruption. When citizens witness the punishment of high-ranking officials who abused their positions during wartime, this elicits positive evaluations and a sense of justice. By contrast, impunity breeds profound disappointment and distrust toward the legal system.

According to M.Ye. Cherkas, the regulatory function of legal consciousness occupies a leading place among others, for it determines the framework and direction of human behavior. It has a dual character: on the one hand, it orients individuals toward certain actions by stimulating lawful behavior; on the other, it sets the boundaries of what is permissible, prohibiting transgressions beyond those limits. Its main social purpose lies in the ordering of social relations on the basis of law, enabling the reconciliation of the interests of the individual, society, and the state (Cherkas, 2008).

The regulatory function is the key to societal stability. It transforms law from a mere text into a real guide to behavior. Particularly under martial law, this function assumes even greater significance: it helps maintain a balance between individual rights and collective security. When citizens perceive legal restrictions as fair and necessary, this enhances trust in the state and in legal order. This function was clearly manifested in the introduction of curfew in Ukraine. The majority of citizens voluntarily complied with the restrictions, understanding that such measures did not unjustifiably limit their freedom but instead served common security and protection

against threats. This demonstrates how legal consciousness facilitates the alignment of individual behavior with the requirements of law under extreme conditions.

4. Conclusions

In the contemporary context, legal consciousness emerges as a key element of legal reality, combining knowledge of law, evaluation of its content, and readiness to act in accordance with norms. The social transformations after 2022 have endowed it with new meaning, reinforcing its mobilizational and integrative potential.

The functions of legal consciousness manifest themselves not only in the sphere of reflecting and evaluating legal phenomena but also in the capacity to shape behavioral models, stimulate civic engagement, and uphold the rule of law. It becomes an instrument for harmonizing social

relations, establishing justice, and strengthening trust in state institutions. In this sense, legal consciousness serves as a mediator between law “on paper” and its practical implementation, ensuring the effective functioning of the legal system even under crisis conditions.

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ПРАВОСВІДОМІСТЬ В УКРАЇНІ ПІСЛЯ 2022 РОКУ: ОНОВЛЕННЯ ЗМІСТУ ТА ЦІННІСНИХ ОРІЄНТИРІВ

Анотація. *Метою* роботи є виявити особливості трансформації правосвідомості українського суспільства після 2022 року, зокрема зміну її змісту та ціннісних орієнтирів у контексті соціально-правових викликів. *Методи.* Методика базується на всебічному аналізі та узагальненні науково-теоретичних досліджень із подальшим формуванням аргументованих висновків і практичних рекомендацій. *Результати.* У роботі вперше показано, що правосвідомість в Україні після 2022 року не трансформується у «нову» форму, а зазнає оновлення ціннісних орієнтирів, набуваючи кризово-мобілізаційного та інтеграційного характеру. Визначено її роль як чинника зміцнення правової культури, громадянської активності та захисту принципів верховенства права в умовах воєнних викликів. Дослідження показало, що після 2022 року правосвідомість в Україні зберегла свої базові структурні елементи, але оновила ціннісні орієнтири. Вона набула мобілізаційного та інтеграційного характеру, посилила функції громадянської активності, правової культури та орієнтації на верховенство права й справедливості. Такі зміни виявляються у зростанні ролі волонтерства, публічних ініціатив та цифрових інструментів участі, що сприяють зміцненню довіри до державних інституцій і підвищенню правової стійкості суспільства. Водночас правосвідомість дедалі більше виконує функцію адаптації правової системи до воєнних викликів і євроінтеграційних процесів, стаючи ключовим чинником модернізації правопорядку та розвитку демократичної державності. **Висновки.** Зроблено висновок, що правосвідомість у сучасних умовах постає як ключовий елемент правової дійсності, що поєднує знання про право, оцінку його змісту та готовність діяти відповідно до норм. Соціальні трансформації після 2022 року надали їй нового змісту, підсиливши мобілізаційний та інтеграційний потенціал. Функції правосвідомості виявляються не лише у сфері відображення та оцінювання правових явищ, а й у здатності формувати моделі поведінки, стимулювати громадянську активність і підтримувати верховенство права. Вона перетворюється на інструмент гармонізації суспільних відносин, утвердження справедливості та зміцнення довіри до державних інститутів. У цьому сенсі правосвідомість виступає посередником між правом «на папері» та його практичною реалізацією, забезпечуючи ефективне функціонування правової системи навіть у кризових обставинах.

Ключові слова: правосвідомість, функції правосвідомості, правова культура, правові цінності, правова поведінка, соціальні трансформації, верховенство права, справедливість, демократичні інститути, Україна після 2022 року.

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THE DIGITAL SOCIETY AS A NEW CHALLENGE FOR LEGAL REGULATION: A GENERAL THEORETICAL ANALYSIS

Abstract. Purpose. The purpose of this article is to carry out a general theoretical analysis of the digital society as a social phenomenon that transforms the structure, nature, and mechanisms of legal regulation; to identify the main characteristics of the digital age that complicate traditional legal approaches; and to substantiate the need to revise classical paradigms of legal understanding, normativity, and social control in the context of digital transformation. **Results.** The study theoretically substantiates that the digital society creates a new social reality within which not only social relations but also the very nature of normativity is being transformed. The digital age changes the sources, structure, and forms of social norms, which generates new challenges for the traditional legal system. It has been established that the key characteristics of the digital society include the virtualization of legal relations, decentralization of authority, algorithmization of decision-making, growth of informational redundancy, and emergence of new forms of subjectivity. These factors disrupt established notions of the legal subject, the boundaries of legal regulation, and sources of legitimacy. It has been shown that the technological revolution acts as an independent factor in the transformation of social norms, leading to the emergence of new (sometimes unconscious) normative structures that function beyond the legal sphere. Particular attention is paid to the phenomenon of *technical normativity*, when behavioral regulation is exercised through the architecture of digital platforms rather than through a legal norm in the classical sense. It is substantiated that the emergence of new social risks—such as cyber threats, manipulative algorithms, and automated decision-making—actualizes the need for flexible, adaptive, and proactive legal responses. **Conclusions.** It is concluded that legal methodology requires renewal, in particular a transition from a rigidly formal to an adaptive and situational approach to the regulation of social processes. What becomes decisive here is not so much stability as the ability of law to function effectively under conditions of change while maintaining the basic principles of justice, equality, freedom, and human dignity. In view of the foregoing, it is argued that understanding the transformation of social norms under the influence of the technological revolution is an extremely relevant and necessary task for modern legal science. This understanding has both theoretical and practical significance, as it makes it possible to develop effective mechanisms of legal response to digital challenges while preserving the humanistic essence of law as a social regulator.

Key words: digital society, legal regulation, social norm, flexibility of law, technological transformation, algorithmization, legal subjectivity in the digital age, virtualization of legal relations, digital risks, normative legitimacy, technical regulation, law and technology, general theory of law.

1. Introduction

The digital transformation of society, encompassing all spheres of social life—from the economy and public administration to education, healthcare, and everyday life—has led to the emergence of qualitatively new forms of social interaction that do not fit into classical schemes of legal regulation. In the digital era, the principles, mechanisms, and instruments that have traditionally

determined the effectiveness of law as a social regulator undergo profound transformation. Law proves to be insufficiently adapted to virtualized legal relations, the transnational nature of digital platforms, the technical normativity of program code, and the phenomenon of algorithmized governance.

Moreover, the digital society generates a new typology of social risks—cyber threats,

automated discrimination, and informational manipulation—that cannot be effectively eliminated through traditional legal mechanisms. This actualizes the need to rethink not only the tools but also the fundamental categories of legal regulation: normativity, legitimacy, subjectivity, the boundaries of legal action, and the relationship between the public and the private in law.

Thus, there arises an urgent need for a general theoretical analysis of the digital society as a new environment of legal functioning capable of transforming the very paradigm of legal understanding. The issue lies not only in adapting legislation to new technologies, but, more deeply, in determining whether law retains its regulatory capacity in a constantly changing technological reality, and what transformations are necessary to ensure this capacity.

It should be noted that most research devoted to digital transformations focuses primarily on particular sectoral aspects (information law, personal data protection, AI regulation), while a systematic elaboration of the general theoretical foundations of legal adaptation to the digital environment remains fragmentary.

The relationship between technical normativity and legal legitimacy, the balance between private and public forms of regulation in the digital space, and the limits of legal flexibility without the loss of its value core remain insufficiently elucidated. Despite significant theoretical developments, the issue of the digital society as a systemic challenge for legal regulation requires further comprehension within the framework of the general theory of law, which determines the relevance of this research.

2. The Digital Society as a Phenomenon of Modern Civilization

It is worth starting with the fact that one of the key phenomena of modern civilization is the formation of a *digital society*—a new social order that develops on the basis of information and communication technologies, the digital economy, artificial intelligence, and global communication networks. This type of society is not merely a technological superstructure over the industrial or post-industrial formation; it possesses its own logic of social existence, legal regulation, value system, and structure of power relations.

Thus, the digital society represents a social formation in which digital technologies, data, and network algorithms play a central role in production, communication, governance, education, security, and everyday life. As the German philosopher **Jürgen Habermas** emphasizes, “in the new reality, digital platforms transform not only communication but also the very institutions of legitimacy” (Habermas, 1991).

Manuel Castells, one of the most prominent researchers of this phenomenon, introduced the concept of the *network society*, in which the main form of social organization consists of dynamic communication links functioning through information technologies. He notes that “in the network society, power relations are increasingly defined not by institutions, but by the ability to control information flows” (Castells, 2004).

According to Ukrainian scholar **V. P. Kolpakov**, the digital society is “a qualitatively new stage in the development of social organization, characterized by the dominance of virtual interactions, decentralization of power functions, the emergence of new forms of legal subjectivity, and the blurring of the boundaries of legal regulation” (Kolpakov, 2020).

Max Weber pointed out that in the modern world, bureaucratic rationality is gradually being replaced by algorithmic rationality, where decisions are made not by human subjects but by data-driven systems, giving rise to the phenomenon of *anonymous governance* (Weber, 2014).

It should be noted that the digital society, which today appears as the defining form of contemporary social organization, is distinguished by a number of features that directly affect the sphere of legal regulation. First and foremost, this concerns an unprecedented level of informational saturation—the so-called *information redundancy*—which generates the hyperdynamics of social processes and creates new challenges for the legal system built on the textual stability of norms.

Legal instruments designed for relatively slow changes in social relations turn out to be unprepared for the regulation of situations that evolve in real time. This informational dynamism is closely connected with the processes of *virtualization*, which encompass not only communication but also legal relations themselves. Most social transactions now occur within a digital environment, which complicates the clear definition of spatial and subjective boundaries of legal interaction.

In this regard, the problem of identification becomes increasingly relevant, since a legal subject often exists only as a *digital entity*—a virtual identity, a digital profile, or a software agent whose actions may produce legal consequences.

Significant transformation also occurs within the very structure of regulatory authority. In the digital society, law is no longer the sole or even necessarily the primary mechanism of social ordering. Its place is partly taken by the architectures of program code, technical standards, and corporate terms of service (Talebayeva, 2021). This phenomenon, as formu-

lated by **Lawrence Lessig**, demonstrates that the behavior of millions of users may be determined not by parliamentary laws, but by the service conditions written by software developers. Thus, regulation acquires a technocratic and apolitical character, which in turn gives rise to new challenges of legitimacy and responsibility (Lessig, 1999).

Special attention should be paid to the *algorithmization* of decision-making processes. Automated systems increasingly influence resource allocation, content moderation, the provision of administrative services, and even judicial decision-making. Algorithms trained on vast datasets often conflict with the principles of transparency, accountability, and the right to appeal. In legal discourse, this raises discussions on the need to develop legal regimes for algorithmic liability, digital ethics, and control over artificial intelligence.

Another systemic feature of the digital society is its *unequal accessibility*. Despite the widespread notion of the democratization of information, in practice, digital transformation creates new forms of inequality—between those who possess the technical, financial, and cognitive resources for full access to digital services and those who remain outside the digital environment. This inequality also has a legal dimension: from limited access to justice and administrative services to discrimination based on algorithmic models.

Thus, the digital society emerges as a multidimensional, non-linear social formation in which not only the modes of interaction but also the very logic of regulation are changing (Cohen, 2019). For law to retain its ability to perform its classical functions effectively, it must adapt to a new reality in which norms compete with code, subjectivity extends beyond natural persons, and jurisdictions are blurred by global networks.

One of the key sociogenic factors determining the dynamics of modern social development is the *technological revolution*—a complex, multi-level process involving the introduction of digital, informational, biotechnological, and cognitive innovations that radically alter not only the tools of human activity but also the very foundations of social interaction. This process involves not only the modification of the technical environment but also a profound re-evaluation of norms, values, expectations, and regulatory mechanisms in society—transforming what social science refers to as the *normative system*.

Attention should be drawn to the fact that the technological revolution, conventionally referred to as the *Fourth Industrial Revolution* (according to **Klaus Schwab**), has a multidimen-

sional impact on the structure of social norms. First, it determines the blurring of traditional boundaries between public and private, physical and virtual, natural and techno-artificial, which makes it impossible to preserve classical normative constructions in their original form. What once belonged to the intimate sphere of the individual has now become public due to the widespread use of social networks, digital identification systems, biometric platforms, and surveillance technologies. This gives rise to a *crisis of privacy* as a fundamental social reference point, and consequently, a transformation of the corresponding legal norms (Schwab, 2017).

Technological innovations are transforming the mechanisms of legitimizing social norms, diminishing the role of traditional culture, authoritative institutions, and social experience. In the digital environment, an increasing number of decisions are made not by humans but by algorithms trained on vast datasets, independent of ethical or normative context. Algorithmic models such as automated user rating systems, online content moderation, or employee monitoring based on big data emerge as new sources of normative influence that, however, do not undergo classical procedures of public deliberation, legal review, or democratic approval.

As Shoshana Zuboff emphasizes, this gives rise to the phenomenon of **“anonymous normative control,”** implemented through engineering means rather than through the legal system. The technological revolution thus contributes to the complication and **hyper-personalization of normative expectations**, which are becoming increasingly contextual, variable, and dependent on specific digital environments. In a space where users interact through dozens of platforms—each with its own terms, policies, algorithms, and rules of conduct—**universal social norms lose their authority** in favor of fragmented, dynamic, and often invisible structures of regulation (Zuboff, 2020).

As Stanislav Dvornichenko notes, this leads to the gradual **degradation of traditional institutions of socialization**—the family, school, and legal culture—which are unable to keep pace with the rate of digital transformation (Dvornichenko, 2021).

It is also essential to emphasize that the technological revolution **changes the very nature of the social norm**, replacing it with a *technical* or *behavioral* one—i.e., a norm that is not the result of normative agreement but is determined by the functioning of software code or interface design. An example of this can be found in **digital restrictions** (e.g., prohibition of copying), which are implemented not through sanctions but through **architectural blocking**

of actions, or in behavioral patterns shaped by interface design. All this requires a profound **reconsideration of the concept of the norm** in legal theory: it is no longer merely a textual product but acquires **functional, procedural, and programmatic forms**.

Thus, the technological revolution is not only a factor of progress but also a **fundamental challenge for law**, as it transforms the very foundation upon which social norms, behavioral expectations, and institutions of legitimacy are formed. In this context, the legal system must either **adapt to new forms of normativity** or lose its ability to effectively perform its social functions. This places before legal theory the task not only of responding to technological transformations but also of **initiating an interdisciplinary reflection** on what law should be in conditions where the social norm arises not as a result of collective agreement but as a **product of engineering logic** (Celeste, 2024).

3. Features of the Formation of the Digital Society

The formation of a digital society is accompanied not only by innovative achievements and technological progress but also by the emergence of qualitatively new social risks that require a rethinking of traditional mechanisms of legal response. These risks are multi-dimensional in nature, as they arise not only in the sphere of security but also in the domains of privacy, autonomy, democratic governance, ethical regulation, and transhumanist perspectives. Their nature cannot be reduced to classical threats typical of industrial society, since they are **hybrid, non-classical, and potential**, which fundamentally complicates their legal conceptualization.

In scholarly discourse, this phenomenon is described through the concept of the **“risk society”** proposed by Ulrich Beck, who emphasized that under post-industrial development, the main problem is no longer the distribution of benefits but the distribution of dangers. In the digital age, this assertion acquires new depth: modern technologies generate **existentially unpredictable consequences** that are difficult to foresee at the stage of innovation implementation, yet they already transform the structure of legal risk. These include **algorithmic errors in the sphere of justice, unauthorized collection and use of biometric data, abuse of artificial intelligence, cybersecurity threats, and manipulation of public opinion through automated information campaigns** (Beck, 1992).

These risks are further complicated by the **transnational nature of the digital environment**, which causes the erosion of traditional mechanisms of legal jurisdiction. A situation arises when an act or omission that generates

a risk occurs in a technical environment that does not coincide with the physical space of law enforcement. Therefore, classical legal categories such as *territory, state affiliation, and subject of jurisdiction* lose their effectiveness as tools for identifying legal responsibility.

Under conditions of uncertainty and rapid technological change, the problem of **flexibility of law** becomes increasingly relevant. Flexibility, in this context, is not synonymous with chaos or the absence of regulation, but rather a manifestation of the **adaptive potential of the legal system** in response to new types of social dynamics. Modern legal science speaks of a transition from *rigid normativity* to **contour-based, open, and risk-oriented regulation**, which allows for consideration not only of existing legal violations but also of potentially dangerous behavioral patterns.

A telling example in this context is the development of instruments such as **international ethical codes for AI developers, European Commission guidelines on platform economy regulation, and UNESCO recommendations on digital literacy and data protection**. Although these documents do not possess binding legal force, they serve as **preventive regulators**, enabling the formation of normative benchmarks in areas where the legislative framework is absent or developing too slowly (Bauman, 2000).

The danger of technological risk also lies in its **“silent” and “distributed” nature**, meaning that it manifests itself neither immediately nor in a specific location. For instance, the influence of digital systems on decision-making bias becomes apparent only after the mass deployment of algorithms trained on heterogeneous data—or only after millions of users have become victims of **automated discrimination** (Graber, 2021). This makes classical forms of legal protection based on *ex post* response impossible and instead requires the **institutionalization of preventive thinking** within the legal system.

Another form of flexible legal response is the **concept of regulatory sandboxes**, which provide experimental legal regimes for new technologies to test their compatibility with fundamental rights and public interests without compromising normative stability. Such approaches are already applied in the spheres of **financial technologies, telemedicine, and digital identification** in several jurisdictions, including the **United Kingdom, Singapore, and Estonia**.

Thus, the new social risks generated by digital transformation represent a challenge not only for positive law but also for its **theoretical and methodological foundations**. In order to remain an effective social regulator, law must not only respond to existing threats but also **anticipate possible scenarios** of their realization,

forming a **multilevel, flexible, and proactive system of legal response** (Baranov, Kostenko, Dubniak, 2023). The new role of the general theory of law therefore lies in its capacity to act not as a retrospective commentator on legal decisions but as a **proactive intellectual mechanism** capable of anticipating and shaping the normative horizon of the technological future.

In our view, the **technological revolution acts simultaneously as a catalyst for social progress and as a source of profound normative imbalances** that cannot be ignored in modern legal discourse. Its impact on the transformation of social norms is undeniable and multidimensional; however, the assessment of this impact must be comprehensive, taking into account not only the **innovative advantages** but also the **systemic risks** arising from digital transformation.

The unquestionably positive aspects include the enhancement of **communicative accessibility, mobility of social interaction, and transparency** of many public governance processes. Digitalization enables the rapid formation and dissemination of normative orientations, promotes **greater citizen participation** in the development of social rules (particularly through mechanisms of e-democracy), and allows for the creation of **new types of social norms**—flexible, situational, and contextualized (Frytskyi, 2021). In this sense, technology opens the prospect of **decentralized, horizontal normativity** that may better correspond to the complexity of postmodern society.

At the same time, the **negative aspects of technological influence on social norms** are no less significant. First of all, there is the threat of **norm creation without the participation of human will**, through program code, algorithms, and the architecture of digital platforms. This means that norms are increasingly established not as a result of collective consensus or legal procedure but through **technical decisions made by private companies** that are not accountable to society. Such transformation threatens the **loss of democratic control** over processes of social regulation (Baranov, Kostenko, Dubniak, 2023). Moreover, the **fragmentation of the normative field, inequality of access to information, and potential for manipulation** through digital environments indicate that the technological revolution not only generates new forms of normativity but also **undermines the authority of traditional norms**, including moral and legal ones.

4. Conclusions

In our view, one of the key tasks of modern legal theory is to search for such models of legal response that will make it possible to **reconcile the dynamics of technological development with the principles of normative legitimacy**. The goal is not to stop or slow down innovation,

but rather to embed mechanisms of **ethical, legal, and public accountability** into the technological environment (Bauman, 2000). This presupposes the development of **normative models for software code**, the creation of conditions for **transparent and controllable algorithmic functioning**, and the strengthening of **public participation in digital norm-making**.

Furthermore, we believe that **legal methodology itself requires renewal**. It is necessary to move from a rigidly formal to an **adaptive and situational approach** in regulating social processes. What should be decisive here is not stability per se, but the **ability of law to act effectively under conditions of change**, while ensuring the core principles of **justice, equality, freedom, and human dignity**.

In light of the above, we conclude that **understanding the transformation of social norms under the influence of the technological revolution** is an extremely relevant and necessary task for contemporary legal science. It has not only theoretical but also practical significance, as it allows for the development of **effective mechanisms of legal response to digital challenges** while preserving the **humanistic essence of law as a social regulator**.

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ЦИФРОВЕ СУСПІЛЬСТВО ЯК НОВИЙ ВИКЛИК ДЛЯ ПРАВОВОЇ РЕГУЛЯЦІЇ: ЗАГАЛЬНОТЕОРЕТИЧНИЙ АНАЛІЗ

Анотація. *Метою* цієї статті є здійснення загальнотеоретичного аналізу цифрового суспільства як соціального феномену, що трансформує структуру, природу та механізми правового регулювання; виявлення основних характеристик цифрової доби, які ускладнюють традиційні юридичні підходи; а також обґрунтування потреби у перегляді класичних парадигм праворозуміння, нормативності та соціального контролю в умовах цифрової трансформації. **Результати.** У результаті проведеного дослідження було теоретично обґрунтовано, що цифрове суспільство формує нову соціальну реальність, у межах якої відбувається трансформація не лише соціальних відносин, а й самої природи нормативності. Цифрова епоха змінює джерела, структуру та форми соціальних норм, що зумовлює появу нових викликів для традиційної правової системи. З'ясовано, що ключовими характеристиками цифрового суспільства є віртуалізація правовідносин, децентралізація владних повноважень, алгоритмізація управлінських рішень, зростання інформаційної надлишковості та виникнення нових форм суб'єктності. Ці чинники порушують сталі уявлення про суб'єкта права, межі правового регулювання та джерела легітимності. Показано, що технологічна революція виступає самостійним фактором трансформації соціальних норм, зумовлюючи появу нових (іноді неусвідомлених) нормативних структур, які функціонують поза межами юридичної сфери. Особливу увагу приділено феномену технічної нормативності коли регуляція поведінки відбувається через архітектуру цифрових платформ, а не через правову норму в класичному сенсі. Обґрунтовано, що виникнення нових суспільних ризиків таких як кіберзагрози, маніпулятивні алгоритми, автоматизовані рішення актуалізує необхідність гнучкого, адаптивного, випереджального правового реагування. **Висновки.** Зроблено висновок, що потребує оновлення правова методологія, а саме необхідно перейти від жорстко-формального до адаптивно-ситуаційного підходу в регулюванні соціальних процесів. Визначальною тут є не стільки стабільність, скільки здатність права ефективно діяти в умовах змін, забезпечуючи при цьому базові принципи: справедливість, рівність, свободу і гідність особи. З огляду на викладене, вважаємо, що осмислення трансформації соціальних норм під впливом технологічної революції є надзвичайно актуальним і потрібним завданням для сучасної правової науки. Воно має не лише теоретичне, а й прикладне значення, адже дозволяє розробити ефективні механізми правової відповіді на цифрові виклики, не втрачаючи при цьому гуманістичну сутність права як соціального регулятора.

Ключові слова: цифрове суспільство, правове регулювання, соціальна норма, гнучкість права, технологічна трансформація, алгоритмізація, правосуб'єктність у цифрову епоху, віртуалізація правовідносин, цифрові ризики, нормативна легітимація, технічне регулювання, право і технології, загальна теорія права.

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THE LEGAL NORM AS A FUNDAMENTAL ELEMENT OF THE MECHANISMS FOR ESTABLISHING THE RULE-OF-LAW STATE

Abstract. Purpose. The purpose of this study is a comprehensive examination of the legal norm as a fundamental element of the mechanisms for establishing the rule-of-law state, to clarify its essence, characteristics, and functions, as well as to determine its role in ensuring the rule of law, stability of legal order, and the realization of human rights and freedoms. **Research methods.** The research methodology is based on the application of dialectical, systemic, formal-legal, and comparative-legal methods, which made it possible to comprehensively reveal the essence of the legal norm, its characteristics, and functions. The generalization of scholarly approaches ensured the formation of a holistic understanding of the role of the legal norm in the mechanisms of establishing a rule-of-law state. **Results.** The study established that the legal norm is a fundamental element of the legal system that ensures the regulation of social relations. It has been proven that its features (universality, formal definiteness, impersonality, systemic nature) directly determine its main functions – regulatory, protective, unifying, stabilizing, educational, integrative, modeling, and organizational. It was found that the effectiveness of a legal norm depends not only on state coercion but also on the level of legal culture and legal consciousness of society. It was emphasized that the legal norm serves as a key link between the abstract values of law and the concrete behavior of subjects, ensuring the integrity of the legal order and the functioning of the institutions of the rule-of-law state. **Conclusions.** It is concluded that a legal norm is not merely a formally established rule of conduct but also a kind of “code of social life” that reflects the balance between rights and duties, freedom and responsibility. It ensures the ordering of social relations, creates conditions for predictability and stability, while simultaneously serving as a carrier of fundamental values – justice, equality, and respect for human dignity. Its multifunctionality allows law to be not merely a system of norms but a living mechanism integrating various spheres of social life into a unified whole. Precisely due to the legal norm, the principle of the rule of law acquires real content, while the rule-of-law state obtains practical instruments for its consolidation.

Key words: legal norm, rule-of-law state, rule of law, functions of legal norms, legal regulation, legal consciousness, legal culture, legal liability, mechanism of statehood under the rule of law.

