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TABLE OF CONTENTS

PHILOSOPHY

ECONOMICS

LAW

ISSN 2786-491X (Print)

PHILOSOPHY

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ANTI-CORRELATIONISM CLUSTER AND PERFORMATIVE NARRATIVE

Abstract. The purpose of the study is to elucidate the defining tendencies of anti-correlationism and its narrative strategies as a fundamental basis of speculative realism, and to consider one of its versions, namely, object-oriented ontology in relation to the concept of narrative ontology and the notion of performative as an anthropological marker of discourse from the perspective of understanding the problem of philosophical anthropology. The authors proceed from the paradoxical nature of anti-correlationism guidelines that substantiate nonrelational metaphysics, while postulating the construction of a narrative ontology of reality, which has the characteristics of a performative. For the first time, the anthropological content of defining tendencies of anti-correlationism and its narrative strategies as a fundamental basis of speculative realism and object-oriented ontology are compared with the concept of narrative ontology and the notion of performative as an anthropological marker of discourse. It has been found that the discursive critique of correlationism is internally contradictory, as it appeals to the thinking and consciousness of the subject and the narrative it creates as a picture of the world. Nowadays, the performative functions as a model of language and speech meaning formation that ontologize the reality of human consciousness, experience and thinking.

Keywords: *anti-correlationism, narrative, performative, speculative realism, narrative ontology*

Introduction. The first third of the 21st century in philosophy is determined by the intense search of the alternatives to the latest research programmes that would update philosophical knowledge in the context of powerful socio-cultural dynamics caused by the fourth wave of scientific and technical revolution, rapid development of information and communication technologies, rethinking the

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efficiency of the dominant social and economic models, and the transformations of life forms and phenomena of human culture. This is especially true of the fundamental foundations of the Western mode of philosophizing and rationality, which in general can be genetically reduced to the projects of science and philosophy of the New Age and the Enlightenment. Especially, it concerns the fundamental foundations of the Western mode of philosophizing and rationality that, in general, can be genetically reduced to the projects of science and philosophy of New Age and Enlightenment. This refers to the ontological, epistemological and aesthetic foundations of the picture of the world of modern human. Moreover, modern critique of the philosophical tradition, in particular by the cluster of speculative realism theories, goes far beyond the poststructuralist or postmodern in the broadest sense of the "rebellion against reason". The question is no longer a "hermeneutic turn" or an "ontological turn" in philosophy to overcome the counterproductive legacy and specific "disorienting aftertaste" of postmodern projects with their inherent negation and recursiveness, but the problematization of the "Anthropocene" (T. Morton, & B. Doan, 2013, 233 p.), and the formation of ideas about the post-Anthropocene. The speculative turn is to critique the implicit instruction that "reality appears in philosophy only as a correlatetion of human thought" (Bryant, Srnicek, 2011, p. 3). Anti-correlationism, which combines the philosophical constructions of Q. Meillassoux, G. Harman, R. Brassier, I. Grant, et al., implicitly implies the rejection of traditional forms of both representation and reception of reality that returns human and his philosophy to the problem of narrative being not only the form of knowledge existence or thought formalization but also of Wittgenstein's space of language and the limits of narrative as the limits of the human world. In our opinion, the ambition of the mentioned theories reaches the rethinking of the form content of human thinking, theories of representation and definition (P. Kretov & O. Kretova, 2017). Somehow, the emergence of a cluster of anti-correlationism (here in after, CA) problematizes not only the concept of object, reality and relations between them, but and primarily the classical concept of the subject and its, accepted in cognitive sciences and constructivism, version of the subject as agent, as well as the issue of representation of knowledge in thinking and discourse, and involves the transformation of the traditional relationship of the concepts of "object", "thing", "concept". Anti-correlationism in philosophy paradoxically agrees with the radical versions of the philosophy of information and transhumanism, which problematize, in fact, the concept of human. These considerations determine the relevance of the research topic.

The purpose of the article is to elucidate the defining tendencies of anti-correlationism and its narrative strategies as a fundamental basis of speculative realism, and to consider one of its versions, namely, object-oriented ontology in relation to the concept of narrative ontology and the notion of performative as an anthropological marker of discourse from the point of view of understanding the problems of philosophical anthropology.

Analysis of recent research and publications. P. Sloterdijk (2018), T. Morton (2013), G. Harman (2018, 2020), Q. Meillassoux, (2008), L. Bryant (2011), R. Brassier (2011), J.-L. Moriceau (2017), H. Meretoja (2014), F. Longo, A. Padovano, S. Umbrello (2020), I. Bogost (2012), V. Rudnev (2016), O. Golovashina (2018), O. Agafonova (2006) and other foreign researchers studied the issues related to the research topic. The contribution of N. Zahurska (2017), V. Starovoit (2018), D. Shatalova-Davidova, N. Sholukho, D. Kralechkina, A. Morozov and others should be noted.

Formulation of the main material. Speaking about the cluster of anti-correlationism in modern philosophy, whose representatives, particularly, G. Harman, Q. Meillassoux, R. Brassier, position their views as those belonging to realism paradigm, we should mention that there are different views about the institutionalization or non-institutionalization of speculative realism as a

philosophic current. While G. Harman believes that the very fact of the presence of this terminological word combination in university programs is evidence of the existence, formulation and recognizability of this current, Q. Meillassoux and R. Brassier do not share this view tending to separate the philosophical brand and publicity around it and the self-sufficiency of the current as a serious philosophical movement. It is anti-correlationism as an initial guiding principle of philosophizing that combines speculative realism and to some extent the fundamental ontology of M. Heidegger, the phenomenological project of G. Husserl, analytical philosophy, language philosophy, and, particularly, the theory of narrative and performative judgements. It is actually a performative, a speech that acquires the ontological status of an event, object and thing (object) (P. Kretov, & O. Kretova, 2017). The project of anti-correlationism in the first quarter of the 21st century fills the performative forms of discourse with both explicit and implicitly non-anthropocentric content.

Q. Meillassoux in his report "Time without Becoming" (2008) notes: "We should redefine compliance, find a completely different concept of adequacy, if we really intend to reject correlationism in all its power. Since, as we will see, what we see outside of correlation is very different from naive concepts of things, qualities and attitudes. This reality is significantly different from the reality which is given to us". The anti-correlationist guideline fills Hegel's definition of speculative as a type of reasoning in which knowledge is derived without reference to experience, as well as Kant's distinction of analytical and synthetic judgments with new meaning, since the overriding task of theories belonging to this cluster is to problematize Kant's concept of the transcendental subject and modern rationality in general. If we consider correlationism, according to Q. Meillassoux, as theories being antagonistic to realism, then philosophical realism involves first the elimination of a subject and the deconstruction of the subject-object dichotomy. Correlationism as a guide covers almost the entire existing typology of philosophical approaches to the problem of the relationship between reality and human consciousness, and finally the traditional fundamental problem of the relationship between being and thinking. Significantly, Q. Meillassoux's assertion that an opponent of correlationism "would be a model of naivety or, if you will, a realist, metaphysician, old-fashioned dogmatic philosopher" (F. Longo, & A. Padovano, 2020), substantiates the antithesis of realism and the philosophy of correlation, which involves the traditions of transcendental philosophy, natural philosophy, phenomenology, existentialism, hermeneutics, partly, psychoanalysis and analytical philosophy, positivism, poststructuralism and postmodernism. It means practically the emergence of a new non-anthropological realism, which with the help of a simple conceptual scheme would dissolve human in a specific depopulated reality, along with his own ideas about reality (Q. Meillassoux calls such a reality in itself as hyper-chaos). Thus, the question is whether it is possible to conceptualize and think a world autonomous from the thinking and semiotic code of language. The liberation of reality from the dictates of human thinking leads to a non-anthropocentric perspective of consideration is, perhaps, the main thesis of speculative realism from G. Harman to Q. Meillassoux and R. Brassier. According to modern researcher T. Morton, the "irreducible openness" of such an approach allows getting rid of "faceless nature" and "immerse yourself more deeply in thinking about things" (Morton, 2011). If being and thinking are fundamentally coherent, and, in thinking, it is impossible to be beyond it to any reality independent of it, and the very factuality of reality is evidenced by thinking (correlationist circle and correlationist factuality), then any way to "break through" to reality outside our concepts is doomed. However, anti-correlationism, as an invariant, offers different ways to get to reality (paraphrasing the famous Wittgenstein's thesis from the "Logical and Philosophical Treatise", 4.002), "disguised" by human language and thinking – according to Q. Meillassoux, it is the concept of hyper-chaos; according to G. Harman, it is an object; according to

R. Brassier, it is the concept of transcendental nihilism; according to I. Grant, it is the non-anthropocentric geology of "natural history". Importantly, in all these variants, anti-correlationism opposes epistemological intersubjectivity as the universal conceptual structure underpinned the human experience and thought by Kant. Anti-correlationism rejects the anthropological criterion and declares the entire previous philosophical tradition to be antirealistic in the sense that it does not raise the question of knowledge about the reality independent from human. It is worth mentioning the concept of the myth of the given by W. Sellars being sacramental for the tradition of analytical philosophy, which is extremely problematic not only the concept of experience and consciousness, but also the space in which all this can exist or can be constituted by these concepts-philosophemes. It is symptomatic that the position of anti-correlationism in Q. Meillassoux's modification agrees with the classical formulation of the argument ("the Gem") about the possibility of thinking of an object without accepting the guideline of correlation between then and thinking of the controversial Australian philosopher D. Stove, who denies the possibility of knowing things, as they are in themselves (Franklin, 2002). Thus, the traditions of continental and analytical philosophy (whatever they rely on – on the intentional structures of consciousness or the structure of language as a semiotic code) are entirely dependent on the fundamental principle of correlation. Thus, both the weak version of correlationism, which regulates the epistemological sphere, and the strong version, which absolutizes the correlation between thought and reality, lead to a situation of "fideism", which consists in skeptical argumentation against the encroachments of metaphysics and rationality in general on access to absolute truth being able to strengthen (and fortiori discredit) the value of faith" (Meillassoux, 2013, p. 63). In the context of our topic, it seems important how the philosopher constructs his thinking – first the requirement of the primary absolute is postulated (Meillassoux, 2013, p. 10), and from this, the possibility of further comprehensible statements, i.e., speculation, is derived. From the point of view of philosophical anthropology, such an approach seems to be a modification of the traditional for the 20th century "rebellion against reason", an attempt to find a way to rehabilitate discredited metaphysics, but not from the standpoint of non-anthropocentrism, "zero degree" of being and personality. Based on the well-known W. Sellars' distribution of manifest and scientific image of human in the picture of the world (the first is human ideas about the place in the world, which are formed by philosophizing as a transcendental question in Kant's sense and forming a thesaurus of cultural meanings in the phenomenological dimension; the second is based on the theoretical explanation of what is behind the objective data of things and considers human as a whole within the physical systems of different levels (Sellars, 1991); anti-correlationism denotes the manifest image of man as essentially correlated and anthropocentric, and the return to the norms of scientific realism is associated with the scientific image of human as essentially impersonal. We should note that the liberation of the real from human dictation in such a situation does not mean either liberation from the intentionality of consciousness, or imaginary freedom from discourse and the inclusion of the speaker in the narrative structure of reality. In addition, it should not be forgotten that post-non-classical science, following non-classical science, considers the anthropic principle as an implicit fundamental guideline for scientific description and picture of the world.

In his project of object-oriented ontology (OOO), G. Harman problematizes the anthropocentrism inherent in correlationism, not from the point of view of reality, but from the point of view of considering the concept of object. If everything that exists can be considered as an object and all objects have the same ontological status, then a person doesn't differ from any other object. However, from the point of view of the strategies of the "undermined object", "overmined object", "undermined-overmined object" providing the reductionism of objects within correlationism, which is the subject of criticism by G. Harman, man still seems to

 ISSN 2786-491X (Print)

occupy a special place, since it is his interpretation of reality that is performatively and entelechically "made" by objects within the picture of the world. Thus, "undermining" considers objects as an external manifestation of "some deeper force" (G. Harman, 2015, p. 27), i.e., indicates the existence of a certain true reality in the world of things; "overmining" means an attack on an object not from below, but from above: "Objects are important to this extent, in which they are the content of consciousness or a part of some other event, which affects other objects" (G. Harman, 2015, p. 21). That is to say, the object of thought or perception exists for a person only because of its qualities, which are fixed in perception and reflected in the conceptual picture of the world through the connection of object in object-human and object-object systems. "Undermining-overmining", according to G. Harman, is inherent in the paradigm of materialism, since it, on the one hand, indicates the total integrity behind it, and on the other hand, describes the object, representing it through its qualities. We are primarily interested in the very way of thinking of the philosopher, who latently involves the elimination of "the importance of consciousness for objects" within the consideration (G. Harman, 2015, p. 49). Human consciousness certainly acts as an object, according to G. Harman, but it is such an object that allows thinking of other objects in their own space – paying attention to the spaciousness of Harman's terms "undermining" and "overmining", which involves the distinction of "bottom" and "top" and, in general, a certain phenomenalism of the discourse of the philosopher. No wonder, from Harman's point of view, Husserl is the first object-oriented philosopher (Q. Meillassoux, 2013, p. 40). The question is not whether Harman managed to remove the object from the sphere of intentionality and the system of noematic relations, but whether it is possible at all if it is possible to preserve the conditions for thinking and constructing a consistent narrative. According to Harman, if an object for a person clarifies itself in the same way as all its properties, that is, it clarifies itself within the limits of immanent experience, then the intentional content of consciousness and the intentional object are identified. In this case, the question of how the act of consciousness, the idea formed in this act, thought, and cognitive structure of language discourse, which is formed in consciousness and allows to systematize its content, differ, is solved just as much as the original thesis of the philosopher on different ontological status of objects and their qualities allows it. Any object is fundamentally dual: this duality unfolds itself between the object and its many qualities and between the object and its relations. Without going into consideration of the ontology of Harman's four-pointed object, we note that the main achievement of OOO is the concept of indirect or substitute causality, which should explain the possibility of interaction between objects, and its concept of allure (the object interacts with another object as with unity due to the fact that on their border there are special qualities due to which the interaction takes place on the sensory-intentional level). That is to say, due to these qualities, objects can coexist without touching each other. "As two sensory objects are substitute-connected through the mediation of one real, so two real objects must be substitute-connected through the mediation of one sensor... Adjacency of sensory-perceived objects is impossible without a real intentional agent, and the communication between real objects is carried out only through the mediation of the senses" (G. Harman, 2012, p. 87). As a result, we have a complex spatial geometric structure, similar to the infinitely recursive overlap of Euler's circles (or spheres), since any object interacts with any other object within a third object. If to remember here that the qualities of the object that are thought, verbalized and enable allure (and resemble the connections of neurons due to synapses) within the discursive fixation of this state of affairs, they must not just be conceptually denoted, but have a remarkable metaphorical potential (in the sense of the possibility of transferring meanings), then OOO as a theory can be considered as a metaphor that involves a performative narrative with zero degree of writing in Bart's sense and not elimination, but another transfer of

human meanings to the noumenal sphere. Indeed, if we consider the objects of OOO as a certain functional system or discourse of things, which would eliminate all connotations of socio-cultural origin, i.e., all human meanings, and would tend to pure functionality, we would get a de-structured space, since autonomous self-sufficient objects as things overcome structure being so closely intertwined. It can be said, using poststructuralist terminology, that the objects of OOO acquire stages of rhizomatic (J. Deleuze) transparency (J. Baudrillard) within the narrative, forming something similar to Baudrillard's simulacrum of the fourth level as a "short circuit of reference". If to use the cosmological metaphor of the "black hole" as a space of space-time deformation, then concerning OOO, it will mean the collapse of the semantic structure as the linguistic definiteness of things and objects, and, accordingly, discourse. However, the discourse of knowledge exists that problematizes the approach and narrative of G. Harman. O. Golovashina, considering Heidegger's motives in Harman's OOO, points out that Heidegger's discourse is not fundamentally schematic, as it is aimed at "getting rid of the notion of existence in order to come to the essence... Heidegger's quartet is an aid in understanding the world for a person accustomed to the categories of thinking, and Harman's quartet is aimed at embracing the whole world, to fit its diversity in a fairly simple scheme" (O. Golovashina, 2018, p. 8). We emphasize in the context of the purpose of the study that the "metaphysicality" of Harman's constructions is essentially schematic, and this is stipulated by his discursive manner, while Heidegger, owing to his experiments with style and discourse, avoided both an outright schematism, which, by definition, conceptualizes reality, limiting it, and the systemic nature of the finalizing narrative. The course of thought of anti-correlationists in this sense results in "another version of anti-essentialism, a kind of positivism" (O. Golovashina, 2018, p. 8), which is not about the integrity of the world. In our opinion, the role of the integrity of the world in the theoretical constructions of anti-correlationists is assumed by the narrative structure of the texts, which, in some places, acquires more or less formalized features of performativity.

We mean that the space of thought of anti-correlationism is limited both by the initial instruction of negation and by the discursive form of presentation. And that is why the search for a new metaphysics in the case of anti-correlationism in the version of OOO generates a new closed system of judgments and descriptions.

R. Brassier offers his own version of anti-correlationism, which is radical or transcendental nihilism. This version of anti-correlationism most clearly demonstrates the birthmarks of the whole cluster and in relation to the problems of philosophical anthropology and is frankly non-anthropocentric. Such nihilism as a methodological and ideological guideline is positioned as an objective approach to reality, far from anthropocentrically oriented philosophizing such as existentialism, pragmatism, various versions of humanism, and therefore claims the status of the foundation of the scientific picture of the world. Since, according to Brassier, it is impossible to reduce to human meanings the truth of reality external to man, nature and the world are indifferent to man; and there are no thinking higher authorities to which human subjectivity is connected, such nihilism "is an inevitable consequence of realistic conviction that there is a reality independent of consciousness, which, despite the presumption of human narcissism, is indifferent to our existence and indifferent to the "values" and "meanings" we tame to make it more hospitable. Nature is neither ours, nor anyone's else "home", nor especially any charitable ancestor. Philosophers would succeed if they refrained from any further prescriptions about the need to restore the significance of existence, purposefulness of life or to correct the destroyed harmony between human and nature" (Brassier, 2007, p. 11). Thus, the new scientific nihilism appears as a kind of emotional antidote and a reaction of resentment against the disappointment of the collective imagination in the ideals of modern rationality and the cult of the human mind of the Enlightenment project. We should note that such a guideline,

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forcing us to recall Epicurus' indifference to the gods, is not new to philosophy or the scientific picture of the world, but is an important part of the performative potential of discourse and the narrative of anti-correlationism since it directly concerns human and is an appeal-proposal to reconfigure his cognitions. If the subject is fundamentally inaccessible to reality, then this reality also cannot be defined conceptually, and therefore, it is the subject of our choice and faith (recall Q. Meillassoux's "fideism"), as well as conceptual construction. R. Brassier denies reality the status of an object: "We know the real through objects, but the real itself is not an object" (Brassier, 2011, p. 50). The philosopher calls his own position "transcendental realism", according to which science knows the real. But the nature of this "real", strictly speaking, cannot be objectified" (Brassier, 2011, p. 50). The modern researcher N. Zahurska writes: "In the speculative reality of the post-anthropocene, the human being himself is objectified, appears as a human object, and it is in this state that he finds out all the diversity of his properties and relations. The human object in this case is a set of objects, which, in turn, are split into a number of objects that is a post-anthropocentric possibility of thought beyond thought as a speculative reality" (2017, p. 8).