1. Introduction

The construction of a rule-of-law state is a strategic goal of modern Ukraine. This process involves not only the enshrinement of the fundamental principles of a democratic system in the Constitution and laws but also their real implementation in social relations. The central instrument of this process is the legal norm – the primary basis of the entire legal system, which defines the scope of permissible and obligatory behavior, ensures the balance between the state and the citizen, and serves as a means of guaranteeing individual rights and freedoms. The effectiveness and efficiency of legal norms

serve as the measure of the level of rule-of-law development.

The issue of the legal norm as a fundamental element of the legal system has been widely covered in the works of Ukrainian scholars. Significant contributions have been made by M.I. Koziubra, M.V. Tsvik, N.V. Pylhun, M.O. Hryhorenko, among others, who defined the legal norm as the fundamental “cell” of legal order and a key structural element of law. At the same time, further in-depth analysis is required of the functional purpose of legal norms, their capacity to ensure the regulation of social relations, and their role as a basic mechanism in the establishment of a rule-of-law state.

2. The Legal Norm as an Element of the Legal System

A legal norm is the primary unit of the legal system that establishes the rights and obligations of subjects, determines permissible and prohibited forms of conduct. It ensures the regulation of social relations and creates the prerequisites for the functioning of the institutions of the rule-of-law state. It is precisely through the legal norm that the principle of the rule of law acquires real meaning.

A legal norm is a universally binding rule of conduct established or sanctioned by the state, which defines the scope of permissible and obligatory behavior of legal subjects. M.V. Tsvik interpreted "legal norms" as socially conditioned rules of conduct aimed at regulating social relations, which are established or sanctioned by the state and ensured not only by the consciousness of subjects and educational work but also by the possibility of applying state coercion in the event of their violation (Tsvik, 2016).

According to M.I. Koziubra, legal norms are fundamental, initial components of the entire legal system. They are designed to regulate social relations, establish models of lawful conduct, determine the legal consequences of their violation (typical norms), or contribute to such establishment and clarification (specialized norms). At the same time, each norm has its own forms of external expression. More broadly, the scholar defined a legal norm as a universally binding rule recorded in the sources of law and reproduced in the practical activity of subjects, which sets the standard of permitted or obligatory behavior and prescribes legal consequences for its non-compliance. Its effectiveness and validity, in Koziubra's view, are guaranteed by the state (Koziubra, 2015).

Therefore, scholarly thought reveals a unified idea: the legal norm is a fundamental, integral element of the legal system, reflecting its essence and principal characteristic – normativity. It is the link through which law is realized in social relations, ensuring their regulation and predictability. In this context, the legal norm not only prescribes a model of lawful conduct but also performs an important integrative function, uniting the ideas of justice, the legal consciousness of citizens, and mechanisms of state coercion.

The legal norm is the normative foundation of legal regulation and possesses a number of general and special features that determine its place in the legal system. It serves as a form of enshrining rights and obligations: a right reflects the possibility of certain conduct, while an obligation signifies the necessity of performing or refraining from certain actions. As a universally binding rule of conduct and an authoritative prescription of the state, the legal norm obliges every citizen to comply with established

requirements and to be guided by them in their activity. Its universal nature lies in the fact that it does not apply only to a specific case but extends to typical social relations, systematizing and generalizing them. An important feature is formal definiteness, since the legal norm is enshrined in normative legal acts, has a written form and official certainty, establishes the rights and obligations of participants in social relations, and prescribes legal liability for their violation (Pylhun, Hryhorenko, 2022).

In addition, legal norms are characterized by special features. They possess systemic nature, being coordinated with one another and structured hierarchically with institutions and branches of law; a representative-binding character, as they grant rights to some subjects while imposing obligations on others; microsystemic structure, since they consist of a hypothesis, disposition, and sanction, thus forming their own internal mechanism; impersonality, as they are addressed not to a specific individual but to an indefinite circle of subjects, setting general standards of behavior; and the authoritative expression of the state, which sanctions, protects, and ensures their implementation, applying coercive measures when necessary (Tsvik, 2016).

The functions of legal norms directly derive from their general and special features, which determine the essence and place of norms in the legal system. First and foremost, since a legal norm enshrines rights and obligations (Tsvik, 2016), it performs a regulatory function – it structures social relations, defines standards of permissible and obligatory behavior, and ensures the ability to predict the actions of other subjects. Through this function, legal order is established, within which citizens, organizations, and state bodies act according to clearly defined rules. The regulatory function promotes social stability, as it allows for avoiding chaos in interactions among participants in legal relations, ensuring their coherence and predictability. It is a crucial condition for the realization of the principle of the rule of law, since it is through legal norms that abstract values are transformed into concrete rules of conduct, guaranteeing a balance between rights and obligations, and between the interests of the individual, society, and the state.

The universal nature of the norm, which extends to typical situations (Tsvik, 2016), determines its unifying function, as it generalizes diverse social interactions and establishes uniform rules for all. Through this function, law ensures the unity of the legal space, forming common standards of conduct regardless of social status, profession, or group affiliation. The unifying function is of key importance for maintaining societal stability, as it prevents legal chaos, guarantees equality of all before the law, and strengthens the principle of legal certainty. In modern conditions, it also serves

as a safeguard for the harmonization of national law with international standards, which is particularly significant for Ukraine in the context of European integration processes.

3. Sanctions for Violations of Legal Norms

The formal definiteness of a legal norm (Tsvik, 2016), enshrined in normative legal acts, underscores its stabilizing function, which lies in creating predictability of legal regulation and ensuring legal certainty. It is precisely due to the stabilizing function that citizens and organizations are able to navigate within the legal environment, foresee the consequences of their actions, and build long-term social and economic strategies. This function also contributes to strengthening trust in the state and its legal system, since the predictability and consistency of legal norms serve as a guarantee of legal order and social cohesion.

At the same time, the existence of legal liability for violations of norms realizes their protective function (Tsvik, 2016), as the state guarantees compliance with established rules through the possibility of applying sanctions. Its essence lies not only in punishing the offender but also in preventing unlawful behavior, ensuring the restoration of violated rights and interests, and reinforcing trust in legal order. The protective function has both preventive and restorative character: on the one hand, the threat of punishment stimulates compliance with legality; on the other, it allows for the restoration of justice and compensation for damages. Under modern conditions, it serves as a key instrument for ensuring the stability of social relations and supporting the principle of the rule of law.

In addition to the regulatory and protective functions, the educational function of legal norms also plays a significant role. It consists in shaping citizens' legal culture, respect for the law, and awareness of personal responsibility for one's actions. Legal norms not only establish rules of conduct but also, through a system of incentives, prohibitions, and sanctions, cultivate in society the notions of justice, equality, and freedom. In this way, they foster the development of an internal conviction regarding the necessity of compliance with the law not merely out of fear of punishment but as the result of a conscious social need.

The educational function manifests itself in daily practice – from participation in elections to observing traffic regulations. It enables citizens to perceive themselves as active bearers of legal culture and cultivates a responsible attitude toward the state and other members of society.

The special features of legal norms also reveal their functional potential. The systemic character of norms (Tsvik, 2016; Pylhun, Hryhorenko, 2022) contributes to the realization of their integrative function, since they

operate in correlation with legal institutions and branches, forming a unified legal system. Through the integrative function, individual legal norms are harmonized with one another, which ensures the internal unity and coherence of legal order. It prevents contradictions in legal regulation, promotes the harmonization of national legislation with international standards and European law. In this sense, the integrative function is crucial for the development of a rule-of-law state, as it guarantees coherence in the actions of different branches of government, stability of the legal environment, and effectiveness of law enforcement practice.

The representative-binding character of legal norms (Tsvik, 2016; Pylhun, Hryhorenko, 2022) reveals their guaranteeing function, since legal norms balance the interests of different subjects by granting rights to some while imposing obligations on others. This establishes a mechanism of social equilibrium, whereby the exercise of the rights of some individuals is possible only if others fulfill their obligations. The guaranteeing function thus serves as a kind of “bridge” between right and duty, ensuring a fair distribution of legal opportunities within society.

It manifests itself across a wide range of spheres: in labor relations (the right of an employee to remuneration corresponds to the employer's obligation to provide it); in property relations (the right of an owner to possess and use property is accompanied by the obligation of others to refrain from its infringement); and in public law (the right of citizens to participate in elections is linked to the obligation of the state to organize a fair and transparent electoral process).

The microsystemic structure of legal norms (the presence of hypothesis, disposition, and sanction) (Tsvik, 2016; Pylhun, Hryhorenko, 2022) demonstrates their modeling function, as it clearly defines the conditions of application, the options of conduct, and the consequences of non-compliance. In this respect, a legal norm acts as a kind of “model of behavior” that sets the boundaries of what is permitted and obligatory, prevents chaos in social relations, and shapes predictable scenarios of development.

The modeling function enables legal subjects to foresee in advance which actions are permissible and which will lead to legal liability. It also creates the conditions for the unification of law enforcement practice, since identical hypotheses, dispositions, and sanctions apply in similar situations. In this sense, a legal norm becomes not only a means of regulating conduct but also an instrument for predicting legal consequences, which is of particular importance in conditions of political and social instability.

Moreover, the impersonality of legal norms ensures their universal function, since they reg-

ulate the conduct not of specific individuals but of a broad range of subjects in diverse life situations. Finally, their authoritative expression reflects their organizational function, which guarantees the close connection of norms with the state and confers binding force upon them. The organizational function is manifested in the fact that legal norms serve as an instrument for structuring the activities of both state authorities and civil society, creating a system of coordinates within which the entire legal order operates. It also presupposes the possibility of applying state coercion in cases of violations of norms, thereby strengthening the stability of legal regulation and ensuring the effectiveness of the legal system as a whole (Tsvik, 2016; Pylhun, Hryhorenko, 2022).

4. Conclusions

Summing up, the rule of law is not merely a formally established rule of conduct but a kind of “code of social life” that reflects the balance between rights and obligations, freedom and responsibility. It ensures the ordering of social relations, creates conditions for pre-

dictability and stability, and at the same time serves as a conduit for fundamental values—justice, equality, and respect for human dignity.

Its multifunctional nature allows law to operate not only as a system of norms but as a living mechanism that integrates various spheres of social life into a coherent whole. It is precisely through the legal norm that the principle of the rule of law acquires real substance and the legal state obtains practical instruments for its consolidation.

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НОРМА ПРАВА ЯК БАЗОВИЙ ЕЛЕМЕНТ МЕХАНІЗМІВ ФОРМУВАННЯ ПРАВОВОЇ ДЕРЖАВИ

Анотація. Метою роботи є всебічне дослідження норми права як базового елемента механізмів формування правової держави, з'ясування її сутності, ознак і функцій, а також визначення її ролі у забезпеченні верховенства права, стабільності правопорядку та реалізації прав і свобод людини. **Методика** дослідження базується на застосуванні діалектичного, системного, формально-юридичного та порівняльно-правового методів, що дозволило комплексно розкрити сутність норми права, її ознаки та функції. Узагальнення наукових підходів забезпечило формування цілісного уявлення про роль норми права у механізмах становлення правової держави. Результати. У ході роботи з'ясовано, що норма права є базовим елементом правової системи, який забезпечує упорядкування суспільних відносин. Доведено, що її ознаки (загальнообов'язковість, формальна визначеність, неперсоніфікованість, системність) безпосередньо зумовлюють основні функції – регулятивну, охоронну, уніфікуючу, стабілізуючу, виховну, інтеграційну, моделюючу та організаційну. Встановлено, що ефективність дії норми права залежить не лише від державного примусу, а й від рівня правової культури та правосвідомості суспільства. Підкреслено, що норма права виступає ключовою ланкою між абстрактними цінностями права і конкретною поведінкою суб'єктів, забезпечуючи цілісність правового порядку та функціонування інститутів правової держави. **Висновки.** Зроблено висновок, що норма права – це не лише формально закріплене правило поведінки, а й своєрідний «код суспільного життя», що відображає баланс між правами та обов'язками, свободою та відповідальністю. Вона забезпечує упорядкованість соціальних відносин, створює умови для передбачуваності та стабільності, а водночас виступає провідником фундаментальних цінностей – справедливості, рівності та поваги до людської гідності. Її багатofункціональність дозволяє праву бути не просто системою норм, а живим механізмом, який інтегрує різні сфери суспільного життя в єдине ціле. Саме завдяки нормі права принцип верховенства права наповнюється реальним змістом, а правова держава отримує практичні інструменти свого утвердження.

Ключові слова: норма права, правова держава, верховенство права, функції норм права, правове регулювання, правосвідомість, правова культура, юридична відповідальність, механізм правової державності.

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DOCUMENTS AS SOURCES OF FORENSIC INFORMATION

Abstract. Purpose. The purpose of the article is to give comprehensive characteristics of documents as sources of forensically significant information. **Results.** The scientific article is devoted to the study of the use of documents as independent sources of evidence in criminal proceedings. It is proved that documents are considered sources of forensically significant information. It is indicated that an electronic document will be recognized as evidence in a criminal case. In addition, the author proves that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. It is noted that the source of evidence of a document is the author of the document. In addition, it is substantiated that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of the documents as official or personal. **Conclusions.** It is stated that documents as independent sources of evidence are important precisely for their content. It is proved that documents are considered sources of forensically significant information. It is emphasized that an electronic document will be recognized as evidence in a criminal case if: it served as an instrument of a crime; retained traces of a crime; is the subject of a crime; is property, securities or other valuables obtained as a result of criminal acts or acquired by criminal means; may serve as a means for detecting a crime and establishing circumstances in a criminal case; if the information set forth in it is important for establishing circumstances that are subject to proof in a criminal case. It has been proven that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. After all, the evidentiary value in documents – sources of evidence, has only content, however, documents – material evidence are also significant in the case in terms of their appearance, time, place, and their discovery. It has been analyzed that documents – sources of evidence can be replaced, documents - material evidence cannot be replaced by others, since they are unique. However, documents as sources of evidence can be copied with subsequent procedural processing. It has been established that the source of evidence of a document is the author of the document. It has been characterized that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of the documents (official and personal); According to the method of recording information, documents can be (written, graphic documents, photo documents, video recording (video libraries), sound recording).

Key words: documents as sources of evidence, documents – material evidence, documents – sources of evidence, electronic document, criminal proceedings, means of detecting a crime.

1. Introduction

A document that is considered a source of evidence in a criminal trial is a material object that is in a fixed form and directly reflects information about facts and events that have criminal procedural significance and are expressed using signs and allow for reproduction in the form of images or oral language, transmission and interpretation of human thought. A document is drawn up by a certain person, enterprise, institution, organization or received in accordance with the established procedure by investigative bodies or a court and can be attached to the materials of criminal proceed-

ings. Today, electronic documents are also used as sources of evidence. Nowadays, domestic regulatory and legal documents are aimed at choosing a democratic course for the development of norms in all branches of law. The Criminal Procedure Code of Ukraine (dated April 13, 2012) in paragraph 4 (articles 98–100) (*Kryminalnyi protsesualnyi kodeks Ukrainy, 2012*) fixed the concepts and features of documents and material evidence. Domestic lawyers substantiated that with this code the legislator regulated such a norm as the recording of information. It was stated that the material carriers of information that are recorded are documents.

N. Onishchenko emphasizes the need for the interconnection of the legal activity of members of civil society and their awareness of the law, as well as legal education and prognostic research of the potential of legal awareness (Onishchenko, 2024).

S. Hrytsai notes that the goal of law as a science is to put new knowledge at the service of humanity. The scientist considers the basis of this knowledge to be the identification of patterns, laws as stable, recurring phenomena that entail certain consequences (Hrytsai, 2024).

We must state that law enforcement activities in the investigation and resolution of criminal proceedings are directly related to the collection, verification and evaluation of evidence (or procedural sources). Most of this evidence is documents. The Criminal Procedure Code of Ukraine (dated April 13, 2012) considers documents to be an independent source of evidence. Documents, like other procedural sources, are subject to evaluation, verification and use in the process of proving on general grounds. Documents are created by a person and, at the same time, represent elements of social relations, as is customary in the legal field of Ukraine. Scientists state that documents contain some specific information, and are also material objects. That is, they are tangible carriers of information in forensics.

The theoretical foundations of this study are scientific research by domestic scientists who analyze the problems of using documents as procedural sources of evidence in criminal proceedings. These are the works of the following scientists: V. Goncharenko, Yu. Groshevy, V. Zelenetsky, A. Ishchenko, V. Ishchenko, N. Karpov, E. Kovalenko, V. Kolmakov, G. Matusovsky, M. Mykheenko, V. Nora, M. Pohoretsky, M. Sirohi, L. Udalova, V. Shepitko, M. Shumyla, O. Shylo, S. Stakhivsky, V. Tertyshnyk and others.

The purpose of the article is a comprehensive characterization of documents as sources of forensically significant information.

2. The concept of a document as a source of evidence in criminal proceedings

For this study, it is necessary to consider the concept of a document as a source of evidence in criminal proceedings. Law enforcement experts justify that documents in criminal proceedings are used subject to compliance with the requirements of the criminal procedural law. Documents must have the necessary form and content in order to be admissible for use in criminal proceedings.

Distinguishing the concept of a document allowed for use in criminal proceedings, we must emphasize the definition of the concept of «document». The Large Explanatory Dic-

tionary of the Modern Ukrainian Language defines «the concept of «document» as, firstly, a business paper that certifies a certain legal fact and confirms the right to something and serves as proof of anything; secondly, a written work, a document, an account as evidence of something historical or important; thirdly, a special meaning – a formatted paper data carrier that is filled in manually or automatically; fourthly, a written certificate that officially confirms a person» (Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy, 2002, pp. 236). We note that such a definition is not normative.

V. Demianchuk provides a definition that is formulated as follows: «A document as a source of evidence in a criminal trial is understood as a material object that is in a fixed form and directly reflects information about facts and events that have criminal procedural significance and are expressed using signs and allow for the reproduction in the form of images or oral speech, transmission and interpretation of human thought. A document can be drawn up by a certain person, enterprise, institution, organization or received in accordance with the established procedure by investigative bodies or a court and attached to the case files» (Demianchuk, 2008, pp. 63–67).

Domestic researcher N. Rohatynska highlights some features of the criminal procedural concept of a document as a source of evidence: «a document is always a material object; a document is a source of evidentiary information when it records information about events and facts that are important for the correct resolution of a criminal case; the content of the document must meet the requirements of: legality, reasonableness, fairness, consistency; the information is certified or described by the bodies or persons from whom the document originates, within the limits of their official competence or, if the document originates from a citizen, within the limits of their authority and actual information; the document must be obtained in accordance with the established criminal procedural procedure by the investigative bodies or the court and attached to the case materials» (Rohatynska, 2012, pp. 349–354).

We agree with these highlighted features and rely on such reasoning in our study of the document as a source of evidence in criminal proceedings.

When substantiating documents as sources of forensically significant information, we must state that the source of evidence is the author of the document. According to A. Slobodzian, it is precisely «the legal status of the source of evidence in this case is determined by the competence of the author of the document, which is limited to the boundaries of his functions»

(Slobodzian, 2014, pp. 185). Documents are considered official if they come from state bodies and organizations (audit reports, documentary checks, etc.). The scientist notes that agreements, receipts, and other acts related to the exercise of rights and obligations are also considered documents if their authorship belongs to citizens (Slobodzian, 2014, pp. 185).

Documents are considered not only those written in letters and numbers, but also those written in telegraph font, shorthand signs, conventional images, drawings, schemes, projects, models, plans, maps, drawings, tables, graphs, etc. As for the technology by which information can be recorded in documents, it can be diverse. As an example, computer equipment that displays information on a hard disk or hard drive, memory cards, etc. Researchers of this problem justify that the use of computer technologies changes the recording of documents. Today, many new types of documents appear (as a rule, on non-traditional material carriers).

3. Classification of documents as sources of evidence in forensics

Let us briefly consider the classification of documents as sources of evidence in forensics. Let us analyze the features by which documents are classified as sources of evidence in criminal proceedings. We have two groups of such documents. The first group includes official documents received from enterprises, organizations and institutions, local governments, officials of state authorities and others. The most important of them are audit reports, specifications, certificates and others. The requirements for official documents are as follows: the form of the document must contain the necessary mandatory details (surname, name and patronymic of the official or official who prepared it, date and place of preparation, the list of information established for this document, special forms, registration number, signatures, seals, stamps, covering letters and others) their content is determined by the competence of the official or official of the relevant body, who acts within the limits of the powers granted to him. The second group is considered by scientists to be personal documents. These are those received from individuals: telegrams, notes, letters and others. Documents of this group can be both anonymous and contain an indication of the author and his personal data (Kovalenko, Udalova, 2013, pp. 136).

There is also a group of documents classified by the method of recording information. They are divided into five subgroups (A. Slobodzian): «1. Written documents (certificates, specifications) – all handwritten and typewritten documents produced using office equipment. 2. Graphic (diagrams, graphs, drawings) – doc-

uments in which the image of objects is transmitted using lines, strokes, chiaroscuro. 3. Photographic documents (photo cards); film documents (films). 4. Video recording (video libraries). 5. Sound recording – phonograms as such, which are created using any sound recording system and reproduce sound information, for example, recorded during meetings, sessions and other» (Slobodzian, 2014, pp. 186).

According to the reasoning of V. Kovalenko, L. Udalova, D. Pysmenny, documents that constitute evidence are sufficient when «in their totality they enable the investigator, prosecutor, investigating judge, court to establish all the circumstances of the criminal proceedings provided for by law at the level of knowledge about them that is necessary for making a lawful and justified procedural decision» (Kovalenko, Udalova, 2013, pp. 127).

We agree with the opinion of domestic scientists Yu. Hroshevy, S. Stakhivskyi that the ratio of documents that are recognized as sources of evidence and documents that are material evidence in the procedural regime of recording their appearance, storage and decision of fate (as documents) «essentially differs from the procedural regime established by law for material evidence». That is why it is necessary in each specific case to determine «which source of evidence is present – a document or material evidence». Yu. Hroshevy, S. Stakhivskyi emphasize the distinction between documents and material evidence. Researchers proceed from the list of features that individual types of material evidence may have in this particular criminal proceeding. These scientists emphasize that documents become material evidence. This, in their opinion, is established when they can be a means of establishing the circumstances of the case, and also have one of the features of material evidence, which must be taken into account in criminal proceedings (Hroshevyi, Stakhivskyi, 2006, pp. 134).

In this case, it is necessary to introduce a distinction between documents. These can be independent sources of evidence, as well as documents that belong to material evidence by the nature of their formation, by content, by the method of their procedural registration in a criminal case. It is important to rely on the set of such features that are inherent in documents (which are independent sources of evidence). Forensic science emphasizes the following features: officiality, validity, the conditionality of their evidentiary force exclusively by the meaning of the content, thanks to which the thing becomes a document-evidence. We agree with the statement that the distinction between documents as an independent type of sources of evidence

and documents that are material evidence should be made not by any single feature, but by the set of their characteristic properties.

Domestic scientist S. Hongalo also distinguishes documents (as documents – sources of evidence from documents – material evidence). The scientist substantiated that: first, «the information recorded in documents – material evidence differs from the information contained in «other documents» in terms of their procedural status»; second, «documents – sources of evidence can be replaced, while documents – material evidence cannot be replaced by others, due to the fact that the changes that occurred to them, related to the event of the crime and the traces reflected in them – are unique»; third, «the evidentiary value in documents – sources of evidence has only content, and their form has an auxiliary meaning»; we also emphasize that, in our opinion, documents – material evidence are significant in the case by the place, time of their discovery and their appearance. Fourthly, «a document – a source of evidence contains information consisting of a description of the event of a crime or the facts of its commission using writing or other conventional symbolic codes, and a document – material evidence fixes not a description of the material traces of a crime or the fact of its commission, but the traces of the crime themselves that were preserved on it»; the ratio of documents – evidence and material evidence proves that documents as sources of evidence can be copied with subsequent procedural processing, however, material evidence is almost always unique and unrepeatable and plays a much greater role in criminal prosecution (Honhalo, 2010, pp. 579–581). In any document as an independent source of evidence, its content at the time of criminal proceedings is important. Therefore, it is necessary to distinguish between documents as sources of evidence and documents as material evidence.

For our study, it is necessary to analyze the procedural procedure for providing and storing documents as sources of evidence. Let us characterize the features of providing documents (according to V. Pavlyuk) (Pavlyuk, 2013, pp. 284–287).

According to Part 3 of Article 99 of the Criminal Procedure Code of Ukraine, a party to criminal proceedings, a victim, a representative of a legal entity, in respect of which proceedings are being conducted, «are obliged to provide the court with the original document. The original document is the document itself, and the original of an electronic document is its reflection, which is given the same meaning as the document. In the absence of the original document, its duplicate is submitted. A dupli-

cate of a document (a document produced in the same way as its original) may be recognized by the court as the original document». It is worth noting that other information may be recognized as admissible to confirm the content of a document if: «the original document is lost or destroyed, except for cases where it is lost or destroyed through the fault of the victim or the party providing it; the original document is in the possession of one of the parties to criminal proceedings, and it does not provide it at the request of the other party; the original document cannot be obtained through available legal procedures» (Kryminalnyi protsesualnyi kodeks Ukrainy, 2012).

The question of special confiscation and the fate of documents that have been submitted to the court often arises. This issue is resolved by the court when adopting a court decision that ends criminal proceedings. The legislator notes that such documents must be stored until the decision enters into legal force. In the event of the closure of criminal proceedings by an investigator or prosecutor, the question of special confiscation and the fate of documents is resolved by a court decision on the basis of a relevant petition, which is considered in accordance with Articles 171-174 of the Criminal Procedure Code of Ukraine. It is necessary to rely on the thesis that «in this case, documents that are material evidence remain in the criminal proceedings materials throughout the entire period of their storage» (Yashenko, 2013, pp. 293).

4. Conclusions

It is stated that documents as independent sources of evidence are important precisely because of their content. It is indicated that documents are considered sources of forensically significant information. It is emphasized that an electronic document will be recognized as evidence in a criminal case if: it served as an instrument of crime; retained traces of a crime; is the subject of a crime; is property, securities or other valuables obtained as a result of criminal acts or acquired by criminal means; can serve as a means for detecting a crime and establishing circumstances in a criminal case; if the information set forth in it is important for establishing circumstances subject to proof in a criminal case. It is proved that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. After all, the evidentiary value in documents – sources of evidence has only content, however, documents – material evidence are also significant in the case in terms of their appearance, time, place, and their discovery. It is analyzed that documents – sources of evidence can be replaced, documents – physical evidence cannot be replaced by others, since they are unique.

However, documents as sources of evidence can be copied with subsequent procedural registration. It is stated that the source of evidence of a document is the author of the document. It is characterized that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of documents (official and personal); by the method of recording information, documents can be (written, graphic documents, photo documents, video recording (video libraries), sound recording).

We consider the study of procedural possibilities in pre-trial investigation and in court proceedings when resolving the case on the merits to be a prospect for further scientific research.

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ДОКУМЕНТИ ЯК ДЖЕРЕЛА КРИМІНАЛІСТИЧНО ЗНАЧИМОЇ ІНФОРМАЦІЇ

Анотація. Метою статті є комплексна характеристика документів як джерел криміналістично значимої інформації. **Результати.** Наукова стаття присвячена дослідженню використання документів як самостійних джерел доказів у кримінальному провадженні. Доведено, що документи вважаються джерелами криміналістично значимої інформації. Вказано, що електронний документ буде визнаватися доказом у кримінальній справі. Крім того, доведено, що необхідно розрізняти докумен-

ти – речові докази, та документи – джерела доказів. Зауважено, що джерелом доказу документа є автор документа. Крім того, обґрунтовано, що документи як джерела доказів у кримінальному судочинстві можна класифікувати за характером виникнення документів як офіційні або особисті. **Висновки.** Констатовано, що документи як самостійні джерела доказів важливі саме своїм змістом. Доведено, що документи вважаються джерелами криміналістично значимої інформації. Наголошено, що електронний документ буде визнаватися доказом у кримінальній справі у випадку: якщо він виступав знаряддям злочину; зберіг на собі сліди злочину; є предметом злочину; є майном, цінним папером чи іншою цінністю, отриманою в результаті злочинних дій або нажитою злочинним шляхом; може виступати засобом для виявлення злочину та встановлення обставин по кримінальній справі; якщо викладені в ньому відомості мають значення для встановлення обставин, що підлягають доказуванню по кримінальній справі. Доведено, що необхідно розрізняти документи – речові докази, та документи – джерела доказів. Адже, доказове значення у документах – джерелах доказів має лише зміст, проте, документи – речові докази значимі у справі також за своїм зовнішнім виглядом, часом, місцем, їх виявлення. Проаналізовано, що документи – джерела доказів можуть бути замінені, документи – речові докази не можуть бути замінені на інші, оскільки є унікальними. Проте, документи як джерела доказів можуть копіюватися із наступним процесуальним оформленням. Констатовано, що джерелом доказу документа є автор документа. Схарактеризовано, що документи як джерела доказів у кримінальному судочинстві можна класифікувати за характером виникнення документів (офіційні та особисті); за способом фіксації відомостей документи можуть бути (письмові, графічні документи, фотодокументи, відеозапис (відеотеки), звукозапис).

Ключові слова: документи як джерела доказів, документи – речові докази, документи – джерела доказів, електронний документ, кримінальне провадження, засіб для виявлення злочину.

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CRIMINAL LAW CHARACTERISTICS OF DRAFT EVASION DURING MOBILIZATION: A GENERAL THEORETICAL OVERVIEW

Abstract. Purpose. The purpose of this article is to provide a comprehensive theoretical and legal analysis of the criminal law characteristics of evasion of conscription during mobilization, to identify problematic aspects of the legal classification of this crime, and to formulate proposals for improving the criminal legislation in this area. **Results.** The article presents a detailed analysis of the criminal law elements of draft evasion during mobilization. It examines the constituent elements of the offence provided for in Article 336 of the Criminal Code of Ukraine, with regard to the specific nature of the mobilization period. Both the objective and subjective elements of this criminal offense are explored, with an emphasis on current judicial practice and recent legislative changes introduced under martial law. The article identifies problematic issues in qualifying acts of draft evasion during mobilization, particularly in distinguishing this offense from other related crimes. It proposes ways to enhance the effectiveness of criminal law measures against such offenses and improve law enforcement practices. An analysis of international experience in criminalizing draft evasion reveals a variety of legal approaches to addressing this issue. In most European countries, criminal liability is imposed for evasion of military service; however, the sanctions are generally less severe than those applied in Ukraine. **Conclusions.** The study concludes that international experience in criminalizing draft evasion can serve as a useful reference point for improving Ukrainian legislation in this area. Nevertheless, the adoption of foreign legal practices must be carried out with due consideration of the specificities of Ukraine's legal system, national traditions, and current threats to national security. In the context of martial law, it is especially important to maintain a balance between the state's interest in protecting national security and defense capabilities on the one hand, and the protection of citizens' rights and freedoms on the other. This balance must be ensured both at the legislative level and in law enforcement practice. Consequently, improving the criminal law response to evasion of conscription during mobilization remains a crucial task that will contribute to strengthening national security and defense capability, as well as fulfilling the constitutional duty of citizens to defend the Homeland.

Key words: criminal law, draft evasion, mobilization, military service, criminal liability, elements of a crime, martial law, crime qualification, national security.

1. Introduction

Ensuring the defense capability of the state under modern challenges represents one of the key priorities of Ukraine's public policy. This issue has gained particular urgency following the onset of the full-scale military aggression against Ukraine, which led to the declaration of general mobilization and the introduction of martial law throughout the territory of the state. Pursuant to the Presidential Decree "On the Introduction of Martial Law in Ukraine" dated February 24, 2022, a special legal regime was established, involving restrictions on constitutional rights and freedoms, including the imposition

of a military duty on certain categories of individuals.

Under these conditions, the issue of holding individuals criminally liable for evasion of conscription during mobilization has become of particular importance. The effectiveness of manning the Armed Forces of Ukraine and other military formations is directly linked to the defense capacity of the state and the protection of its territorial integrity. Criminal liability for draft evasion during mobilization is established in Article 336 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine), which provides for imprisonment for a term of five to ten years.

The legal analysis of the nature and specific characteristics of criminal law provisions on draft evasion during mobilization is of both theoretical and practical significance, since the proper legal qualification of such conduct directly affects the effectiveness of criminal justice mechanisms. Despite the relevance of the issue, the academic literature lacks comprehensive studies specifically addressing the criminal law aspects of evasion of military service during mobilization, which necessitates a thorough analysis of the subject.

The objective of this article is to conduct a comprehensive theoretical and legal study of the criminal law characteristics of evasion of conscription during mobilization, to identify challenges in the qualification of this offense, and to develop proposals for improving the relevant criminal law framework.

2. The Theoretical and Legal Foundations of Liability for Evasion of Conscription During Mobilization

Liability for evasion of conscription for military service during mobilization is established under Article 336 of the Criminal Code of Ukraine. According to this provision, evasion of conscription during mobilization is punishable by imprisonment for a term of five to ten years. It is worth noting that, following the outbreak of the full-scale invasion, the sanction under this article was significantly increased—from the previous penalty of two to five years of imprisonment to the current term. This amendment was introduced by the Law of Ukraine "On Amendments to the Criminal Code of Ukraine Regarding the Strengthening of Liability for Certain Military Offenses" dated 15 March 2022.

The criminalization of draft evasion during mobilization is driven by the imperative to safeguard national security and ensure the state's defense capability. The duty of citizens to defend the Homeland is enshrined in Article 65 of the Constitution of Ukraine, which states that the protection of the Homeland, its independence, and territorial integrity is the constitutional duty of Ukrainian citizens. Further implementation of this constitutional norm is ensured through the provisions of the Law of Ukraine "On Military Duty and Military Service" and the Law of Ukraine "On Mobilization Preparation and Mobilization," which establish the legal mechanisms for fulfilling this duty, including participation in military service during mobilization (Volotivskyi, 2019).

The legal basis for the conscription of citizens into military service during mobilization is the Law of Ukraine "On Mobilization Preparation and Mobilization." According to this Law, mobilization is defined as a set of measures

aimed at the planned transition of the national economy, the activities of public authorities, other state bodies, local self-government bodies, enterprises, institutions, and organizations to function under conditions of a special period, and the transition of the Armed Forces of Ukraine, other military formations, and the Civil Protection Operational Rescue Service to wartime organization and staffing structures.

Legal relations related to the fulfillment of military duty and the performance of military service are also governed by the Law of Ukraine "On Military Duty and Military Service." This law specifies that the fulfillment of military duty in the reserve includes conscription into military service during mobilization. Thus, in the event of a declared mobilization, citizens in the reserve are subject to mandatory conscription into military service.

3. Objective Elements of the Offense of Draft Evasion During Mobilization

The objective elements of the offense comprise the object and the objective side of the crime. The generic object of the offense of evasion of conscription during mobilization is the system of social relations in the sphere of ensuring the defense capability of Ukraine, its independence, and territorial integrity. The immediate object is the legally established procedure for the manning of the Armed Forces of Ukraine and other military formations under mobilization conditions (Iermolaieva-Zadorozhnia, 2017).

The objective side of this offense consists in the act of evading conscription during mobilization. Evasion may be manifested through active conduct (such as forging documents, feigning illness, changing one's place of residence without notifying the military commissariat, etc.) or through inaction (e.g., failing to report to the territorial recruitment and social support center upon summons).

It is important to note that in order to qualify an act as a criminal offense under Article 336 of the Criminal Code of Ukraine, it must be established that the individual was duly notified of the conscription and had a real opportunity to report to the territorial recruitment and social support center but deliberately failed to do so. Conversely, if the individual did not receive the summons or was unable to appear at the recruitment center for valid reasons (such as illness, natural disaster, etc.), the elements of the offense under Article 336 of the Criminal Code of Ukraine are not present.

The crime is considered completed upon the failure to report to the recruitment center after being summoned, or upon the commission of other acts aimed at evading conscription dur-

ing mobilization. Thus, the offense is formal in nature, meaning that its completion does not require the occurrence of socially harmful consequences.

4. Subjective Elements of the Offense of Draft Evasion During Mobilization

The subjective elements of the offense consist of the subject and the subjective side. The subject of the crime under Article 336 of the Criminal Code of Ukraine is a special subject—an individual who is subject to conscription for military service during mobilization. According to the Law of Ukraine "On Military Duty and Military Service," those subject to conscription during mobilization are individuals who are in the military reserve, i.e., conscripts (Official website "Judiciary", 2024).

Conscripts are individuals in the reserve who may be called up to staff the Armed Forces of Ukraine and other military formations during a special period, as well as to carry out defense-related tasks. This category includes individuals who acquired a military occupational specialty during their military service or military education, and those who are medically and age-wise fit for military service.

It is worth noting that under the Law of Ukraine "On Mobilization Preparation and Mobilization," certain categories of citizens are exempt from conscription during mobilization. These include, among others, individuals deemed unfit for military service due to health reasons, Members of Parliament of Ukraine, judges, prosecutors, persons with three or more children under the age of 18 in their care, and some other categories. Such individuals cannot be subjects of the crime defined in Article 336 of the Criminal Code of Ukraine.

The subjective side of draft evasion during mobilization is characterized by direct intent. This means that the individual is aware of the socially dangerous nature of their conduct (evasion of conscription) and deliberately chooses to engage in it. The motives and purposes of committing the offense (e.g., unwillingness to serve in the military, fear of danger, desire to maintain one's usual lifestyle, etc.) do not affect the legal qualification of the act, but may be taken into account by the court when determining the appropriate punishment (Official website "Judiciary", 2024).

5. Problematic Aspects of the Legal Qualification of Evasion of Conscription During Mobilization

The application of Article 336 of the Criminal Code of Ukraine has revealed a number of problematic aspects related to the legal qualification of this offense. One such issue is the distinction between evasion of conscription during mobilization and evasion of military reg-

istration. According to Article 210 of the Code of Ukraine on Administrative Offenses, evasion of military registration constitutes an administrative offense. However, if an individual is not registered for military service and, consequently, does not receive a draft notice, the question arises as to whether such conduct can be qualified as evasion of conscription during mobilization (Liudvik, 2015; Maistrenko, 2016; Pylypenko, 2018).

In the author's view, evasion of military registration with the intent to avoid conscription during mobilization should be qualified as an attempt to commit the offense provided for in Article 336 of the Criminal Code of Ukraine. In this case, the evasion of registration serves as a means of achieving the ultimate goal—evasion of conscription during mobilization. Conversely, if a person avoids military registration without the specific intent to evade conscription (for instance, due to ignorance of the law or negligence), such behavior should be regarded solely as an administrative offense.

Another problematic aspect concerns the legal qualification of actions committed by individuals who left Ukraine before the announcement of mobilization and did not return after it was declared. In such circumstances, the issue arises whether the failure to return to Ukraine constitutes evasion of conscription. In the author's opinion, if a person was aware of the announcement of mobilization and had the opportunity to return to Ukraine but deliberately failed to do so in order to avoid conscription, such actions should be qualified as evasion of conscription during mobilization. At the same time, if a person lacked a real opportunity to return to Ukraine (e.g., due to the absence of transportation, illness, or lack of financial means), the elements of the offense under Article 336 of the Criminal Code of Ukraine would be absent (Pysmenskyi, 2024).

The qualification of actions involving the use of forged documents or the offering of bribes to avoid conscription also presents legal challenges. In such cases, the issue arises as to whether these acts should be qualified cumulatively. In the author's view, if a person forges documents or offers a bribe with the aim of avoiding conscription during mobilization, such conduct should be qualified as a combination of offenses: evasion of conscription under Article 336 of the Criminal Code of Ukraine and either document forgery (Article 358) or offering an unlawful benefit to an official (Article 369).

6. Judicial Practice Concerning the Prosecution of Evasion of Conscription During Mobilization

Table 1

Main Methods of Evasion of Conscription During Mobilization and Their Legal Assessment			
Method of Evasion	Objective Characteristics	Criminal Law Assessment	Challenges in Proving
Failure to report upon summons without valid reasons	The individual was duly served with a summons but failed to appear at the Territorial Recruitment and Social Support Center (TRSSC) within the designated timeframe	Qualified under Article 336 of the Criminal Code of Ukraine, provided that intent to evade is proven	Requires proof of receipt of the summons and the absence of valid reasons for nonappearance
Avoidance of receiving the summons	The individual deliberately avoids receiving the summons (e.g., refusing to open the door, ignoring electronic notification, etc.)	Qualified under Article 336 of the Criminal Code of Ukraine if intent to evade conscription is proven	Difficulties in proving deliberate evasion of receipt
Change of residence without notifying the TRSSC	The individual changes place of residence without deregistering from military records	Qualified under Article 336 of the Criminal Code of Ukraine if the purpose of changing residence was to evade conscription	Requires proof that the change of residence was aimed at avoiding conscription
Feigned illness	The individual deliberately simulates illness or worsens health condition intentionally	Qualified under Article 336 of the Criminal Code of Ukraine. May also be qualified under Article 358 (forgery) if false documents are used	Requires forensic medical examination; difficult to prove deliberate simulation
Forgery of documents to obtain deferral or exemption	Creation or submission of falsified documents regarding health status, family composition, etc.	Qualified cumulatively under Articles 336 and 358 of the Criminal Code of Ukraine	Requires document examination and proof of falsification
Crossing the border to avoid conscription	The individual leaves Ukraine with the intent to evade conscription	Qualified under Article 336 of the Criminal Code of Ukraine; if the border crossing was illegal, also under Article 332-2	Difficult to prove that the departure was motivated specifically by intent to evade conscription
Failure to return from abroad after mobilization is declared	The individual, while abroad, deliberately fails to return to Ukraine after the announcement of mobilization	May be qualified under Article 336 of the Criminal Code of Ukraine if intent to evade conscription is proven	Particularly difficult to prove intent and presence of legal obligation to return
Self-inflicted injury	The individual intentionally causes bodily harm to be deemed unfit for military service	Qualified cumulatively under Articles 336 and 409 of the Criminal Code of Ukraine	Requires forensic medical examination and proof of intentional nature of injuries

An analysis of judicial practice in cases involving evasion of conscription during mobilization reveals key trends and problematic aspects in the application of Article 336 of the Criminal Code of Ukraine. Based on the generalization of court judgments rendered under Article 336, the following conclusions may be drawn.

First, courts pay particular attention to establishing whether the individual was duly notified of conscription. According to the case law of the Supreme Court, for conduct to be qualified under Article 336 of the Criminal Code of Ukraine, it must be proven that the individual was properly notified of the call-up and had a real opportunity to report to the territorial center of recruitment and social support. Noti-

fication is considered proper if the individual received the draft notice in person, confirmed by their signature, or if the notice was delivered via other communication channels provided by law (Turkot, 2015; Chorny, 2015).

Second, courts recognize the existence of valid reasons for failure to appear in response to a draft notice as a circumstance that excludes criminal liability under Article 336. Such reasons may include illness, natural disasters, the death of a close relative, or other circumstances that make it impossible for the individual to report. The burden of proving the existence of valid reasons lies with the defendant.

Third, courts examine the subjective element of the offense, in particular the presence

Table 2

Comparative Analysis of Criminal Liability for Draft Evasion in European Countries

Country	Legislative Regulation	Sanctions for Draft Evasion	Qualification Features	Alternative (Non-Military) Service
Ukraine	Article 336 of the Criminal Code of Ukraine "Evasion of Conscription during Mobilization"	Imprisonment for a term of 5 to 10 years	Formal composition of the crime; direct intent required	Provided only for specific categories of citizens due to religious beliefs
Poland	Article 144 of the Criminal Code of Poland "Evasion of Military Service"	Fine, restriction of liberty, or imprisonment for up to 3 years	Intentional act; milder sanctions in peacetime	Available for persons with religious or other conscientious beliefs
Germany	§ 109 of the German Criminal Code "Evasion of Military Service"	Imprisonment for up to 5 years or a fine	Differentiated approach depending on the method of evasion	Well-developed system of alternative service
Lithuania	Article 314 of the Criminal Code of Lithuania "Evasion of Military Service"	Community service, fine, arrest, or imprisonment for up to 3 years	Increased liability during wartime	Available for persons with religious or other conscientious beliefs
Finland	Chapter 45 of the Criminal Code of Finland "Military Offences"	Fine or imprisonment for up to 1 year (in peacetime), up to 4 years (in wartime)	Clear differentiation based on the time criterion	Broad availability of alternative service
Sweden	The Total Defence Duty Act	Fine or imprisonment for up to 2 years (in peacetime), up to 4 years (in wartime)	Criminal liability reinstated in 2017 after a long suspension	Well-developed system of alternative service
Italy	Article 135 of the Military Criminal Code	Imprisonment from 6 months to 2 years (in peacetime), from 2 to 5 years (in wartime)	Differentiated approach based on time of commission	Right to alternative service is constitutionally guaranteed
Norway	§ 35 of the Military Criminal Code	Fine or imprisonment for up to 3 years	Additional sanctions include restriction of civil rights	Well-developed system of alternative civilian service

of intent to evade conscription. If the person was unaware of being subject to conscription or lacked intent to avoid it, the elements of the crime under Article 336 are not present. At the same time, ignorance of the law does not exempt one from criminal liability; therefore, a person who was aware of the announcement of mobilization but failed to appear at the territorial recruitment center may be held criminally liable.

Fourth, courts take into account the personal characteristics of the offender and the specific circumstances of the case when determining the punishment for evasion of conscription during mobilization. An analysis of judgments indicates that in most cases, courts impose a sentence of imprisonment close to the minimum term provided for by the sanction of Article 336 of the Criminal Code of Ukraine, namely five years. However, where mitigating circumstances are present—such as sincere remorse, active cooperation with the inves-

tigation, or the presence of minor children in the person's care—courts often apply Article 75 of the Criminal Code and release the individual from serving the sentence with a probationary period (Chorny, 2015).

7. International Experience of Criminal Law Counteraction to Evasion of Military Service

An analysis of international experience in criminal law counteraction to evasion of military service reveals a diversity of approaches to addressing this issue. In most European countries, criminal liability for evasion of military service is prescribed, yet the sanctions for such an act are generally less severe than those in Ukraine.

For instance, in Poland, evasion of military service is punishable by up to three years of imprisonment. In Germany, such evasion may result in imprisonment for up to five years or a fine. In Lithuania, it may be punished by community service, a fine, arrest, or imprisonment for

up to three years. At the same time, most European states provide the possibility of performing alternative (non-military) service for individuals whose religious or other beliefs prevent them from undergoing military service. In Ukraine, the possibility of alternative service is also legally established for certain categories of citizens. However, the scope of such individuals is rather limited and, for example, does not include persons whose philosophical or ethical beliefs prevent them from performing military service.

It is worth noting that following the onset of the full-scale invasion of Ukraine by the Russian Federation, many European countries have strengthened the liability for evasion of military service and intensified efforts to reinforce their armed forces. This indicates a growing awareness of the importance of ensuring national defense capability in the context of modern geopolitical challenges.

8. Ways to Improve Criminal Legislation in the Field of Counteracting Evasion of Mobilization

Based on the conducted analysis, the following directions for improving criminal legislation in the field of counteracting evasion of mobilization can be proposed.

Firstly, it is advisable to differentiate criminal liability for evasion of mobilization depending on the method by which the offense is committed. In particular, stricter liability could be established for evasion committed through the use of forged documents, bribery, self-inflicted injury, and similar means. This would contribute to upholding the principle of fairness in punishment and the individualization of criminal liability.

Secondly, it is expedient to introduce criminal liability for evading the receipt of a summons for military service during mobilization. Currently, such evasion qualifies as evasion of mobilization only when the individual's intent to avoid conscription is proven. In practice, however, proving such intent poses significant difficulties. Therefore, consideration should be given to criminalizing intentional evasion of receiving a summons for military service during mobilization as a separate criminal offense or, alternatively, introducing administrative liability for such actions.

Thirdly, it is necessary to clarify the disposition of Article 336 of the Criminal Code of Ukraine by specifying the meaning of "evasion of mobilization." In particular, it would be appropriate to define this term as the failure to report to the designated assembly point within the period specified in the summons without valid reasons, as well as other deliberate actions (or inaction) aimed at avoiding conscription for military service during mobilization. This

would help to eliminate inconsistencies in the interpretation of this provision and ensure its uniform application in practice.

Fourthly, it is worth considering the introduction of broader opportunities for performing alternative (non-military) service during mobilization. This would strike a balance between the state's interest in ensuring defense capability and the rights of individuals who, due to religious, philosophical, or ethical beliefs, cannot perform military service.

Fifthly, the introduction of a legal mechanism of *active repentance* for individuals who evaded mobilization but voluntarily reported to a territorial recruitment and social support center and expressed a willingness to perform military service should be considered. Such a mechanism would provide incentives for individuals who had previously evaded conscription to voluntarily fulfill their constitutional duty to defend the homeland.

9. Conclusions

The analysis conducted allows for the formulation of the following conclusions and proposals. Evasion of military conscription during mobilization constitutes a socially dangerous act that undermines national security and the defense capabilities of the state. The criminalization of such conduct is justified and consistent with the principle of proportionality, given the heightened public danger of draft evasion during wartime.

Effective counteraction to evasion of mobilization requires a comprehensive approach that encompasses not only criminal law measures but also organizational, informational, and other initiatives. In particular, it is essential to raise citizens' legal awareness, promote a positive attitude toward military service, and ensure adequate conditions for its performance. This includes sufficient material support for service members and their families, as well as proper social protection for combatants.

At the same time, the criminal law measures directed at addressing draft evasion during mobilization require further refinement. It is advisable to:

- Differentiate criminal liability based on the method of commission (e.g., use of forged documents, bribery, self-inflicted injuries).
- Introduce liability for intentional evasion of receiving a draft summons during mobilization.
- Clarify the disposition of Article 336 of the Criminal Code of Ukraine by specifying what constitutes "evasion of mobilization"—including failure to report to the assembly point without valid reason or other intentional actions (or omissions) aimed at avoiding military conscription.

– Expand opportunities for performing alternative (non-military) service during mobilization, particularly for individuals with religious, philosophical, or ethical objections.

– Establish a legal mechanism for **active repentance** for individuals who previously evaded mobilization but voluntarily report to the Territorial Recruitment and Social Support Center and express a willingness to serve.

Judicial practice also plays a crucial role in addressing evasion of military service during mobilization. Courts must ensure consistency and stability in the application of law, consider all relevant circumstances of the case and the personality of the offender, and uphold the principles of justice and individualized liability when imposing punishment.

International experience in criminal law responses to military service evasion may be valuable for improving Ukrainian legislation in this area. However, such experience should be adapted with consideration for the specific features of Ukraine's legal system, national traditions, and the current threats to national security.

In conditions of martial law, it is particularly important to maintain a balance between the state's interest in ensuring national security and defense capability on the one hand, and the protection of citizens' rights and freedoms on the other. This balance must be upheld both in legislation and in law enforcement practice.

Therefore, improving the criminal law mechanisms for countering evasion of military conscription during mobilization is a vital task. Its successful implementation will contribute to strengthening national security and defense capacity, as well as ensuring the fulfillment

of citizens' constitutional duty to defend their homeland.

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КРИМІНАЛЬНО-ПРАВОВІ ОЗНАКИ УХИЛЕННЯ ВІД ПРИЗОВУ НА ВІЙСЬКОВУ СЛУЖБУ ПІД ЧАС МОБІЛІЗАЦІЇ: ЗАГАЛЬНОТЕОРЕТИЧНА ХАРАКТЕРИСТИКА

Анотація. *Метою* статті є здійснення комплексного теоретико-правового аналізу кримінально-правових ознак ухилення від призову на військову службу під час мобілізації, визначення проблемних аспектів кваліфікації даного злочину та формулювання пропозицій щодо вдосконалення кримінального законодавства у цій сфері. **Результати.** У статті здійснено комплексний аналіз кримінально-правових ознак ухилення від призову на військову службу під час мобілізації. Розглянуто основні елементи складу злочину, передбаченого статтею 336 Кримінального кодексу України, із урахуванням специфіки мобілізаційного періоду. Досліджено об'єктивні та суб'єктивні ознаки даного кримінального правопорушення, проаналізовано актуальну судову практику та законодавчі зміни, що відбулися в умовах воєнного стану. Визначено проблемні аспекти кваліфікації ухилення від призову під час мобілізації, зокрема розмежування з іншими суміжними складами злочинів. Запропоновано шляхи вдосконалення

кримінально-правової протидії таким правопорушенням та підвищення ефективності правозастосовної практики.