Performative Narrative and Anti-Correlationism

In the context of M. Mamardashvili's well-known arguments about the difficulty of keeping oneself in thought (Aesthetics of Thinking, 2000), we note that the apparent antinomy and paradoxicality of the phrase "thought beyond thinking" is, in our opinion, a performative construction and functions as an autosuggestion and invitation to a certain type of philosophizing (e.g., radical physicalism in the philosophy of consciousness, or the practice of the self (M. Foucault), or Lacanian psychoanalysis). It is important that the post-anthropocene, which postulates anti-correlationisma, in fact, still remains a radicalized and nihilistic anthropocene at the level of discourse and narrative, as indicated at least by the metaphorical discourses of Meillassoux and Harman. Since metaphorical, "conceptual imagery" forms a structure outside the structure of the narrative, while fixing the pluralism of essentially inaccessible objects and their intersection in the plane of their qualities and properties, which human discursively gathers together in discourse, building a narrative and a picture of the world. For the time being, anti-correlationism postulates thought not outside of thinking, but, using metaphor, on the numerous boundaries of thinking as the facets of a diamond, which has an infinite number of them, and this diamond symbolizes human. We emphasize that only the conceptual structure of the semiotic code of language and the internal structure of discourse and narrative make such a situation possible, and this is not a change in the type of rationality, but only its correction. Findings of modern researchers on the performative contradiction that anti-correlation philosophers fall into when talking about the "zero person" as a way of understanding the essence of things beyond any access to them (Moriceau, 2017), as well as on the controversial nature of OOO for ideological projects and ethics in general (Harmon, 2019), show that the limit of "overmining" and "undermining" of the object is fixed in reality, which is represented in the imagination as pure speculation, pre-verbal and to some extent pre-logical. Another thing is that the referential design and conceptualization of such a reality inevitably returns us to the narrative, is carried out discursively and functions as a performative construction. From an object as an almost immense post-Kantian thing-in-itself and a thing-for-other-things to a concept or category within a conceptual system and discourse, the transition is a simple shift in the focus of discourse, according to Wittgenstein, the language game played by the narrator. Strictly speaking, a classic article by T. Nagel "What is it like to be a bat?" (1974) raises the question of the limits of the ontologization of reality in thought, which are related not so much to the phenomenology of the senses but to verbalization, narrative, and description, i.e., the semiotic code of language. Based on G. Harman, T. Morton proposes his own concept of a hyper-object, the defining

qualities of which are viscosity, non-locality, etc. "Hyper-objects are distributed in time and space in such a way that they are never fully accessible or can be thought of in their entirety" (Morton, 2013, 233 p.), such as: you can perceive the wind or raindrops, but not the weather in general. On the other hand, within the framework of correlationism, in the tradition of cultural hermeneutics, V. Rudnev ("New Model of Reality", 2016) proposes an epistemological model, which, at the same time, is the basis of a new ontology, which the author defines as narrative. His constructions are based on the ancient author's thesis on the "opposition of "reality"" moving in time towards entropy, and the text moving in time in the direction of information accumulation". Thus, the reality of the perceived "object" world is compared with the reality of the plot in its fable and speech dimensions (V. Rudnev, 2016, p. 4). The obvious schematic nature of this model is removed by the intuition that these multidirectional motions have a common tendency to merge, illustrated by the classic "Möbius strip" metaphor, which is a direct appeal to algebraic and geometric topology and demonstrates disjunction, openness, and de-centeredness as defining features of the narrative ontology project. We note the agreement of this understanding of the mode with the existence of objects in G. Harman's OOO.

The modern linguist argues that guided by pragmatic considerations, the representatives of the development of semantics no longer focus on the study of only the factual function of language, do not rigidly oppose the meaning and logical truth. This is especially true of performative expression (E. Agafonova, 2006), since after analyzing the theory of linguistic act by J. Austin and J. Searle, as well as its critique of poststructuralism in terms of the inherent performative of universalism (due to its iterability – repeatability), the theory of reference abandons rigid distinction textual and non-textual reality, there is a transition "into the performative space of discourse, which opens the paradox of referentiality: a story about what does not yet exist, but which is born only in the process of narration. Narrative discourse not only states about being and not only constructs being, but also constantly produces and reproduces it in the act of narration" (E. Agafonova, 2006, p. 234). Thus, any description and the picture of the world based on it are extremely close to the narrative. Even Wittgenstein's attempts to construct a grammar of the description of reality that led to the emergence of the theory of the speech act, already latently contained a certain moment of mythologism as a hypostasized narrative. Moreover, these considerations apply both to the humanities and the language of science in general, since a holistic model of description-understanding-experience of the world by human, is based on this understanding of speech, as well as the possibility of forming both autonomous and heteronomous versions of ethics as practical philosophy according to modern researchers (Meretoja, 2014), F. Longo (2020). Naturally, to consider modern fundamental and applied science as a description of the material world without some slip into the oxymoron is hardly possible, since the post-classical paradigm in the fundamental pure and natural sciences necessarily implies not only the existence of an observer but all pragmatic aspects of this existence that find expression in language and speech and can be considered as an element of the narrative. The question now can be put this way: is it possible to consider anything on its own, giving it a predicate of objectivity? Does scientific analysis (from which we necessarily turn to linguistic analysis) presuppose not only the decomposition of being into its components, but also the problems of human, his language, and activity inherent in this analysis? How to deal, in this case, with the manifested anti-correlationism rejection of human meanings and non-anthropocentric instruction? Harman's "zero person", like R. Bart's "zero writing" at the time, functions as an open concept within the performative as an ontologized narrative. This indicates the internal contradiction of such guidelines that does not preclude its heuristic potential.

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At the same time, the non-anthropocentric and anti-metaphysical intentionality of anti-correlationism points to its conceptual affinity with the tradition of anti-essentialism, anti-lophonocentrism, and opposition to the philosophy of presence associated with the postmodern philosophical paradigm.

Conclusions. As a result of the consideration of the manifested issue we can formulate the following conclusions:

1. The cluster of anti-correlationism (G. Harman, R. Brassier, Q. Meillassoux, etc.) for the modern philosophy of speculative realism (post-continental philosophy) plays the role of a monolithic guideline and theoretical and ideological basis. The inhomogeneous and amorphous group of thinkers due to the instruction of anti-correlationism, goes beyond the actual ontology and epistemology to ideological (L. Bryant's ontology, Y. Regev's radical secularization) and sociocultural (M. DeLanda) generalizations, significantly influencing the problem field and horizons of meanings of modern philosophy. At the same time, the basic guideline of anti-correlationism seems to be internally antinomic.

2. The guideline of anti-correlationism acts as a representation of the non-anthropocentric tendency in modern philosophizing and is explained as a specific mode of thinking, colliding for the basic model of rationality of post-classical science. The project of creating non-relational non-anthropocentric metaphysics denies the very concept of the correlation between thinking and being and the philosophy of privileged access as being anthropocentric. At the same time, the elements of this new metaphysics are considered to be those that must be accepted by man and form the basis not only of science (R. Brassier) but also of the social religion of renewed humanity (Q. Meillassoux). Thus, anti-correlationism appears as the philosophical basis of transhumanism. Anticorrelationism captures the tendency to absolutize objects (G. Harman), hyper-chaos and stochastics (Q. Meillassoux), transcendental nihilism (R. Brassier), "baselessness" (J. Grant), combining new heuristic cognitive strategies and models and implicit worldview philosophical practices of self, while criticizing the anthropic principle in science, culture and in general the anthropocentrism of science and civilization from the standpoint of eco-philosophy. Such an approach is extremely problematic system of value orientations at the level of civilization.

3. The guideline of anti-correlationism, being formalized and in the process of translation, is based on discursive language practices and the creation of a new ontologized narrative that has the present signs of performativity. The performative now functions as a model of language and speech meaning formation that ontologize the reality of human consciousness, experience and thinking. Thus, the guidelines of anti-correlationism, represented in the texts of the cluster, function in the discourse as a performative programme of narrativization, the construction of a new picture of the world. The paradox of this phenomenon is that the addressee in the semiotic triangle is human consciousness and its formal expression – the subject. The fundamental correlation and the subject cannot be completely eliminated, since it is possible to deny human thinking by means of human language as a universal semiotic code only on the border of rational and immanent (G. Deleuze), intersection of semantic units, using metaphors and symbolism as indications of discursive gaps as points of singularity of thought or text. Therefore, anti-correlationism can be considered within the paradigm of narrative ontology and at the same time performative, action-call, the result of the resentment of the crisis of the 20th century in the collective consciousness and imagination (Ch. Taylor) of mankind.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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КЛАСТЕР АНТИКОРЕЛЯЦІОНІЗМУ ТА ПЕРФОРМАТИВНИЙ НАРАТИВ

Анотація. Метою дослідження є з'ясування визначальних тенденцій антикореляціонізму та його наративних стратегій як фундаментальної підстави спекулятивного реалізму, а також розгляд однієї з його версій – об'єктно-орієнтованої онтології у співвідношенні

з концепцією наративної онтології та поняттям перформативу як антропологічного маркера дискурсу під кутом зору осмислення проблематики філософської антропології. Автори виходять з парадоксального характеру настанови антикореляціонізму, яка обгрунтовує нереляційну метафізику, водночас постулюючи побудову наративної онтології реальності, яка має ознаки перформативу. Вперше співставлено антропологічний зміст визначальних тенденцій антикореляціонізму та його наративних стратегій як фундаментальної підстави спекулятивного реалізму та об'єктно-орієнтованої онтології з концепцією наративної онтології та поняттям перформативу як антропологічного маркера дискурсу. З'ясовано, що дискурсивна критика кореляціонізму внутрішньо суперечлива, оскільки апелює до мислення і свідомості суб'єкта та твореного ним наративу як картини світу. Перформатив наразі функціонує як модель мовного та мовленнєвого смислоутворення які онтологізують реальність людських свідомості, досвіду та мислення.

У результаті розгляду виявленого питання можна сформулювати наступні висновки: 1. Кластер антикореляціонізму для сучасної філософії спекулятивного реалізму відіграє роль монолітного орієнтиру та теоретико-ідеологічної основи. Неоднорідна й аморфна група мислителів через настанову антикореляціонізму виходить за межі власне онтології та епістемології до ідеологічного та соціокультурного узагальнення, що істотно впливають на проблемне поле та горизонти сенсу сучасної філософії. 2. Настанова антикореляціонізму виступає як репрезентація неантропоцентричної тенденції в сучасному філософствуванні і пояснюється як специфічний спосіб мислення, що стикається з базовою моделлю раціональності посткласичної науки. 3. Орієнтир антикореляціонізму є формалізованим і перебуває в процесі перекладу, ґрунтується на дискурсивних мовних практиках і створенні нового онтологізованого наративу, що має наявні ознаки перформативності. Перформатив тепер функціонує як модель формування мовного та мовленнєвого значення, що онтологізує реальність людської свідомості, досвіду та мислення. Таким чином, настанови антикореляціонізму, репрезентовані в текстах кластера, функціонують у дискурсі як перформативна програма наративізації, побудови нової картини світу. Парадоксальність цього явища полягає в тому, що адресатом в семіотичному трикутнику є свідомість людини, а його формальним виразом – суб'єкт.

Ключові слова: *антикореляціонізм, наратив, перформатив, спекулятивний реалізм, наративна онтологія*

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GENDER CHALLENGES OF MODERN SOCIETIES

Abstract. It is necessary to point out that our time is a time with the general topic of social changes that are inevitably impending on us. The modern era has its own unconditional features, the main of which are intensive pluralization, individualization, the value of everyone's experience in the process of construction a general picture of the world, and the multiplicity of choices that a person did not have before. The task of the state policy is to provide opportunities for free development of the individual not only at the legislative level, but also to develop a mechanism for the practical implementation of the principles of gender non-discrimination.

Keywords: *public service in gender issues, gender inequality, gender identity, gender non-discrimination*

Introduction. Despite numerous publications of the results of scientific research in the society, there is a widespread misconception regarding the understanding of the word "gender". We observe a mixing of the concepts of "gender" and "sex". Analysis of publications allows us to come to the conclusion that the term "gender" refers to the socially constructed role of the individual and the socio-cultural ways of realizing his male (masculine) or female (feminine) nature. Gender demonstrates what it means to be a woman or a man in a given socio-cultural context through behavior, gait, manner of dress, speech, ways and forms of self-realization as a person. In the process of manifesting gender identity, we represent it in society, and thus, we carry out a gender performance, we show our gender identity with a certain set of expressive means, including verbal and non-verbal. Today's scientific publications provide compelling evidence that gender can be considered in several aspects. As a kind of methodology that marks out, delineates the number of masculine and feminine qualities in an individual, regardless of his biological sex. And as a system of symbols and meanings, ways of thinking and seeing the overall picture of the world and our place in it. We "send", signify our "messages" to society about what it means, in our understanding, to be a man or a woman in the modern world. The content of the categories of femininity and masculinity is understood and perceived, on the one hand, as a product of the socio-cultural context, and, on the other hand, as an element of society that affects the socio-cultural transformations of society.

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Analysis of recent research and publications. The problem of solving issues of constant reproduction of gender inequality has been cosidered from many years.We have the work of researchers who, understanding the need for a new approach to the problem of constituting gender inequality, attempted to study the origins of the reproduction of the dominance of one identity over another. These are such scientists as G. Arendt, J. Butler, M. Gonik, A. Dworkin, M. Dietz, J. Elliot, J. Elstein, M. Kimmel, N. Klein, R. Connell, N. Kukarenko, E. Smith, J. Stone, M. Foucault, N. Hartsock. But in the context of constant social and cultural changes and changes in social practices, it is necessary to identify not only the very problem of the reproduction of gender inequality, but also to develop mechanisms to prevent this discrimination at the state level.

The purpose of the article is to study gender challenges of modern societies.

Formulation of the main material. Michael Kimmel, a well-known American scientist dealing with the problem of gender identity and gender relations, and a founder of the international scientific journal "Men and Masculinities", in his work "Gendered Society" (2000) proposed his vision of gender unequlity problem. The author outlined a principled position that helps to establish the source of the permanent reproduction of gender inequality. Using a social-constructionist approach to the problem of gender differences, he substantiated his theory of maintaining the order of gender inequality in society. Almost all studies on the differences between men and women are based on the premise that men and women are "from different planets", and therefore, they say, the differences between them are so deep and the barriers between them are insurmountable. Understanding the causes of social dichotomy by American scientists is exactly the opposite of the traditional one. In his opinion, the social dichotomy is supported by the institution of power as a tool for regulating the legitimization of the socio-cultural domination of one group (men) over another (women). Studies of the form and content of the term gender, M. Kimmell examines biological differences, analyzes the intercultural constructs of the formation of gender differences. Based on the study of a wide database taken from various branches of scientific knowledge, the Amenrican scientist forms a psychological interpretation of gender development, compares the relationship between gender inequality and gender difference as a way of social construction of gender relations in human society.

We understand that gender, unlike sex, does not belong to biology. This is not sexuality in a biological sense. Unlike biological identity, gender is not always obvious, and we can understand person's gender because of the analysis of the socio-cultural representation of the individual. Gender identity revals itself in a way, in which the individual sees himself / herself and with what set of cultural and social characteristics he/she wants to appear before society. Gender and gender are not the same social and cultural phenomena. This is a wide spread delusion. If the concept of "sex" includes components of anatomical aspects of identity, such as: body, physiology, hormones, reproductive organs, chromosome set, genetic data, then the concept of "gender" is a socially – cultural structure, expression of their content of femininity and masculinity, these are preferences in linguistic means, thoughts, feelings, ways and possibilities of self-realization in society.

Researchers warn about typical mistakes in understanding the essence and mechanisms of manifestation of an individual's gender identity (Perez, 2019). One of the mistakes is erroneous expectations in the manifestation of an individual of his/her socio-cultural orientation. Since gender may not be visible in terms of body politics, sometimes the only way to recognize another's gender identity is to find out how he/she "feels" himself (Butler, 1994).

The next mistake, which has its origins in the vision of the world through the prism of dichotomy, is the opinion that one of the genders has an advantage or greater importance in constructing a general picture of the world. And, finally, no less fundamentally erroneous is the idea of gender identity as a certain static,

immovable, once and for all established basic structure of the socio-cultural characteristic of an individual. Long-term and numerous studies in various fields of scientific knowledge have proved that the forms and methods of manifestation of their feminine-masculine nature in an individual change throughout life, both under the influence of age and under the influence of various social conditions.

The analysis of researches in different fields of knowledge, during years gives the opportunity to conclude that the differences within the group of men and within the group of women are much larger than the differences between these groups. This conclusion is very important for developing mechanism of gender dichotomy overcoming. The more detailed deconstructive analysis we made the more effective ways of solving the problem we have. The analysis demonstrates us the the role of public service. Asking about possible solutions of problems which were faced by citizens while receiving public services, those 18.9 % of citizens who complained to the highest authorities do not receive help. Thus, 9.3 % of the respondents indicated that their complaint was rather satisfied, 2.1 % rather were not satisfied with the complaint, and 4.9 % of the citizens were not satisfied with the complaint at all. Only 2.6 % of the respondents were satisfied. Consequently, above-mentioned allows us to make the main conclusion. The quality of public services is a set of characteristics that determines its ability to meet established or expected customer's needs. Unfortunately, the Ukrainian system of public services has significant disadvantages (Skyba, & Polishchuk, 2019). During a comparative analysis we understand how the biological and social factors of the formation of sex and gender correlate, and whether the category of gender identity is universal or culturally specific one. All these results we must use as the basis for developing effective public service in the case for gender inequality overcoming.

In our servey we emphasize that biological and philosophical researches have a significant impact on us in two fundamental issues: about the differences between gender identities and about gender-based inequality. Innate gender differences do not automatically produce social, political and economic inequalities on their own. In contrast to the already developed scientific directions, which could not answer the questions posed by the new time, M. Kimmel, the American specialist in the field of masculinity, presented his particular answer to the questions of the dominance of a particular gender identity. In his research, the author corrects myths, stereotypes, uses modern data from recent years of research by various scientists from various countries and fields of knowledge. Through his research, the scientist convincingly and reasonably proves that gender differences emphasized in society are neither the result of some primordial biological, evolutionary imperative, nor a consequence of the inevitable, universal processes of our psychological development. The American scientist states that gender inequality is not an inevitable social and political result of these differences. Throughout this work, Michael Kimmel claims the opposite, namely, gender difference, (the statement of two qualitatively different entities), is the result of wish to put into the social practice gender inequality. One of the world's leading experts in the history of masculinity concludes that gender differences are used to justify gender inequality (Kimmel, 2000). Fagot, in his survey "Different reactions in the communicative actions of boys and girls" (Fagot, 1985) develops the understanding that neither gender inequality nor gender difference is due to biology or physicality, and the use of research data in different types of sciences, more and more often leads scientists to the conclusion that the differences between the group of men and the group of women are not as great as the differences within the group of women and within the group of men.

As the author points out, men grow up with a more autonomous sense of their essence, more independent, more adapted to enter the world of competing social relations because of such cultural traditions in relation to raising children. They have trouble expressing or sharing their emotional problems. In women, these abilities are very developed, on the contrary, they are more inclined to feel

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the need to maintain relationships with others. But, on the other hand, they have a certain difficulty in protecting their independence and maintaining their autonomy. But scientist, analyzing true different cultures, comes to the conclusion that this state of affairs is not absolute. If the policy of fatherhood and motherhood changes, the content of gender identities will change. If fathers are involved in childcare, leading to greater emotional intimacy between father and children, the vicious circle of emotional bias in maturing children would be broken (Fagot, 1985).