Аналіз міжнародного досвіду кримінально-правової протидії ухиленню від військової служби свідчить про різноманітність підходів до вирішення даної проблеми. У більшості європейських країн передбачено кримінальну відповідальність за ухилення від військової служби, але санкції за таке діяння є менш суворими, ніж в Україні. Зроблено висновок, що міжнародний досвід кримінально-правової протидії ухиленню від військової служби може бути корисним для вдосконалення українського законодавства у цій сфері. Водночас, запозичення зарубіжного досвіду повинно здійснюватися з урахуванням особливостей правової системи України, національних традицій, а також актуальних викликів та загроз національній безпеці України. В умовах воєнного стану особливого значення набуває забезпечення балансу між інтересами держави щодо захисту національної безпеки та обороноздатності, з одного боку, та захистом прав і свобод громадян, з іншого боку. Цей баланс повинен бути забезпечений як на законодавчому рівні, так і в правозастосовній практиці. Таким чином, вдосконалення кримінально-правової протидії ухиленню від призову на військову службу під час мобілізації є важливим завданням, вирішення якого сприятиме забезпеченню національної безпеки та обороноздатності України, а також реалізації конституційного обов'язку громадян щодо захисту Вітчизни.

Ключові слова: кримінальне право, ухилення від призову, мобілізація, військова служба, кримінальна відповідальність, склад злочину, воєнний стан, кваліфікація злочинів, національна безпека.

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THE ESSENCE AND FEATURES OF TRANSNATIONAL ORGANISED CRIMINAL GROUPS: THEORETICAL AND PRACTICAL ASPECTS

Abstract. Purpose. The purpose of the article is to define the essence and features of transnational organised criminal groups. **Results.** The article studies some aspects of investigation of crimes committed by transnational organised criminal groups. On the basis of domestic and foreign scientific literature, as well as the study of legislation, the concept and features of a ‘transnational organised criminal group’ are formulated. The author emphasises that the issue of transnational crime, namely, the definition of its concept and features, has always been a subject of lively debate among scholars and practitioners over the past decades both in Ukraine and abroad. The solution to these problems requires a thorough study and analysis of domestic and foreign scientific literature, as well as a comprehensive study of judicial and investigative practice. The concept of a transnational organised criminal group is formulated as a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds. **Conclusions.** The following features have been identified: it operates on the territory of more than one state; it commits unlawful acts in one state, but a significant part of its preparation, planning and management takes place in another state; it commits unlawful acts in one state, but its significant consequences take place in another state; it consists of five or more persons; it has a preliminary conspiracy; it is stable; the association is hierarchical; its goal is to commit serious or especially serious crimes; it manages and coordinates the illegal activities of these persons; it has a high level of secrecy of criminal activity; it has a mercenary motive; it may have corrupt ties in government, administration, and law enforcement agencies; organised criminal activity may be politicised.

Key words: transnational organised criminal group, criminal offences, leader, investigation, investigative (search) actions, planning.

1. Introduction

The issue of transnational crime, namely, the definition of its concept and features, has always been a subject of lively debate among scholars and practitioners over the past decades both in Ukraine and abroad. The solution to these problems requires a thorough study and analysis of domestic and foreign scientific literature, as well as a comprehensive study of judicial and investigative practice. Therefore, this publication will be aimed at addressing a specific issue: defining the essence and features of transnational organised criminal groups.

The following national and foreign scholars who have focused their research

on the study of the essence and features of organised criminal groups should be noted: V.P. Bakhin, P.D. Bilenchuk, M. H. Verbenskyi, V.O. Hlushkov, A. Castle, E. Karamucho, N.S. Karpov, O.L. Kobylanskyi, V.V. Korolchuk, A.V. Kofanov, A.M. Lazebnyi, B.S. Levytskyi, K. B. Marysiuk, Ye.K. Paniotov, V.S. Polianska, Ye.D. Skulysh, K.O. Chaplynskyi, and others. In addition, our study is based on a comprehensive approach to formulating the scientific category, considering international practice and current trends.

The purpose of the article is to define the essence and features of transnational organised criminal groups.

2. Areas of combating transnational organised crime

To begin with, we consider it necessary to cite V.V. Korolchuk's thesis, stating that transnational organised crime is the result of the development of organised crime, its transformation, expansion of its borders by going beyond the borders of one state. The author argues that this phenomenon is becoming global in nature and threatens the development of any state, so transnational organised crime is one of the highest levels of criminal evolution, which is almost impossible to eradicate, but it is quite possible to reduce its negative impact on the modern world community and politics (as well as the economy and politics of individual states). The researcher concludes that among the urgent measures aimed at solving a large number of problems related to the prevention and overcoming of organised crime and its transnational forms, the legislative complex of legal measures should be in the first place along with the measures of organisational nature, with due regard for foreign experience of such legal prevention, as well as consistency with international law. In other words, according to V.V. Korolchuk, Ukraine needs to coordinate the forms and methods of combating organised crime in accordance with the approaches of the EU and the CoE, recognise the procedures for combating organised crime generally accepted in European countries, and for this purpose it is necessary to make appropriate changes to legislation, as well as to adopt new laws, participate in joint activities of the EU countries in the fight against organised groups and criminal organisations, including transnational ones, introduce a mechanism for implementing legislation on transplantation (Korolchuk, 2013). In support of all of the above, we emphasise that the regulatory framework should, in our opinion, be based on international law.

In the context of the above, we believe that the position of K. Marysiuk is correct, as he points out that these provisions are clearly not sufficiently regulated at this level. In the author's opinion, it would be necessary to enshrine provisions relating to transnational organised crime at the domestic legislative level of the UN member states. After all, international and domestic legislation should include provisions that would clearly define the features of transnational organised crime and transnational criminal organisations, which would enable their clear distinction from other types of criminal manifestations and related criminal entities, and would significantly improve the fight against them (Marysiuk, 2017).

According to V.S. Polianska '... original definition of transnational organised crime in the economic sector, it is organised crim-

inal activity in the field of legal and illegal economic activity, that is, in the field of production, exchange, distribution and consumption of material goods and services, including under the guise of legal activity, performed in two or more states, characterised by mercenary motives, planning and proper preparation of crimes, a developed structure, the presence of a special purpose of committing grave and especially grave crimes." In addition, the researcher establishes that the following will be the features of transnational economic crimes: '...multiple jurisdictions (internationality), multiple criminality, specific motive, structured and mobile actor, criminal innovation, corrupt connections as an integral element of the infrastructure' (Polianska, 2016).

According to A. Castle, the issue of transnational organised crime has been raised in security dialogues precisely on these terms. The researcher argues that in recent years, a number of authors have argued that criminal organisations are particularly well-positioned to exploit the opportunities of an opening global economy, the break-down of political barriers, and the communications revolution. Moreover, the author argues that "the combined and often cooperative activities of many of the leading criminal organizations are by nature borderless operations, running counter to and often directly threatening the interests – and the security – of states, who seem powerless to slow (much less reverse) the growth of criminal activity" (Castle, 1997).

According to foreign publicists, "...transnational organized crime encompasses virtually all serious profit-motivated criminal actions of an international nature where more than one country is involved. There are many activities that can be characterized as transnational organized crime, including drug trafficking, smuggling of migrants, human trafficking, money-laundering, trafficking in firearms, counterfeit goods, wildlife and cultural property, and even some aspects of cybercrime. It threatens peace and human security, leads to human rights being violated and undermines the economic, social, cultural, political and civil development of societies around the world. The vast sums of money involved can compromise legitimate economies and have a direct impact on governance, such as through corruption and the "buying" of elections" (Transnational Organized Crime – The Globalized Illegal Economy, 2020).

In addition, M.H. Verbenskyi defines transnational organised crime as "...a separate type of organised crime characterised by a structural system of highly organised and carefully concealed criminal groups engaged in interre-

gional or, in some cases, international criminal activity in the form of a trade aimed at systematically obtaining the highest possible profits and super-profits, often using both state structures and civil society institutions in their interests" (Verbenskyi, 2006).

Therefore, we argue that a transnational organised criminal group is a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds.

Regarding the features of this scientific category, first, a reference should be made to the publication of V.V. Popko, who appropriately emphasised that the formation of transnational criminal law is one of the most important activities of the United Nations, which performs a central function in organising cooperation in the field of combating international crime on an institutional basis. In addition, the author argues that the law-making and organisational role of the Organisation is manifested in the activities of its bodies, among which the researcher identified the following: the General Assembly, the Security Council, the International Law Commission, the Economic and Social Council (ECOSOC), the Commission on Crime Prevention and Control, expert groups, the Office on Drugs and Crime, congresses on crime prevention and criminal justice, commissions and committees whose activities are aimed at drafting conventions, resolutions, declarations and other UN documents (Popko, 2019). Thus, V.V. Popko has listed in detail all possible UN bodies that can adopt specific documents to counteract the activities of transnational organised crime.

We believe that the United Nations Convention against Transnational Organised Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, is the most important among them. In addition, this international legal instrument states that an offence can be recognised as '...transnational in nature if: a) it is committed in more than one State; b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) it is committed in one State, but involves an organised criminal group that engages in criminal activities in more than one State; d) it is committed in one State but has substantial effects in another State" (United Nations Convention against Transnational Organized Crime, adopted by Resolution 55/25 of the General Assembly, 2000). Agreeing with the accuracy of the features identified, we synthesise them into the following ones, considering the issues of our study:

- A transnational organised criminal group operates on the territory of more than one state;
- A transnational organised criminal group commits offences in one state, but a significant part of its preparation, planning and management takes place in another state;
- A transnational organised criminal group commits an offence in one State, but it has substantial effects in another State.

3. Formation of signs of organised crime

In addition, at the legislative level in our country, the issue of the list of specific features has not been resolved, for example, the Law of Ukraine only provides a definition of organised crime, and the features inherent in this phenomenon are not defined (Law of Ukraine On the organizational and legal foundations of combating organized crime, 1993). Moreover, parts 3 and 4 of Article 28 of the Criminal Code of Ukraine state that '...a criminal offence shall be deemed to have been committed by an organised group if several persons (three or more) who have previously organised themselves into a stable association for the purpose of committing this and other criminal offences, united by a single plan with the distribution of functions of the group members aimed at achieving this plan, known to all group members... 4. A criminal offence shall be deemed to be committed by a criminal organisation if it is committed by a stable hierarchical association of several persons (five or more), whose members or structural parts, by prior conspiracy, have organised themselves for joint activities with the aim of directly committing serious or especially serious crimes by members of this organisation, or directing or coordinating the criminal activity of other persons, or ensuring the functioning of the criminal organisation itself and other criminal groups" (Criminal Code of Ukraine, 2001). These definitions can be used to identify the following features of a criminal group: quantitative composition, structural stability, hierarchical association, prior conspiracy, the purpose of committing grave or especially grave crimes, as well as the management and coordination of the illegal activities of these persons.

Relying on the analysis of publications by scholars and practitioners who have studied this issue, Ye.D. Skulysh and V.O. Hlushkov conclude that the definition of 'transnational organised crime' is dominated by the lucrative motive, that is, the focus of transnational criminal structures on obtaining ultra-high profits, which may be both material and non-material. The authors argue that it is not possible to establish a minimum or maximum amount of desired criminal profits in arithmetic terms, that is, the value is relative. In any case, individuals join together in a criminal organisation

to generate significant profits without resorting to small, 'petty' transactions. In addition, scholars indicate that organised criminal activity of a lucrative nature, which is a criminal activity, at the present level of development of society is often aimed at obtaining not only material goods and financial resources, but also numerous privileges of an outwardly intangible nature. Such privileges usually consist in the real possibility of individuals to indirectly influence public policy, the direction of its socio-economic development or to participate in the management of the state or its individual institutions (Skulysh, Hlushkov, 2012). That is, another feature of a transnational organised criminal group is the lucrative motive of their activities.

In his monographic study, K.O. Chaplynskyi provides a rather extended list of features of organised crime, including the following: a negative socio-economic phenomenon (the activities of criminal groups disrupt the stability of the state and economic systems, harm individuals and competing organisations, are a major obstacle to building market relations, and impede civilised trade exchange, thus posing a serious threat to Ukraine's independence); a stable socially dangerous group with a functional and hierarchical system of structure; the presence of interdependent groups of different criminal orientation, whose members are engaged in systematic criminal activity, closely linked by mutual responsibility and criminal rules and traditions, have common goals and orientation, act in a coordinated manner according to a common plan in order to obtain the highest possible profit; the clandestine and long-term nature of criminal activity, the existence of a system of systematic neutralisation of all forms of social control using intelligence and counterintelligence, corrupt connections in government and administration, the judiciary and law enforcement agencies; the clandestine and long-term nature of organised crime helps criminal groups to survive, be legally 'invisible' and actively prevent undesirable legal decisions; the presence of a significant material base, which is manifested in the creation of joint monetary funds invested in various areas of criminal activity, bank accounts, real estate; large-scale interregional, state and interstate criminal nature of criminal activities with the distribution of territories and spheres of influence between criminal groups on territorial and sectoral grounds; the presence of officially registered funds, joint ventures, firms and other objects under the cover of which criminal groups operate; establishment of links with the foreign criminal world, active dissemination of anti-social ideology by leaders of crim-

inal groups (Chaplynskyi, 2004). In addition to the previously mentioned, the criminalist identifies the following signs: a high level of conspiracy of criminal activity, the presence of officially registered funds, joint ventures, companies and other objects under the cover of which criminal groups operate, as well as the establishment of links with the foreign criminal world and the active spread of anti-social ideology by leaders of criminal groups.

4. Conclusions

Therefore, a transnational organised criminal group is a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds. The following features have been identified: it operates on the territory of more than one state; it commits unlawful acts in one state, but a significant part of its preparation, planning and management takes place in another state; it commits unlawful acts in one state, but its significant consequences take place in another state; it consists of five or more persons; it has a preliminary conspiracy; it is stable; the association is hierarchical; its goal is to commit serious or especially serious crimes; it manages and coordinates the illegal activities of these persons; it has a high level of secrecy of criminal activity; it has a mercenary motive; it may have corrupt ties in government, administration, and law enforcement agencies; organised criminal activity may be politicised.

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СУТНІСТЬ ТА ОЗНАКИ ТРАНСНАЦІОНАЛЬНИХ ОРГАНІЗОВАНИХ ЗЛОЧИННИХ УГРУПОВАНЬ: ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ

Анотація. *Метою* статті є визначення сутності та ознак транснаціональних організованих злочинних угруповань. **Результати.** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі вітчизняної та зарубіжної наукової літератури, а також опрацювання законодавства формується поняття і ознаки «транснаціонального організованого злочинного угруповання». Автор акцентує увагу на тому, що проблематика транснаціональної злочинності, а саме визначення її поняття та ознак завжди викликали жваві дискусії серед вчених та практиків протягом минулих десятиріч як в Україні, так і за кордоном. Вирішення вказаних задач вимагає ґрунтовного опрацювання та аналізу вітчизняної і зарубіжної наукової літератури, а також всебічного дослідження судово-слідчої практики. Сформульовано поняття транснаціонального організованого злочинного угруповання як стабільного транснаціонального об'єднання п'яти та більше осіб, що поєднане єдиним планом протиправної діяльності та розподілом функцій між його членами з наявним лідером (лідерами), а також яка вчиняє протиправну діяльність (можливо, замасковану під законну) з метою отримання максимальних протиправних доходів. **Висновки.** Визначено наступні його ознаки: діє на території більш, ніж однієї держави; вчиняє протиправні діяння в одній державі, але значна частка його підготовки, планування та керівництва відбувається в іншій державі; вчиняє протиправні діяння в одній державі, але його істотні наслідки мають місце в іншій державі; кількісний склад (п'ять та більше осіб); попередня змова; стійкість структури; ієрархічність об'єднання; мета – вчинення тяжких або особливо тяжких злочинів; керівництво та координація протиправної діяльності вказаних осіб; має високий рівень конспірації злочинної діяльності; корисливий мотив діяльності; можливі корупційні зв'язки в органах влади, управління, а також у правоохоронних органах; можлива політизація організованої злочинної діяльності.

Ключові слова: транснаціональне організоване злочинне угруповання, кримінальні правопорушення, лідер, розслідування, слідчі (розшукові) дії, планування.

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ON THE CONCEPT OF CRIMINAL LAW REGULATION OF LAW ENFORCEMENT ACTIVITIES UNDER SPECIAL PERIOD CONDITIONS: CHALLENGES AND PROSPECTS

Abstract. Purpose. This article aims to examine the nature and specific features of law enforcement activities, their objectives, functions, and composition of actors in the context of the development of civil society. It also analyzes the criminal law regulation of law enforcement activities, particularly under special period conditions. **Results.** The article considers law enforcement activities as a complex process aimed at maintaining public order, implemented by specially authorized bodies in accordance with the law. It explores key approaches to defining the concept of law enforcement activity, its functions, tasks, and institutional composition. The author analyzes academic perspectives on the role of state and non-state institutions in ensuring public order. Particular attention is given to the role of law enforcement activities amid civil society development and their significance for upholding the rule of law. The main directions of law enforcement bodies' activities, their functional purpose, and the legal foundations for interaction with other institutions are identified. The article examines the criminal law regulation of law enforcement activities during special periods, including martial law and states of emergency. Issues of coordination among branches of government and the need to improve professional training for law enforcement personnel are also addressed. **Conclusions.** It is concluded that a key aspect lies in enhancing preventive measures to reduce the risk of criminal offenses, as well as focusing on work with vulnerable population groups. At the same time, significant attention is paid to the protection of human rights even under temporary restrictions such as curfews or limited access to certain resources. The prospects for the development of law enforcement activities during special periods include the introduction of modern technologies, improved professional training of law enforcement personnel, and the enhancement of the regulatory framework, taking into account the experience of other countries. This will enable the law enforcement system to respond more effectively to threats and ensure the implementation of the rule of law.

Key words: law enforcement activity, public order, law enforcement agencies, legality, rule of law, criminal law regulation.

1. Introduction

Modern societal development is characterized by growing social, economic, and geopolitical challenges that necessitate the improvement of criminal law regulation. Under special period conditions—associated with martial law, states of emergency, or other crisis situations—the criminal justice system must adapt to new threats. A special period requires the creation of specific legal mechanisms to ensure effective crime prevention, protection of national security, and safeguarding of human rights. However, this raises the issue of maintaining a balance between securing public order

and respecting constitutional rights and freedoms.

Moreover, criminal law policy often lacks the flexibility needed to respond to new forms of crime, such as cybercrime, terrorism, or war-related offenses. This calls for a revision of existing norms and procedures, as well as adaptation of international practices to national contexts.

Another pressing issue is the imperfection of coordination mechanisms between law enforcement bodies, the judiciary, and other actors involved in criminal justice. The special period also poses challenges for upholding

human rights standards, since the application of coercive measures often risks violating the principle of the rule of law.

Thus, the criminal law regulation of law enforcement activities during special periods must be comprehensive, innovative, and forward-looking. Addressing these challenges is a crucial step toward ensuring sustainable public order and the protection of fundamental human rights.

The issue of law enforcement activity has been extensively discussed in academic literature, particularly by scholars such as A.D. Voitsechuk, V.M. Dubinchak, O.F. Kobzar, V.V. Mykytenko, O.L. Sokolenko, P.L. Fris, V.V. Shablysty, P.M. Shapirko, S.I. Shevchenko, O.S. Yunin, among others. However, there is no consensus regarding the actors involved and the functional content of law enforcement activities. Some researchers argue that such activities are performed exclusively by state authorities vested with coercive powers, while others highlight the active role of non-state institutions. Particular attention is paid to the legal status of law enforcement agencies and their interaction with other state and civil society structures. At the same time, scholars examine crime prevention as a distinct direction within law enforcement activities. The question of adapting law enforcement functions to the realities of a special period remains a subject of debate and requires further research.

The purpose of this article is to examine the essence and specific features of law enforcement activities, their objectives, functions, and actors within the context of civil society development. Additionally, it analyzes the criminal law regulation of law enforcement activities, especially under special period conditions.

2. Law Enforcement Activity in the Context of Civil Society Development

In legal scholarship, there is a perspective that defines law enforcement activity as a process of safeguarding legal order carried out by specially authorized bodies in accordance with procedures established by law. This activity includes handling legally significant matters, identifying offenses, prosecuting individuals responsible for their commission, and, in certain cases, applying coercive measures regulated by law. An essential component also involves representing and protecting the rights and legitimate interests of individuals and legal entities (Krasnokutskyi, 2004).

From this standpoint, it can be stated that law enforcement activity in the context of civil society development possesses the following characteristics: it is carried out on the basis of legal norms and for the purpose of their implementation, it has clearly defined objec-

tives, and it is exercised exclusively by specially authorized entities. However, academic discourse lacks a unified view regarding the precise subjects of such activity.

For instance, P.M. Shapirko argues that law enforcement activity is a type of state function carried out by specially authorized bodies with the aim of safeguarding public order. It involves the application of legal measures while adhering to the regime of legality (Shapirko, 2014).

Similarly, V.M. Dubinchak defines law enforcement activity as an active form of behavior by authorized entities that includes the use of coercive means prescribed by law. Its purpose is to protect, safeguard, and prevent violations, to restore violated rights, freedoms, and legitimate interests, and to ensure the implementation of the state's law enforcement function (Dubinchak, 2007).

In contrast, V.V. Mykytenko challenges the assertion that law enforcement activity is exercised solely by authorities whose decisions are binding. He emphasizes that the function of protecting human rights and freedoms should not be the exclusive prerogative of state institutions vested with public authority. According to the scholar, this function can be fulfilled by both governmental and non-governmental institutions. This claim is supported by the activities of organizations whose very names reflect their goals and purpose (Mykytenko, 2013).

O.L. Sokolenko, in turn, includes in Ukraine's system of law enforcement agencies such institutions as the judiciary, the prosecutor's office, the Security Service of Ukraine, the State Protection Directorate, the Military Law Enforcement Service of the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the State Criminal-Executive Service, the State Enforcement Service, the National Police of Ukraine, the Internal Troops of the Ministry of Internal Affairs, the Foreign Intelligence Service of Ukraine, the Main Intelligence Directorate of the Ministry of Defense, the Ukrainian Parliament Commissioner for Human Rights, and other law enforcement agencies (Sokolenko, 2013). He also emphasizes that the goal of law enforcement activity is to safeguard and protect the foundations of the constitutional order, human rights and freedoms, and legitimate interests, while ensuring legality and public order. The essence of this activity lies in the practical implementation of legal norms by competent authorities (Sokolenko, 2013).

Accordingly, it is reasonable to recognize law enforcement activity as inherently linked to the law enforcement function of the state, whose principal purpose is the protection and safeguarding of citizens' rights, freedoms, and legiti-

mate interests. Owing to its multifaceted nature, law enforcement activity encompasses both state and non-state institutions that exercise authority in various domains—environmental, social, cultural, and others. In fact, it is difficult to find a body or organization that is not invested in its effectiveness. Law enforcement activity affects the interests of every individual, holds significant social value, and constitutes a key element in the formation of a rule-of-law state (Fomenko, Yunin, Myroniuk, Sobakar, 2022).

Based on the above definitions, law enforcement activity is grounded in the maintenance of public order in society and the state, and the protection of citizens' rights, freedoms, and legitimate interests. Its purpose is revealed through its objectives and functions.

The core objectives of law enforcement activity include the protection of individual rights and freedoms, the constitutional order, property, public order, natural resources and the environment, as well as state and national security and the country's borders. Fulfilling these objectives enables the protection of both individuals and society as a whole, which is achieved through the implementation of the rule of law in all spheres of life. Through law enforcement activities, the state ensures compliance with legal norms by all subjects of law (Yunin, 2013).

The realization of law enforcement objectives is achieved through functions such as: prevention of legal violations, identification of offenses, their suppression, examination and investigation, restoration of violated rights, and the imposition of sanctions on offenders (Yunin, 2013). These functions are aimed not only at combating unlawful acts but also at restoring citizens' legitimate rights and interests, thereby promoting the rule of law.

Thus, law enforcement activity serves as a guarantor for the implementation of legal norms. It is an integral part of the state's functioning, ensuring the effectiveness of law itself. The overarching goal of law enforcement activity is the protection and safeguarding of law, which is expressed through the implementation of the principle of the rule of law.

However, the primary objective of law enforcement agencies is to exert preventive and deterrent influence by preventing offenses and maintaining public order. This encompasses not only combating crime but also protecting public order, the constitutional system, public health, environmental safety, and other related spheres. The fight against crime includes the entire range of measures aimed at the protection of law.

As previously noted, law enforcement activity, as a type of state function, is carried out

by various governmental bodies that are affiliated with different branches of power. Law enforcement agencies possess a complex, multi-tiered structure. According to some scholars, this structure can be categorized into major groups based on the areas of activity. These include combating general crime, organized crime, and economic crime; preventive work; maintaining public order; and others. The types of law enforcement activity vary depending on the regulatory subject matter, which is governed by different branches of law. For instance, justice is considered one form of law enforcement activity, with its subtypes including administrative and criminal proceedings (Yunin, 2021). In this context, some researchers argue that the ideal model of a law enforcement system presupposes the absence of subordination of law enforcement agencies to executive bodies that are not tasked with ensuring legality. All types of state activity must comply with the law and be carried out in accordance with legally established procedures.

Depending on the functions performed by law enforcement bodies, law enforcement activity may be divided into the following areas: maintaining public order in the sphere of social relations; counteracting offenses; ensuring public safety; combating crime, including detecting, solving, and investigating criminal offenses; monitoring compliance with legal norms; enforcing court decisions and rulings of other bodies within the limits established by law; implementing state policy in the field of justice; providing professional legal assistance to both individuals and organizations; and the operations of notarial institutions, private security companies, and detective agencies.

At the same time, scholars emphasize that it is unreasonable to expect law enforcement agencies to completely eradicate crime; however, a significant reduction is possible. To that end, law enforcement activity operates in two principal forms. The first involves the detection, registration, documentation, investigation, judicial review of criminal cases, and execution of penalties. The second takes the form of identifying the conditions conducive to the commission of offenses, safeguarding public order and property, ensuring public safety, and conducting comprehensive preventive measures and legal awareness campaigns.

Another notable area of law enforcement activity is the removal of obstacles that hinder citizens from exercising their legitimate rights and freedoms. In this regard, crime prevention may be recognized as a distinct type of activity, separate from the core concept of law enforcement. It is worth supporting the constitutional principles that emphasize the importance

and purpose of state and local authorities' efforts to create conditions for individuals to exercise their rights and freedoms. At the same time, it is noted that preventive work should be grounded in the results of law enforcement activities; otherwise, its direction will remain vague and ineffective (Kosytsia, 2017).

Therefore, we contend that crime prevention is an integral part of law enforcement activity, as it is aimed at ensuring legality. From this perspective, law enforcement activity can be understood as a set of diverse yet interrelated measures carried out by both state and civil society institutions. These measures are aimed at preventing criminal offenses, eliminating the conditions that give rise to or facilitate them, and ultimately creating favorable conditions for citizens to realize their rights, freedoms, and obligations. Practical experience shows that prevention is most effective when it is conducted jointly by governmental and non-governmental organizations. For example, civil associations contribute significantly to the implementation of the state crime prevention system, particularly by encouraging citizen involvement in such activities.

Some scholars equate law enforcement activity with so-called "legal coercion," asserting that the legal status of state institutions obliges them to apply coercive measures (Kosytsia, 2017). These institutions are defined as those tasked with the mandatory enforcement of public order. At the same time, the concept of coercion is interpreted broadly, encompassing not only direct (physical) influence but also indirect methods such as inspections, directives, prohibitions, and restrictions. It should be emphasized that the law enforcement activity of state bodies is inherently coercive in nature, as only the state possesses the legitimate authority to apply coercion.

Unlike state structures, law enforcement activity carried out by non-state actors is based on public influence measures. One of the key indicators used to assess the effectiveness of law enforcement agencies—particularly the Military Law Enforcement Service of the Armed Forces of Ukraine—is public opinion. The level of public trust and support plays a decisive role in shaping the positive image of law enforcement agencies. Therefore, in order to strengthen public trust, law enforcement bodies should actively engage citizens and civil society organizations in cooperation and joint initiatives.

It is apparent that the criminal law regulation of law enforcement activity under special period conditions is complex and multidimensional. A special period encompasses situations arising from states of emergency, armed conflicts, technological or natural disasters, and other

crisis conditions that require the adaptation of legal mechanisms. Under such circumstances, law enforcement agencies not only perform their traditional functions of maintaining public order but also assume additional responsibilities aimed at reinforcing national security and maintaining social stability.

4. Conclusions

In the context of a special period, law enforcement activity acquires new characteristics shaped by crisis-related challenges that require prompt response and the adaptation of criminal law mechanisms. The key features of such activity lie in its orientation toward ensuring national security, maintaining public order, and safeguarding the rights and freedoms of citizens under extraordinary circumstances. Law enforcement agencies play a crucial role in fostering stability, which is achieved through effective coordination among various state institutions and international partners.

A fundamental aspect in such conditions is the strengthening of preventive measures aimed at reducing the risk of criminal offenses, alongside targeted engagement with vulnerable groups. At the same time, significant attention is devoted to the protection of human rights, even under temporary restrictions such as curfews or limitations on access to certain resources.

The future development of law enforcement activity during a special period includes the integration of modern technologies, enhancement of the professional training of law enforcement personnel, and improvement of the regulatory and legal framework in line with international best practices. These measures enable the law enforcement system to respond more effectively to emerging threats and to uphold the principle of the rule of law.

Thus, criminal law regulation under complex circumstances serves as a vital tool for ensuring societal stability, protecting public interests, and strengthening trust in state institutions. It enables the establishment of appropriate conditions for citizens' security and the functioning of a rule-of-law-based state even in times of crisis.

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ДО ПОНЯТТЯ КРИМІНАЛЬНО-ПРАВОВОГО РЕГУЛЮВАННЯ ПРАВООХОРОННОЇ ДІЯЛЬНОСТІ В УМОВАХ ОСОБЛИВОГО ПЕРІОДУ: ВИКЛИКИ ТА ПЕРСПЕКТИВИ

Анотація. *Мета* статті є дослідження сутності та особливостей правоохоронної діяльності, її завдань, функцій та суб'єктного складу в контексті розвитку громадянського суспільства. Також аналізується кримінально-правове регулювання правоохоронної діяльності, зокрема в умовах особливого періоду. **Результати.** У статті розглянуто правоохоронну діяльність як комплексний процес, що спрямований на охорону правопорядку та реалізується спеціально уповноваженими органами відповідно до законодавства. Досліджено основні підходи до визначення поняття правоохоронної діяльності, її функцій, завдань та суб'єктного складу. Проаналізовано позиції науковців щодо ролі державних і недержавних установ у забезпеченні правопорядку. Особливу увагу приділено місцю правоохоронної діяльності в умовах розвитку громадянського суспільства та її значенню для утвердження верховенства права. Визначено основні напрямки діяльності правоохоронних органів, їх функціональне призначення та правові засади взаємодії з іншими інституціями. Розглянуто кримінально-правове регулювання правоохоронної діяльності в умовах особливого періоду, зокрема воєнного стану та надзвичайних ситуацій. Висвітлено питання координації між різними гілками влади та підвищення рівня професійної підготовки співробітників правоохоронних органів. **Висновки.** Зроблено висновок, що ключовим аспектом є посилення превентивних заходів, які зменшують ризик виникнення кримінальних правопорушень, а також робота з вразливими категоріями населення. Водночас значну увагу приділяють захисту прав людини навіть за умов тимчасових обмежень, таких як комендантська година чи обмеження доступу до певних ресурсів. Перспективи розвитку правоохоронної діяльності в особливий період включають запровадження сучасних технологій, підвищення рівня професійної підготовки працівників правоохоронних органів та вдосконалення нормативно-правової бази з урахуванням досвіду інших країн. Завдяки цьому правоохоронна система здатна ефективніше реагувати на загрози й гарантувати реалізацію принципу верховенства права.

Ключові слова: правоохоронна діяльність, правопорядок, правоохоронні органи, законність, верховенство права, кримінально-правове регулювання.

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INFORMATION AND ANALYTICAL SUPPORT FOR COUNTERACTION BY THE SECURITY SERVICES OF UKRAINE TO SMUGGLING OF CULTURAL VALUES AND WEAPONS

Abstract. Purpose. The purpose of the article is to identify the specific features of information and analytical support for counteraction by the Security Service of Ukraine to smuggling of cultural values and weapons. **Results.** The article emphasises that the main element of search organisation is information and analytical support, which, with regard to the procedure for moving cultural property and weapons, has a double meaning: on the one hand, as an element of organisation of activities, it is considered as an assessment of the criminogenic, operational situation in the field of economic activity, organised crime, establishment of facts of smuggling, including cultural property and weapons, and also as an assessment, selection, planning of tactical countermeasures by the Security Service of Ukraine. Information support as a complex of information and search activities is carried out by the authorised units of the Security Service of Ukraine with the purpose of effective use of all possible information resources in the process of countering smuggling of cultural property and weapons. Analytical work as a component of such activities consists of a set of intellectual operations with all available data collected in the course of operational search, as well as with data obtained in the course of using information resources. **Conclusions.** Considering the level of crime under martial law, the main area of counteraction by the Security Service of Ukraine to smuggling of cultural property and weapons is operative-search activities with the gradual introduction of an analytics-driven security model, including regulatory support; information resources and systems for their content; criminal analysis; and the creation of analytical programmes for operative and search purposes based on artificial intelligence; active search activities on the Internet, information resources; automation of the processes of analysing photo and video materials, intelligence based on open information and search sources, as well as processing large amounts of data (analytics, filtering, structuring, systematisation, accumulation of information) using specialised software; integration with information resources of various law enforcement agencies; targeted training for employees in the system of training (specialisation) and advanced training; standardisation of forms of analytical products.

Key words: counteraction, Security Service of Ukraine, smuggling, cultural values, weapons, information, analytics, information and analytical support.

1. Introduction

With the development of scientific and technological progress, existing and new information technologies based on the introduction of computer equipment, communications and telecommunication systems are constantly being improved, as well as the development of information technologies that facilitate the informatisation of social processes, including criminal ones, their gradual transition to cyberspace, which leads to the generation of large amounts of information in electronic format. Moreover, information has long been an integral

and necessary element of law enforcement, the quality, reliability and timeliness of which determine many management decisions. Moreover, the criminal world is undergoing a qualitative transformation: in their illegal activities, criminal organisations make extensive use of the latest advances in science and technology, computer systems and modern information technologies.

Thus, the main element of the organisation of crime counteraction is information and analytical support, and the introduction of modern information and analytical systems opens up

new opportunities for processing and analysing unstructured data generated in the course of law enforcement activities, including those of the Security Service of Ukraine (SSU).

Certain issues of information and analytical support for combating crime have been considered by L.I. Arkusha, V.M. Beschastnyi, V.I. Dykyi, I.P. Katerynychuk, O.Ye. Korystin, N.V. Myshchyshyn, O.M. Muzychuk, V. H. Sevruk, O.I. Haraberiush, V.I. Shkolnikov and others. The work of these and other scholars forms the theoretical basis of the article, but in the current context of armed conflict and increasing smuggling, further study of the problems of information and analytical support for counteraction by the SSU to smuggling of cultural values and weapons is required.

2. Specific features of information and analytical support for combating crime

In order to make the right decision, it is important to have the most complete and reliable information possible, enabling to choose the most optimal option available. L.I. Arkusha rightly emphasises that the awareness of a person or body authorised by law is crucial for making a decision in any field of activity. The researcher argues that awareness in the activities of law enforcement institutions plays an important role, since it is from the identification of information relevant to the detection of criminal offences and the search for various categories of persons that countermeasures are developed and taken (Arkusha, 2003).

The XIII United Nations Congress on Crime Prevention and Criminal Justice emphasised the need to explore the possibilities of using new information and communication technologies in the development of strategies and programmes aimed at improving work in the field of crime prevention. However, the strategic task of using information technology in crime forecasting was not explicitly set (Kubetska, Paleshko, Sanakoiev, Neklesa, 2019). It is also underlined that international cooperation in the field of information technologies for combating crime should be expanded as the main area for improving crime prevention and ensuring the criminal justice system in line with information efficiency (Doha Declaration on the inclusion of crime prevention and criminal justice issues in the broader UN agenda in order to address social and economic problems and promote the rule of law at the national and international levels, as well as public participation, 2015).

It should be emphasised that the information space, resources, infrastructure and technologies are of key importance for raising the level and pace of socio-economic, scientific, technical and cultural development. They have a signif-

icant impact on the effectiveness of managerial decision-making, in particular in the fight against organised crime and corruption (Myshchyshyn, 2016). Information and analytical support is one of the key areas of law enforcement activities. It provides the police with the necessary information for preventive work, detection and documentation of crimes. This support includes a multifunctional system of data processing, analysis and systematisation. Information support is usually considered in close connection with analytical support, as information without proper processing and systematic analysis cannot be used effectively on its own (Muzychuk, 2010).

Information support for combating crime is defined as the introduction of specialised tools that facilitate the effective identification, research and documentation of information sources in accordance with legal requirements in order to generate evidence of the circumstances of criminal offences, methods of their establishment and use in criminal proceedings. At the pre-trial stages, information support includes ongoing analysis of investigative practice, identification of shortcomings and current problems, their scientific study and appropriate legislative, methodological and other solutions (Beschastnyi, 2016).

For its part, analytics is an integral set of principles of methodological, organisational and technological support for individual and collective mental processes enabling efficient processing of information in order to identify its essential and semantic core, improve the quality of existing and acquire new knowledge, and prepare an information basis for making optimal managerial decisions (Korystin, Shvets, Butko, Denysenko, 2024). Analytical work is the direct use of available information in the performance of tasks by law enforcement bodies; it is an important component of the process, which includes a number of intellectual operations with all available data collected during the search. The main purpose of analytical work coincides with the goals of the SSU, and its tasks, in addition to those directly aimed at achieving the goals of the investigative and criminal process, also include forecasting, planning and control. In contrast to the entities specially authorised to provide information support, analytical functions are assigned to each SSU operational unit and each employee. It includes a wide range of actions (measures) and their complexes.

The content of the analytical support of the OSA includes the following elements:

- Accumulate information received by operational units in the course of performing their functions;

– Organise access of these units to other information resources;

– Use all available information resources to perform the tasks of the OID and criminal proceedings, including the creation of databases and databanks, information retrieval systems, their integration, ensuring the functioning and access to them by the operational units.

Such work is a direct application of the available information to perform operational tasks by the SSU. According to V.I. Shkolnikov, nowadays there are many analytical technologies as a set of typical methods of searching, processing and analysing operative-search activities information in information systems using specialised and other software and hardware tools to counteract illegal actions of individuals and criminal groups in order to perform tasks of crime prevention and search for criminals, as well as to perform related tasks of crime prevention and forecasting the operational situation in a certain territory (Shkolnikov, 2017). The development of analytical technologies has resulted in the emergence of innovative forms of organising operational work and the creation of specialised analytical units.

The analysis of the above definitions suggests that information and analytical support in the field of combating crime is a set of tools, methods and measures used to obtain timely, valuable and important information. This affects the accuracy and efficiency in the decision-making process aimed at eliminating, reducing or neutralising the factors that contribute to crime and criminal offences.

3. Specific features of counteraction by the Security Service of Ukraine to smuggling of cultural values and weapons

The SSU's crime counteraction activities are operative and searching in nature. Therefore, it should be noted that the main task of the OSA is to search for and record data on the criminal activities of individuals and groups (Law of Ukraine On operative-search activities, 1992).

The core of information relations in the field of the OSA is operational-search information, which includes information about persons and facts of operational interest, all their elements and interrelationships between them; information about the OSA system itself, its constituent elements, characteristics, operative-search actions and their results; information about the conditions of the operational situation in which operative-search activities are conducted, as well as the state of the operational apparatus itself. The concentration and movement of such information in a direction consistent with the OSA's crime-fighting objectives creates information flows. The latter character-

ise the cognitive activity of operational units with a focus on searching, studying, evaluating and using heterogeneous information.

The effectiveness of the SSU's counteraction to smuggling of cultural values and weapons depends on obtaining information (factual data) on the movement of such items across the customs border of Ukraine outside customs control or concealed from customs control; methods of committing the offence and the availability of operationally relevant information about individuals and organised groups. These activities are based on information support and analytical work of the SSU operational units.

According to I.P. Katerynychuk, modern information and analytical systems containing data on organised groups and criminal organisations, their leaders, corruption ties, combat structures, as well as internal and international communications, have been developed in many law enforcement agencies based on different criteria, with no regard for international standards. These systems are not coordinated with each other and do not provide a holistic view of the location of criminal groups, their size, armament, technical support, connections with state and local authorities, contacts with financial and industrial groups, etc. Different investigative and operational units create and use isolated and incompatible databases (Katerynychuk, 2013). According to M.O. Semenyshyn, this situation forces operational staff to turn to information and analytical systems supported by various departments and even law enforcement bodies in the course of their duties to combat crime. In Ukraine, state agencies independently create and organise their information bases. The SSU and other law enforcement bodies that are authorised by law to conduct OSA are in dire need of a state integrated database that could unite disparate sectoral and departmental information and search systems (Semenyshyn, 2020).

Therefore, it should be noted that the main element of search organisation is information and analytical support, which, with regard to the procedure for moving cultural property and weapons, has a double meaning: on the one hand, as an element of organisation of activities, it is considered as an assessment of the criminogenic, operational situation in the field of economic activity, organised crime, establishment of facts of smuggling, including cultural property and weapons, and also as an assessment, selection, planning of tactical countermeasures by the SSU. The organisational aspects of combating the smuggling of cultural values and weapons in Ukraine today include the use of modern technical means and devices, such as photo and video recording equipment, installa-

tion of security systems, etc. Moreover, information and analytical systems for collecting and processing data to predict the situation with smuggling in certain territories, as well as the forms and types of criminal offences related to this phenomenon, in order to develop and select forms and means of counteraction, play a significant role.

According to the survey, only 42% of SSU employees noted the effectiveness of information and analytical support for law enforcement agencies in combating smuggling of cultural values and weapons in Ukraine. The respondents highlighted the deterrents to high-quality information and analytical support of the SSU in such counteraction as the lack of proper legal grounds and uncertainty of the organisational regulation mechanism, which requires a systematic update of both the criminal procedure legislation and the Law of Ukraine 'On operative-search activities', with the development of a targeted departmental legal regulation that would give the SSU operational units the rights and obligations to store, accumulate and process information obtained in the course of OSA and the performance of investigator and prosecutor's orders to conduct COSA using modern, proven information and analytical technologies (supported by 92% of SSU employees surveyed); providing operational units with the opportunity to consolidate in digital format arrays of the above data with information that does not constitute a state secret (88%); facilitating the exchange of necessary information between operational units of different law enforcement agencies by converting requests into digital format and reducing the time for responses (requests) (90%); introducing legal and technical means to counteract the illegal use of this information (68%). In addition, 91% of respondents point to the need to improve this activity due to the constant development of information technology. In addition, 93% emphasise the need for legal regulation of information and analytical support for operational units at the departmental, interagency, legislative and international levels.

Under the current realities, we agree that it is necessary to immediately update and improve information and analytical support both in combating smuggling of cultural values and weapons, and in the fight against organised groups and criminal organisations.

First, combating smuggling requires primarily a radical improvement of the system of coordination of all enforcement agencies, including the SSU, the National Police of Ukraine, and customs authorities (Dykyi, 2022). Second, in 2010, the European Union developed a multi-year policy cycle to respond

to criminal offences (Draft Council Conclusions on the creation and implementation of the EU policy cycle for organised and serious international crime, 1999). In order to systematically and methodically address the most important criminal threats by creating 'threat assessment' (SOCTA - Serious and Organised Crime Threat Assessment), which consists of the following main blocks: focus, means, analysis and prioritisation, and results, including a mapping of arguments for each risk to help prepare strategic and operational action plans (Assessment of the threats of serious crimes and organised crime of third countries, 2017).

Considering this progressive model of threat assessment, at the stage of gathering primary information, the SSU's search activities in relation to smuggling of cultural values and weapons include:

(I) Assessment of the operational situation, enabling to assess the level of crime, identify its dynamics and development trends, check the effectiveness of organisational and tactical measures taken by the SSU bodies to influence its state, determine the efficiency of using operational search resources, as well as obtain diverse information necessary for further analysis and forecasting of the development of the operative-search situation in a particular region for a certain period and in certain directions.

(II) Verification of primary information, relying on the results of primary information processing, enabling to plan search activities and operations of both tactical and strategic nature.

(III) Collection of information about a person who has come to the attention of the SSU, enabling the SSU to obtain, process and analyse available data on persons involved in smuggling or who have information that may help to uncover such illegal actions, identify persons preparing or committing criminal offences and those who are wanted.

(IV) Collection of information on facts and circumstances of interest, enabling to establish certain primary data on smuggling, as well as to provide appropriate assessments based on their comparison and analysis, and to determine the further use of this information for solving the problems of fighting organised crime and corruption.

(V) Provision for the use of information contained in the information and search systems of law enforcement agencies enabling the SSU to use data obtained as a result of research, analysis of statistical and accounting information on individuals, seized cultural values or weapons, events and facts of organised activity, information on the results of certain search operations based on search actions, etc.

The 'foundation' of information and analytical support for law enforcement is criminal analysis. The purpose of criminal analysis is to identify implicit and hidden links between facts, events and individuals, followed by the formulation of versions and hypotheses to solve the crime (Uzlov, 2018). The purpose of criminal analysis may also be to prevent criminal offences within the framework of combating crime, as well as to predict crime in a certain operational service area in order to have a preventive impact on the operational situation. Obviously, the purpose of criminal analysis cannot be realised without the use of analytical technologies, which can be used to obtain qualitatively new information based on the results of the primary data passing through the analytical cycle in order to prevent, detect and predict crime.

The main types of criminal analysis, considering the nature and source of information, analytical technologies used and the results of such analysis, regularity and frequency of analysis, as well as the target audience and purpose of the analysis, are: analytical criminal intelligence; tactical criminal analysis; strategic criminal analysis; administrative (managerial) criminal analysis (LeBlanc, Elder, Bruce, Santos, Cook, Rodriguez, Steiner, 2014).

Currently, powerful information arrays in various areas of activities have been created and integrated, thereby enabling effective law enforcement. Various models are used in criminal analysis training. One of these models aimed at achieving the goal of counteraction is the so-called '5W+H' (Who, What, When, Where, Why and How) (Rossy, Ribaux, 2014).

Criminal analysis consists of six main stages, united in a cyclic circle: planning and determination of directions (goals); information gathering; information processing; information analysis; information dissemination; re-evaluation of information (The National Criminal Intelligence Sharing Plan, 2003). Such analysis is based on: information from thematic (periodic) analyses at the operational and tactical levels; identification of threats and risks and collection of information on them from existing databases, information from operational-search departments, SSU departments, law enforcement agencies, media, etc. (Albul, Korystin, 2015); identification of objects that have a specific risk profile and threat profile (the area of the offence and its specific details) and the algorithm of actions in the management bodies, as well as their implementation directly in operational service activities (Myshko, 2016). The basis of this activity is the identification and accurate determination of the relationships between information relating to criminal events, persons associated with them and data originating

from various sources, as well as their use by law enforcement bodies and courts.

Therefore, it should be noted that considering the level of crime under martial law, the main area of counteraction by the SSU to smuggling of cultural property and weapons is OSA with the gradual introduction of an analytics-driven security model, including regulatory support; information resources and systems for their content; criminal analysis; the creation of analytical programmes for operative and search purposes based on artificial intelligence; active search activities on the Internet, information resources; automation of the processes of analysing photo and video materials, intelligence based on open information and search sources (One Login, OSINT, Python, etc.), as well as processing large amounts of data: analytics (FACE Recognition, VideoAnalytics, etc.), filtering, structuring, systematisation, accumulation of information using specialised software (PALANTIN, goCASE, goTRACE); integration with information resources of various law enforcement agencies; targeted training for employees of the SSU in the system of training (specialisation) and advanced training; standardisation of forms of analytical products.

4. Conclusions

The main element of search organisation is information and analytical support, which, with regard to the procedure for moving cultural property and weapons, has a double meaning: on the one hand, as an element of organisation of activities, it is considered as an assessment of the criminogenic, operational situation in the field of economic activity, organised crime, establishment of facts of smuggling, including cultural property and weapons, and also as an assessment, selection, planning of tactical countermeasures by the SSU.

Information support as a complex of information and search activities is carried out by the authorised units of the Security Service of Ukraine with the purpose of effective use of all possible information resources in the process of countering smuggling of cultural property and weapons. Analytical work as a component of such activities consists of a set of intellectual operations with all available data collected in the course of operational search, as well as with data obtained in the course of using information resources.

The effectiveness of the SSU's counteraction to smuggling of cultural values and weapons depends on obtaining information (factual data) on the movement of such items across the customs border of Ukraine outside customs control or concealed from customs control; methods of committing the offence and the availability of operationally relevant information about

individuals and organised groups. These activities are based on information support and analytical work of the SSU operational units.

The deterrents to high-quality information and analytical support of the SSU in counteraction smuggling of cultural values and weapons should be highlighted as follows: the lack of proper legal grounds and uncertainty of the organisational regulation mechanism, which requires a systematic update of both the criminal procedure legislation and the Law of Ukraine 'On operative-search activities', with the development of a targeted departmental legal regulation that would give the SSU operational units the rights and obligations to store, accumulate and process information obtained in the course of OSA and the performance of investigator and prosecutor's orders to conduct COSA using modern, proven information and analytical technologies (supported by 92% of SSU employees surveyed); providing operational units with the opportunity to consolidate in digital format arrays of the above data with information that does not constitute a state secret (88%); facilitating the exchange of necessary information between operational units of different law enforcement agencies by converting requests into digital format and reducing the time for responses (requests) (90%); introducing legal and technical means to counteract the illegal use of this information (68%).

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ІНФОРМАЦІЙНО-АНАЛІТИЧНЕ ЗАБЕЗПЕЧЕННЯ ПРОТИДІЇ ОРГАНАМИ СЛУЖБИ БЕЗПЕКИ УКРАЇНИ КОНТРАБАНДИ КУЛЬТУРНИХ ЦІННОСТЕЙ ТА ЗБРОЇ

Анотація. Метою статті є визначення особливостей інформаційно-аналітичного забезпечення протидії органами Служби безпеки України контрабанді культурних цінностей та зброї. **Результати.** У статті наголошено, що основним елементом організації пошукової діяльності є інформаційно-аналітичне забезпечення, яке стосовно порядку переміщення культурних цінностей та зброї має подвійне значення: з одного боку, як елемент організації діяльності розглядається у вигляді оцінки криміногенної, оперативної обстановки у сфері господарської діяльності, організованої злочинності, встановлення фактів контрабанди, у тому числі й культурних цінностей та зброї, а також як оцінка, вибір, планування органами Служби безпеки України тактичних заходів протидії. Інформаційне забезпечення як комплекс інформаційно-пошукових заходів здійснюється уповноваженими підрозділами Служби безпеки України з метою ефективного використання усіх можливих інформаційних ресурсів у процесі протидії контрабанді культурних цінностей та зброї. Аналітична робота як складова такої діяльності полягає в комплексі інтелектуальних операцій з усіма наявними даними, зібраними в процесі оперативного пошуку, а також з даними, одержаними в процесі використання інформаційних ресурсів. **Висновки.** З урахуванням стану злочинності в умовах воєнного стану, головним напрямом протидії органами Служби безпеки України контрабанді культурних цінностей та зброї є оперативно-розшукова діяльність з поетапним запровадженням моделі безпекової діяльності, керованої аналітикою, що включає нормативно-правове забезпечення; інформаційні ресурси та системи їх наповнення; кримінальний аналіз; створення аналітичних програм оперативно-розшукового призначення на базі штучного інтелекту; проведення активних пошукових заходів в мережі Інтернет, інформаційних ресурсах; автоматизацію процесів аналізу фото та відео матеріалів, розвідки на основі відкритих інформаційно-пошукових джерел, а також опрацювання великих масивів даних (аналітика, фільтрація, структурування, систематизація, накопичення отриманої інформації) за допомогою спеціалізованого програмного забезпечення; інтеграція з інформаційними ресурсами різних правоохоронних відомств; цільові тренінги для працівників у системі підготовки (спеціалізації) та підвищення кваліфікації; стандартизацію форм аналітичних продуктів.

Ключові слова: протидія, Служба безпеки України, контрабанда, культурні цінності, зброя, інформація, аналітика, інформаційно-аналітичне забезпечення.