The study "Gender, work and the economy" by Heidi Gottfried (Heidi, 2012) is an attempt to reveal the hidden world of relationships between society, gender and the workplace through using feminist lenses. This study concerns such fundamental issues as the mechanism for constructing social inequality, and the reasons for the persistence of this inequality. When structuring the transparency of the social relationships that govern economies globally, the work analyses how economic transformations not only change the way of production, but also our way of being. Changing patterns of employment and all the time occurring economic crises cannot be explained only on the basis of the concepts of work and economics. When conducting a comparative analysis of gender, work, as an economic category, and the economy, Heidi Gottfried reveals many faces of power, many ways of authotity's influence, including the redistribution of power relations, both in private family life and relations in the public sphere. Discussions about globalization run throughout the book to reveal the impact of increasing global interconnections. Real-world examples include developing industrial countries such as the United States and industrial centers such as New York, London and Tokyo, as well as examples from developing countries and new global cities such as Beijing, Shanghai and Dubai. As one example of agender stereotype influence the author cites the words of a manager who indicates that he prefers to hire young women, and in every possible way restricts the hiring of women who, in his words, look like "his aunt". According to the author of the study, such statements reflect the structural conditions for the devaluation of intelligence and knowledge in front of the beauty of youth, and, likewise, the devaluation of human life in comparison with the possibility of making a profit. The author points out that the main narrative of today's financial situation is gloss. Gloss, shine are necessary features of today's corporate leader. Research suggests that hyper-masculine bravado may have served as the foundation for unfounded bravado in behavior and management, which in turn has led to a disregard for social responsibility for others and others. Their abstract financial value and arrogance are rooted, according to Gottfried's analysis, in their display of a hegemonic masculinity that dominates the natural. This situation contributes to the formation of a culture of unjustified risks, leading global capitalist production to an abyss and a dangerous situation. The author pointed out that between 2007 and 2009, globally, the economy curtailed production and construction, while the main engines of the economies of different countries are still the models of the masculine working class and the family model, where the man is the main breadwinner. This state of the economy, according to Gottfried, indicates that the process of social restructuring has begun. It is less clear what mechanisms lead to a shift in the economy from an industrial production model to a service-dominant one. All these data of the current economic state can neither be analyzed nor explained if we proceed from the principle of gender-neutral substantiation of financial crises. The author points out the need to recognize that one of the main factors for the loss of stability in the economy is a shift towards a masculine model of productive forces and an orientation towards leadership of the type of hegemonic masculinity. The author points out that the definitions of labor and economics are of a gendered nature and their neutrality hides the true essence of social policy in this direction. Only through gender, the researcher believes, can one trace the mechanisms of creating a systematic disadvantage for women at work, and also study what are the differences within a group of women, depending

on class, race and ethnicity (Heidi, 2012).

The analytical work "Gender (Graphic Guide)" by J. Sheel and M.-J.-Barker is devoted to the study of the problem of the gap between the socio-cultural status of men and women. Patriarchal culture initiated the establishment of a social hierarchy with male domination, the inheritance of land by men as an economic factor of social separation between men and women. The study examines the differences in gender exchange at different times and the peculiarities of society's acceptance of gender norms. As the authors themselves emphasize, they immerse themselves in complex and changing notions of masculinity and femininity, consider non-binary and transgender, and scientifically analyze the intersection of gender experiences with issues of race, sexuality, class, disability, and so on. It is very important for the authors to develop an approach to gender issues, which is based on more socially constructive, emotional and sensory ways. Trading involved men in active social life, while caring for family and household items tied women to routine private work. This influenced the establishment of a gender dichotomy (J. Scheele, & M.-J. Barker, 2019).

Caroline Criado Perez in her survey "Invisible Women: Exposing Data Bias in a World for Men: A Book for All" (2019), notes that officially recorded human history is one of example of big gap in data on the role of women and men in created a general picture of the world. From time immemorial, since the creation of the theory "Man – Hunter", as the researcher notes, the chroniclers of the past have left little memory of the role of women in the evolution of mankind. Instead, men's lives were accepted as the standard for People's lives in general. When the matter comes to the place and role of the other half of humanity, namely women, Perez emphasizes, there is often no information at all. And such suppression of information is everywhere, in all spheres of activity. As the British feminist, activist and journalist Carolina Perez notes, our entire culture is permeated with information gaps about the contribution of women as a social group to the development of civilization. We can see these gaps while analysing films, news, literature, science, urban planning, economics, history and others, in all spheres of human activity, according to K. Perez, information is distorted precisely by the "absence of the presence" of women's contribution. This is a manifestation of the gender gap. But, as the author continues, the gap in gender data is not only a silence, but also the further socio-cultural consequences of these gaps. Among such consequences, according to the British researcher, there are those that affect the lives of women every day. The impact may be relatively small. For example, the offices have a temperature regime for men, or the height of the upper shelves in the premises is focused on the growth of men. Such situations are, of course, annoying, because it is unfair, dangerous, but they are not life-threatening. But, the researcher notes, safe measures in cars do not take into account women's dimensions. Or a heart attack in women is not diagnosed in time, because women's symptoms are considered as "atypical". These are already examples of the consequences of a gender-sensitive approach to life. That is, the researcher points out, the world is built around standards for men. Particularly dangerous is, as K. Perez points out, that the rupture of gender data is very often unintentional, but simply a product of the way of thinking that has existed for millennia and is therefore a kind of dementia (2019).

Analyzing the problem of gender inequality reproduction it is important to use in practise the work of M. Yarhouse and D. Sadusky "Establishing Gender Identity: Understanding the Diversity of Experiences of Modern Youth" (2020), which addresses issues related to the formation of gender identity, establishment and reproduction of modern gender practices. This scientifically sound and objective analysis of different gender practices helps readers to distinguish between current mental health issues, such as gender dysphoria, and the new contemporary gender identity that some young people turn to for a sense of identity and community when interacting in a community. This study also examines the reaction of modern

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society to the processes of formation and social manifestations of different gender identities. It is especially important that the process of creating new gender identities is constant and in a changing state (Yarhouse, & Sadusky, 2020). There is an extreme rise of individualization, which scholars describe as a consequence of the multiplicity and segregation of roles available to the individual, and often imposed on him. As a result, people can share nearly identical role portfolios without sharing the same commitments or, for example, the same background. More importantly, however, such people will have little reason to share a common collective identity (Simon, 1987).

Conclusions. Gendered social institutions – family, school, work – work for a single ideological setting. If we want to achieve the elimination of inequalities between gender identities, then efforts must be made in all social institites. From a political point of view, women, most likely, will not be able to achieve the necessary reforms without male support because the socially stable sociaty is a state where both male and women support is executed on the prinsipiles of personal competence. We strongly believe that the point is not that a woman and a man would become more like each other, but that all psychological traits, attitudes and behavior that we, as carriers of a given culture, define as "maskuline" or "feminine" needs to be revisited. Both traits and attitudes carry positive and negative values, and precisely because of the hierarchy of values, because of their inequality, gender inequality is closely intertwined with gender difference. As the results of the implementation of the Concept of public service, we should achieve the increasing in the availability of services for citizens and organizations, simplification of procedures for their interaction with service providers, reducing corruption risks, increasing the efficiency of budget expenditures. So, we strongly believe that after deep analyzing the problem of gender inequality and putting the mechanism of gender inequality overcoming into the social practice of our society we achieve social and cultural stability of our community.

According to researchers, one of the most difficult aspects of discussing the social conditions and qualities of subjectivity of experience, which is important for understanding, today's culture is the pluralism of meanings, derived from the pluralism of perspectives and "voices", and – more importantly – the pluralization and individuation of human experience (Skyba, 2020).

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Елеонора Скиба, Катерина Ткаченко

ГЕНДЕРНІ ВИКЛИКИ СУЧАСНИХ СУСПІЛЬСТВ

Анотація. Необхідно підкреслити, що наш час – це час із загальною темою суспільних змін, які неминуче на нас чекають. Сучасна епоха має свої безумовні риси, головними з яких є інтенсивна плюралізація, індивідуалізація, цінність досвіду кожного в процесі побудови загальної картини світу, множинність вибору, якого людина раніше не мала. Завданням державної політики є забезпечення можливостей для вільного розвитку особистості не лише на законодавчому рівні, а й вироблення механізму практичної реалізації принципів гендерної недискримінації.

Гендерні соціальні інститути – сім'я, школа, робота – працюють на єдину ідеологічну установку. Якщо ми хочемо домогтися ліквідації нерівності між гендерними ідентичностями, то треба докладати зусиль на всіх фронтах. З політичної точки зору жінкам, швидше за все, не вдасться досягти необхідних реформ без підтримки чоловіків, оскільки соціально стабільне суспільство – це стан, де підтримка як чоловіків, так і жінок здійснюється на принципах особистої компетентності.

Автори стверджують, що справа не в тому, щоб жінка і чоловік стали більше схожими один на одного, а в тому, що всі психологічні риси, установки та поведінка, які ми, як носії даної культури, визначаємо як "чоловічі" або "жіночі" потреби повинні бути переглянуті. І риси, і установки несуть в собі позитивні і негативні цінності, і саме через ієрархію цінностей, через їх нерівність гендерна нерівність тісно переплітається з гендерною відмінністю. За результатами реалізації Концепції державної служби, ми маємо досягти підвищення доступності послуг для громадян та організацій, спрощення процедур їх взаємодії з надавачами послуг, зниження корупційних ризиків, підвищення ефективності бюджетних видатків. Отже, після глибокого аналізу проблеми гендерної нерівності та впровадження механізму подолання гендерної нерівності в соціальну практику нашого суспільства можливо досягти соціальної та культурної стабільності нашої громади.

Ключові слова: *державна служба з гендерних питань, гендерна нерівність, гендерна ідентичність, гендерна недискримінація*

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CRITICAL AND LOGICAL THINKING FORMATION AS THE EDUCATIONAL COMPETENCE IN THE MODERN TRAINING SYSTEM FOR LAWYERS

Abstract. At the current stage of development, the education faces a social demand for the shaping of a highly qualified competitive specialist wanted in the global world and the global labor market. Nowoday, in the world community, competencies related to the perception and information processing such as logical and critical thinking (cognitive competencies) are the most popular ones. Such competencies shaping is one of the educational tasks, in particular legal education. The research deals with theoretical, methodical, scientific and practical principles of logical and critical thinking shaping as main educational competencies required for a modern specialist. As a result of the research the theoretical bases and means cognitive competences shaping have been covered, the ways of logical and critical thinking shaping of future lawyers have been suggested. The author has recommended the introduction of special training courses for future lawyers into the educational process considering the specifics of the competencies given above.

Keywords: *critical thinking, logical thinking, educational competencies, methodology of critical thinking development, legal education*

Introduction. The relevance of the problem connected with logical thinking shaping, improvement and development of the cognitive activity among future professionals is due to a present-day social demand. At this stage of society's development, the task of education is to create a competitive specialist, who is also of interest to employers and graduates as the consumers of educational services. This orients the Ukrainian educational space on the graduates' competencies shaping which is in demand in the global world and in the modern labor market, changing the educational paradigm of training. Such competencies of a modern specialist include cognitive ones, in particular logical and critical thinking. According to the reports of The World Economic Forum "The Future of Jobs", critical thinking remains the one among the key competencies of the future (4th place – among skills in 2015, 2nd place – among skills in 2020, 4th place – in the list of anticipated skills in 2025), which determines the attention to the development of thinking skills.

Analysis of recent research and publications. The problem of logical competence shaping is especially relevant in the training for legal professionals – in accordance with the requirements and needs of the time considering global educational trends, as logical thinking skills are of the same importance as

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basic professional competencies. The report on results of the analytical research "Knowledge and skills of law faculties and higher education institutions graduates through the prism of matching labor market needs", initiated by the Ministry of Justice, stated: "According to employers, law graduates should have skills to draft procedural documents (25.3 %), the ability to express their opinion logically and have communication skills (25.3 %). Almost an equal number of respondents noted the need for analytical, critical and logical thinking (9.6 %), abilities to work with the legal framework, data registers and legal programs, skills of rapid search and information processing (8.4 %), interaction with clients (7.3 %)" (Shemelynets, Yakubovych, & Osinska, 2018, p. 19). Thus, the development of logical thinking is not only a necessary condition for cognitive activity, but also a current qualified specialist shaping.

The importance of logical thinking in modern training is growing. Such competence can be found in the educational industry standards for the training of specialists in various fields, as a logical culture is a direct basis for intellectual activities, including the professional one. Thus, in the list of graduate's competencies defined by the standard of higher education (approved and put into effect by the order of the Ministry of Education and Science of Ukraine dated 12.12.2018 no. 1379) logical competence is mentioned as the general one – GC1: "Ability to abstract thinking, analysis and synthesis", and among special (professional) competencies – SC13: "Ability to critical and systematic analysis of legal phenomena and application of acquired knowledge within professional activities", SC16: "Ability to logical, critical and systematic analysis of documents, understanding their legal nature and value" (Standart, 2018).

Thus, cognitive competencies shaping in the system of training legal professionals is of great importance according to the requirements and needs of the time and taking into account global educational trends. Thus, measure of cognitive competencies development is a prerequisite and component of law education, for example, in the United States of America. The relevance of the study is also due to its applied nature, practical significance for modern professionals training.

The purpose of the article is to study the features of critical and logical thinking shaping as the educational competencies in the system for training for legal professionals. The article also presents the practical experience of logical thinking shaping required for law students by means of teaching the discipline "Logic", formulates the principles of critical thinking shaping by means of Humanities.

The research is devoted to theoretical, methodical, scientific and practical principles of logical and critical thinking shaping as the main educational competencies of a modern specialist. The purpose is to determine the main directions of cognitive competencies development. There have been suggested the ways of logical and critical thinking shaping required for future legal professionals. The aim of the research can be implemented through following objectives:

– consider theoretical approaches to the critical thinking study in the modern research;

– study the means of logical thinking shaping;

– suggest methods of logical (analytical) thinking shaping in the system for training legal professionals at the Bachelor's level;

– justify the need for special training courses for future legal professionals and give appropriate recommendations.

Formulation of the main material. The topic of research remains relevant due to a wide range of different aspects of critical and logical thinking study, as well as peculiarities of thought processes shaping and ordering, which leads to an ever-increasing amount of scientific research. Critical and logical (analytical) thinking shaping is at the intersection of various areas of research along with areas of knowledge from Philosophy (through Pedagogy) to Neurophysiology and Neurocognitive Studies. Each of aspects of this has a large bibliography, which

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requires the coverage of the main current trends in the study of critical and logical thinking shaping as cognitive competencies.

The problem of critical thinking formootion and development is one of the generally accepted areas in modern Pedagogy, Psychology and Philosophy. Various aspects of critical thinking shaping are reflected in the works of domestic and foreign scientists. Critical thinking in the modern sense is an invention of American Cognitive Psychology. The idea of critical thinking development has its origin in the United States of America, namely in the work of famous American psychologists of the twentieth century W. James and J. Dewey, where it began to be spread from within America, Europe, etc. (A. Lipman, R. Paul, P. Pintrich, R. Sternberg, D. Halpern, O. Tiaglo, & S. Terno and others).

Thus, in the United States of America, projects to introduce critical thinking into the education system have been widely used since the 1980th.

Significant amount of literature is devoted to the problems of critical thinking development. The studies dedicated to the peculiarities of logical thinking shaping are to be highlighted within the frames of the subject under consideration. Works, in particular, textbooks and tutorials devoted to teaching the discipline of Logics are aimed to logical thinking shaping through the development of logical techniques and analysis. In this group it is possible to identify a separate component that contains educational literature on teaching the discipline of Logic at Law Schools, Legal Logic, and logical thinking shaping required for legal professionals. The third group includes methodological literature on individual methods and techniques for of logical and / or analytical thinking development.

Thus, despite the large number of studies on both theoretical aspects of logical and critical thinking, and various ways of such competencies shaping, the problem of logical and critical thinking shaping as components of cognitive competence required for law students has not been studied.

The research topic remains relevant due to a wide range of different aspects of critical and logical thinking study, as well as peculiarities of thought processes shaping and ordering, which is a consequence and direct result of such competencies shaping.

Critical and logical (analytical) thinking shaping is at the intersection of various areas of research along with areas of knowledge: from Philosophy (through Pedagogy) to Neurophysiology and Neurocognitive Studies. Each of aspects of this very issue has a large bibliography, which requires the coverage of the main current trends in the study of critical and logical thinking shaping as cognitive competencies.

Considering complexity of the psychological and pedagogical processes considered in this article, which is the subject under consideration of the research in various fields of knowledge, it is necessary to clarify some concepts and categories. One of such concept is “competency”.

In modern didactics, the problem of distinguishing between the concepts of “competence” and “competency” is acute. There are differences in regulations and scientific research on the use and definition of these concepts. Experts emphasize that the terms “competence” and “competency” are not only very close in meaning (some consider them as synonymous, and others – keep off the use of one of them to avoid misunderstanding), but also cognate words, not clearly stated in the national literature, therefore, they need further more careful studying; problems related to both definitions are relevant and need further consideration, remaining unresolved for a long time (for more details, see (A. Tyaglo, & T. Voropay, 1999, 285 p.)). In general, it is considered appropriate to use “competency” as a general concept, “competence” as a broad concept, and “competences” as a narrower (knowledge, skills, abilities). Competences, in turn, are separate elements of the broad concept of competence. Due to the study of logical and critical thinking as educational characteristics formed as a result of learning activities, it is advisable to use the concept of “competence” in

this article, as its content is enshrined in the education legislation.

In the study, reflecting the experience of logical and critical thinking formation by means of socio-humanitarian disciplines, in particular "Logic", the concept of "cognitive competence" is used in the meaning of the characteristic defined for admission to Master's degree in "Law". Cognitive competence is a personal characteristic acquired by a person as a result of his life and learning activities (formal and informal). It determines his ability to gain and improve an individual system of knowledge, skills, abilities and values, use it to solve personally and socially significant problems due to the generally accepted system of values belonging to a sustainable growth society. Accordingly, the starting point is the provision that cognitive competencies cannot be measured directly. To measure them, special tools are needed, the use of which can provide indirect information, where its interpretation will serve as a basis for certain conclusions about the level of cognitive competencies formation, where the key competence is the ability to think critically, analytically and logically.

At present, the concepts of such competencies as "logical thinking" and "critical thinking" are widely discussed within their content in the pedagogical (methodological) literature. On the one hand, in everyday language, "critical" is associated with a negative attitude towards something. Thus, for many, critical thinking involves controversy, discussion and conflict. On the other hand, the concept of "critical thinking" includes "analytical thinking", "logical thinking", "creative thinking" and so on. Although the term "critical thinking" has been known for a long time from the works of psychologists J. Piaget, J. Bruner, L. Vygotsky. Teachers-practitioners have been using this concept more recently in the professional language. In Ukraine, the problem of critical thinking development has been raised first by the Kharkiv researcher O. Tiaglo (Tiaglo & Voropay, 1999).

The theory of multiple intelligences is widely used at the current stage of pedagogical knowledge development in practice. It allows researchers to diversify the development of personality. Howard Gardner (1983) suggested his theory of multiple intelligences as an alternative to the classic view of intelligence as a property of logical thinking. Currently, there are several theories that emphasize the existence of several types of intelligence – a wide range of cognitive abilities, which in some way correlate with each other.

The theory of multiple intelligences differentiates human intelligence into specific modalities, rather than see the intelligence as dominated by one general ability. Howard Gardner suggested this model in his book "Frames of Mind: Theory of Multiple Intelligence" (1983). Is there really (more than?) one kind of intelligence – which is traditionally considered as "rational" and characterized by the ability to think logically?

The theory invites remarks and criticism, but the idea itself is being developed and supplemented. In his work, H. Gardner first identified 5 areas and later this list was broadened. There are the following types:

– linguistic;
– logical-mathematical;
– spatial;
– musical;
– bodily-kinesthetic;
– intra personal.

Although all individuals are able to show all kinds of intelligence to some extent, each individual is characterized by a unique combination of more and less developed intellectual abilities, which explains the individual differences between people. It is suggested to take into account the theory of multiple intelligences when using testing for cognitive competence, learning ability or level of intellectual development.

At the current stage of science, social communications and society as a

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whole development, mathematical or verbal-conceptual (verbal) intelligences are predominant, while development of other types of intelligence is not considered and an insufficient attention is paid to determining the level of such development due to a number of objective reasons. That is why when performing tasks at the level of intellectual development, the level of development of rational thinking is checked (logical-verbal, mathematical or rational thinking in the traditional meaning) or spatial thinking, the definition of which is taken as an indicator of cognitive competence are checked. At the same time, the ability to perform formal logical operations is a condition for the activity of specialists in certain specialties, in particular, lawyers. Such skills and abilities formation is aimed at educational activities for the training of modern specialists, the quality of which is assessed by means of GLET (General Legal Education Test).

Critical thinking is recognized as the main competence of the future, which is associated with the trend of world development − the transition to the information society. In this regard, the Council of Europe has included competencies related to the information society's life among the most important (key) human competencies. They also have included ones to the list of new technologies for information retrieval and processing, understanding the feasibility of their usage, ability of critical attitude to the messages broadcast through the media, the ability to be protected from the negative influences of the media. Critical thinking is formation of particular importance is shaping in conditions of changing cognitive functions, loss of ability to perceive arrays of complex and structured information, or even large texts. "Clip thinking" leads to unconscious consumption of information, inability to process and use it.

Conventionally, information can be represented as a natural information space that reflects the physical objects of the material world and an artificial information space created by the human. Artificial space also includes information, the production and consumption of which is realized through the media. The modern human receives most of the information both from the surrounding material world and, in the indirect process of information exchange during communication: through symbolic (mostly language) and technical (devices that transmit, present information) means. The individual has a psychological (information-psychological) media influence in the media production. The media consumer is affected by such media influence and this causes opposite psychological reaction: intellectual, emotional, behavioral. In other words, the media influence intermediated by special technologies determines the result in the form of expected psychological reactions, an effective final psychological result from the audience.

The concept of "media literacy" is closely connected with such educational competence as critical thinking. The concepts of "critical thinking" and "media literacy" are widely discussed in the pedagogical (methodological) literature and their content is being specified and approved. Analyzing critical thinking when combined with media literacy, we can determine that critical thinking is a psychological mechanism of media literacy, the ability to perceive and analyze messages and then evaluate them in an appropriate environment, a deep and detailed understanding of historical, economic and artistic contexts, represented in the message, the ability to see the peculiarities in the information presented, the ability to draw conclusions on advantages and disadvantaged of the message.

Considering all these, critical thinking formation is one of the most important tasks of modern education, as the ability to process information is an integral part of the individual in the information society. However, defining this, due to differences in the definition of this concept, there are different approaches and methods of critical thinking formation. How exactly is it suggested to form this competence in nowadays conditions? Since the conscious perception of information is based on its rational perception, which is one of the means of protection against fakes and distortions of messages, critical thinking formation is based on a logical culture

formation, the ability to "make sense", reason rationally and draw conclusions.

The authors of various courses of critical thinking shaping (Terno, 2020) first pay attention to understanding the context of information offered for consumption on the one hand and strict adherence to the logical sequence of reasoning where the last ensures the avoidance of common logical fallacies and manipulation techniques known since ancient rhetoric on the other. Typical logical fallacies that are widely used in almost every controversy (from Greek "Polemikos" – warlike, hostile – one of the most common types of public debate, which is characterized by confrontation and opposition; form of opposition of fundamentally different opinions, ideas, views; the purpose of the controversy is victory over the enemy), are as follows:

1) Ad hominem arguments – rhetorical strategy where the speaker attacks the character, motive or some other attribute of the person making an argument rather than attacking the substance of the argument itself. This method is also called "mudslinging".

2) Argument ad nauseam (Argument to the point of disgust) – making the argument that something is true by repeating the same thing in different words. This approach works when the number of media sources is limited or controlled by the propagandist.

3) Appeal to authority – a way of using public statements of famous or respected people to support the position, argument or course of action. It is also called "confirmation bias".

4) Appeal to fear. A person who uses this argument tries to gain support for his ideas / views by playing fears of the audience and warning, for example, Josef Goebbels used "Germany must Perish!" by Theodor Kaufman to claim that the Allies were seeking to destroy the German people.

5) Appeal to emotions – the use of meaningful or emotional terms to give weight or moral virtue, just to believe what has been said. It is usually used for fanatical or deceptive methods.

Means based on logical fallacies are used to influence consciousness, as the goal is to influence the recipient and his beliefs. Detecting the use of such techniques along with preventing the dissemination of false and manipulative information is the main goal of such educational competencies shaping as media literacy and critical thinking. "Equivocation" as a kind of "straw man fallacy" is constantly found in discussions dedicated to the problems of different formats and degrees of significance, so modern professionals (especially legal professionals!) need to be up for it – and therefore protected from such manipulations.

With the development of critical thinking, new solutions are built on the basis of information known that is imposed on life experience. Therefore, a person with critical thinking has the following important character traits: to think independently, search and analyze information, find his own solution to the problem and making compelling arguments, to express his opinion in debates, discussions, controversies (discuss in society). To develop these qualities as components of critical thinking, it is necessary to consider development of the following skills: to organize thoughts and make plans; assimilate other people's ideas – fluency of thinking; continue to work on the problem, even if there are difficulties – persistence; ability to draw positive conclusions from one's own mistakes – readiness to make mistakes; ability to monitor his own mental activity consciously; ability to find compromise solutions – willingness to compromise. Development of these skills and qualities at the personal level is a part of critical thinking shaping.

For the development of critical thinking as a component of cognitive competence "Six Hats Method" can be used in the classroom. "Six Hats Method" is a system designed by Edward de Bono (1985) that describes a tool for group discussion and individual thinking using six colored hats. The background of this very method is the fact that the human brain is able to think in several different

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ways, each of which can be intentionally involved, and therefore planned for the structured use, thus allowing the development of tactics to reflect on individual problems. De Bono identifies six separate areas where the human brain can be involved. The brain recognizes and brings to mind certain aspects of the problem of consideration (e.g., neutral facts, pessimistic judgment, etc.) in each of these areas. None of these areas is a completely natural way of thinking, but rather the way people reflect the results of their thinking. Colored hats are used as metaphors for each of the areas of thinking suggested by the researcher.

Six different directions are defined and assigned a separate color. Therefore, these areas are:

– Management – Blue: what is the subject of discussion? What are we thinking about? What is our goal? The overall picture can be seen.

– Information – White: what facts do we have taking into account only the information available to us?

– Emotions – Red: intuitive or instinctive inner reaction or emotional feelings statement (but no justification).

– Cautions – Black: logical reasoning is given to be careful and conservative. Practical, realistic.

– Benefits – Yellow: logical reasoning is given to find advantages, search for harmony. Positives and plus points are seen.

– Creativity – Green: provocative and experimental judgments, gives free rein to thought. Think creatively, not by pattern.

The symbolic jumping between the directions is the action of wearing a colored hat, literal or metaphorical. Such a metaphor and its layout in didactics contribute to a more complete and thorough separation of thinking. These six hats of thinking point out problems and solutions to the idea suggested by the speaker. Using this technique allows students to consider problems in many ways, turn it into a task, taking into account possible solutions. Schools in more than twenty countries have included Edward de Bono's thinking tools in their curricula.

Considering various aspects of critical thinking, we can determine that critical thinking is, in a broad sense, the ability to perceive and analyze messages, or the psychological mechanism of media literacy which is another important component of thinking in today's information society. Perception and further evaluation of information in the appropriate environment, deep and detailed understanding of the historical, economic and artistic contexts of the systems presented in the message, the ability to see the nuances in presenting information, the ability to draw conclusions about strengths and weaknesses are important skills of educational process required for a specialist.

At the same time, the disciplines of social and humanitarian profile have a special role in these competencies shaping, as the process of studying shapes the worldview of the individual, including the development of information perception and informed decision making. As a result, in the study of social and humanitarian disciplines, it is appropriate to aim the development of these competencies and implement appropriating methods and technologies for their shaping. Within the framework of teaching "Logic" and "Legal Logic", special courses on effective communication, theory and practice of argumentation, which consider various methods of influencing the interlocutor, correct and incorrect means of argumentation, ability to analyze the interlocutor's reasoning and identify manipulations. It is advisable to include the topic dedicated to critical thinking shaping.

Competence of "critical thinking" is important both within obtaining a Bachelor's degree and in entering Master's degree education, and later in professional activities, because a specialist with analysis skills is able to act effectively and is a competitive specialist in today's labor market. Therefore, it is appropriate to introduce the course "Critical Thinking" in the educational process of higher education in order to train modern specialists. The creation of such a course is conditioned by

the requirements and challenges facing the modern education system and the public demand for existing competencies in the modern global world.

Having considered critical thinking providing conscious perception and correct understanding of textual material and which is extremely important for legal activities, we turn to such competence as logical thinking, focusing on the peculiarities of its shaping and importance in modern training.

In modern pedagogy and cognitive psychology there are differences in understanding the concept of "logical thinking". Under logical thinking as an educational competence it is understood the ability to perform operations and techniques aimed at cognition, in accordance with a certain sequence and using abstract forms. Both symbols and words that serve to embody and convey concepts are meant by such forms. The competence of "logical thinking" as "the ability to think abstractly, analyze, synthesize and establish relevance between phenomena and processes" is used in educational and professional programs of various fields of knowledge, formed on the basis of approved standards of higher education. Despite the differences in understanding of logical competence, the problem of logical thinking shaping is relevant regardless of the field of knowledge of future professionals. Thus, logic as a property of abstract thinking and its study in the form of a discipline forms a logical culture, which is an indicator of the modern specialists' development in the social sciences, humanities, philosophy or law. At the same time, the use of abstract categories embodied in signs (mathematical symbols) and logical operators is an integral part of modern engineering training, namely in IT.

Logical competence is one of the main competencies of a lawyer. It has been current since antiquity, but does not lose its relevance, meeting the request of modern employers. Logic is the main discipline for logical thinking shaping required for legal professionals; its importance cannot be exaggerated: understanding and applying the rules of law is impossible without study and conscious use of logical knowledge.

The competence of logical thinking is an integral part of modern specialists' development. This competence is important for modern psychologists, educators, physicians and engineers. But it is a necessary condition for the development of a lawyer as a modern educated specialist. Proving the need for logic mastery and use within jurisprudence is even superfluous, so they are inextricably linked since antiquity, the time of the modern (Roman) legal system and judicial rhetoric. Both philosophers and lawyers emphasized the need for logical knowledge for legal professionals. Thus, in the sixteenth century Abraham Frunce's work "Lawyers Logike" was published. The main idea of this work is to demonstrate the close connection between logical and legal knowledge. The book offers a special approach to logic of legal reasoning (1958).

In England, an important source for the further development of the theory of argumentation in the Renaissance was the work of Abraham Fraunce "Logic for a lawyer with examples of the logic precepts in the practice of common law" (1588). Fraunce dedicated it to his patron the Earl of Pembroke, and "all lawyers-scientists of England".

The founder of classical logic G. Leibniz presented the connection between logic and law, the use of logical and mathematical knowledge in jurisprudence. This eminent philosopher, mathematician and lawyer stated that logical proof guarantees the objectivity and truth of knowledge, formulating the law of sufficient reasons as extremely important for legal theory and practice. The desire for the accuracy of legal thinking stimulated him to the further deep logical and mathematical analysis of phenomena, the thinker saw logic as a universal tool of science for knowledge of the objectively existing world.

The importance of mastering and applying logical knowledge in legal activities has been constantly emphasized by legal practitioners, well-known lawyers; the problems of the interconnection between logic and law remain relevant for modern

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specialists in legal logic (Malyukova et al., 2018).

Taking into account the inextricable link between logic and jurisprudence and the need to acquire logical knowledge to be applied to the logic of norms, logical competence is one of the components of lawyer's professional qualifications. Knowledge of logical techniques and operations is an essential feature of a qualified lawyer, regardless of the immediate field of activity.

The means of developing logical thinking are the performance of appropriate exercises and tasks that cover the whole set of logical operations. The main component to get success in logical thinking skills shaping is the awareness of the aim and final result of the exercise done by both students and teachers.

It can be agreed that a person acquires the foundations of logical thinking during socialization, which occurs in accordance with the age characteristics of consciousness formation, and subsequently, continues to be formed within the mastery of specialized disciplines.

Thus, while doing social activities the child learns to perform basic logical operations, following the example, often with mistakes. Correcting them, completing logical thinking shaping as an important component of consciousness is the aim of the secondary education. An important component of logical thinking forming is solving mathematical exercises and problems aimed at building a certain sequence of mental processes to obtain the final result in the mind. Also, the skills of logical thinking are formed within the study of disciplines, STEM and socio-humanitarian, under the terms of the introduction of tasks and case situations promoting development of such skills within the educational process. However, even with the completion of logical thinking forming, which takes place mainly at the age of 16-18, which coincides with the period of study in high school and is characterized by the ability to track causal links and build argumentation process. Mistakes related to violations of rules as for concepts (for example, definitions) are observed here. They are common for first-year students and can be quickly corrected by consciously working out these rules and such mistakes.

Such work is almost impossible to be carried out without the involvement of special disciplines aimed at studying and streamlining thinking, analysis and elimination of common mistakes made in professional activities. That is why future legal professionals, teachers, doctors, engineers study logic as a necessary discipline that helps to avoid specific mistakes. Thus, it is an understanding of causation, probability and validity of conclusions, contradictions of opinion for health professionals; understanding deductive and inductive learning tools, understanding the rules of concepts operating accompanied with making and avoiding mistakes by students necessary for teachers. Of particular importance is the study of logic and acquiring culture of mental operations for future engineers, because the methods of scientific induction are widely used in the daily activities of technical professionals.

In the general scientific sense, logic is a means of conducting and substantiating experimental data, testing hypotheses and developing theories.

The study of logic is especially important for professionals in the field of law. For many centuries, logic and law have been inextricably linked and intertwined, not only in the sense of teaching theories and practice of judicial argumentation in adversarial litigation, which has been around since ancient times. Logic occupies an important place in criminology, studying various types of examinations, the student realizes which examination provides reliable knowledge and why. It is impossible to exaggerate the importance of logic as a discipline for action planning in the study and practical elaboration of the rules of criminal procedure law. The concept and structure of legal evidence is inextricably linked with understanding the process of logical proof, logical laws (including the law of identity and the law of sufficient reasons) and the concept of logical proof (argument) in the structure of argumentation, comparing legal and logical evidence as a basis to build a criminal process.

Is it possible to a logical culture shaping by means of exclusively professional

disciplines, without resorting to the study of logic? Probably the answer is positive, because many disciplines of both general training and vocational training among the competencies that should produce academic disciplines are called logical thinking. But what exactly are the operations and techniques performed by this or that discipline? What are the mistakes that will be avoided by students of higher educational establishments who study these disciplines? Obviously, only such a discipline as "Logic" has the means to shape logical thinking to the extent that ensure the establishment and use of logical tools for professional legal activities.

Basic skills, techniques and analysis shaped at law schools during the study of the discipline of "Logic" and its interdisciplinary links with other subjects provided during training for a modern lawyer are at great importance. The main skills developed by future legal professionals and used in the daily work of legal professionals are operations on concepts – such as definition and classification. At the same time, the classes have algorithms for solving tasks, included into special disciplines, which is an important component required for a modern lawyer during the training.

Understanding the universality and uniformity of mental analysis is the key to its effectiveness, and therefore the effectiveness of professional activity.

To form this competence in the course of educational activities, when studying the discipline of "Logic" students are offered an algorithm for solving problems, which is fixed within the study of socio-humanitarian disciplines (philosophical, historical and legal), and later professional disciplines.

Although there is no single algorithm for solving problems, we can identify the necessary stages (steps) in considering the task as a problem situation, to achieve the goal that must be fulfilled through parameterization of boundary conditions, circumstances, and the solution can be represented by the following algorithm.

The algorithm for solving any conditional (mathematical) task includes the following steps:

1. Analysis of the condition.
2. Selection of solution rules.
3. Selection and application of the relevant rule.
4. Providing a reasonable answer.

When considering practical tasks, law students are asked to perform the following steps:

The problem distinguishes:

– conditions and elements of the situation, circumstances;
– limit of conditions;
– rules for transforming the situation;
– model, solution version (goal).

For example, when the algorithm is used during the Logic class (later Criminal Law class); students are invited to solve tasks in criminal law. This activates cognitive activity, arise the interest and practical orientation of the discipline, and promotes interdisciplinary links and further professional thinking culture formation.

As a result of the analysis given it is necessary to write down the qualification formula where it is necessary to mention a paragraph or a part of the corresponding article (in some cases – a set of articles) of the law on criminal liability if it meets the needs of the task. If it is concluded that there is a lack of corpus delicti in the act committed, it is necessary to provide arguments and considerations as to which element of the corpus delicti is missing. An unacceptable option for solving any task is a short answer without justification (for example: "an act is not a crime", "it is worth applying one or another article of the Criminal Code of Ukraine", etc.). Such decisions, even if they are correct, will be considered unsatisfactory.

Such exercises form the logical competence of the specialist; create conditions for successful professional activity in the future. Teachers of professional disciplines note, "One of the difficulties that students face in the process of preparation for a practical lesson is the wording of the task solution. On the one hand, it is

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unacceptable to limit it only to a simple answer or only to an indication of the criminal law article to be applied. Of course, drawing up a formula is a necessary condition for qualifying a crime, but it is especially important to justify why in this case the specified criminal law is applicable". Thus, the skills of analysis, finding the solution and giving justification in solving tasks in various fields of law during the classes of Logic is a case for the next stages of the educational process.

The experience of taking a professional test in the format of External Independent Assessment (EIA) for the master's degree programme in "Law" and preparing applicants for such testing, shows that implementation of such tests has to do with potential ambiguity and rejection. This is due to a number of reasons. First of all, it is worth mentioning the prejudice against one's own abilities, negative attitude to mathematics, mathematical calculations, task solving.

In the testing of cognitive competencies in the external evaluation, the tasks on testing analytical – numerical – thinking are connected with describing certain situations and their conditions. Tasks on the use of deductive analysis are suggested for each of situations.

Doing such exercises allows students to determine the existing level of analytical (numerical) thinking.

Along with logical thinking, great importance in the modern educational paradigm is given to analytical thinking. This article considers correlation between logical and analytical thinking.

Analytical thinking has much more meaning than just the ability to solve arithmetic or algebraic tasks. It is an analytical view of life and phenomena of the surrounding world, when searching for their logical structure, essence and quantification. The perception of oneself as a mathematical thinker is quite organic. Such features of thinking do not contradict the specific professional analysis of information, but structure and organize it. Stanford University offers the two-part course in mathematical thinking. The core course takes eight weeks and focuses on developing mathematical thinking skills for everyday life and professional (non-mathematical) activities. Tasks that are solved during training are aimed at mastering the rules of logic in the analysis of language and wording. In fact, it is a course of analytical thinking. Researchers sometimes even use the seemingly paradoxical phrase "humanities mathematics" to introduce to the sections of applied mathematics that study society and social relations.

Solving various tasks provides an opportunity to learn to analyze the situation, to find connections between phenomena, to distinguish primary and secondary, to set a strategy, to apply knowledge and skills. The competencies wich are formed this way are important both for educational activities and professional tasks performing. Acquiring the methods of logical thinking development and, in particular, methods of solving logical tasks, is an integral part of the intellectual culture formation required for a modern highly qualified specialist.

Thus, the relevance of logical thinking formation and development required for students, the question of techniques, methods and tools aimed at achieving this goal arises. Currently, there are at least two opportunities in the education system to ensure the development of students' logical thinking: development through the introduction of Logic components into the teaching process – special techniques, operations, etc. – within the professional disciplines of the relevant field of study. Another way is to teach a special discipline of "Logic", the aim of which is logical thinking formation as one of the components of general cognitive competence. The discipline of Logic can be considered as the main means of the logical competence formation required for a current lawyer. At the same time, it is impossible to neglect the opportunities for logical thinking shaping provided by the disciplines of professional training. Given the need to train a modern specialist and the demand for such competence (critical thinking) shaping, it is advisable to consider the possibility of introducing special training courses named "Legal

Logic" and "Critical Thinking".

Conclusions. Thus, at the current stage of society's development and taking into account the process of education reformation process, which becomes focused on the complex of both harmonious personality and professional, cognitive competencies formation are in high demand, in particular, the competence of critical and logical thinking. Development and implementation of such techniques as skills of analysis and perception of information, the ability to reflect on the information received consciously and independently, ask questions, look for arguments, find independent and relevant solutions into the educational process – is an urgent need and, accordingly, becomes the main task of disciplines both social and humanitarian nature, and professional disciplines in the specialty during the educational process. At the same time, for the logical thinking formation as a competence that allows specialists to form, use and improve thinking operations consciously, it is advisable to use a special discipline "Logic", which tasks are directly connected with a logical culture formation required for the future specialist.

Having analyzed the peculiarities of logical and critical thinking formation within the training of legal professionals, the research has identified scientific and theoretical principles and practical ways of implementing the experience of these competencies shaping by means of general disciplines, justified the need for special courses "Legal Logic" and "Critical Thinking" in the modern system of training legal professionals.