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CONDUCTING FORENSIC EXAMINATIONS DURING THE INVESTIGATION OF THE ILLEGAL USE OF HUMANITARIAN AID, CHARITABLE DONATIONS, OR GRATUITOUS ASSISTANCE FOR PROFIT

Abstract. Purpose. The purpose of this article is to outline the fundamental principles and specific features of conducting forensic examinations in the context of investigating the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit. **Results.** The article substantiates the necessity of improving the technical and forensic support for the detection and investigation of criminal offenses, particularly those involving the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit. The author emphasizes the need for analyzing investigative practices and forensic activities to facilitate theoretical reflection and the generalization of practical experience. It has been established that during pre-trial investigations of such offenses, two main types of forensic examinations are typically appointed and conducted: economic and commodity examinations. Specifically, during economic forensic examinations, the following primary documents are examined: primary records (acts of acceptance and transfer, internal movement); bank statements; cash orders; reporting documents or statements; invoices, requisition notes (issuance, acquisition, transfer); and consignment notes. Other supporting documents are also examined, including requests, appeals, letters of inquiry, written donor proposals (donation letters), written consent of the humanitarian aid recipient, contracts, and administrative documents. Another type of forensic examination relevant to these investigations is the commodity (merchandise) examination. Depending on the subject of examination, this includes: assessment of machinery, equipment, raw materials, and consumer goods; transport-commodity examination; and examination of military property, equipment, and armaments. **Conclusions.** Under martial law in Ukraine and amid the struggle against the armed aggression of the Russian Federation, the process of conducting such forensic examinations has become significantly more complicated due to the heterogeneous nature of humanitarian aid, charitable donations, and gratuitous assistance, their substantial volume, diversity of sources, and the presence of previously used items among the aid supplies.

Key words: criminal proceedings, investigator, expert, forensic examination.

1. Introduction

One of the key conditions for enhancing the effectiveness of criminal proceedings at the current stage of development of Ukrainian society, state institutions, and the law enforcement system is ensuring the inevitability of punishment and accountability for every committed criminal offense. This is to be achieved through the improvement of the scientific foundations of investigation and the implementation of advances in forensic science into investigative and expert practices.

The current state of combating criminal offenses requires enhancing the efficiency of investigative and forensic activities. This includes improving the legal regulation

of the technical and forensic support for the detection and investigation of criminal offenses, expanding the range of issues addressed by experts, increasing the reliability and substantiation of expert opinions, improving forensic methodologies, developing new methods, and strengthening the informational and technical support of forensic practice. This must be done with the maximum utilization of specialized knowledge and the involvement of experts and specialists in criminal proceedings.

The entire set of these measures is aimed at improving the technical and forensic support for the detection and investigation of criminal offenses, particularly those involving the illegal use of humanitarian aid, charitable dona-

tions, or gratuitous assistance for profit. In this regard, the study and analysis of investigative practices and forensic activities is a necessary prerequisite for theoretical reflection and the generalization of practical experience. The issue of forensic examination in its various manifestations has been the subject of research by many scholars, including A.V. Ishchenko, N.I. Klymenko, E.B. Simakova-Yefremian, M.Ya. Sehaj, and I.Ya. Fridman. However, issues related to determining the specific features of conducting forensic examinations during the investigation of the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit remain relevant.

The aim of this article is to reveal the fundamentals and identify the specific features of conducting forensic examinations in the context of investigating the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit.

2. The Essence of the Concept of "Forensic Expert Activity"

Attention should be given to the definition of the term "forensic expert activity." According to H.O. Strilets, forensic expert activity is a legislatively regulated activity carried out by forensic institutions aimed at conducting independent forensic examinations through objective, comprehensive, and thorough research while observing the latest achievements in science and technology. It includes the organization of the work of forensic institutions and their structural units, scientific, methodological, and informational support, as well as the selection and training of forensic experts (Strilets, 2009). However, forensic expert activity should not be narrowly understood as activity confined solely within the framework of forensic institutions, even though the majority of expert examinations are indeed conducted in specialized expert establishments. In our view, forensic expert activity is directly connected to the practical work of the forensic expert. The special nature of the expert's functions, the specific purpose of the research conducted, and the legal regulation of its foundations and procedures distinguish forensic expert activity from other types of professional activity. During the investigation of the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit, the conduct of forensic examinations constitutes a mandatory and integral component. According to Article 1 of the Law of Ukraine "On Forensic Examination," forensic examination is defined as the study, based on specialized knowledge in the fields of science, technology, art, craftsmanship, etc., of objects, phenomena, and processes in order to provide an expert

opinion on issues that are or will become the subject of judicial consideration (Law of Ukraine On Forensic Examination, 1994). The legal regulation of this institution is of a complex nature and involves adherence to the provisions of the Criminal Procedure Code of Ukraine dated April 13, 2012 (Criminal Procedure Code of Ukraine, 2012), the Law of Ukraine "On Forensic Examination" dated February 25, 1994 (Law of Ukraine On Forensic Examination, 1994), and the Instruction on the Appointment and Conduct of Forensic Examinations and Expert Studies, approved by the Order of the Ministry of Justice of Ukraine No. 53/5 of October 8, 1998 (as amended by the Order of the Ministry of Justice of Ukraine No. 1950/5 of December 26, 2012) (Order of the Ministry of Justice of Ukraine on Approval of the Instructions..., 1998), among others. An analysis of criminal proceedings has shown that during pre-trial investigations of the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit, the following types of forensic examinations were appointed by investigators and conducted:

Criminalistics examinations:

- handwriting examination (19.6%),
- technical examination of documents (62.5%),
- firearms examination (32.1%),
- trace evidence examination (21.4%);

Other types:

- economic examination (100%),
- commodity (merchandise) examination (100%),
- computer and technical examination (48.2%).

3. Specifics of Conducting Economic Forensic Examinations

During the investigation of the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit, the most commonly appointed forensic examinations are economic and commodity (merchandise) examinations. Let us now examine the specifics of economic examinations in greater detail.

The procedure for conducting economic forensic examinations is governed by Section III of the *Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies*, approved by Order No. 53/5 of the Ministry of Justice of Ukraine dated October 8, 1998 (Order of the Ministry of Justice of Ukraine, 1998).

This examination most often involves the analysis of accounting, tax, and reporting documents.

Its primary objectives include determining the following:

- documentary justification for the amount of shortages or surpluses of inventories and cash at enterprises, institutions, organizations, and their structural subdivisions, as well as the period of their occurrence;
- documentary justification for the recording of transactions related to the receipt, storage, production, and sale of inventories, cash, fixed assets, and the provision of services;
- documentary justification for accounting entries involving fixed assets, inventories, cash, securities, and other assets;
- documentary justification for payroll accounting, including the accrual and payment of wages and other payments;
- documentary justification for the profit tax base declared by the taxpayer and the tax amount to be paid for a specific reporting period, as determined by the tax authority;
- documentary justification for the formation by the taxpayer of tax liabilities and tax credit for value-added tax (VAT), determination of the VAT amount payable, and the VAT amount claimed for budget reimbursement;
- documentary justification for individual tax and fee elements declared by the taxpayer in the relevant tax returns (calculations, reports) (Order of the Ministry of Justice of Ukraine, 1998).

Resolving issues that fall under the competence of state financial and tax control bodies – such as having expert economists conduct audits of certain aspects or the entirety of an entity's financial and economic activities to detect violations of law or tax regulations, or to identify responsible officials – is **not** part of the tasks assigned to economic forensic examination (Order of the Ministry of Justice of Ukraine, 1998).

Other forms of economic examination may include the analysis of documents related to an entity's economic activity or financial and credit operations. An examination of empirical sources demonstrates that economic forensic examinations most frequently involve the analysis of primary documents, including:

- acts (acceptance-transfer, internal movement);
- bank statements;
- cash orders;
- reporting documents or ledgers;
- invoices and requisition slips (issuance, acquisition, transfer);
- consignment notes.

Other supporting documents may also be examined, including:

- requests, appeals, letters of inquiry,
- written donor proposals (donation letters),

- written consent from the recipient of humanitarian aid,
- contracts,
- administrative documents.

In essence, this involves the study of a broad range of accounting documentation that evidences the movement of goods provided as humanitarian aid, charitable donations, or gratuitous assistance.

It is also essential to consider the established rules of accounting practice. For example, specific rules govern the documentation of humanitarian aid imports when primary documents from the donor are available. The crossing of Ukraine's customs border by humanitarian aid is certified by a *Declaration on the List of Goods Recognized as Humanitarian Aid*. If the donor provides additional primary documentation alongside the customs declaration, such as an international consignment note, invoice, packing list, or specification, the importation is considered confirmed. Based on this declaration and the accompanying documentation, the recipient is required to issue an *Act of Acceptance and Transfer of Humanitarian Aid*.

This act must be issued in any form but must contain the mandatory details listed in Article 9 of the Law of Ukraine *On Accounting and Financial Reporting in Ukraine*. Primary documents may also include additional details, such as a seal, document number, or grounds for the transaction. Primary documents drawn up in electronic form may be used in accounting, provided that the requirements of legislation on electronic documents and electronic document management are observed [5, p. 6]. Additional accounting rules for the registration of humanitarian aid, charitable donations, and gratuitous assistance are also outlined in specialized sources.

During the investigation of the unlawful use of humanitarian aid, charitable donations, or gratuitous assistance for profit, the most common types of forensic examinations are economic and commodity (merchandise) examinations. Let us consider them in more detail.

The conduct of economic forensic examinations is regulated by Section III of the *Instruction on the Appointment and Conduct of Forensic Examinations and Expert Studies*, as well as by the *Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies*, approved by Order No. 53/5 of the Ministry of Justice of Ukraine dated October 8, 1998 (Order of the Ministry of Justice of Ukraine, 1998).

Most often, this concerns a specific category of such examinations: the examination of accounting, taxation, and reporting docu-

ments. The main objectives of this type of examination include the determination of:

- the documentary justification of shortages or surpluses of inventory and cash at enterprises, institutions, organizations, and their structural subdivisions, and the periods in which they arose;
- the documentary substantiation of operations involving the receipt, storage, production, sale of inventory, cash, fixed assets, and provision of services;
- the documentary support for accounting entries related to fixed assets, inventory, cash, securities, and other assets;
- the documentary validity of accounting payroll operations and other types of payments;
- the documentary substantiation of the corporate income tax base declared by the taxpayer and the amount of tax payable for a specific reporting period as determined by the tax authority;
- the documentary support for the formation of VAT liabilities and tax credits by the taxpayer, determination of the VAT amount payable, and the VAT amount claimed for budgetary reimbursement;
- the documentary substantiation of individual elements of taxes and fees as declared by the taxpayer in the relevant declarations, calculations, or reports (Order of the Ministry of Justice of Ukraine, 1998).

Resolving issues falling under the jurisdiction of state financial or tax control authorities—such as the examination of specific aspects of financial and economic activities of institutions, organizations, and enterprises to detect violations of financial or tax law and to identify the individuals responsible—is outside the scope of an economic forensic examination (Order of the Ministry of Justice of Ukraine, 1998).

Other subtypes of economic examinations may include:

- the examination of documents on the economic activities of enterprises and organizations;
- the examination of documents related to financial and credit transactions.

The study of empirical sources shows that, in the course of this type of forensic examination, the primary documents typically examined include: acts (of acceptance/transfer, internal movement), bank statements, cash orders, reporting forms or registers, invoices, consignment notes, bills of lading, as well as other supporting documents (requests, appeals, letters of intent, donation letters, written donor offers, written consents of humanitarian aid recipients, contracts, and internal administrative documents). This involves the examination of a wide range of accounting documentation reflecting the flow

of goods classified as humanitarian aid, charitable donations, or gratuitous assistance.

It is important to consider the rules of accounting. For example, the procedure for documenting the import of humanitarian aid is established where primary documents from the donor are available. The crossing of the customs border by humanitarian aid is confirmed by a Declaration of the List of Goods Recognized as Humanitarian Aid. If the donor additionally provides supporting documentation, such as international bills of lading, invoices, packing lists, or specifications, the recipient is required to prepare an Act of Acceptance-Transfer of Humanitarian Aid.

This act, which can be in arbitrary form, must contain the mandatory requisites of primary documentation in accordance with Article 9 of the Law of Ukraine *On Accounting and Financial Reporting in Ukraine*. Primary documents may also include additional details (e.g., seal, document number, basis for the transaction). Documents created in electronic form may be used in accounting provided they comply with relevant legislation on electronic documents and electronic document flow (Ozerova & Panura, 2022).

Furthermore, there are established procedures for documenting the receipt of humanitarian aid from resident or non-resident donors when primary documents are missing. The basis for accounting such aid is a primary document containing data on a business transaction—that is, an action or event that causes changes in the composition of assets, liabilities, or equity. This document may be created in paper or electronic form. In the general case, receipt of humanitarian aid must be documented using one of the following: an incoming invoice, a bill of lading, a paid invoice, an act of acceptance-transfer of material assets, or a receipt order. If such documentation is unavailable, the regulations allow for the business transaction to be recorded using a properly prepared internal document (act) signed by a responsible official, provided that this option is foreseen in the company's document workflow policy. To ensure proper documentation of received humanitarian aid, it is necessary to:

(1) provide for the use of an internal act in the company's accounting policy order,

(2) designate by order a responsible official for the acceptance-transfer and documentation of such aid, and

(3) develop and approve a standardized internal act form with the required primary document requisites (Ozerova & Panura, 2022).

However, under martial law in Ukraine and amidst the armed aggression by the Russian Federation, the process of evaluating documents

related to humanitarian aid has significantly complicated due to the heterogeneous nature of the aid, its large volumes, diverse sources, and the inclusion of used goods in humanitarian shipments.

Other challenges in conducting economic forensic examinations include:

- the absence of primary documentation or the presence of atypical documents;
- lack of accounting records;
- changes in the regulatory framework governing the receipt, use, accounting, and reporting of humanitarian aid, including its subtype—charitable assistance.

The main methods used in economic forensic examinations during the investigation of the unlawful use of humanitarian aid, charitable donations, or gratuitous assistance include documentary audits and comparison of accounting and reporting records.

Illustrative list of questions posed to the expert may include:

- Is the shortage of humanitarian or charitable aid—specifically inventory or funds—as documented in the inventory report on a given date, supported by relevant documentation?
- Are the findings of the controlling body's audit report (include reference details and name of authority) regarding the misuse of humanitarian/charitable aid by enterprise X, received from enterprise Y, in the amount of Z over a specified period, supported by documentation?
- Is the provision/transfer/remittance of humanitarian/charitable aid from enterprise X to a charitable foundation under contract (include reference details or other document) during a specific period substantiated by documentation?

Therefore, together with the order appointing the expert examination, the expert must be provided with accounting and tax records containing the initial data required to address the posed questions. These may include incoming and outgoing invoices, tax invoices, orders, reports of materially responsible persons, warehouse inventory cards, cash books, inventory records, audit reports, timesheets, job orders, work acceptance acts, employment contracts, payroll records, bank statements, payment orders and demands, liability contracts, turnover balance sheets, accounting registers (e.g., journal-orders, memo orders, sub-ledger cards), general ledgers, VAT invoice registers, tax declarations, balance sheets, and other original or consolidated accounting and tax documents (Order of the Ministry of Justice of Ukraine, 1998).

If accounting and tax records are maintained electronically, printed versions of the registers, duly certified, must be submitted to the expert.

Upon request, they may also be provided in electronic form, in a human-readable format, and systematically organized in chronological order (by relevant periods).

For the study to be valid, originals or properly certified high-quality copies of the documents must be submitted. These must be chronologically organized, bound, stitched, and paginated (Order of the Ministry of Justice of Ukraine, 1998).

The next type of forensic examination typically appointed and conducted in investigations of the illegal use of humanitarian aid, charitable donations, or gratuitous assistance for profit is the **commodity (merchandise) examination**.

The appointment of commodity forensic examinations is thoroughly regulated by current legislation. A forensic examination is defined as a procedural action involving scientifically based analysis of goods, services, and works by forensic experts, upon the request of participants in criminal proceedings or the court, to determine product-related characteristics. The appointment and conduct of this type of examination is of particular importance, as it constitutes a key criterion for holding individuals criminally liable for crimes related to the unlawful use of humanitarian aid. This is especially relevant, given that humanitarian aid is critically important for Ukrainians during this extraordinary time (Kopytko & Atamanchuk, 2024).

4. Specific Features of Commodity Forensic Examination

The principles and procedures for appointing and conducting commodity forensic examinations are defined in Section IV of the *Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies* and the *Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies*, approved by Order of the Ministry of Justice of Ukraine dated October 8, 1998, No. 53/5 (Order of the Ministry of Justice of Ukraine, 1998).

Depending on the subject of examination, the following types of commodity examinations are conducted:

1) Examination of machinery, equipment, raw materials, and consumer goods.

Objects of commodity examination include consumer goods, equipment, and raw materials. Other types of goods may also be subject to this type of examination.

The primary tasks of commodity forensic examination include:

- Determining the value of goods and merchandise;
- Classifying goods into appropriate categories used in industrial and trade practice;

- Establishing the characteristics of goods in accordance with the Ukrainian Classification of Goods for Foreign Economic Activity;

- Identifying changes in quality indicators of goods;

- Determining the method of production of goods (industrial or homemade), the manufacturer, and the country of origin;

- Assessing the conformity of packaging, transportation, storage conditions, and shelf life to applicable standards.

Indicative list of questions to be addressed in a commodity examination:

- What is the value of the examined goods in Ukraine (as of the specified date)?

- What is the customs value of the examined goods at the time of crossing the border of Ukraine (as of the specified date)?

- What are the names and intended purposes of the goods?

- Do the labeling and marking data accurately reflect the actual characteristics of the goods?

- Does the quality of the product meet the standards, technical specifications, and provided samples based on organoleptic properties?

- What defects does the product have? Are they significant? Is it possible to use or sell the product given the identified defects?

- What were the conditions for the acceptance, storage, and release of the goods?

- Does the labeling and packaging of the goods comply with technical standards or with provided samples?

- Which company produced the goods and when (based on labeling or accompanying documents)?

- What classification features does the product possess according to the Ukrainian Classification of Goods for Foreign Economic Activity?

- What is the amount of material damage caused to the property owner as a result of damage to this property (e.g., due to fire, flooding, etc.)? (Order of the Ministry of Justice of Ukraine, 1998)

The order appointing the examination must specify the circumstances of the criminal proceeding in which the examination is ordered. The expert must be provided with the object of the examination. Bulky items are examined on-site. If access to the object is restricted, the investigator is obliged to ensure the expert's ability to inspect it. If necessary, the inspection shall be conducted in the presence of the parties involved in the case.

Objects for examination shall be submitted to the expert in packaging that ensures their preservation.

If the question posed to the expert concerns the value of goods (property), the investiga-

tor must indicate the specific date as of which the valuation must be conducted.

An examination may also address the value of missing goods (property). In such cases, the appointment document must state that the object is absent and specify the case materials on which the valuation shall be based (e.g., invoices, shipping documents, witness statements, interrogations, etc.) (Order of the Ministry of Justice of Ukraine, 1998)

2) Transport-Commodity Forensic Examination

This type of forensic examination primarily aims to determine the market value of wheeled vehicles and their components, as well as the amount of material damage caused to the owner or possessor due to damage.

It may also involve related issues concerning the acquisition and operation of wheeled vehicles.

Indicative questions for the expert may include:

- What is the market value of the wheeled vehicle (including make, model, and license plate number) on the specified valuation date?

- What is the customs value of the wheeled vehicle (including make, model, and identification number) or its components upon import into Ukraine on the specified date?

- What is the extent of the reduction in the commodity value of the wheeled vehicle on the specified date?

- What is the vehicle's residual (scrap) value on the specified date (including make, model, and license plate or identification number)?

- Is the vehicle complete in accordance with the manufacturer's technical documentation? If not, what components are missing?

The expert shall be provided with the vehicle(s), related registration documents, investigation materials, and other documentation containing relevant data for resolving the posed questions.

If necessary, interested parties may be summoned for a technical inspection of the vehicle, with prior notice indicating the date, time, and place (to be coordinated with the expert).

The investigator must ensure proper conditions for the inspection of the vehicle, including lighting, free access, and the ability to examine the vehicle from all sides. (Order of the Ministry of Justice of Ukraine, 1998).

3) Commodity Expertise of Military Property, Equipment, and Weapons

Objects subject to commodity expertise of military property, equipment, and weapons include: military property, military equipment, and weapons.

The objectives of commodity expertise of military property, equipment, and weapons are as follows:

- determining the value of the examined objects used as military property;
- determining the type and purpose of the examined objects;
- determining the characteristics and properties of the examined objects in accordance with the Ukrainian Classification of Goods for Foreign Economic Activity;
- determining the manufacturer, country of origin, and year of manufacture (in conjunction with trace evidence analysis) of the examined objects;
- determining changes in quality indicators of the examined objects (in conjunction with relevant specialists in the operation of similar property).

An indicative list of questions to be addressed includes:

- What is the name and intended use of the object submitted for examination?
- Which enterprise manufactured the object, and when was it produced (subject to the availability of labeling information or accompanying documentation)?
- What is the year of manufacture of the object submitted for examination? (Resolved jointly with trace evidence analysis, provided labeling information is available);
- What are the characteristics and properties of the examined object according to the Ukrainian Classification of Goods for Foreign Economic Activity?
- Is the object submitted for examination fully equipped in accordance with regulatory and technical documentation? If not, what are the deficiencies or discrepancies?
- Does the quality condition of the object comply with applicable standards, technical specifications, and provided samples? If not, what are the specific non-conformities? (Resolved jointly with specialists in the repair and operation of similar property);
- What defects or damages does the object submitted for examination have? Are these defects significant? Is the object still operable for its intended use despite the identified defects? (Resolved jointly with specialists in the repair and operation of similar property);
- Can the identified defects and damages of the examined object be remedied? If so, by what means? (Resolved jointly with specialists in the repair and operation of similar property);
- What is the degree of wear and tear of the object submitted for examination?
- What is the residual value of the object as of the specified date?
- What is the market value of the object as of the specified date (taking into account the information provided to the expert on purchase and sale agreements of similar objects in the international market)?

– What is the liquidation value of the object as of the specified date?

– What is the amount of material damage caused by the damage to the object, including based on the repair cost estimate provided to the expert?

– What is the amount of material damage caused by the total destruction of the object, including as a result of hostilities?

(Based on the Order of the Ministry of Justice of Ukraine on Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and the Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies, 1998).

5. Conclusions

The analysis of criminal proceedings has demonstrated that during the pre-trial investigation of the unlawful use of humanitarian aid, charitable donations, or gratuitous assistance for profit-making purposes, the primary types of forensic examinations appointed and conducted were economic and commodity (merchandise) expertise.

During the period of martial law in Ukraine and the ongoing counteraction to the armed aggression of the Russian Federation, the process of conducting such forensic expert evaluations has become significantly more complex. This complexity arises from the heterogeneity of humanitarian aid, charitable donations, or gratuitous assistance; their substantial volume; the diversity of sources of origin; and the presence of used goods within humanitarian shipments.

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ПРОВЕДЕННЯ СУДОВИХ ЕКСПЕРТИЗ ПІД ЧАС РОЗСЛІДУВАННЯ НЕЗАКОННОГО ВИКОРИСТАННЯ З МЕТОЮ ОТРИМАННЯ ПРИБУТКУ ГУМАНІТАРНОЇ ДОПОМОГИ, БЛАГОДІЙНИХ ПОЖЕРТВ АБО БЕЗОПЛАТНОЇ ДОПОМОГИ

Анотація. Мета статті полягає у формуванні основ та виокремленні особливостей проведення судових експертиз за умови розслідування незаконного використання з метою отримання прибутку гуманітарної допомоги, благодійних пожертв або безоплатної допомоги. **Результати.** Обґрунтовано необхідність вдосконалення техніко-криміналістичного забезпечення розкриття та розслідування кримінальних правопорушень, і безпосередньо – розслідування незаконного використання з метою отримання прибутку гуманітарної допомоги, благодійних пожертв або безоплатної допомоги. Необхідним є аналіз слідчої практики, судово-експертної діяльності задля теоретичного осмислення теоретичних проблем, узагальнення практичного досвіду. З'ясовано, що під час проведення досудового розслідування незаконного використання з метою отримання прибутку гуманітарної допомоги, благодійних пожертв або безоплатної допомоги призначалися і проводилися такі основні види судових експертиз як економічна і товарознавча. Зокрема, під час проведення судово-економічної експертизи досліджувалися первинні документи (акти (прийому-передачі, внутрішній, внутрішнє переміщення); банківські виписки, касові ордери; звітні документи або відомості; накладні, накладні-вимоги (відпуск, оприбуткування, переміщення); товарно-транспортні накладні. Досліджувалися й інші підтверджуючі документи (запити, звернення, листи-прохання, письмова пропозиція донора (дарчий лист), письмова згода отримувача гуманітарної допомоги, договори, розпорядчі документи). Наступним видом судових експертиз, що призначається і проводиться при розслідуванні незаконного використання з метою отримання прибутку гуманітарної допомоги, благодійних пожертв або безоплатної допомоги, є товарознавча. Відповідно до предмету дослідження, проводяться її такі різновиди: експертиза машин, обладнання, сировини та споживчих товарів; транспортно-товарознавча експертиза; товарознавча експертиза військового майна, техніки та озброєння. **Висновки.** Під час воєнного стану в Україні, подолання збройної агресії російської федерації, процес проведення даних судових експертиз оцінки значно ускладнився через неоднорідність гуманітарної допомоги, благодійних пожертв та безоплатної допомоги, значні обсяги, різноманіття джерел походження, наявність у складі гуманітарних вантажів товарів, що були у використанні тощо.

Ключові слова: кримінальне провадження, слідчий, експерт, експертиза.

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STATE OF SCIENTIFIC RESEARCH ON THE ISSUES OF FORENSIC METHODS OF INVESTIGATING CRIMINAL OFFENSES IN THE SPHERE OF ECONOMIC ACTIVITY RELATED TO DOCUMENT FORGERY

Abstract. Purpose. The purpose of the article is to examine the state of scientific research on the issues of forensic methodology for investigating criminal offenses in the sphere of economic activity related to document forgery. **Results.** Within the framework of the research, the author carried out a comprehensive analysis of the current state of forensic development concerning the methodology of investigating criminal offenses in the economic sphere involving document forgery. Attention is focused on the study of scientific approaches formed in domestic forensic science regarding tactical foundations for detecting, recording, examining, and using evidentiary information during the investigation of such offenses. Key trends influencing the development of methodological foundations for investigating economic offenses are analyzed, including the digitalization of documents, the emergence of new forms of falsification, the active use of electronic document flow, and methods of concealing criminal activity within the corporate environment. **Conclusions.** It has been established that despite the availability of certain methodological recommendations, generalizations of investigative practice, and existing scientific developments, there is a lack of a comprehensive vision of a systematic methodology for investigating such offenses, adapted to modern conditions. The article highlights the relevant scientific problems of methodology in investigating criminal offenses in the sphere of economic activity related to document forgery. Emphasis is placed on the need for an interdisciplinary approach to the development of an updated forensic methodology that would take into account the specifics of the object of encroachment, the mechanism of forgery, the characteristics of offenders, and the latest technical capabilities for detecting falsifications. As a result of the analysis, the conclusion is drawn about the expediency of intensifying scientific research in this area, developing unified standards and methodological recommendations for practitioners, as well as improving training programs for investigators, experts, and prosecutors in light of these challenges.