Within the research given the author has determined the main directions of cognitive competencies developing and has suggested the ways of logical and critical thinking formation required for future legal professionals. Considering the specifics of these competencies formation it has been recommended to introduce the additional courses as means of critical thinking formation, the main educational competence in the global world of the XXI century.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ФОРМУВАННЯ КРИТИЧНОГО ТА ЛОГІЧНОГО МИСЛЕННЯ ЯК ОСВІТНЬОЇ КОМПЕТЕНТНОСТІ У СУЧАСНІЙ СИСТЕМІ ПІДГОТОВКИ ЮРИСТІВ

Анотація. На сучасному етапі розвитку перед освітою постає суспільний запит на формування висококваліфікованого конкурентоспроможного фахівця, затребуваного в умовах глобального світу та глобального ринку праці. На цей час у світовій спільноті серед затребуваних компетентностей є компетентності, пов'язані із сприйняттям та обробкою інформації – пізнавальні компетентності: логічне та критичне мислення. Формування таких компетентностей є одним із завдань освіти, зокрема юридичної. Дослідження присвячено теоретичним, методичним та науково-практичним засадам формування логічного та критичного мислення як основних освітніх компетентностей сучасного фахівця.

Таким чином, на сучасному етапі розвитку суспільства та з огляду на процес реформування освіти, що стає орієнтованою на комплексне формування як гармонійної особистості, так й фахівця-професіонала, пізнавальні компетентності є гостро затребуваними,

зокрема, компетентності критичного та логічного мислення. Розробка та впровадження у навчальний процес прийомів, що формують навички аналізу та сприйняття інформації, здатність свідомо та самостійно міркувати над отриманою інформацією, ставити запитання, шукати аргументи, знаходити незалежні та релевантні рішення поставлених завдань – є нагальною потребою та, відповідно, стає основним завданням дисциплін як соціально-гуманітарного профілю, так і фахових дисциплін за спеціальністю. Водночас для цілісного формування логічного мислення як компетентності, що дозволяє формувати, свідомо використовувати та вдосконалювати мисленєві операції, доцільно застосовувати спеціальну навчальну дисципліну "Логіка", завдання якої безпосередньо полягають у формування логічної культури майбутнього фахівця.

Проаналізувавши особливості формування логічного та критичного мислення при підготовці юристів, у результаті дослідження визначено науково-теоретичні засади та практичні шляхи реалізації досвіду формування означених компетентностей у студентів-юристів засобами навчальних дисциплін загальної підготовки, обґрунтовано необхідність впровадження спеціальних навчальних курсів ("Юридична логіка", "Критичне мислення") у сучасну систему підготовки юристів.

У результаті проведеного дослідження висвітлено теоретичні засади та засоби формування пізнавальних компетентностей, запропоновано шляхи формування логічного та критичного мислення у майбутніх юристів. Розглянувши специфіку формування зазначених компетентностей, у висновках рекомендовано впровадження спеціальних навчальних курсів для сучасної підготовки майбутніх юристів.

Ключові слова: *критичне мислення, логічне мислення, освітні компетентності, методика розвитку критичного мислення, юридична освіта*

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TECHNOLOGIES IMPROVING THE SYSTEM OF TRAINING ATHLETES

Abstract. Ignoring the subject of the study of the temporality of experience in the training of athletes is understandable, impoverishes the possibilities of social design. The requirement of the present in the philosophical understanding of the difficult study and application of experience, its use in the social design of sports training. Turning to the analysis of research conducted in recent years, we draw attention to a rather narrow range of publications on the study and application of experience in the tasks of its use in the design of social systems.

It is necessary to determine the role of studying and using the experience of leading specialists, proving that the individual experience of specialists is an important element in developing a modern reform strategy and creating a system of training athletes.

The aim of the article was to analyze the philosophical and sociocultural context of using the experience of training athletes of the highest level of skill in the temporality of experience (transfer it to the future), ie a new, desirable system of sports in developing Ukraine.

In our study, temporality was used in the context of identifying, evaluating and summarizing the individual experience of its bearers when designing a new system of sports of the highest achievements in Ukraine. The action of the construct unfolds in time space.

Research has shown that the essence of psychological – pedagogical competence of a specialist in the field of sports is revealed through the constant replenishment of their knowledge

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and their adaptation to physical culture and sports; knowledge of the construction of physical culture and pedagogical process as an object of design; systematic description and explanation of problems that arise in the field of sports, in terms of science (epistemological function); ability to apply modern psychological and pedagogical research technologies in the physical culture and pedagogical process.

During the transition of an athlete from one stage to the next in his sports career, his responsibility and influence as an active subject to achieve a competitive result are constantly growing. This must be taken into account, first, during the training of sports coaches. And, secondly, to use coaches during the further improvement of the system of training athletes

Keywords: *temporality, experience of specialists, development of sports development strategy, higher achievements of designing of the system of training of athletes*

Introduction. In Ukraine still there is no the strategy of the modern system of sports, the higher achievements, the features of its development and implementation are not obvious. This strategy is needed, because at the Olympics in Rio de Janeiro (2016) 205 Ukrainians won 2 gold medals, and small countries such as: Hungary – 8, Croatia – 5, Uzbekistan – 4, Kazakhstan – 3 gold medals. The National University of Physical Education and Sports has a gallery of photo portraits of famous university students who have become Olympic champions. If you compare how many gold medals were won by them on average at each Summer Olympics over the years of the USSR, and then over the years of Ukraine's independence, the numbers will be impressive: accordingly 6.4 and 1.3 (!) Conditional gold medals. Ukraine won the same (1 gold) at the last Olympic Winter Games in Pyongchang (for comparison: the Netherlands, a country with a population of 17 million, which, like Ukraine, brought 33 athletes to the Olympic Games, won 8 gold medals).

The scientific problem is to substantiate the place of experience in the content of the strategy of the development of Olympic sport, as a step in its development. The strategy should be generalized, taking into account the socio-economic conditions of Ukraine, as an experience of countries similar in scope to Hungary and Croatia, as well as the existing important domestic positive experience that carries leading experts in the field of sport. But the practice of attracting and transferring the experience of specialists in this area has not been studied, and at all, it is not obvious to understand the need for its application.

Analysis of recent research and publication. Analysis of the philosophical and socio-cultural context of the use of the experience of training the athletes of the highest level of skill in the tasks of temporality (its transfer to the future) into the new, desired system of sports in Ukraine, which is being created.

The system, activity and subjective approaches in the context of philosophical and socio-cultural comprehension of the transfer and use of the experience of experts from among the leading trainers of Ukraine in the content of work on the design and further implementation of the new, modern strategy of development of Olympic sports are used in the work.

F.V. J. Schelling successfully described the situation of resistance to the new way: "If a system that completely changes or even overthrows the dominant views not only in everyday life, but also in most sciences, it meets, despite the fact that in it fulfilled the most rigorous proof of its principles, the constant resistance, even those who are able to follow the course of evidence and understand their obviousness, all this can be explained only by one – the inability to distract from the dominance of partial problems that our imagination ... readily extracts from the wealth of all slidnyh data and thus causing us embarrassment and excitement. It is impossible to argue the convincing evidence, there is also nothing credible and obvious that could be opposed to the proposed principles, but the fear of incredible consequences that inevitably seem to be inevitable, leads to despair and forces us to retreat from the same mind with all the difficulties that will necessarily entail the application of these principles" (Shelling,1987, p. 227). And further important: "... The best test of any system is not only that it easily solves problems that

previously seemed unsolvable, but also (it's scary-auth.). That it is putting forward entirely new, previously nobody was posed a problem, and, generating everything that was considered true, creates the truth of a new generation" (Shelling, 1987).

Attempts to put an end to reforms in the conservative part of the government actually exist. But there is also the need for a philosophical understanding of the difficult study and application of experience, its use during the social design of the system of sports training.

The term temporality is used as a synonym for time. The specificity of the category of temporality lies in the fact that it linguistically interprets the fundamental ontological and ideological category of time. The ontological time represents the dynamics of the world, all of its components undergoing permanent irreversible changes. This fundamental feature reflects the language. The vertex grammatical semantics of the linguistic sign, through which the system of language is implemented, is predicate, has in the structure a single ontological content component – temporality (Barchuk, 2011). It is established, that the flow of time is divided by man into separate, indirectly perceived segments associated with the concepts of beginning and end, duration and short duration, speed and slowness, etc. (Barchuk, 2011, p. 68).

In our study, temporality was used in the context of identifying, evaluating and generalizing the individual experiences of its carriers in designing a new system of sport for higher achievements in Ukraine. Here the designer's action unfolds in the temporal space, and the duration of the action is the moment of its beginning (A), duration (B) and completion (C). The moment of the beginning, duration, and termination of action expresses the interval of time (Barchuk 2011, p. 68). At the same time, the philosophical category of time expresses the time sequence of events that occur in the objective reality or are thought to be such as may occur (Barchuk 2011, p. 72).

To philosophical texts, in our opinion, temporality is relevant precisely because the temporality category is universal, generally grammatical, inter-level. And its denotate – ontological time – appears to be the basic, fundamental, ontological component in the construction and functioning of grammatical and general-language systems. Consequently, temporality is a general grammatical inter-level category, which is based on the semantics of efficiency, expressed in the verb, and reflects the internal, external and correlative aspects of the duration of action, grammatically interpreting the ontological time from the past to the future (Barchuk 2011, p. 76).

H.-G. Gadamer asks how are knowledge and action related? And he gives the following answer: "(It is necessary) to learn to think the activity-historical consciousness so that, when realizing the work of action, immediacy and high dignity of the created are not reduced again all to the same reflexive reality – to think, therefore, such a reality in which the omnipotence of reflection has their limits. It was at this point that criticism focused on Hegel, and here the principle of reflexive philosophy really proved its superiority over all its critics. "And further: "The real disadvantage of the previous theory of experience ... lies in the fact that it is entirely oriented to science and therefore releases from (field) attention the internal historicity of experience" (Gadamer, 2018, p. 207, 209). We agree with this thesis and consider it is necessary in the subject of experience to see a particular person.

Experience is the experience of human finiteness (the limits of what a person can). Experienced in the proper sense of the word, one who remembers this finitude, one who knows that time and future are not subject to him. An experienced person knows the limits of all foresight and the unreliability of all our plans. Experience achieves in it its higher truth, the highest value. If each phase of the whole process of obtaining experience was characterized by the fact that the person who acquires experience also found a new openness for a new experience, then this primarily

refers to the idea of a perfect experience. Experience does not pass into the higher form of knowledge (according to Hegel), but right here the experience is for the first time in its entirety and is in fact present (Gadamer, 2018, p. 215).

Turning to the analysis of research carried out in recent years, we pay attention to a rather narrow circle of publications devoted to the problem of studying and applying experience in the tasks of its use in the design of social systems (Ravikumar 2017; Rutherford, 2017).

We take into account that the critical philosophy and the theory of education must be based on the critical theory of society, which conceptually analyzes the peculiarities of the real capitalist societies and their relations of domination and subjection (oppression), contradictions and perspectives for progressive social changes and transformative practices that they themselves create projects of a more complete, free life in a democratic society. The criticality of the theory means the way of seeing and understanding, building the categories that make the connection, reflection and participation in the theory of theory, the emergence of the theory of social practice. Critical theory is interdisciplinary, with the participation of analytical criticism from various academic sciences and trans disciplinary constructions of various branches of knowledge for the production of an objective multi-perspective view of the future society. Critical theory is the boundary of intersection, interaction and mediation, combining various aspects of social life in an integrated project of normative-historical thinking. Its meta-theories thus themselves contain models of a more holistic formation that unites different themes that are a dialectical integrity, but does not divide the material into narrowly disciplined knowledge (Syn'jaev, 2017, p. 50). It is this kind of synthetic strategy for reforming the sport of higher achievements.

Account of experience, the account of "individual characteristics of consumers of collective concepts" and "social contexts of the use of concepts" is absolutely necessary, for example, in the decision-making process (Zynchenko, 2015; Nilgun Vurgun, 2016). It becomes especially apparent if we compare this process with its result – a decision taken on reform, in which the ambiguity and uncertainty should disappear. The decision of its essence is some result of the reasoning, and therefore it is always concluded. It should be clear,precise so as to exclude discrepancies. However, the decision-making process itself allows ambiguity, ambiguity, multiplicity of ways of realization.

Formulation of the main material. Being used in the design of critical thinking is oriented to the analysis of "natural" considerations, not trying to fit them into the structure of formal logic. Procedures of reasoning, as already noted, are analyzed in the "anthropological" context, taking into account the peculiarities of the contemplative and acting subject, which is characterized by a certain will, target settings, educational and professional level, etc.

Convincing technologies are tools for motivating change in behavior using the logic of applying strategies. Socially oriented convincing technologies are based on three common components: competition, social comparison and cooperation. Research has shown that public opinion-based persuasive interventions lead to negative outcomes of demographic behavior, but lack knowledge of how interventions can motivate or motivate behavior.

Turning directly to the specifics of sport, we note that the practice of effective management of a regional educational institution sports profile is possible when integrating the special-professional and regulatory framework of the management of the institution with the system approach and the relevant organizational and pedagogical conditions. One of the important conditions, in his opinion, is the readiness of the head for effective work aimed at: creating a flexible and democratic management structure; maintenance of the logic, content and pace of innovative development of training practice in sport as a multi-profile and differentiated system; development of interpersonal, professional and sports interactions on the

basis of subject-subject relations. Ensuring effective management in an institution requires the formation of a team of professionals, able to prepare a sports reserve for national teams, to ensure the growth of sports and professional skills of athletes. Solving this problem requires the creation in the sports organization of its own program of action and its implementation (Sharunenko, 2010).

It is obvious that the development and implementation of the project of the desired system of training athletes of a higher level of skill, from the region to the general state level, requires a high level of competence of specialist designers. The pedagogical competence of specialists in the sphere of physical culture and sports is an integral part of his professional competence, which manifests itself in readiness and ability to perform pedagogical activities in the conditions of a single sports-educational process, which requires the availability of certain professional-personal qualities, knowledge, skills, and competences in pedagogical and sporting spheres.

The essence of the pedagogical competence of the specialist in the sphere of sport, which is required in the development of a strategy of reforms, is revealed through the following tasks facing him:

– constant replenishment of their psychological and pedagogical knowledge and their adaptation to physical culture and sports, knowledge of the construction of the sports and educational process as an object of design, knowledge and skills to apply in the sports and educational process of modern psychological and pedagogical technologies; research, systematic description and explanation of the problems arising in the field of sports, from the standpoint of science (epistemological function);

– planning and construction of the sports and educational process in accordance with modern requirements, selection and composition of educational material, planning of their actions and actions of pupils of all ages and level of athletic skill, designing of sports and educational process in the conditions of modernization of educational and sports-sports spheres (constructive function);

– inclusion of pupils in different types of sports activities, creation, if necessary, teams and organization of its joint activity, establishment of pedagogically appropriate relations with pupils, colleagues, the public (fans, sports clubs), as well as mass media (organizational and communicative function);

– application in the pedagogical activity of modern scientific approaches, critical thinking, skills of heuristic search and methods of scientific and pedagogical research, including analysis of own experience and experience of their colleagues (research function);

– comprehension of the fundamentals of its activity, during which the assessment and revaluation of abilities, errors and opportunities of pupils and oneself, the development of reflection in the course, and the construction of the «I–concept» in subjects of the sports process (reflexive function) are carried out.

The article (Zynchenko, 2015) provides an example of the identification and synthesis of individual experiences in the interests of improving medical practice, from which it is evident that the authors were satisfied in this case with a survey of only 10 people that we took into account as a conditional limit.

The purpose of the article is to analyze the philosophical and sociocultural context of using the experience of training athletes of the highest level of skill in the temporality of experience (transfer it to the future), in a new, desirable system of sports in developing Ukraine.

Formulation of the main material. In the first study aimed at updating and describing the experience of leading experts in sports, a survey was conducted by 18 Honored Coaches of Ukraine on various sports that work in the Pridneprovsk State Academy of Physical Culture and Sports and the Kharkiv State Academy of Physical Culture. The survey was conducted according to the author's questionnaire, which includes a number of open and closed questions.

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Answers to the closed questions of questionnaire no. 1, obtained by interviewing experts, are summarized in Table. 1.

Table 1

Responses of the Honored Coaches of Ukraine to the part of the closed ones questionnaire questions (n = 18)

no.	Questionnaire question	Agree	Difficult to answer	Disagree
1.	Do you agree with the statement that reform of sport in Ukraine is needed to create a truly effective sports training system?	18 (100 %)	-	-
2.	Do you agree with the statement that as the transition from the initial training to the stage of maximum realization of individual opportunities increases as personal responsibility, as well as the ability of the athlete to influence the competitive?	18 (100 %)	-	-
3.	Do you agree with the statement that sports activity, which manifests itself in personal responsibility, the ability to improvise, in making the right decisions during the competition, largely determines the final sporting result?	18 (100 %)	-	-
4.	Do you agree that one of the main results of an effective system of sports training should be the formation of a responsible and independent person of the athlete, which can be said that it has formed a sporting activity?	10 (55,6 %)	6 (33,3 %)	2 (11,1 %)

As can be seen from Table 1, the first three questions were answered 100 % “Agree”. In this way, the Honored Coaches of Ukraine, selected as experts, have expressed their agreement that the reform of sport in Ukraine should create an effective system of training athletes. In addition, they unanimously agreed that the sports activity formed, which manifests itself in the individual responsibility of the athlete, his ability to improvise and make the right decisions during the competition undeniably affects and largely determines the final sporting result in the competitions.

As for the last question, the answers to it were distributed as follows: Agrees – 55.6 %, Difficult to answer – 33.3 % and Disagree – 11.1 %. We will interpret the answers received in this way. For trainers who are accustomed to the fact that the result of the system of training athletes is an exclusively competitive result, which is judged by their professional activity, the very formulation of this question was unusual. Although only 55.6 % agreed, previous answers to questions 1-3 indicate that most of them understand the important role of an athlete directly in achieving a high sporting result.

Table 2

Responses of the Honored Coaches of Ukraine to the part of the closed ones questionnaire questions (n = 9)

№	Questionnaire question	Agree	Difficult to answer	Disagree
1.	Do you agree that besides the coach, the athlete himself is responsible for the competitive result?	9 (100 %)	-	-
2.	Do you agree that it is incorrect to consider an athlete in the preparation for higher achievements and at subsequent stages only as the object of management?	9 (100 %)	-	-
3.	Do you agree that from the stage of initial training to the stages of maximum realization of individual capabilities and the preservation of higher sportsmanship, the role of the athlete in achieving a high competitive outcome is constantly increasing?	9 (100 %)	-	-
4.	Do you agree that in many ways, for example, in sports games and martial arts, an athlete who has learned to make the right decisions in the light of the situation is decisive?	7 (77,8 %)	1 (11,1 %)	1 (11,1 %)
5.	Do you agree that the professional position and actions of the coach largely determine the peculiarities of becoming an athlete as a subject of sports activities?	8 (88,9 %)	-	1 (11,1 %)
6.	Do you agree that, having seen the desire to express an opinion on the preparation, perhaps already at the stage of specialized basic training and on the following, the trainer should support the athlete, thereby contributing to his becoming a subject of sports activities?	7 (77,8 %)	1 (11,1 %)	1 (11,1 %)
7.	Do you agree that one of the main effects of sports training should be the formation of a responsible and independent person, which can be said that it has formed a phenomenon of sports activities?	7 (77,8 %)	1 (11,1 %)	1 (11,1 %)
8.	Do you agree that coaches should be prepared to be able to contribute to the formation of an athlete as a sports subject and to successfully interact with him?	9 (100 %)	-	-

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In the next survey, a survey of 9 Honored Coaches of Ukraine, working in the Pridneprovsk State Academy of Physical Culture and Sports. It was conducted on the author's questionnaire with the help of questions, which, apart from the actual content, described the respondents according to the type of sport and work experience. The second part of the answers to the closed questions of questionnaire number 2, which were obtained through a survey of experts, summarized in the Table 2.

As can be seen, for the first three questions, and also for the eighth question, 100 % of the answers were «Agreed». In this way, the Honored Coaches of Ukraine, selected as experts, expressed their agreement that the system of training should create conditions for the formation of the subject of sports activities. And coaches should be trained to be able to contribute to the formation of an athlete, as a sports subject, and to successfully interact with him. That is, do not control «force», but understand and take into account that as the athlete's skill grows, he must play an increasingly important role in the competitions, in achieving a high sporting result.

Even those questions of the questionnaire, namely no. 4-7, which did not cause unanimity in the responses, confirmed the legality of their statement to the experts and the obvious importance for improving the training system of athletes. After all, and obviously, support by expert agreement in the range of from 77.8 % to 88.9 % clearly indicates the importance of these posed issues.

The questions of the questionnaire were extremely important: «Given the role of the trainer and the athlete as the subjects of sports activities, estimate the contribution of the coach and the athlete to the received sports result at the various stages of preparation». Given its weight, we put the content of the responses in a separate table (respondents' answers are given in Table 3).

In the general philosophical part, for the first time in the design of the system of sports, analyzed and generalized work on the essence of the phenomenon of experience and the difficulties of its transfer (from the bearers of experience to practice, which objectively needs to be reformed).

Table 3

Assessment by the Honored Coaches of Ukraine of the contribution of the trainer and an athlete in a sports result at different stages of training (n = 9)

Stage of preparation	The subject	%	The subject	%
Specialized basic	coach	75.6	sportsman	24.4
Preparations for higher achievements	coach	63.9	sportsman	36.1
Maximum realization of individual possibilities	coach	53.3	sportsman	46.7
Preservation of the highest sporting skills	coach	47.8	sportsman	52.2

In the experimental part the data is shown in Table 3, as well as those included in Tables 1 and 2, have an indisputable scientific novelty. For the first time, with a high objectivity, the role (in %) of each of the participants in the process of sports training in achieving a competitive outcome at different stages of training is established. It is shown that at the stage of specialized basic training the role of the trainer is estimated at an average arithmetic of 75.6 %, and the role of the athlete is 24.4 %. At the stage of preparation for the highest achievements, the role of the coach is estimated at 63.9 %, and the role of the athlete has increased significantly and estimated – 36.1 %. At the stage of maximum realization of individual opportunities, the role of the coach is estimated at 53.3 %, and the role of the athlete has increased even to 46.7 %. Finally, at the stage of maintaining the highest sporting skill, it is estimated as follows: the coach is 47.8 %, and the athlete

is more than the coach, namely 52.2 %.

Conclusions. 1. The reform of the sphere of sport of higher achievements is impossible without the development of a concept, strategy and calendar plan of reform. Meanwhile, as experience of reforms in Ukraine shows, first of all, it is necessary to deeply study and use the professional opinion of leading trainers. Secondly, it is important for the authors of the reform to realize the objective difficulties with their implementation, which follows from the peculiarities of the perception of the management of the difficulties associated with them.

2. The development and implementation of the project of a new system of preparation of athletes of a higher level of skill, from the level of the region to the general state level, requires high competence of designers. The pedagogical competence of specialists in the sphere of physical culture and sports is a component of their professional competence, which manifests itself in readiness and ability to carry out pedagogical activities in the conditions of a complex sports-educational process, which requires certain professional-personal qualities, as well as, in addition to knowledge, skills, skills , as well as competence in pedagogical and sporting spheres.

3. The responses of experts involved in closed questions, the generalized results of which are presented in Table 1-3.

Became very important in the study. The achievement of the study should be considered the first quantitative objectification of the phenomenon, which expresses the existing tendency to increase the role of the athlete as a subject, as his skill grows, in achieving the obtained competitive result. If at the stage of specialized basic training the contribution of the trainer and athlete in the obtained result is estimated at 75.6 % and 24.4 %, then at the stage of maintaining the highest sporting skill already 47.8 % and 52.2 %. That is, the athlete's role in the competitive result is even higher by 4.4 % than the coach.

4. Regarding the important social aspect of designing, it should be noted that the research carried out proved that it is incorrect to consider an athlete as an object of influence in the process of sports training. As the athlete moves to the next stage, his responsibility and influence, as an active subject, for gaining the competitive result is constantly increasing. This should be taken into account, firstly, in the professional training of sports coaches. And, secondly, used by trainers in the course of further improvement of the system of training of athletes.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ТЕХНОЛОГІЇ ВДОСКОНАЛЕННЯ СИСТЕМИ ПІДГОТОВКИ СПОРТСМЕНІВ

Анотація. Ігнорування предмета дослідження досвіду в підготовці спортсменів збіднює можливості соціального проектування. Вимога сьогодення полягає у філософському осмисленні складного вивчення і застосування досвіду, його використання в соціальному проектуванні спортивної підготовки. Звертаючись до аналізу досліджень, проведених за останні роки, автори стверджують, що існує досить вузьке коло публікацій щодо вивчення та застосування досвіду при проектуванні соціальних систем.

Автори зауважують, що необхідно визначити роль вивчення та використання досвіду провідних спеціалістів, доводячи, що індивідуальний досвід спеціалістів є важливим елементом у розробці сучасної стратегії реформування та створенні системи підготовки спортсменів.

Метою статті був проаналіз філософсько-соціокультурного контексту використання досвіду підготовки спортсменів найвищого рівня майстерності та розробка рекомендацій щодо можливості створення нової, бажаної системи спорту в Україні, яка б забезпечувала високі результати підготовки спортсменів на міжнародному рівні.

В цьому дослідженні темпоральність використовувалася авторами в контексті виявлення, оцінки та узагальнення індивідуального досвіду її носіїв при проектуванні нової системи різних видів спорту України для отримання високих спортивних показників. Дія досліджуваної конструкції розгортається в часовому просторі.

Дослідження показали, що сутність психолого-педагогічної компетентності спеціаліста у галузі спорту розкривається через постійне поповнення своїх знань та адаптацію до фізичної культури та спорту; знання побудови фізкультурно-педагогічного процесу як об'єкта проектування; систематичний опис і пояснення проблем, що виникають у сфері спорту, з точки зору науки (гносеологічна функція); уміння застосовувати сучасні психолого-педагогічні технології у фізкультурно-педагогічному процесі.

Під час переходу спортсмена від одного етапу до іншого у спортивній кар'єрі постійно зростає його відповідальність і вплив як активного суб'єкта на досягнення змагального результату. Це необхідно враховувати, по-перше, під час підготовки спортивних тренерів. А, по-друге, використовувати досвід тренерів під час подальшого вдосконалення системи підготовки спортсменів.

Ключові слова: *темпоральність, досвід тренерів, розробка стратегії розвитку спорту, проектування системи підготовки спортсменів, досягнення майстерності у спорті.*

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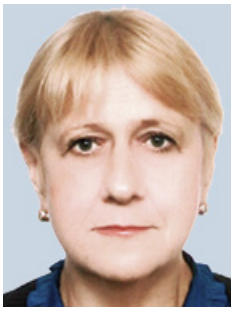

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MANAGEMENT OF THE SYSTEM OF OPTIMIZATION OF PARAMETERS OF BUSINESS PROJECTS

Abstract. In this work, an adaptive approach is used to optimize the functioning of projects, while a computer decision support system is being successfully implemented. The decision support system is based on the integration of information management systems and database management systems and includes data warehouses and tools for their processing.

The conducted studies have shown the possibility of improving the project parameters when using a decision support system that is adaptive to the incoming flow of requests, which dynamically changes the number of functioning structural elements, being within a given limit of the intensity of the information flow, using the available resources as efficiently as possible.

Keywords: *project, system, optimization, control, analysis, management*

Introduction. Constant changes in the situation on the world markets force many commercial enterprises and financial companies to optimize their business projects. The practice of optimizing such projects shows that for its implementation it is necessary to obtain detailed information for analyzing the parameters to determine their priority in the optimization process.

Optimizing a project is the process of improving its various characteristics and

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processes through transformation. The main characteristics that are improved in the process of project optimization are time, volume, degree of parallelism, or asynchrony of processes. These characteristics depend on the initial data, therefore, there is a distinction between absolute optimization, in which the values of the characteristics are improved for any initial data, and optimization of the priority of parameters.

Analysis of recent research and publications. There are many suggestions for prioritizing data processing optimization parameters. In (A. Shishkin, & Ye. Chernetsova, 2013), and information aggregation algorithm is proposed, based on combining data from various sources, which contain useful for analysis purposes information. To unify information (E. Akimkina et al., 2016), universes, which are a set of objects grouped into classes and reflecting the subject area of are used. In the works (P. Bocharov, & A. Pechinkin, 1995; F. Chan et al., 2016), storage modes and methods for collecting and merging different types of data are proposed, which make it possible to reduce the time for data processing and the amount of disk space for storing information. The works (V. Tomashevskiy, & Ye. Zhdanova, 2003, V. Sovetov, 2010) are devoted to the determination of the composition and structure of parameters in the corresponding base of models. However, for real-life optimization systems, the approach proposed in these works is not acceptable, since it does not consider the failure of individual optimization elements, their cyclical change depending on the current load on the system as a whole.

The purpose of the article is to study the management of the system of optimization of parameters of business projects.

Formulation of the main material. Currently, business project management involves the implementation of a number of stages:

– formation of target states of the project;
– process automation using IT solutions;
– control and analysis of the project (controlling);
– improvement of management processes.

Currently, the following main stages can be distinguished in the organization of controlling:

– definition of performance indicators and “control points”;
– monitoring of process indicators;
– analysis of project monitoring results;
– comparison of actual and planned indicators of the project and finding the reasons for deviations.

In this situation, it is advisable to use an adaptive approach for changing conditions of the external and internal environment in order to optimize the functioning, which can be successfully implemented using a computer decision support system (DSS).

DSS acts as a computing unit and a control object. The decision maker (DM) acts as a control link: he sets the input data, rules and algorithms, collects data from heterogeneous sources using queries and evaluates the solutions proposed by the computer system based on the described rules and algorithms, and, in the event of a risk decision making, forms additional requests and scenarios.

SSPR are developed on the basis of integration of information management systems and database management systems (Frenk, 2003) and include data warehouses and tools for their processing. This leads to the need to use specialized tools for analyzing processes, such as information systems of the Process Intelligence class, which is a Business Intelligence (BI) platform with advanced analysis tools.

The main advantages of the Process Intelligence toolkit are as follows:

– project monitoring based on metrics;
– automatic warning system in case of deviations from the planned values;
– the ability to make changes to business processes;

– automatic visualization of the stages of the project;
– benchmarking based on process indicators;
– identifying potential for optimizing business processes;
– control of measures to improve business processes.

A conceptual diagram has been developed to simulate the optimization processes of the project parameters (Fig. 1).

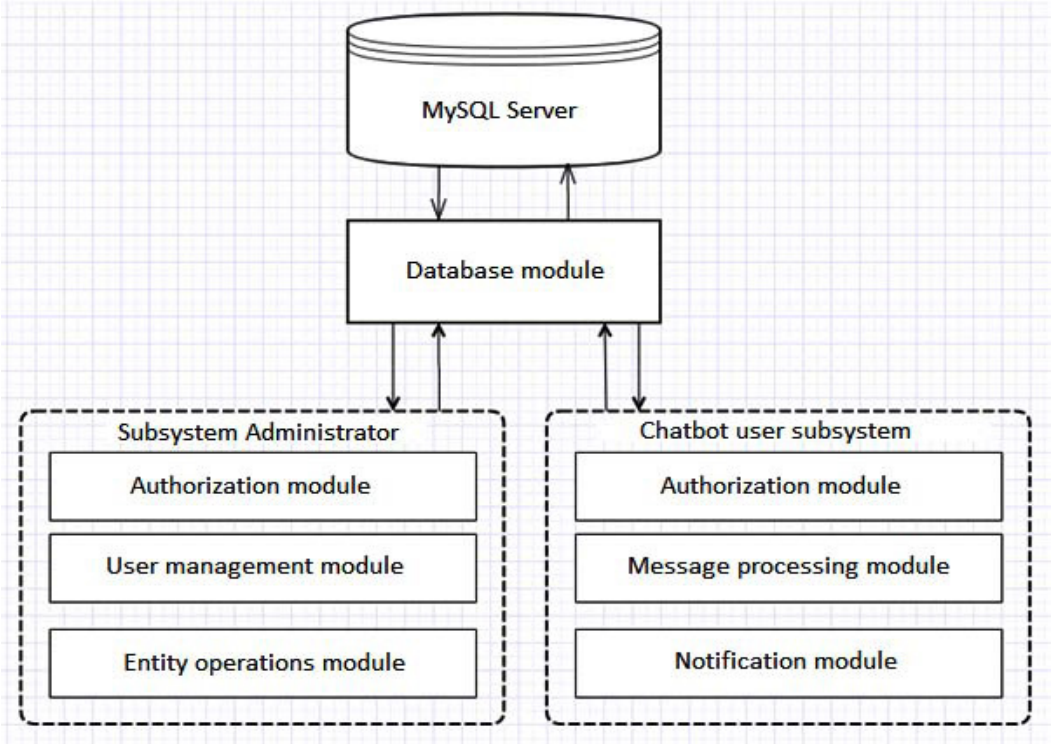

Figure 1 – Conceptual diagram of the project parameters optimization system

The diagram consists of the following parts:
– MySql Server – a server responsible for storing data necessary for the system to work;
– a module for working with a database, which is responsible for creating, reading, deleting and updating information in the database;
– Administrator of subsystem, which is used to manage users and operations with basic entities;
– a subsystem of the chatbot user responsible for the interaction of the chatbot users with the system.

Figure 1 shows that the administrator subsystem and the chatbot user subsystem interact with the same module for working with the database, which is the result of correct abstraction and providing the system with a generalized interaction interface.

At the same time, it is impossible to abstract the authorization modules, since the authorization and authentication methods in the administrator subsystem and the chatbot user subsystem are carried out on different servers: the administrator is authorized on the server side by validating the Json Web Token, and the chatbot user is authorized on the servers Telegram.

JSON Web Token (JWT) – it is an open standard (RFC 7519) for creating access tokens based on the JSON format. Typically used to pass authorization data in client-server applications. Tokens are created by the server, signed with a secret key, and transferred to the client, who later uses this token to confirm his identity.

The user management module, which is part of the administrator subsystem, is responsible for creating, confirming, editing, and deleting system users. Thus, the system administrator can create a new administrator or head of the structural department, confirm the user registration in the chatbot, change the data of the chatbot user, or delete the user. The entity operations module includes the ability to create, read, update or delete the main entities of the system. In turn, the chatbot user subsystem includes modules for processing messages and notifying users. The message processing module includes receiving a text message from the user, processing it, performing any actions in the system, and sending a response message to the user. The user notification module includes sending messages to users when events occur in the system that the user should be notified of. If any of the above events occur in the system, the user will receive a message from the chatbot with all the necessary information.

The general architecture of the project parameters optimization system is shown in Fig. 2.

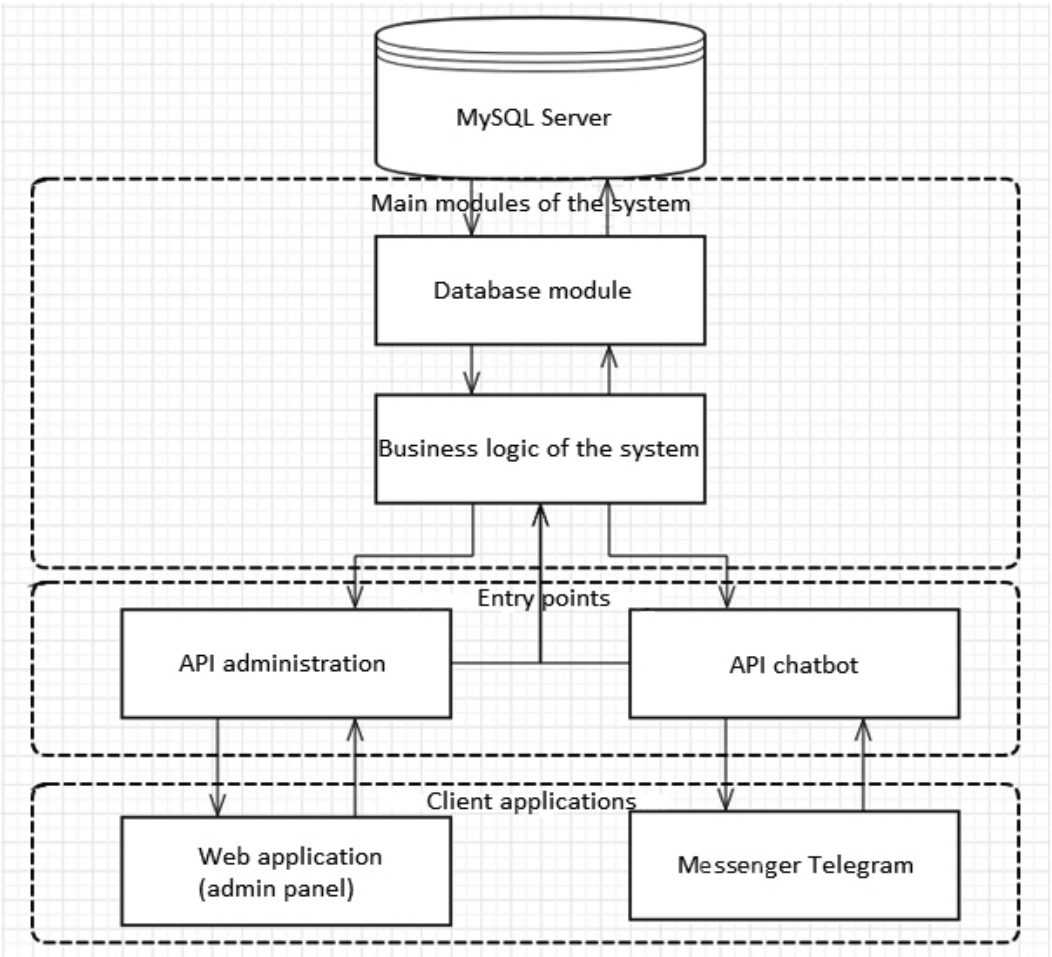

Figure 2 – General architecture of the project parameters optimization system

The server side of the system is a RESTful web service. REST (abbr. Representational State Transfer) is an architectural style of interaction between components of a distributed application in a network. REST is a consistent set of constraints to consider when designing a distributed hypermedia system. This, in certain cases, leads to an increase in system performance and a simplification of its architecture.

On the Internet, a remote procedure call can be a regular HTTP request (usually “GET” or “POST”; such a request is called a “REST request”), and the

required data is passed as request parameters.

For web services built with REST in mind (that is, without violating the constraints imposed by it), the term "RESTful" is used.

Unlike SOAP-based web services (web services), there is no "official" standard for RESTful web APIs. This is because REST is an architectural style while SOAP is a protocol. Although REST is not a standard, most RESTful implementations use standards such as HTTP, URL, JSON, and XML.

Interaction with the server occurs by sending HTTP requests to specific URLs. Depending on the HTTP type, method, request path, and request body, the server performs certain actions and returns the result to the client.

It is advisable to adhere to the SOLID principles when designing the application architecture.

SOLID principles (short for single responsibility, open-closed, Liskov substitution, interface segregation, and dependency inversion) in programming are designed to increase the likelihood that a programmer will create a system that is easy to maintain and expand over time. The SOLID principles are guidelines that can be applied while working on software, instructing the programmer to refactor the source code until it is legible and extensible. This is part a of an overall agile and adaptive development strategy.

Here are the names and a brief description of these principles.

1. The principle of sole responsibility. There is only one reason for the class change.

2. The principle of openness (closedness). Software entities must be open for extension but closed for modification.

3. The substitution principle of Barbara Liskov. Objects in a program must be replaceable with instances of their subtypes without changing the correct execution of the program.

4. The principle of interface separation. Many customer-specific interfaces are better than one general-purpose interface.

5. The principle of inversion of dependencies. There is a dependency on abstractions, there is no dependence on specifics.