Key words: forensic methodology, document forgery, economic activity, economic crimes, investigative practice, scientific research, electronic document flow, falsification.

1. Introduction

The issue of document falsification in the economic sphere is not new to forensic science. However, the development of digital technologies, the increase in electronic document flow, and the complication of economic schemes necessitate the renewal of scientific approaches. In forensic literature, the investigation of criminal offenses related to document forgery in the economic sphere is mainly considered within the framework of general methodologies for investigating economic and official crimes.

In order to establish a proper theoretical foundation, it is necessary to study dissertations, monographs, and other scholarly works within the criminal-law sciences, which are devoted to the methodology of detecting and investigating criminal offenses in the sphere of economic activity, including those involving document forgery.

The purpose of this article is to examine the state of scientific research on the issues of forensic methodology in investigating criminal offenses in the sphere of economic activity related to document forgery.

In scholarly sources, certain aspects of investigating criminal offenses in the field of economic activity have been studied by such domestic scholars as V.A. Zhuravel (2006), V.O. Konovalova (2006), V.P. Korzh, I.R. Pashynska (2023), S.S. Trach (2020), D.B. Sanakoyev (2021), S.S. Cherniavskiy, V.Yu. Shepitko (2006), among others. At the same time, despite the availability of certain developments, the issue of document forgery specifically in the context of economic activity has been considered only fragmentarily. Studies often focus on general aspects of falsification without considering the specifics of economic transactions, accounting, tax reporting, and the like, which in turn requires a more in-depth analysis.

2. Problems of Investigating Criminal Offenses in the Sphere of Economic Activity

Document forgery in the sphere of economic activity is a common means of implementing fraudulent schemes, tax evasion, embezzlement of property, and laundering of proceeds obtained through criminal means. Given the increasing level of crime in this field, the improvement of forensic methodology for investigating this category of criminal offenses becomes particularly relevant.

The problems of methodology for investigating criminal offenses in the sphere of economic activity related to document forgery are caused by a number of factors, in particular:

1. the high level of latency of such criminal offenses;
2. the complexity of detecting forged documents (the high level of technical falsification using printers, scanners, photo editors, forged seals, the prevalence of electronic document flow, where visual verification is impossible);
3. the insufficient level of technical and forensic support in practice (lack of equipment, specialists, access to registers);
4. legal uncertainty regarding certain concepts and qualifications (collisions between articles of the Criminal Code of Ukraine (Articles 191, 205-1, 222, 358, 366 of the CC of Ukraine) and sectoral legislation, such as the Law of Ukraine "On Accounting and Financial Reporting in Ukraine," the Law of Ukraine "On Electronic Documents and Electronic Document Flow," in particular the uncertainty of the concepts of "official document," "official person," or "fictitious entrepreneurship" in the context of economic relations);
5. the insufficient level of specialization of investigators and prosecutors (lack of professionals with sufficient experience in investigating criminal offenses in the sphere of economic activity, particularly forgeries in accounting, finance, audits; difficulties in analyzing primary accounting documents, banking operations,

contracts, reporting; lack of understanding of the specifics of corporate structuring such as affiliated companies, transit operations, offshore chains);

6. the formalized approach to investigative tactics (typical investigative practice often does not take into account the economic essence of the criminal offense, but focuses only on detecting a "paper" forgery, while lacking adapted algorithms for investigating specifically economic forgeries, as distinct from official or everyday ones);

7. difficulties in involving qualified experts and specialists (the limited number of institutions capable of conducting comprehensive economic, handwriting, and technical examinations of documents; the absence in the CPC of Ukraine of clear regulation of interaction between the investigator and the expert, which complicates the preparation of high-quality materials for examination);

8. the lack of specialized methodologies for investigating criminal offenses in the sphere of economic activity that take into account modern methods of document falsification;

9. the difficulty of proving intent and causation between forgery and material damage or unlawful benefit (particularly in complex financial schemes).

In this regard, there has arisen the need to develop a separate methodology for investigating criminal offenses in the sphere of economic activity related to document forgery, which should incorporate modern approaches to investigating such criminal offenses and correspond to the needs of practice.

The development of scientific ideas on the formation of forensic methodology for investigating criminal offenses was comprehensively studied in the monograph by V.A. Zhuravel, in which the author examined modern trends in the formation and development of methodologies for investigating certain types of crimes, micro-methodologies and their adaptation to specific programs, the problems of methodology design for investigating individual types of crimes, and the structure of certain forensic methodologies (Zhuravel, 2012).

Among domestic scholars who made a significant contribution to the development of this issue are V.Yu. Shepitko, V.O. Konovalova, and V.A. Zhuravel (2006). They conducted a thorough study of certain forensic methodologies for investigating crimes in the sphere of economic activity (Shepitko, Konovalova, Zhuravel, 2006). The team of authors revealed both general issues of methodology in investigating criminal offenses, their forensic characteristics, types and forms of interaction, and investigation planning, as well as the peculiarities of investigating

specific types of crimes in the sphere of economic activity related to violations of the procedure for conducting economic activity. In particular, they addressed the forensic characteristics of crimes involving violations of the procedure for conducting economic activity, the construction of investigative versions and investigation planning, typical investigative situations of the initial stage of investigation and the programs of action for the investigator to resolve them, as well as the tactics of conducting certain investigative actions (Shepitko, Konovalova, Zhuravel, 2006).

Specifically, the monographic study contains forensic methodologies for the effective investigation of such types of criminal offenses in the sphere under consideration as fictitious entrepreneurship, legalization (laundering) of proceeds obtained through crime, fraud with financial resources, crimes related to consumer rights violations, crimes associated with the production and sale of counterfeit alcoholic beverages, and smuggling (Shepitko, Konovalova, Zhuravel, 2006).

In order to develop a comprehensive methodology for investigating criminal offenses in the sphere of economic activity related to document forgery, it is necessary to study scholarly works in other branches of legal science, in particular criminal law, criminology, and criminal procedure law.

Among domestic scholars, the criminal-law characteristics of criminal offenses in the sphere of economic activity have been studied by O.H. Frolova (2006), D.V. Kamenskyi (2020), and O.V. Starostenko (2024).

For instance, O.H. Frolova conducted a comprehensive analysis of the elements of crimes related to bankruptcy, provided their criminal-law characteristics, established the methods of commission and the socio-legal content of such crimes, and offered recommendations for improving Ukraine's criminal legislation. Certain aspects of her dissertation were devoted to analyzing the use of knowingly forged documents as a method of committing bankruptcy-related crimes. These included:

1. the balance sheet as of the last reporting date, signed by the head and chief accountant of the enterprise;
2. the list and complete description of pledged property with its location and value at the time of the pledge;
3. the minutes of the general meeting of the debtor's employees at which a representative of the debtor's employees was elected to participate in economic proceedings during bankruptcy proceedings;
4. other documents confirming the debtor's insolvency (Frolova, 2006).

The criminal-law protection of economic relations in the United States and Ukraine was the sub-

ject of the research conducted by D.V. Kamenskyi (2020), who performed a comparative analysis of approaches to criminal liability for economic crimes in the United States and Ukraine, covering the classification of economic crimes, a comparative analysis of their elements, and the regulatory framework of criminal liability. In particular, the author examined the concept of "economic crime" and compared it with related terms such as "commercial," "economic" (in some countries also "white-collar," "corporate," and "professional"), "entrepreneurial," and "business" crimes, which encompass similar criminally punishable acts (Kamenskyi, 2020).

Scientific contributions by **O.V. Starostenko (2024)** are devoted to the criminal-law characteristics of crimes committed by officials in the field of lending. The dissertation covers the characteristics of such crimes committed through document forgery and their differentiation from related elements of criminal offenses (Starostenko, 2024). The author states that document forgery, as well as official forgery committed for the purpose of obtaining subsidies, grants, subventions, or loans, should be qualified under a combination of offenses provided for in Articles 222 and 358 or Article 366 of the Criminal Code, depending on the circumstances of the case (Starostenko, 2024).

Furthermore, the author analyses behavioural models of officials who commit crimes in the lending sector: officials (employees of a bank or financial institution), exploiting the trust of management or clients, prepare fictitious loan agreements or alter the terms of existing agreements for personal enrichment or in the interests of third parties; an official deliberately ignores violations related to document falsification, including loan applications, income certificates, or collateral documents, in exchange for material benefits or to avoid liability; an official directly forges documents or organises their falsification (income certificates, collateral, client data) in order to secure loans for fictitious persons or "dead souls"; an official acts as an intermediary between the initiator of fraud and the technical executor (a company or individual preparing forged documents). Such a person provides consultations, facilitates accelerated decision-making, and sometimes "covers" the scheme in exchange for kickbacks (Starostenko, 2024). This is directly related to typical criminal offences in the sphere of economic activity, where document forgery serves as a key instrument. This approach allows for specification of the motives and methods of document falsification, as well as examination of common fraudulent schemes, including the preparation of fictitious loans, pledges, property valuation acts, and others.

Of particular note is the scholarly work of **O.M. Nesterenko** *Criminal Liability for Forgery of Documents Submitted for State Registration of a Legal Entity and Individual Entrepreneurs (Article 205-1 of the Criminal Code of Ukraine)* (Nesterenko, 2021). Within the study, the author explores the concept of “legitimate document circulation” and “document circulation,” the latter being understood as a set of legal relations arising between its subjects—namely, individuals, associations, and social communities—concerning official documents in relation to ensuring the state-established procedure for their creation, storage, use, and destruction in various spheres of social activity (Nesterenko, 2019).

A number of scholarly works are devoted to the prevention of criminal offences in the sphere of economic activity, which also has both practical and theoretical significance, particularly for the investigation of such criminal offences, including those related to document forgery. Among such works, doctoral and candidate dissertations should be highlighted, which address the general features of preventing economically motivated criminal offences, as well as studies within particular groups or types of criminally punishable acts in this area.

General issues of preventing economic crimes are addressed in the works of **O.V. Bitsiura (2021)** *Criminal Police as a Subject of Prevention of Economic Crimes*; **D.O. Hrytsyshen (2021)** *State Policy in the Sphere of Prevention and Counteraction of Economic Crime*; **V.V. Moiseenko (2021)** *Prevention of Criminal Offences in the Field of Economic Activity in Ukraine*; and **T.V. Baranovska (2024)** *Prevention and Counteraction of Criminal Offences against the Economic System*.

The criminological foundations of the criminal police as a subject of economic crime prevention are revealed in the dissertation by O.V. Bitsiura. The author defines the principles of activity of the criminal police units as a subject of economic crime prevention, criteria for the effectiveness of their activities in this field, analyses specific structural elements of the criminological characteristics of economic crime, and, on the basis of a comprehensive study of scholarly views, formulates the concept of “economic crimes” and their groups. O.V. Bitsiura rightly notes that criminal offences in the field of economic activity constitute the majority of economic criminal offences (Bitsiura, 2021).

The development of the theory and methodology of forming and implementing state policy in the field of prevention and counteraction of economic crime as a threat to national security was undertaken by D.O. Hrytsyshen.

In his dissertation, he proposed a comprehensive methodological approach to the formation and implementation of state policy in this field. This approach includes a series of sequential stages: identification of the problem and detection of its symptoms; disclosure of the content of state policy as a process and a system; determination of the subject-object field, goals and objectives, directions of formation, objects and subjects of the formation and implementation of state policy; interaction with other types of state policy; methods of implementation; principles of state policy; and implementation mechanisms that take into account the peculiarities of economic crimes in the state and corporate sectors of the economy. This forms new scholarly value regarding the expansion of methodological tools of public administration (Hrytsyshen, 2021).

The dissertation is devoted to a comprehensive study of the criminological problems of preventing criminal offences in the sphere of economic activity in Ukraine. It reveals the impact of the shadow economy on national security, clarifies the specifics of legal regulation of economic activity in Ukraine, and systematises criminal offences in this sphere.

The structure and dynamics of criminal offences have been characterised. The determinants contributing to the criminalisation of the economic sphere of social relations have been disclosed, and criminologically significant characteristics of individuals committing criminal offences in the field of economic activity have been identified. A conceptual vision of the ways to implement criminological measures for the protection of the country’s economic sphere, as well as measures of prevention at the special-criminological level, has been proposed. An economic-legal mechanism and criminological measures for preventing criminal offences in the field of economic activity by Ukrainian law enforcement agencies have been developed, together with the main directions of their interaction both among themselves and with non-governmental organisations, at the national level and in cooperation with law enforcement agencies and NGOs abroad (Moiseenko, 2021).

The scholarly pursuit of resolving the issue of prevention and counteraction of criminal offences against the economic system was further advanced by **T.V. Baranovska**, who proposed the creation of a comprehensive concept of state policy in the sphere of prevention and counteraction of economic crime. In her research, the author conducted a retrospective analysis of the development of criminal liability for the forgery of objects and documents, including within the sphere of economic activ-

ity, and suggested directions for improving the activities of Ukrainian law enforcement agencies in preventing and counteracting criminal offences against the economic system (the Security Service of Ukraine, the Bureau of Economic Security, the State Bureau of Investigation, and the National Anti-Corruption Bureau of Ukraine). Within the context of criminal law reform, T.V. Baranovska presented substantiated proposals for developing a new structure of the Criminal Code in the part concerning criminal offences against the economic system. This approach envisages a separate book, *Criminal Offences against the Economic System*, divided into the following chapters: (1) Criminal Offences against the Order of Economic Activity; (2) Criminal Offences against the Budgetary System; (3) Criminal Offences against the Financial System and Financial Markets; (4) Criminal Offences against the Tax System; (5) Criminal Offences concerning the Unlawful Use of Economic Instruments against the State and Society; (6) Criminal Offences against Competition and Commercial Secrecy. According to the scholar, such an approach accounts for all the characteristics of the economic system and the directions of applying economic instruments in social relations, thereby ensuring effective management of risks and threats to the economic security of the state (Baranovska, 2023).

The subject of I.S. Kundelska's (2024) research is the prevention of the legalisation (laundering) of criminal proceeds in Ukraine. In this study, the author examined the theoretical and legal foundations of preventing the laundering of criminal assets, carried out a criminological analysis of money laundering, and proposed preventive measures against the legalisation (laundering) of criminally obtained property (Kundelska, 2024).

As regards dissertation and monographic studies on the prevention of document forgery, which highlight the criminological and criminal-law aspects of this type of criminal offence, particular attention should be paid to the scholarly contributions of Ya.S. Ostapenko, whose research focuses on the criminological characteristics of official forgery. This includes the analysis of social, organisational, and personal determinants of the crime; quantitative and qualitative assessment of the prevalence of such offences and the characteristics of offenders; and the development of general-social, special-criminological, and individual preventive measures. The author identified and analysed the stages of the formation of the legal concepts of "official document" and "forgery," as well as the evolution of the legal regulation of criminal liability for forgery in Ukraine. A comprehensive description of the quantitative and qualita-

tive criminological indicators of official forgery in Ukraine is provided, establishing the persistence of its high level, unfavourable dynamics, and specific geography associated with factors of urbanisation. The methods of committing official forgery are also defined, among which the scholar distinguishes intellectual forgery—consisting in the creation of a document that is formally correct but wholly or partly inconsistent with reality—and material forgery, which involves other forms of document falsification, such as altering requisites or parts of the document's content (Ostapenko, 2017).

In order to address the criminal-procedural aspects, it is also worth emphasising the dissertation research of P.P. Cheberiak *Collection and Evaluation of Evidence in Criminal Proceedings on Economic Crimes* (2013). The author noted that: "The adaptation of certain provisions of economic disciplines, such as accounting, banking, auditing, and revision, to the needs of crime investigation, as well as the integration of economic and forensic knowledge, is a necessary precondition for improving the effectiveness of combating economic crimes by enhancing the efficiency of collecting and evaluating evidence" (Cheberiak, 2013).

3. Identifying Problems in the Investigation of Criminal Offences in the Sphere of Economic Activity

The study of problems related to the investigation of criminal offences in the sphere of economic activity within the framework of forensic science has not been overlooked, covering both the general principles of investigative tactics for such offences and specific issues within individual forensic methodologies.

V.P. Korzh, in his research on the theoretical foundations of methodologies for investigating crimes committed by organised criminal groups in the field of economic activity, defined that "the forensic characteristics of crimes committed by organised criminal entities in the sphere of economic activity represent a system of data obtained as a result of generalisation of investigative and judicial practice regarding the types of organised criminal entities, typical methods of their formation and principles of functioning, types and forms of corrupt connections; the peculiarities of personal characteristics and role functions of members of such entities; the typical features of these crimes, which are contained (or reflected) in the form of specific material or ideal traces in the methods of economic crimes, in the conditions and circumstances under which the members of organised criminal entities operated, laundered illicit proceeds, the knowledge and use of which are necessary for the detection, disclosure, investigation, and prevention of these crimes" (Korzh, 2002).

An important contribution is the research by **V.H. Petrosian** *Forensic and Operational Support for Detecting Crimes Committed by Business Entities with Signs of Fictitiousness* (2012), in which he identified the peculiarities of tactics for detecting signs of crimes and documenting the criminal activities of business entities with signs of fictitiousness. The scholar also improved the provisions regarding the most widespread contemporary methods of criminal activity related to the state registration of fictitious business entities, highlighted the shortcomings of the organisation of the state registration procedure, the risks of corruption, and the conditions facilitating the proliferation of fictitious registrations (Petrosian, 2012).

In his dissertation *Investigation of Misappropriation, Embezzlement of Property, or Taking Possession Thereof by Abuse of Office* (2015), **S.S. Kulyk** reached the following conclusions: preparation for committing such an offence may involve the use of business entities with signs of fictitiousness, the conclusion of fictitious agreements, the opening of bank accounts, and document forgery; methods of concealment include fictitious bankruptcy, destruction of items and documents, liquidation of business entities, and obstruction of inspections and audits. The objects of misappropriation, embezzlement, or taking possession of property by abuse of office most commonly include: cash in national currency (45.6%), funds in bank accounts (29.5%), cash in foreign currency (14.9%), material assets (10.6%), and securities (2.3%). In addition, he defined the tactics of searches, inspections, and interrogations as the most common investigative actions in cases of misappropriation, embezzlement, or taking possession of property by abuse of office (Kulyk, 2015).

S.S. Trach (2020) studied the organisation and planning of investigations of criminal offences in the sphere of economic activity. The author rightly notes that today the practice of law enforcement and judicial authorities demonstrates that many business structures are in fact entirely criminal entities that significantly hinder the positive development of economic activity in Ukraine (Trach, 2020).

The scholarly works of **I.R. Pashynska (2023)** are devoted to the study of the theoretical and practical foundations for developing and implementing forensic methodologies for investigating criminal offences committed by organised criminal groups in the sphere of economic activity. In particular, the author examines issues related to the forensic classification of crimes committed by organised criminal groups in the field of economic activity, the theoretical foundations of the forensic characteristics of such crimes, and the methodological

foundations for investigating them (Pashynska, 2023).

Certain issues related to the criminal-law qualification and the algorithm of actions of the Strategic Investigations Department of the National Police in detecting and investigating specific types of crimes in the sphere of economic activity committed by organised groups and criminal organisations were examined by a team of scholars including **D.B. Sanakoiev, O.V. Neklesa, D.S. Yuriev**, among others (Sanakoiev, Neklesa, Yuriev, Yefimov, Paleshko, 2021).

The research of **I.M. Osyka** addresses the peculiarities of investigating document forgery and their use in entrepreneurial activity. The author developed the concept of the complexity of committing economic crimes in the form of criminal technologies of enrichment; proposed a classification of documents subject to forgery for use in business crimes, based on the criterion of functional purpose and information medium (paper, electronic, plastic); introduced definitions of methods of forgery and use of forged documents; identified problematic issues in analysing primary materials; outlined an indicative list of circumstances subject to mandatory establishment depending on the category of documents forged and used; determined the peculiarities of typical investigative situations and formulated recommendations for conducting investigative and operational measures (tactical operations) in cases of forgery and use of forged documents in entrepreneurship. Algorithms of investigative actions were provided depending on typical investigative situations, particularly at the initial stage of the investigation, along with practical recommendations for carrying out investigative (search) actions (Osyka, 2007).

The scientific works of **A.O. Milevska** are devoted to a specific area – forgery of notarial documents. She analysed the types, forms, methods, and features of forgery of such documents; expanded the concept of a “notarial document”; examined the stages of pre-trial investigation, the specifics of investigative actions, the appointment and conduct of forensic examinations; paid attention to the preservation of notarial secrecy, the optimisation of pre-trial investigation processes, and information interaction between justice bodies, law enforcement agencies, and courts. She also provided recommendations for eliminating legislative inconsistencies (Criminal Code, Criminal Procedure Code, Law *On Notariate*) and improving procedures for information exchange. The author analysed the definitions of the concepts “method of forgery,” “form of forgery,” and “type of forgery” as system-forming elements of the foren-

sic characteristics of this phenomenon (Milevska, 2016).

Theoretical provisions and practical recommendations regarding the use of specialised knowledge in the investigation of official forgery were the subject of **N.V. Kopcha's** research. Within the framework of her study, the author provided recommendations on the peculiarities of involving specialists in conducting certain investigative actions during the investigation of official forgery, such as inspection, search, and interrogation. She examined issues of types of document forgery and methods of detection, the signs to which investigators should pay attention during examination, the peculiarities of forgery of electronic documents in electronic document circulation systems, and offered proposals regarding the algorithm of investigative actions in preparation for interrogation in such criminal proceedings (Kopcha, 2023).

Methodological approaches to the investigation of certain types of criminal offences in the field of economic activity, in particular those related to document forgery, have been proposed in the form of scholarly articles by **D.P. Hurina and I.V. Kalinina (2017)**. Their research focuses on the methodology of investigating economic crimes involving document forgery, emphasising the role of the investigator and the expert in preventive work within the methodological process of investigation. The authors identify the key principles, tasks, and structure of the methodology for investigating economic crimes involving document forgery. Separately, the research team highlights the role of "prevention" on the part of the investigator and expert—namely, the active participation of specialists in preventing falsifications at the investigation stage (Hurina, Kalinina, 2017).

Thus, at present, the issue of investigating criminal offences in the sphere of economic activity related to document forgery is gradually gaining importance within forensic science. Nevertheless, research in this area remains fragmented and requires further theoretical generalisation and practical adaptation. The existing studies tend to concentrate on individual components of the investigation and address separate methodological techniques, such as document examination, preparation for forensic analysis, and the conduct of typical investigative (search) actions (interrogation, seizure, search) in the context of the specific features of investigating individual types of criminal offences.

Currently, there is no unified and systematised methodology for investigating criminal offences in the economic sphere related to document forgery that would encompass the entire

cycle of investigation, taking into account modern forms of document falsification (electronic, digital, accounting, etc.). Many works address the peculiarities of investigating criminal offences in the sphere of economic activity where forgery does not constitute an independent object of investigation but functions as an auxiliary means of implementing fraudulent schemes, abuses, or budgetary embezzlement. Moreover, there is an evident lack of adaptation of existing methodologies to new challenges, such as the use of digital forgery technologies, falsification of electronic digital signatures (EDS), and virtual documents in financial circulation.

At the current stage, forensic science demonstrates the following shortcomings: the absence of a systematic approach to the development of a unified forensic methodology for investigating forgeries in the economic sphere; the need to update tactics and algorithms of investigative (search) actions in light of modern digital technologies in document circulation; and the necessity of revising the classification of forgery methods in accordance with technological progress (graphic, electronic, hybrid forgeries, etc.). These circumstances highlight the urgent need to develop a comprehensive forensic methodology for investigating such criminal offences, as is also emphasised by forensic scholars.

For example, the necessity of creating a methodology for investigating financial crimes, with the definition of its fundamental principles, is stressed by **S.S. Cherniavskiy, Yu.M. Chornous, P.V. Tsymbal, and others (2020)**. The authors underline the importance of considering essential specific features in the development of forensic methodologies for investigating individual types of criminal offences, which expands the content of their forensic characteristics, provides preconditions for the application of effective investigative methods, means, and techniques, and enhances the efficiency of law enforcement activities in accordance with the specific nature of these offences (Cherniavskiy, Chornous, Tsymbal, Samodin, Nadiia, 2020).

Taking into account such essential specific features, as noted by the scholars, is of key importance for improving the effectiveness of investigating criminal offences in the economic sphere related to document forgery. It allows for the expansion of the forensic characteristics of document forgery in the economic domain, more precise formulation of tactical and organisational techniques, and the targeted use of resources at all stages of investigation.

In his monograph *Forensic Support for the Investigation of Crimes Committed in*

the Budgetary Sphere of Ukraine (2012), **R.L. Stepaniuk** emphasises that “*the structuring of any system of knowledge is an integral process for optimising its cognitive function. As regards forensic methodologies, structuring likewise ensures their functional purpose. Therefore, it is indisputable that the absence of a unified approach to structuring an individual forensic methodology undermines the prospects for the practical implementation of scholarly recommendations*” (Stepaniuk, 2012).

At the same time, among the problematic aspects of modern forensic methodology, particularly in the sphere of economic activity involving document forgery, the following should be noted: insufficient typification of investigative situations arising in the detection of forgeries in financial documentation; insufficient research into issues of digital falsification, including the forgery of electronic documents and data in accounting software; inadequate use of the specialised knowledge of economic and accounting experts, which complicates the qualification of the offence; and imperfect inter-agency cooperation between investigators, financial institutions, tax authorities, and expert institutions.

In the context of forming the structure of a separate forensic methodology for investigating criminal offences in the economic sphere related to document forgery, it is worth agreeing with the position of **V.M. Shevchuk (2020)**. The scholar argues that the structure of investigating crimes must include the following elements: “the peculiarities of identifying signs of a criminal offence and initiating criminal proceedings, as well as the specifics of the tactics of conducting certain investigative (search) actions, covert investigative (search) actions, and securing measures.” He further asserts that a separate forensic methodology should consist of the following elements (blocks): (1) forensic characteristics of the criminal offence; (2) circumstances to be established; (3) peculiarities of identifying signs of a criminal offence and initiating criminal proceedings; (4) typical investigative situations and versions at the initial stage of investigation, together with the investigator’s action plan for their resolution and verification; (5) typical investigative situations and versions at the subsequent stage of investigation, with the investigator’s action plan for their resolution; (6) organisation and planning of the investigation, including the investigator’s interaction with other participants in criminal proceedings; (7) peculiarities of the tactics of conducting certain investigative (search) actions, covert investigative (search) actions, and securing measures; (8) forensic prevention measures for individual types and groups of criminal offences” (Shevchuk, 2020).