During the design of the architecture, it was decided to divide the project into 3 subprojects: API, Application Core, Infrastructure. Let's consider each of them in more detail.

The Application Core project is central to clean architecture design and should be referenced by all other projects. As a result, this project has a minimum number of external dependencies. This project should include:

– domain objects;
– interfaces;
– services;
– domain errors;
– specifications;
– DTO objects.

An interface is a programmatic structure that defines a relationship between objects that share a certain behavioral set and are not related in any other way. When designing classes, designing an interface is identical to designing a specification — a set of methods that every class that uses an interface must implement.

Interfaces, along with abstract classes and protocols, establish mutual obligations between elements of a software system, which is the foundation of the concept of programming by contract (DbC). An interface defines the boundary of interaction between classes or components by specifying a certain abstraction that the implementing side implements.

An OOP interface is a strictly formalized element of an object-oriented language and is widely used in the source code of programs.

Service is a class that inherits a specific interface and contains the business logic of the application.

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A "specification" in programming is a design pattern by which the representation of business logic rules can be transformed into a chain of objects linked by Boolean logic operations. The business logic object inherits its functionality from the Composite Specification abstract aggregate class, which contains just one Is Satisfied By method that returns a boolean value. After instantiation, the object is chained with other objects. As a result, without losing flexibility in configuring business logic, we can easily add new rules.

Data Transfer Object (DTO) — a design pattern used to transfer data between subsystems of an application. A Data Transfer Object, unlike a business object or data access object, should not contain any behavior (pattern, design).

Most of the dependencies on external resources must be implemented in the classes defined in the Infrastructure project. These classes must implement the interfaces declared in the Application Core project. In this application, the Infrastructure project is responsible for working with the database. It implements the EfRepository class that implements the IRepositry <T> and IAsyncRepository <T> interfaces declared in the Application Core project.

One of the most commonly used patterns when working with data is the Repository pattern, which allows you to abstract from the specific connections to the data sources with which the program works, and is an intermediate link between the classes that directly interact with the data and the rest of the program.

With the standard approach, even in a small application that selects, adds, changes, and deletes data, leads to a large number of changes, and the Repository adds flexibility to the program when working with different types of connections.

The API project is the entry point to the application. This project must contain:

– controllers;
– filters;
– middleware;
– viewmodels.

The controller provides "connections" between the user and the system. Controls and directs data from the user to the system and vice versa. Uses model and view to implementing the required action.

Filter – allows you to execute a certain piece of code before or after certain stages of request processing. Middleware is software that pipelines an ASP.NET application to handle requests and responses.

ViewModel – is, on the one hand, an abstraction of the View, and on the other hand, it provides a wrapper for the data from the Model, which are subject to the binding. That is, it contains a Model that has been converted to a View, and also contains commands that the View can use to influence the Model.

Thus, following the principles of SOLID and dividing the project into 3 subprojects, we got an easily maintainable and easily extensible application that meets modern architectural software standards.

This software application is implemented using ASP.NET Core technology using the C # programming language. ASP.NET Core is a cross-platform, high-performance, open-source framework for building modern, Internet-connected cloud applications.

ASP.NET Core ships completely as NuGet packages. Using NuGet packages allows you to optimize your applications to include only the required dependencies (pattern, design).

Based on the fact that this application is a Web-API, the Postman application was chosen as the testing tool. The program has a built-in query editor, with the ability to encode, load from a file, and send binary data. The history of past requests is saved by category (collection). You can write Markdown comments for each request. Postman supports several types of authentication when sending requests: Basic Auth, Digest Auth, and OAuth 1. Microsoft Visual Studio Community 2017 was used as a development environment.

Microsoft Visual Studio – allows you to develop both console and GUI applications, including those supporting Windows Forms technology, as well as

websites, web applications, web services in both native and managed code for everyone platforms supported by Windows, Windows Mobile, Windows CE, .NET Framework, Xbox, Windows Phone.NET Compact Framework, and Silverlight.

Visual Studio includes a source editor with IntelliSense support and easy code refactoring. The built-in debugger can function as either a source-level or machine-level debugger. The rest of the plug-in tools include a form editor to simplify the creation of an application's GUI, a web editor, a class designer, and a database schema designer. Visual Studio allows you to create and connect third-party add-ons (plugins) to extend functionality at almost every level, including adding support for source code version control systems (such as Subversion and Visual SourceSafe), adding new toolkits (for example, for editing and visual design code in domain-specific programming languages) or tools for other aspects of the software development process (for example, the Team Explorer client for working with Team Foundation Server).

To access the documentation generated by the tool presented above, you need to follow the path/swagger:

– The URL to which you want to send the HTTP request;
– Required HTTP method;
– JSON object to be passed to the server;
– HTTP status codes that the server can return.

Thus, using the documentation generated using the Swagger tool and collections of requests from the Postman application, the developers of client applications have access to modern and reliable information about the capabilities of the Web-API with which they interact, which greatly increases the speed of development.

It was decided to use MySql as a DBMS.

MySQL is a free relational database management system. MySQL is a solution for small and medium-sized applications, included in WAMP, AppServ, LAMP servers, and in portable server assemblies Denver, XAMPP, VertrigoServ. Usually, MySQL is used as a server that local or remote clients access, however, the distribution includes an internal server library that allows MySQL to be included in standalone programs.

The flexibility of MySQL is provided by the support of a large number of table types: users can choose from both MyISAM tables, which support full-text search, and InnoDB tables, which support transactions at the level of individual records. Moreover, MySQL comes with a special EXAMPLE table type that demonstrates how to create new table types.

Thanks to its open architecture and GPL licensing, new types of tables are constantly appearing in MySQL. This application uses Entity Framework Core and the Code First approach to work with the database.

Entity Framework Core (EF Core) is an object-oriented, lightweight, and extensible technology from Microsoft for data access. EF Core is an ORM tool (object-relational mapping – mapping data to real objects) and allows you to work with databases, while presenting a higher level of abstraction, namely, it allows you to abstract from the database itself and its tables and works with data independently on the type of storage. If at the physical level we operate with tables, indexes, primary and foreign keys, but at the conceptual level that Entity Framework offers us, we are already working with objects.

With the Code-First approach, the model is first defined in code, then a so-called migration is created from it, which is applied to the database. Migration is a file containing commands that must be applied to an existing database for it to match the current domain model of the application. Thus, every time the domain model changes, a new migration must be created and applied.

By leveraging Entity Framework Core and a Code First approach, you can fully automate your database design process and start coding your domain model classes immediately.

Conclusions. The conducted studies have shown the possibility of improving the project parameters when using an adaptive DSS concerning the incoming flow

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of requests, which dynamically changes the number of functioning structural elements, being within a given limit, depending on the intensity of the information flow. Adaptive DSS is the most balanced version of the system, in which additional parameters are turned on only when the load on the system increases, and are turned off when the load on the system decreases, that is, it works in the optimal mode, using the available resources as efficiently as possible.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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УПРАВЛІННЯ СИСТЕМОЮ ОПТИМІЗАЦІЇ ПАРАМЕТРІВ БІЗНЕС-ПРОЄКТІВ

Анотація. У даній роботі використовується адаптивний підхід з метою оптимізації функціонування проектів, при цьому успішно реалізується комп'ютерна система підтримки прийняття рішень. Адаптивна система підтримки прийняття рішень являє собою найбільш оптимальний варіант системи, в якому додаткові параметри включаються тільки тоді, коли навантаження на систему зростає, і вимикаються, коли навантаження на систему знижується, тобто працює в оптимальному режимі, максимально ефективно використовуючи наявні у неї ресурси.

Для здійснення оптимізації параметрів проекту необхідно отримання детальної інформації для аналізу з метою визначення першочерговості параметрів в процесі їх оптимізації. Системи підтримки прийняття рішень розробляються на основі інтеграції інформаційно-керуючих систем і систем управління базами даних і включають сховища даних і інструментальні засоби для їх обробки. Це призводить до необхідності застосовувати спеціалізовані інструменти аналізу процесів, як, наприклад, інформаційні системи класу Process Intelligence, що представляють собою платформу Business Intelligence (BI) з розширеними засобами аналізу.

У роботі обґрунтовано доцільність побудови концептуальної схеми системи оптимізації параметрів проекту, а також описані основні її модулі. При проектуванні архітектури системи оптимізації параметрів проекту було вирішено розділити проект на 3 підпроекти: API, ApplicationCore, Infrastructure, що дозволило отримати легко підтримуваний і легко розширюваний додаток, який відповідає сучасним архітектурним стандартам програмного забезпечення.

Проведені дослідження показали можливість поліпшення параметрів проекту при використанні адаптивної по відношенню до вхідного потоку запитів системи підтримки прийняття рішень, яка динамічно змінює кількість функціонуючих структурних елементів, перебуваючи в межах заданого ліміту інтенсивності потоку інформації.

Ключові слова: *проект, система, оптимізація, контроль, аналіз, управління*

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LEAN PRODUCTION OF "TOYOTA" AS AN INTEGRATED SYSTEM OF OPERATIONAL PERFECTION

Abstract. The relevance of the study of the lean production is of great importance, as its implementation demonstrates new methods of management of all production and logistics processes aimed at achieving quality, successful use and a number of means of their application after World War II. The article analyzes the Toyota Production System, which formed the basis of dozens of books on "lean production". The purpose of the article is the theoretical and practical principles of Toyota lean production as an integrated management system and achieving operational excellence as a condition for success in its application in the automotive industry both in production and services. Objectives of the study: 1. To find out the definition of value and the flow of their creation as a set of actions aimed at forming frugal thinking. 2. To form the concept of lean production as a strategy of perfection. 3. To reveal the global significance of "Toyota's philosophy" as the most profitable industry among car manufacturers. 4. To investigate the Toyota Production System as a foundation for lean thinking and frugal production. This goal determined the application of general scientific methods – analysis, synthesis, comparison, induction and deduction, scientific abstraction, analogies and scientific generalizations, logical and historical analysis in the framework of systemic and cross-cultural approaches, forecasting and modeling, literature review of scientific sources. It has been proved that lean production is one of the brightest examples of the "Japanese miracle", the basic principles of which include: determining the value of a good or service for the consumer; determining the flow of value creation; loss control; ensuring the continuity of the flow of value creation; "Extraction" of production; constant improvement. The authors, using the experience of working with leading companies in the United States, Germany and Japan, including Pratt & Whitney Porche Tesco, note

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that the principles of lean production have allowed them to: to increase productivity almost by two times; speed up the release time; halve production space; reduce inventories with virtually no financial loss. The practical significance of this topic is that economical production as a philosophy of "Toyota" guarantees the effect and success of many companies and manufacturers.

Keywords: *lean production, Toyota, operational perfection, productivity, achievement of success*

Introduction. The relevance of the study of lean production is of great importance in the modern world because its implementation demonstrates new methods of management of all production and logistics processes aimed at achieving quality, successful implementation and a number of means of their application after World War II.

Guided by the experience of working with leading companies in the US, Germany and Japan, including Pratt & Whitney, Porche, Tesco note that the principles of lean production have allowed them to increase productivity almost by two times, speed up production time, halve production space and reduce inventory with almost no financial losses, using effective methods of working with value and their components, to form the conditions for creating teams and using structural functions of quality in product design, what principles to use and make the company economical. The analysis shows that the theory and practice of lean production is able to cover all technological industries and their scope for directing the process of change, using Agile-management (J. Appelo, 2019, 432 p).

The book Thrifty Production was first published in 1996 before the 1997 recession and the 1998 financial thaw. The purpose of the book was to highlight ways out of the crisis, to create real long-term value in any business activity in order to reconsider their strategies and start a new path. Businesses, such as lean production, led by Toyota, have served as the most powerful tool for dealing with losses in any organization, challenging other firms, succeeding and gaining real value for their customers, opening up a whole new world of opportunities for to make a big leap from mass production to lean, using strategic innovations (O. Buhaichuk, 2019).

Analysis of recent research and publications. Lean manufacturing as an effective management concept, the essence of which is to optimize business processes by maximizing the interests and needs of the customer (market) and taking into account the motivation of each employee. The introduction of the Lean-production methodology ideally solves a number of major problems that most companies face every day and every hour to achieve high quality at minimal cost, reduce production time, avoid overproduction, regulate supply issues (V. Voronkova, 2019).

The author of the concept of lean production is considered to be Tahiti Ono, who developed a unique production system for Toyota Corporation – Toyota Production System (TPS), which in the West is called Lean production. Henry Ford once tried to convey the principles of lean-production to the business community, but his ideas were not accepted at the time. By introducing the methodology of lean-production first in the world, the Japanese once again demonstrated their talent not so much to generate new ideas, but to develop existing ones.

Tahiti Ono (1912-1990) – CEO of Toyota, was a supporter of the fight against losses, which was unknown to human history. He identified seven types of muda, which were present literally everywhere, proving the daily observations of the activities of any typical organization, as there are a lot of losses around. Lean thinking is a powerful antidote of muda, it helps to determine the value, in the best sequence looking for the actions that create it, for the most effective performance of work. Lean thinking also makes it possible to enjoy work, creating immediate feedback from efforts to turning the mood into values, – say James P. Womak, Daniel T. Jones, Daniel Rus. A machine that changed the world. History of lean-production – dark weapons of "Toyota" in automobile wars (P. James, 2017, p. 17).

In short, lean production is called "lean" as it allows you to create more and more, spending less and less human effort, less equipment, less time and space,

getting closer to giving customers exactly what they want. Toyota's Production System has formed the basis of dozens of books on "lean", including two bestsellers – "The machine that changed the world: the history of lean production" and "Lean thinking". Former Toyota employees are valued in almost every industry around the world, they are hired due to their knowledge and experience.

Highlighting previously unsolved parts of the general problem to which this article is devoted.

Summarizing the principles of lean production, it was necessary to develop a concept of sound leadership for managers who sought to overcome the daily chaos of mass production, using specific methods used for specific activities in technology offices, procurement departments, sales departments and factories by specialized product development teams, price planning, schedule and production structure. The Japanese have published many books describing specific techniques and conceptual work, trying to bring isolated developments into a single whole. The quintessence of lean production can be reduced to the following five principles:

1) accurate determination of the value of each product;

2) determining the flow of value creation of this product;

3) ensuring a continuous flow;

4) enabling the customer to extract the value of the product from the manufacturer;

5) the pursuit of perfection.

A clear understanding of these principles and their relationship helps managers to take advantage of lean production while maintaining a stable exchange rate. Lean production companies are developed not only in Japan, but also in America and Europe, where measures have also been taken to make mass production lean in the context of the entire value stream – from raw materials to finished products, from supply orders to the development of a start-up concept in search of perfection (V. Voronkova, & T. Teslenko, 2020).

The purpose of the article – the theoretical and practical principles of lean production of "Toyota" as a holistic management system and the achievement of operational excellence, as a condition for success in its application in the automotive industry in production and services.

Formulation of the main material. 1. To find out the definition of value and the flow of their creation as a set of actions aimed at forming frugal thinking. 2. To form the concept of lean production as a strategy of perfection. 3. To reveal the global significance of "Toyota's philosophy" as the most profitable industry among car manufacturers. 4. Investigate the Toyota Production System as the foundation of the movement for lean thinking and lean production, influencing the development of the digital economy (V. Voronkova et al., 2020).

To solve the research problems, we use the method of analysis and synthesis, which helped to break down lean production, as the object of study, into elementary components, determine the relationship between its components, and then reveal the correlation between them to show it as a whole. The synthesis was facilitated by correlation analysis, which helped to explore the constituent components in their interaction, to enrich the epistemological structure of lean production through lean thinking, based on values.

According to our hypothesis, we intend to decompose this chain of transformations of the phenomenon of lean production, which includes four stages, namely: 1) origin; 2) formation; 3) functioning; 4) introduction into the system of economic activity of the automobile industry (S. Winchester, 2019, 448 p).

Also important is the method of modeling, based on the creation of a model that identifies instrumental operations, techniques, stages of process development, establishing the reliability of components, modes, techniques, practices that allow to understand the discourse of the subject and object of study. The subject of the study is the philosophy of lean production of "Toyota" as a holistic management system.

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The object of study is the conditions for achieving operational perfection. Even before the company decides on the appearance of the new model, Toyota is trying to assess possible options and anticipate all potential problems with the manufacturer and design. A separate "training sketch" is created for each variant of the car, using the quality and design process, as a result of which "Toyota" has become a successful self-learning organization, and for a century went where it is (M. Goodman, 2019, 592 p).

1. Defining the value and flow of their creation as a set of actions aimed at forming a lean thinking and culture of production

In fact, the force field of lean production is a value that can only be determined by the end consumer. And this only makes sense when it comes to a specific product (good or service, or often all together), which at a certain cost and at a certain time meets the needs of the customer. Value is created by the manufacturer, but, according to the consumer, this is what the manufacturer exists for. Top managers pay a lot of attention to the organization, technology, key competencies, strategic intentions to improve ways to reduce staff, extract additional profits from consumers and their suppliers of raw materials. Most executives at companies such as Toyota have begun the costing process by asking how they can design and manufacture a product in Japan to meet societal expectations of long-term employment and maintaining relationships with suppliers in the context of management tasks (P. Drucker, 2000, 276 p).

Based on the above, it becomes clear that lean production should begin with the fact that it is necessary to determine consciously the value in terms of a particular product that has certain characteristics and a certain value. The best way to do this is a dialogue with certain consumers, a rethinking of all the company's activities related to the manufacture of the product through teamwork. The analysis showed that no manager will be able to implement all this at once, but it is very important to form a clear vision of how to do it. Otherwise, the understanding of value will inevitably be distorted. The specificity of these innovations is that the flow of value creation is a set of all the actions necessary for a particular product (product, service or all together) to go through three important stages of management, inherent in any business:

1) problem solving (from concept development and working design to the release of the finished manufacturer);

2) management of information flows (from receiving the order to drawing up the detailed schedule of the project and delivery of goods);

3) physical transformation (from raw materials to the moment the consumer receives the finished product).

Determining the entire value creation stream for each product is the next step in building lean manufacturing, which is seldom included in the process, but almost always shows how large the size of the "muda" ("mura", "mudi") is. All actions that make up the value creation stream can almost always be divided into three categories:

1) a large number of actions that create value;

2) actions that do not create value, but are inevitable given a number of circumstances;

3) actions that do not create value, which can be immediately excluded from the process (muda of the second kind).

Lean production must move forward, go beyond the firm, which serves as a standard budget unit worldwide, and look at the situation as a whole as a full set of actions that create a product – from concept through product design to the finished product. The organizational mechanism of this product is what we call a lean enterprise, the creation of which requires a new way of thinking about relationships between firms, transparency of all stages of value, and this requires a complete reorganization of ideas about the proper organization of work – say James P. Womack, Daniel T. Jones, Daniel Russ in their study "The Machine that changed the World. The history of lean-production – dark weapons of "Toyota" in car wars" (J. Womack, 2019, p. 243).

The movement towards the development of lean production is already noticeable today and in the future it will only intensify. All work on the design, ordering of components and delivery of the product must be performed in one continuous flow. An alternative to lean production is to rethink the role of functional services, departments, and the entire system so that everyone contributes to value creation so that employees have a personal interest in the flow of value. Therefore, it is necessary to rethink the role of the firm, functional services and professions, as well as the development of a cost-effective strategy.

Toyota's operating culture is a set of fundamentals invented, discovered or developed by a specific group to overcome the problems of external adaptation and internal integration, which have justified themselves and proved their relevance, so they can be used to train new members and are the right way to think, perceive and feelings about problem solving (K. Michio, 2017, 432 p).

Thus, the philosophy of "Toyota" in connection with the development of the concept of value penetrates to the depth of fundamental assumptions about the most effective ways to "think, perceive and feel" the problem. Toyota's philosophy was invented, discovered and developed as talented cedar engineers and Toyota engineers learned to overcome the problems of external adaptation and internal integration for decades. To address these challenges, the company conducts seminars on its philosophy, based on the transfer of the culture of the philosophy of "Toyota" to new employees through daily work, following the example of leaders who are formed by this culture.