In view of the above, within a separate methodology for investigating criminal offences in the sphere of economic activity related to document forgery, the following structural elements should be distinguished: the forensic characteristics of criminal offences in the sphere of economic activity related to document forgery; the forensic classification of such criminal offences; the circumstances to be established in the course of the investigation; typical investigative situations arising during the investigation; the use of specialised knowledge in the investigation; the organisational and tactical principles of interaction between the investigator and other actors in the course of the investigation; and the tactics of individual investigative (search) actions during the investigation of criminal offences in the sphere of economic activity related to document forgery.

In addition, it appears expedient, within the framework of a separate methodology for investigating such criminal offences, to address the following categories: the experience of foreign states in investigating criminal offences in the sphere of economic activity related to document forgery; and international cooperation in the investigation of such criminal offences.

4. Conclusions

Thus, having analysed the scholarly literature on the study of issues concerning the forensic methodology of investigating criminal offences in the sphere of economic activity related to document forgery, existing scientific works may be divided into four main groups:

1. Works dealing with the general principles of organisation and methodology of investigating criminal offences.
2. Works devoted to the development of the scientific foundations of methodologies for investigating criminal offences in the economic, including the business, sphere.
3. Works addressing the investigation of related criminal offences.
4. Works directly examining the investigation of criminal offences in the sphere of economic activity related to document forgery.

Despite the availability of scholarly contributions that will undoubtedly serve as a foundation for the formation of a separate forensic methodology for investigating criminal offences in the sphere of economic activity related to document forgery, the level of research into this issue remains insufficient. It is necessary to conduct further in-depth studies aimed at: generalising existing judicial and investigative practice (including the analysis of typical methods of document forgery in the economic sphere, mechanisms of their use, and dissemination within economic activity); studying current trends and technologies used in falsifying business documents, in particu-

lar the use of digital tools, forgery of electronic signatures, and data manipulation in accounting and financial software; forming a classification and systematisation of types of forged documents in the economic sphere, their features, methods of detection, and identification under conditions of digitalised document management; developing specialised forensic methodologies and recommendations for pre-trial investigation bodies, covering effective means of detecting, recording, seizing, and examining forged documents, as well as ensuring interaction between investigators and experts in economics, digital technologies, and document studies; updating the forensic characteristics of such criminal offences, taking into account legislative changes, transformations in the business environment, and the impact of information technologies on the mechanisms of committing criminal offences.

For the effective investigation of such offences, it is advisable to develop a unified methodology for investigating criminal offences related to document forgery in economic activity; to improve the algorithms of investigative (search) actions considering the specifics of electronic document management; to expand the use of forensic examinations, in particular technical examination of documents, economic examination, and digital trace examination; and to promote an interdisciplinary approach to investigating such criminal offences through the involvement of specialists in finance, auditing, IT, and related fields.

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СТАН НАУКОВИХ ДОСЛІДЖЕНЬ ПРОБЛЕМ КРИМІНАЛІСТИЧНОЇ МЕТОДИКИ РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ У СФЕРІ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ, ПОВ'ЯЗАНИХ ІЗ ПІДРОБКОЮ ДОКУМЕНТІВ

Анотація. Метою статті є вивчення стану наукових досліджень проблем криміналістичної методики розслідування кримінальних правопорушень у сфері господарської діяльності, пов'язаних з підробкою документів. **Результати.** У межах наукового дослідження автором здійснено всебічний аналіз сучасного стану криміналістичної розробки проблем, що стосуються методики розслідування кримінальних правопорушень у сфері господарської діяльності, пов'язаних із підробкою документів. Увагу зосереджено на вивченні наукових підходів, сформованих у вітчизняній криміналістичній науці, щодо тактичних засад виявлення, фіксації, дослідження та використання доказової інформації під час розслідування таких кримінальних правопорушень. Проаналізовано ключові тенденції, які впливають на розвиток методичних засад розслідування правопорушень еко-

номічного характеру, зокрема цифровізацію документів, появу нових форм фальсифікації, активне використання електронного документообігу та засобів маскування злочинної діяльності в корпоративному середовищі. **Висновки.** Визначено, що попри наявність окремих методичних рекомендацій, узагальнень слідчої практики та наявних наукових розробок, відсутнє комплексне бачення системної методики розслідування таких кримінальних правопорушень, адаптованої до сучасних умов. Розкрито актуальні наукові проблеми методики розслідування кримінальних правопорушень у сфері господарської діяльності, пов'язана з підrobкою документів. Наголошено на потребі між-дисциплінарного підходу до формування оновленої криміналістичної методики, яка б враховувала специфіку предмета посягання, механізм вчинення підrobки, особливості суб'єктів правопорушення та новітні технічні можливості для виявлення фальсифікацій. У результаті проведеного аналізу зроблено висновок про доцільність активізації наукових досліджень у цій сфері, розроблення єдиних стандартів і методичних рекомендацій для практичних працівників, а також удосконалення навчальних програм підготовки слідчих, експертів і прокурорів з урахуванням зазначених викликів.

Ключові слова: криміналістична методика, підrobка документів, господарська діяльність, економічні злочини, слідча практика, наукові дослідження, електронний документообіг, фальсифікація.

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LIFE AS THE HIGHEST VALUE IN WARTIME: BETWEEN LEGAL NORMS AND MILITARY REALITY

Abstract. Purpose. The purpose of this scholarly article is to conduct a comprehensive analysis of the relationship between war and violations of the right to life, to systematize international legal norms regulating these relations, and to outline ways of strengthening accountability for such violations. **Results.** The article is devoted to examining the right to life as a fundamental value in the context of armed conflicts and warfare. It explores the evolution of this right's concept—from its philosophical foundations to its universal recognition in international law. Special attention is paid to contemporary military actions, in particular, the full-scale invasion of Ukraine by the Russian Federation, which has revealed unprecedented violations of the right to life. The paper systematizes the typology of crimes against life, including direct and intentional deprivation of life, indiscriminate attacks, the creation of conditions leading to death, as well as assaults on persons hors de combat and other forms of offences. Possible mechanisms for bringing perpetrators to justice at the international level (the International Criminal Court, the European Court of Human Rights, UN monitoring missions) and at the national level, particularly through the application of universal jurisdiction, are analyzed. It is emphasized that the problem of impunity remains a significant challenge, requiring the continuous development of international law, enhanced inter-state cooperation, and the adaptation of legal instruments. The study substantiates that ensuring the inevitability of punishment for violations of the right to life is not only a moral imperative but also a necessary condition for upholding the rule of law and maintaining a stable international order. **Conclusions.** It is concluded that the right to life is an absolute and inalienable value forming the foundation of the entire system of human rights, yet during armed conflicts it faces the most severe challenges. The historical development of the concept—from the philosophical principles of natural law to universal codification in international legal instruments—highlights its paramount importance. Modern warfare, particularly the full-scale invasion of Ukraine by the Russian Federation, demonstrates unprecedented violations of this right, encompassing direct and intentional deprivation of life (extrajudicial executions, targeted attacks on civilians, torture, use of “human shields”), indiscriminate attacks and disproportionate use of force, creation of conditions leading to death (destruction of infrastructure, obstruction of humanitarian aid), as well as crimes against persons hors de combat and other forms of assaults (enforced disappearances, use of children, sexual violence resulting in death). These acts constitute grave breaches of international humanitarian law and qualify as international crimes. Ensuring the inevitability of punishment for violations of the right to life is not only a moral imperative but also a vital prerequisite for affirming the rule of law and achieving a stable international order.

Key words: right to life, international humanitarian law, international criminal law, war crimes, European Court of Human Rights, impunity.

1. Introduction

Wars and armed conflicts, which unfortunately remain an inseparable part of modern human history, represent the greatest threat to fundamental human rights, primarily the right to life. This category of rights is foundational, since without its realization the exercise of any other rights and freedoms becomes impossible. In the context of armed conflicts, the right to

life is subject to systematic and large-scale violations, which necessitates a thorough analysis of both the international legal mechanisms for its protection and the practical challenges faced by states and the international community.

The relevance of this study is reinforced by the scale and brutality of contemporary military actions, in particular, the full-scale invasion of Ukraine by the Russian Federation, which

has demonstrated egregious examples of disregard for the lives of military personnel, civilians, and prisoners of war.

The purpose of this scientific article is to conduct a comprehensive analysis of the interrelation between war and violations of the right to life, to systematize international legal norms governing these relations, and to outline ways of strengthening accountability for such violations.

The study of the right to life originates from philosophical concepts of natural law, which asserted the existence of inalienable rights belonging to every person by birth, independent of state recognition. In this context, the ideas of the English philosopher John Locke cannot be overlooked. In his *Two Treatises of Government*, Locke justified the concept of natural rights, stating that the rights to life, liberty, and property are inalienable and pre-exist the state (Locke, 2001). He examined how these rights form the foundation of the social contract and limit the powers of government, whose primary purpose is to safeguard them.

The ideas of another English philosopher, Thomas Hobbes, though less liberal than Locke's, also emphasized the paramount importance of life. In his seminal work *Leviathan*, Hobbes analyzed the right to life from the perspective of its preservation as the highest value in the "state of nature" – a condition of "war of all against all." The philosopher argued that people relinquish part of their natural rights in favor of the sovereign to ensure safety and self-preservation (Hobbes, 2000). Thus, Hobbes's concept of the right to life is grounded in the fundamental imperative of survival and the absence of rights in the natural state. At the same time, this very imperative underlies the formation of political authority and justifies the absoluteness of sovereignty. In Hobbes's philosophy, the right to life serves an instrumental role, functioning as the basis of political order rather than as an inviolable individual right.

Following the world wars of the twentieth century, the right to life received universal international legal recognition, becoming the subject of numerous studies by international law scholars. The works of Hersch Lauterpacht were instrumental in shaping the *Universal Declaration of Human Rights*, in which the right to life occupies a central place. Lauterpacht analyzed the imperative nature of this right and its application in international relations (Rabinovych, 2013).

The research of René Cassin, one of the principal authors of the *Universal Declaration of Human Rights* and Nobel Peace Prize laureate, focused on the systematization and universalization of human rights–

including the right to life—as the cornerstone of the international legal order. He emphasized that the right to life constitutes a prerequisite for all other rights and freedoms, substantiating its absolute character (Sviatotskyi, 2010).

Many scholars, including Jean-Marie Henckaerts and Louise Doswald-Beck (Henckaerts & Doswald-Beck, 2005), have examined the application of the right to life in the context of armed conflicts. Their research focuses on the principles of distinction, proportionality, and humanity, which limit the means and methods of warfare to protect the lives of civilians and persons hors de combat. They analyze the Geneva Conventions and Additional Protocols, as well as customary norms of international humanitarian law (IHL) relevant to the protection of life.

International law and criminal law scholars specializing in international criminal law study the legal foundations of accountability for mass violations of the right to life during armed conflicts, including genocide, war crimes, and crimes against humanity. Researchers analyze the jurisdiction of the International Criminal Court, ad hoc tribunals, and the principles of universal jurisdiction.

In Ukraine, the issue of the right to life has been the subject of extensive academic research, gaining special relevance under conditions of armed aggression. Ukrainian scholars have made a significant contribution to the development of theoretical foundations and practical mechanisms for the protection of this fundamental right. For instance, the works of Volodymyr Pylypenko (Pylypenko, 2024) focus on the analysis of war crimes under the Rome Statute and the mechanisms of accountability for such crimes. The scholar examines the implementation of international criminal law norms into the national legislation of Ukraine and the issue of liability for violations of international humanitarian law, particularly in the context of armed conflicts.

The studies of Mykola Hnatovskyi, a prominent expert in international humanitarian law, are devoted to the protection of human rights during armed conflicts, especially the right to life. He analyzes the application of IHL principles such as distinction and proportionality in contemporary warfare, as well as issues related to the protection of civilians and prisoners of war (Hnatovskyi, 2011).

In his dissertation, Yurii Usmanov identified the legal boundaries of protecting the right to life in situations of armed conflict and internal violence, as well as the specific mechanisms and regimes of such protection (Usmanov, 2018).

These scholars, along with many other Ukrainian researchers (L. Linyk, M. Kalchenko,

H. Romanovskyi, O. Miroshnychenko, V. Rusynova, M. Savryha, K. Basovska, D. Boichuk, A. Demydas, and others), have actively contributed to the development of the doctrine of the right to life, the analysis of its violations, and the elaboration of effective protection mechanisms in the face of modern challenges.

2. The Right to Life as a Fundamental Right of Every Individual

The right to life is recognized as a fundamental, inalienable, and absolute right of every individual, enshrined in a number of international and national legal instruments. Its peremptory nature (*jus cogens*) implies that it is non-derogable, even in situations of emergency, except under strictly defined circumstances. The concept of the right to life encompasses not only the prohibition of arbitrary deprivation of life but also the positive obligations of the State to protect it and to create conditions conducive to existence. In the context of armed conflict, the right to life acquires particular importance, as it faces the gravest threats precisely under such circumstances.

Existing international and European human rights protection mechanisms were established to prevent a recurrence of the tragic experiences of the Second World War. However, the full-scale military aggression of the Russian Federation against the sovereign and independent state of Ukraine has resulted in an unprecedented number of deaths among both combatants and civilians. The aggressor has systematically disregarded the fundamental values that form the basis of human existence, including the rights to life, health, honor, and dignity. In this context, the prioritization of guaranteeing the right to life, ensured in particular by the European system of human rights protection, becomes especially significant.

According to Article 2 of the *European Convention on Human Rights* (1950), everyone's right to life shall be protected by law, and no one shall be deprived of life intentionally except in the execution of a court sentence following conviction for a crime for which this penalty is provided by law. Article 15 of the Convention establishes the conditions under which a State Party may derogate from its obligations: in time of war or other public emergency threatening the life of the nation, a High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, and provided that such measures are consistent with its other international legal obligations.

It is important to note that Article 2 of the Convention, which enshrines the right to life, is non-derogable even in time of war or other public emergency threatening the life

of the nation, except in respect of deaths resulting from lawful acts of war. This reflects the absolute and inviolable character of the right to life within the European human rights system.

The principles of human rights and the provisions of the *European Convention on Human Rights* remain fully applicable and relevant even in times of war. States Parties are under an obligation to ensure the observance of human rights throughout the duration of armed conflict. Every individual retains the right to demand respect for his or her rights and to submit an application to the *European Court of Human Rights* (ECtHR) alleging a violation by the State of its conventional obligations in the context of hostilities.

The role of the ECtHR in this process is indisputable, as it remains accessible to individuals affected by armed conflict who believe that their rights cannot be effectively protected through national remedies. However, given its institutional design, which focuses on individual cases, the Court faces certain limitations—particularly its capacity to process a large number of applications arising from widespread violations during armed conflicts.

Therefore, the optimal approach lies in strengthening effective legal protection mechanisms at the national level. Nevertheless, when national institutions prove incapable of fulfilling their protective functions, or when a State violates its obligations under the Convention, the ECtHR assumes a decisive role in ensuring justice and accountability.

Analyzing the practice of the ECtHR in relation to armed conflicts, Liudmyla Andrusiv (2023) identifies several principal categories of cases: those concerning the Turkish–Cypriot issue; the conflict between Turkish security forces and the Kurdistan Workers' Party (PKK); NATO operations in the former Yugoslavia; the conflict in Chechnya; the war in Bosnia and Herzegovina; the Armenian–Azerbaijani conflict over Nagorno-Karabakh; the case concerning the Katyn massacre during the Second World War; the inter-state case concerning the Georgian–Russian conflict; cases related to international military operations in Iraq; the war in Croatia; and, most recently, cases concerning the Ukraine–Russia conflict.

3. Violations of the Right to Life in War-time

The right to life, as a fundamental value of human existence, suffers from systemic and large-scale violations during armed conflicts. The norms of international humanitarian law (IHL) and international human rights law (IHRL) establish clear standards for its protection; however, their disregard leads to severe and irreversible consequences. The clas-

sification of the main violations of the right to life during wartime, particularly in the context of the Russian–Ukrainian armed conflict, allows for the systematization of such crimes, the identification of their nature, and contributes to effective documentation and prosecution of those responsible under international law.

One of the gravest violations of the right to life is **the deliberate and intentional deprivation of life** – the intentional killing of persons who do not take a direct part in hostilities (civilians) or who are hors de combat (prisoners of war, the wounded, the sick, or those who have surrendered), without a fair trial or judicial sentence. Such acts include shootings, hangings, strangulations, and other forms of killing committed by either state or non-state actors of the conflict. These acts constitute a direct violation of Article 3 common to the Geneva Conventions of 1949, which prohibits violence to life and person against those not actively participating in hostilities, and are qualified as war crimes and, in certain cases, as crimes against humanity or genocide under the Rome Statute of the International Criminal Court (ICC). Striking examples of such violations can be observed during the full-scale invasion of Ukraine, notably in Bucha, Iziun, and Mariupol, which demonstrate a systematic disregard for IHL principles and cruel treatment of civilians.

The category of intentional killings also includes **targeted attacks on the civilian population** – deliberate acts aimed at killing civilians or destroying objects that are not military targets. These may include sniper fire at civilians, shelling of evacuation convoys, deliberate attacks on residential areas, markets, or public spaces with the aim of inflicting maximum casualties among civilians. Such acts constitute a gross violation of the **principle of distinction** under IHL, which obliges parties to an armed conflict to distinguish clearly between civilian objects and military objectives.

Torture is absolutely prohibited and can never be justified under any circumstances, including in armed conflict. It encompasses physical or psychological violence that causes unbearable suffering and may result in the victim's death. Death resulting from torture constitutes a particularly aggravated form of crime against life.

Another form of direct violation of the right to life is the use of **“human shields”** – the coercive placement of civilians or protected objects (such as hospitals, schools, or cultural monuments) near military objectives or operations to protect them from attack or to conceal military actions. Such conduct includes: moving civilians into areas of active hostilities or near military targets; stationing weapons, military

equipment, or personnel in residential areas, schools, or hospitals using civilians as cover; and obstructing civilian evacuation from conflict zones. Civilian deaths resulting from such practices are a direct consequence of their use as “human shields” and qualify as war crimes, particularly as violations of Article 51(7) of Additional Protocol I to the Geneva Conventions of 1949, which explicitly prohibits the use of the presence of civilians or individual civilians to render certain areas or military forces immune from military operations (Protocol Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977).

A second group of violations of the right to life includes **indiscriminate attacks** – actions that, although not always aimed directly at killing civilians, nevertheless cause civilian deaths due to the disregard of fundamental IHL principles. Such actions involve the use of means or methods of warfare that fail to distinguish between military objectives and civilian objects or that are inherently indiscriminate. They include: bombardments or shelling of areas containing both military and civilian targets without distinction (for example, attacks on entire cities or districts without targeting specific military facilities); the use of weapons that are by nature indiscriminate (such as certain types of cluster munitions, unguided rockets, or drones lacking precision in densely populated areas); **disproportionate use of force** (carrying out attacks expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated); and **failure to take precautions in attack** (omitting all feasible measures to avoid or minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects).

Crimes against the right to life also include **the creation of conditions leading to death**, that is, indirect or mediated violations. This category encompasses acts or omissions that, while not constituting direct attacks, systematically cause the death of civilians by creating unbearable living conditions and violating their basic needs. Such actions include the deliberate deprivation of civilians of objects indispensable to survival – for instance, blocking access to food, water, or medicine, or destroying agricultural land and water supply sources.

The **intentional destruction of critical civilian infrastructure** – the demolition of facilities essential for the survival of the population (water and sanitation systems, energy infrastructure, medical institutions, and facilities responsible for food production and distribu-

tion) – deprives civilians of the basic conditions necessary for existence, leading to humanitarian catastrophes and increased mortality, particularly among vulnerable groups.

Closely related is the **obstruction of access to humanitarian assistance** – the deliberate blocking or restriction of humanitarian organizations' access to civilians in need, which exacerbates humanitarian crises and increases the risk of death.

Attention must also be paid to the **creation of hazardous environments and contamination** – the mining of territories, the leaving of explosive remnants of war, and the pollution of the environment with hazardous substances that continue to endanger civilian life and health even after active hostilities cease. All such acts may constitute **crimes against humanity** or **war crimes**, as they are aimed at causing suffering and death among the civilian population.

A separate category of violations concerns **crimes against members of the armed forces who are hors de combat**, as well as medical, religious, and other protected personnel. These include:

- **Denial of medical care** – the failure or deliberate obstruction in providing necessary medical assistance to wounded or sick combatants and civilians, resulting in death or serious deterioration of health. This may involve denial of access to medical facilities, refusal of evacuation, or inadequate detention conditions leading to death.

- **Killing and ill-treatment of prisoners of war** – the deprivation of life of captured combatants, torture, or detention in life-threatening conditions (such as lack of food, water, or medical assistance, and unsanitary conditions), as well as forcing them to perform dangerous labor. Numerous documented cases during the current Russian–Ukrainian war include executions of prisoners of war, denial of medical aid, and inhumane detention conditions resulting in death. These acts constitute gross violations of the **Geneva Convention relative to the Treatment of Prisoners of War (1949)**.

Attacks on medical and religious personnel, medical units, and transport – deliberate attacks on persons and facilities under special protection of IHL, such as medical staff, chaplains, hospitals, ambulances, and medical aircraft, which result in death or injury. Such attacks undermine humanitarian assistance systems and constitute serious war crimes.

Ensuring the right to life during wartime remains one of the most complex challenges for both international and national legal systems. Violations of this fundamental right, which often amount to international crimes, require effective mechanisms of accountability.

Accountability is a key element in restoring justice, preventing impunity, and deterring future crimes.

The system of accountability operates on several levels – including **international criminal justice**, the work of international judicial and monitoring institutions, and **national legal mechanisms**. Despite the crucial role of international mechanisms, **national judicial systems** play a primary role in prosecuting violations of the right to life. States have an obligation to investigate and prosecute individuals responsible for war crimes, crimes against humanity, and other crimes against life committed on their territory or by their nationals. This requires the harmonization of domestic legislation with international standards, the training of law enforcement officers and prosecutors, and the establishment of an independent and effective judiciary.

4. Conclusions

The **right to life** is an absolute and inalienable value that forms the foundation of the entire human rights system. However, during armed conflicts, this right is subjected to the most severe challenges. The historical development of the concept of the right to life – from the philosophical ideas of natural law to its universal recognition in international legal instruments – underscores its paramount importance.

Modern armed conflicts, particularly the full-scale invasion of Ukraine by the Russian Federation, reveal **unprecedented violations** of this right, encompassing direct and intentional killings (extrajudicial executions, targeted attacks on civilians, torture, and the use of “human shields”), **indiscriminate attacks** and **disproportionate use of force**, **creation of life-threatening conditions** (destruction of infrastructure, obstruction of humanitarian aid), as well as crimes against persons hors de combat and other forms of violations (enforced disappearances, use of children, and sexual violence resulting in death). These acts constitute gross breaches of international humanitarian law and are classified as **international crimes**.

Ensuring the inevitability of punishment for violations of the right to life is not only a **moral imperative** but also a **necessary condition** for upholding the rule of law and maintaining a stable international order.

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ЖИТТЯ ЯК НАЙВИЩА ЦІННІСТЬ В УМОВАХ ВІЙНИ: МІЖ ПРАВОВИМИ НОРМАМИ ТА ВОЄННОЮ РЕАЛЬНІСТЮ

Анотація. *Мета* наукової статті – комплексний аналіз взаємозв'язку між війною та порушеннями права на життя, систематизація міжнародно-правових норм, що регулюють ці відносини, та окреслення шляхів посилення відповідальності за такі порушення. *Результати.* Стаття присвячена аналізу права на життя як фундаментальної цінності в контексті збройних конфліктів, війни. Досліджено еволюцію концепції цього права від філософських засад до універсального міжнародно-правового закріплення. Особливу увагу приділено сучасним воєнним діям, зокрема повномасштабному вторгненню російської федерації в Україну, що виявило безпрецедентні масштаби порушень права на життя. У роботі систематизовано типологію злочинів проти життя, включаючи прями та умисні позбавлення життя, невибіркові напади, створення умов, що призводять до загибелі, а також посягання на життя осіб, які вибули з бою, та інші форми злочинів. Проаналізовано можливі механізми притягнення винних до відповідальності на міжнародному (Міжнародний кримінальний суд, Європейський суд з прав людини, моніторингові місії ООН) та національному рівнях, зокрема через застосування універсальної юрисдикції. Акцентовано, що проблема безкарності залишається значним викликом, що вимагає постійного розвитку міжнародного права, посилення співпраці між

державами та адаптації правових інструментів. Обґрунтовано, що забезпечення невідворотності покарання за посягання на життя є не лише моральним імперативом, а й необхідною умовою для утвердження верховенства права та стабільного міжнародного порядку. **Висновки.** Зроблено висновок, що право на життя є абсолютною та невід’ємною цінністю, що становить фундамент усієї системи прав людини, проте в умовах збройних конфліктів воно піддається найжорстокішим випробуванням. Історичний розвиток концепції права на життя, від філософських ідей природного права до універсального міжнародно-правового закріплення, підкреслює його першочергову значущість. Сучасні воєнні дії, зокрема повномасштабне вторгнення російської федерації в Україну, демонструють безпрецедентні масштаби порушень цього права, що охоплюють прямі та умисні позбавлення життя (позасудові страти, цілеспрямовані напади на цивільне населення, катування, використання «живих щитів»), невідповідні напади та непропорційне застосування сили, створення умов, що призводять до загибелі (знищення інфраструктури, перешкоджання гуманітарній допомозі), а також злочини проти осіб, які вибули з бою, та інші форми посягань (насильницькі зникнення, використання дітей, сексуальне насильство з летальними наслідками). Ці дії є грубим порушенням норм міжнародного гуманітарного права та кваліфікуються як міжнародні злочини. Забезпечення невідворотності покарання за посягання на життя є не лише моральним імперативом, а й необхідною умовою для утвердження верховенства права та стабільного міжнародного порядку.

Ключові слова: право на життя, міжнародне гуманітарне право, міжнародне кримінальне право, воєнні злочини, Європейський суд з прав людини, безкарність.

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