2. Development of the concept of lean production as a strategy of perfection

The movement in this direction is so powerful that the question has arisen about the development of the concept of lean production as a strategy of perfection. The first obvious effect of changes in organizational work – from departments to product teams and flow – is manifested in a significant reduction in time between concept development and product release, between sales and delivery, between the receipt of raw materials and sales of finished goods to consumers. After the introduction of the flow method, the design time is reduced from a few years to a few months, the processing time of orders is reduced from days to hours, and the production itself requires several hours instead of weeks or months. If as a result of management efforts the time of product development is not halved, the processing time of the order is not reduced by 75 %, and the period of physical processing can not be reduced by 90 %, the company is clearly wrong (M. Kaiku, 2017, 432 p).

Lean production allows you to change freely the sequence of production of any product and thus respond to changes in demand. The organization must learn to define the value correctly, to see the whole flow of value creation, to add it continuously to the product at each stage of the flow, which will allow the consumer to understand the process of improving value, which is reduced to perfection. The most important incentive to improve lean production is transparency, which is called "open card management", which is based on financial transparency and material remuneration of employees as two key elements.

The lean thinking of the company's employees gives hope for perfection. Transforming classic mass production into economical allows you to double the productivity of the entire system, reduce production time and inventory by 90 %. The time of launching a new product on the market is halved, and for a small additional fee the consumer becomes available a significantly larger number of modifications of the product. This impressive effect is due to radical improvements in the flow of value creation (N. Vitalina et al., 2019).

Then the processes of continuous improvement come, which move the company to perfection more slowly. Such improvements can double productivity again in two or three years, halve inventory, level of errors, and production cycle time, and these improvements can go on indefinitely if leadership develops the right strategy. Therefore, lean production is a means of combating the prolonged economic stagnation that has engulfed Europe, Japan and North America. Traditionally,

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organizations and industries are trying to achieve economic growth through new technologies and intensive training. However, not everything is comforting. In recent years, there has been a revolution in the use of robots, new materials, microprocessors, personal computers and biotechnology (V. Melnik, 2019).

However, the volume of domestic product per capita (i.e. the share of value per capita on average) in all developed countries has not increased at all. The problem is not in the new technologies themselves, as they cover a very small part of the economy. Very few companies, like Microsoft, can grow into business giants in a short time. Most businesses in construction, housing, transportation, food, manufacturing and services are changing much more slowly, they may not change at all unless ways are found to create value and apply new technologies through teamwork. New technologies and human capital can drive growth in the long run. The development of the concept of lean production as a strategy of perfection ensures that this growth will be achieved in the next few years and may even make the introduction of some "new technologies" unnecessary.

Lean production is an available immediate solution that can produce the desired results, and therefore, managers must develop for themselves the concept of value defined by the consumer, find the right understanding of value, for which to dialogue with the consumer using personal mobility. The ability to attract new customers, increase sales quickly, constantly return to the question of values and see if you can further improve your understanding of value – all this is necessary for the continued success of lean production (O. Nesterenko, & R. Oleksenko, 2020).

Thus, during the analysis of approaches to the development of the concept of lean production as a strategy of perfection, approaches to which are based on rationalism and skill, we came to the realization that its implementation will result in a stable process of continuous improvement.

Thus, we have theoretically proved that we must further reproduce by cognitive means that the most important task of the introduction of lean production will be to determine the value, which is based on:

1) the establishment of target costs, which are based on a certain amount of resources and labor costs required for the production of a product with certain technical characteristics;

2) determination of target costs for development, acceptance of the order and production activity which can act as criterion for check of correctness of each administrative step in a value creation flow;

3) the global importance of the "Philosophy of Toyota" as the most profitable industry among car manufacturers.

The task of this section is to reproduce systematically the parametric characteristics of the global significance of the "philosophy of Toyota" as the most profitable industry among car manufacturers in the context of achieving operational perfection. The world turned its attention to Toyota in the late 1980th, when it became clear that Japanese quality and productivity had their own characteristics. Japanese cars have served their owners much longer than American ones, says K. Jeffrey Leikner in Toyota's Philosophy (2019, p. 21).

Understanding the success of Toyota and its quality improvement systems does not mean that you can immediately change your company, which has a different culture and operates in a different environment. However, Toyota can be a source of inspiration and an example of how important it is to have commitment and support at the leadership and value system that goes beyond instant profits. Toyota is an example of how the right combination of philosophy, processes, people and problem-solving skills can form a learning company. Toyota's strength is not in car design, but in ensuring that its processes are consistent and that the product is integrated, that it builds cars faster, more reliably and at an uncompetitive price, that it solves problems in an amazing way and competes with new competitors.

We would like to note, that at the same time, this step will show a positive

trend that "Toyota" is the most profitable industry among car manufacturers, the key characteristics of which include:

1. Toyota's annual profit, which exceeds the profits of General Motors, Chrysler and Ford, which is the highest annual profit of the car manufacturer in the last 10 years. The profitability ratio of net profit is 8.3 times higher than the industry average.

2. For decades, Toyota has been the number one carmaker in Japan. In North America, the company until recently was fourth after the "Big Three", which is increasing production capacity, while American manufacturers are closing plants, reducing volumes and relocating production abroad.

3. "Toyota" has created a "lean production" (known as "production system" system "Toyota" (TSA). Over the last 20 years in every industry transition could be observed on the philosophy and methods of "Toyota" supplies.

4. Toyota has the fastest product development process in the world, it only takes a few months to build a new model of car or truck, while its competitors spend 2-3 years on it.

5. Colleagues and competitors around the world consider Toyota the best company in its class in terms of quality, productivity, production speed and flexibility. Toyota cars have been at the top of professional ratings and consumer reports for many years.

The success of "Toyota" is based on its reputation with high quality products, because "Toyota" longer serve without repair, while American cars in a year or two in need of repair, and the "Toyota" consistently holds the first position in the ranking of quality and endurance.

The success of "Toyota" is the result of high business standards, perfect production as strategic weapons, methods of improving quality. These include the following terms: "when, it is necessary", Kaidan, the flow of single products, Jidoka, Heijunka, which helped to spread the revolution of "lean production". Toyota's continued success is due to the use of these tools and is a consequence of its business philosophy. Success grows out of companies' ability to nurture leaders, build teams and culture, develop strategies, build strong relationships with suppliers, and learn more.

"American Auto" Company had a lot to do to make its extravagant supplier development center bear fruit. The main problems were sewn deep into the system. Its people themselves lacked development, and the management style of the "whip and gingerbread" method did not involve an understanding of the business processes of suppliers. The company had to earn the right to be a leader so that its suppliers could go to it to learn. Finally, in the process of reducing costs, the company "killed" the project to create a supplier development center. Suppliers responded only positively to the demanding but honest partnership with Toyota. In 2003, Toyota took first place in 17 parameters – from trust to capabilities. It is followed by Honda and Nissan, and only then Chrysler, Ford and General Motors. The power of the supplier network goes far beyond information technology – it is the power of ingenuity and sincere relationships, – says Liker Jeffrey K. in the work "Philosophy of Toyota. 14 principles of a coordinated team" (2019, p. 279).

When Toyota started constructing cars, it did not have the resources and equipment to make thousands of car parts itself. The young engineer Aiji Toyoda at the beginning of his career at Toyota, was given the task of finding suppliers of quality spare parts to establish a partnership with them. At that time, the company's production volumes were very small, there were days when no car came off the assembly line, because Toyota lacked quality parts. Toyota was well aware of the need for reliable partners, but at that time Toyota could offer suppliers one thing – the opportunity to increase production together and work together for mutual benefit in the long run. Like Toyota employees, the suppliers began to join a large family that grew and studied the Toyota Production System. Suppliers have also proven their sincerity and willingness to adhere to high standards of quality, cost

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and delivery. For Toyota, respect meant high expectations from suppliers, honest opportunities and training (O. Punchenko et al., 2021).

Problematic is the question of the formation of the Toyota Production System as the foundation of the movement for lean thinking and lean production, in the context of which is its theoretical understanding, which includes many components or components. It includes the company's unique approach to production, which became the basis for the lean production movement, which emerged as the most popular trend of the late twentieth century (along with the "six sigma" theory). The lean movement has become widespread, but most attempts to apply its principles in practice have long been sporadic. The reason is that almost all companies pay too much attention to tools, such as 5S, but do not have an understanding of cost-effectiveness as a holistic system that must become an organization's culture.

In most companies that try to implement the lean philosophy, top managers are rarely interested in day-to-day operations and continuous improvement – an integral part of this philosophy. Lean production is the end result of applying the Toyota Production System to all parts of the production process.

James P. Wumek, Daniel T. Jones, Daniel Russ defined lean production as a process of five stages (2017, 388 p.):

1) determining the value for consumption;
2) determining the value creation flow;
3) construction of a continuous flow;
4) value creation (flow of single products);
5) creating a system of "extraction" of the product by the consumer and the pursuit of perfection.

To become a lean producer, you need to focus on the flow of value creation. This flow should be continuous and work on a system of "extraction", which focuses on consumer demand and in short intervals provides the production of only what is needed for the next operating cycle. Behind all this is a culture, each member of which seeks to grow constantly. Focusing on the "flow" guarantees the global success of "Toyota" in the XXI century.

This means that in each of its horizons the main tools of economy, including SMED, which takes a specific form as an object of knowledge, and includes rapid equipment setup, standardization of work, system "extraction" and protection against errors that create flow and maintain culture continuous improvement of its employees.

Philosophical analysis of the subject of this study allows us to clarify the nature, essence, content of lean production, specified by 14 principles (terms) of "Toyota", including:

Problem solving: continuous improvement and learning.

1. Always use comprehensive training – Kaizen.
2. Check with your own eyes to understand in detail – Genbutsu.
3. Make decisions by consensus.
4. Educate leaders is the company's philosophy.
5. Respect, develop and challenge people and companies.
6. Respect, challenge and help your suppliers.

Employees and partners: respect, challenges and growth.

7. Create a process in the form of a continuous flow.
8. Use a traction system to avoid overproduction.
9. Solve workloads – Heijunka.
10. Create a culture of stopping production in case of a quality problem – Jidoka. Process: elimination of losses (muda).
11. Standardize tasks for continuous improvement.
12. Use visual inspection to identify problems.
13. Use only reliable and proven technologies.

Philosophy: long-term thinking.

14. Management decisions should be based on a long-term philosophy,

even if it is necessary to sacrifice short-term financial goals (O. Nesterenko, & R. Oleksenko, 2020).

The philosophy of "Toyota" and its production system has formed a production method used by the company – a double helix of "Toyota's" DNA, which defines the management style of the company that makes it unique and which can be applied in any organization to improve the system of a business process: from sales to product development, marketing, logistics and management (T. Teslenko, & V. Zadoia, 2021).

Its content is revealed as a set of processes of objective, subjective, subjectified and objectified nature of economic, managerial and educational cycles, aimed at training employees in this production system, including the work of all departments and the system formed as a whole.

Here is an example from logistics. Close cooperation has been established between suppliers of parts, Transfrate and assembly plants. A coordinated flow passes through the cross-docks: the parts move to the factories, and from there the containers are returned for filling. Toyota, which is working hard to align the plant's schedule, is aligning the supply of parts to the warehouse. A uniform schedule is an additional factor in equalizing the flow of parts from suppliers through the cross-dock to the factory and the balance of containers that go to the factory full and return to suppliers empty.

As a result, Toyota has achieved the goal of establishing delivery on a "when needed" basis; the cross-dock system has helped to reduce significantly transport costs; Transfrate steadily improves operations and reduces costs, as do other Toyota divisions. Transfrate has not only successfully solved the issue of logistics on a "when needed" basis for Toyota, but has also become a successful international company and serves as an example of a cost-effective transportation system. Toyota is interested in its suppliers achieving the same craftsmanship and efficiency in their production as it does. In addition, reducing Toyota's costs is impossible without reducing suppliers' costs.

The principle of Toyota's philosophy is as follows: Respect all your partners and suppliers – set them challenging tasks and help them to improve. Therefore, Toyota is considered a role model in terms of building relationships with suppliers as one that is ready to learn and grow with its partners. Thanks to this, we managed to create a unique learning business partnership, which is the highest form of lean production, – says Liker Jeffrey K. in the work "Toyota's philosophy. 14 principles of a coordinated team" (N. Valevska, 2019, p. 399).

Conclusions from the study and prospects for further exploration in this direction.

Thus, we present an important conclusion for the purpose of our study, the author of the work that "Toyota" for decades has created a lean culture and achieved in this regard skills in the application of these methods. Lean thinking in the understanding of Toyota's philosophy implies a much deeper cultural transformation than most companies can imagine (T. Teslenko, 2021).

Managers of firms and companies can improve their business processes by using the concept of lean thinking and production:

1) elimination of losses of time and resources;
2) embedding quality in all production processes;
3) search for cheap but reliable alternatives to expensive new technologies;
4) improvement of business processes;
5) creating a culture of learning for continuous improvement in order to improve the quality, efficiency, speed of production.

Many executives feel that Toyota's experience cannot be applied outside of Japan. However, companies are working on this right now – the creation of organizations in different countries around the world, studying to transfer knowledge about the production-friendly philosophy (T. Teslenko, 2020).

Toyota's lean production philosophy as a holistic management system and operational excellence is a detailed plan of management philosophy that describes

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specific tools and methods that will help you to become the best in your industry in terms of cost, quality and service.

The procedural approach to the analysis of the levels of lean production as a complex system of economic reality should be supplemented by the epistemological dichotomy "subjective-objectified", which sets its prognostic vision. Toyota's philosophy is a vision and inspiration for any organization that seeks to be successful in the long run, which includes leaders as actors in the process and the excellence of the organization that needs this implementation of lean manufacturing principles. As an example, we can the international organization Canada Post Corporation, CCP, which began to implement the principles of austerity and went through three stages until it became a successful corporation owned by the government.

Thus, the idea of lean production must embody the perfection, efficiency and perfection of all cycles of this process, which has undergone three stages of transformation into integrity and is enshrined in the economic ideal of production of the XXI century.

The first stage is "point Kaizen", or attempts to apply different methods at different points in the flow of value creation.

The second is a global systematic analysis of the value creation flow and change.

The third stage is the creation of a lean enterprise, which with managed to make a significant breakthrough the help of lean techniques and tools.

Toyota uses the knowledge gained through Genchi Genbutsu to make informed decisions and become a learning organization. Toyota believes that the way to decision-making is as important as the quality of the decision, and to do so comprehensively consider everything, including alternative solutions. That is why the allocation of time and effort for this is mandatory. The secret to easy and near-seamless implementation of new initiatives at Toyota is detailed pre-planning, which is based on problem solving and decision-making to every detail.

Toyota's excellence is in every detail, for which decisions must be made slowly, jointly and carefully, considering all options, and implemented quickly and immediately, and when the proposal reaches senior management, it is already so honed that it is actually a ready-made solution. The search for consensus is a belief in reason, and Toyota's best approach is a group decision approved by management. The general rule is to strive to involve the maximum number of employees.

Thus, "lean production" is one of the clearest examples of the "Japanese miracle", the basic principles of which include: determining the value of goods or services to the consumer; determining the flow of value creation; loss control; ensuring the continuity of the value creation flow; "Extraction" of production; constant improvement. The authors, drawing on the experience of working with leading companies in the United States, Germany and Japan, including Pratt & Whitney Porche Tesco, note that the principles of lean production have allowed them to increase productivity almost by two times; speed up the release time; halve production space; reduce inventories with virtually no financial loss.

Lean production as Toyota's philosophy guarantees effect and success.

Undoubtedly, the prospect of further exploration in this direction will include the philosophy of lean-production.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Тетяна Тесленко, Камерон Батмангліч, Олег Романко

ОЩАДЛИВЕ ВИРОБНИЦТВО "TOYOTA" ЯК ІНТЕГРОВАНА СИСТЕМА ОПЕРАЦІЙНОЇ ДОСКОНАЛОСТІ

Анотація. Актуальність дослідження теми ощадливого виробництва набуває великого значення тому, що його впровадження демонструє нові методи менеджменту та керування всіма виробничими та логістичними процесами, направленими на досягнення якості.

У статті проаналізовано Виробничу Систему "Тойоти", яка лягла в основу багатьох праць на тему "ощадливості". Мета статті дослідження теоретичних і практичних засад ощадливого виробництва "Тойоти" як цілісної системи управління та досягнення операційної досконалості, що в свою чергу, є умовою досягнення успіху при її застосуванні в автомобільній галузі як у виробництві, так і сфері послуг.

Завдання дослідження:

1. З'ясувати визначення цінності та потоку їх створення як сукупності дій, націлених на формування ощадливого мислення.

2. Сформувати концепцію ощадливого виробництва як стратегії досконалості.

3. Розкрити глобальне значення "філософії Toyota" як найбільш прибуткової галузі серед автомобільних виробників.

4. Дослідити Виробничу Систему "Тойоти" як підгрунття руху за ощадливе мислення і ощадливе виробництво.

Поставлена мета визначила застосування загальнонаукових методів – аналізу, синтезу, порівняння, індукції та дедукції, наукової абстракції, аналогій та наукових узагальнень, логічного та історичного аналізу в рамках системного та кроскультурного підходів, прогнозування та моделювання, літературного огляду наукових джерел.

Доведено, що "ощадливе виробництво" (lean production) – один з яскравих прикладів "японського дива", до основних принципів якого відносяться: визначення цінності товару або послуги для споживача; визначення потоку створення цінності; боротьба з втратами; забезпечення безперервності потоку створення цінності; "витягування" виробництва; постійне вдосконалення. Автори зазначають, що принципи ощадливого виробництва дозволяють їм майже вдвічі збільшити продуктивність праці; прискорити час випуску; удвічі скоротити виробничі площі; зменшити запаси практично без фінансових втрат.

Практичне значення виконаних досліджень полягає в тому, що ощадливе виробництво як філософія "Тойоти" гарантує ефект і успіх.

Ключові слова: *ощадливе виробництво, "Toyota", операційна досконалість, продуктивність, досягнення успіху*

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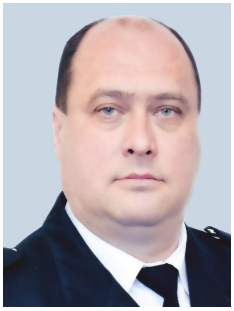

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APPROACHES TO THE DEVELOPMENT OF THE COMPLEX METHOD OF EXPERTISE AT ENTERPRISES

Abstract. Attention is paid to the fact that in order to make reasonable decisions, it is necessary to rely on the experience, knowledge and specialists' intuition. A large number of methods for obtaining expert assessments, has been noted.

The methods of examination are also differ, in some of them work is being done separately with the expert, in others the problem is being discussed collectively, opinion of other experts is being studied, incorrect ways of decision are being rejected. It is also emphasized that there is diversity at all stages of the examination: formation of the group by number, qualifications of experts. Using of statistical data processing also differs significantly, from mathematical to computerized. The main methods and stages of expert evaluation have been given. Emphasis is being placed on assessments, their classification according to various criteria and characteristics. Conditions for measuring of qualitative and quantitative characteristics and the main requirements for them are being indicated. Attention is being paid to the conditions of using of the interval scale and the order scale. The methodology of experts' work in case of definition of probabilistic expert estimations is being described. Peculiarities of using the methods which are most often used in practice have being described, among which are method of academician V. Glushkova, morphological method, QUEST, PATTERN, SEER methods and Delphi method. A combined method of examination at enterprises with specific working conditions is being proposed. The algorithm of examination has been developed and the main stages of examination, and functions of the persons which are taking part in examination have been olefined. The main requirements to the automated expert system have been highlighted.

Keywords: *examination, method, evaluation, classification, stages, experts*

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Introduction. The current state of many enterprises in Ukraine can may be described as transitional, ie the state of search for new forms, methods and approaches to the organization of production and management processes. It is necessary to use techniques that have not been widely used before, namely methods based on the assumption that on the basis of the opinions of experts it is possible to build an adequate picture of enterprise development with specific production conditions, which will consider qualitative and structural changes.

The essence of the methods of examination is to take into account the views of experts, based on the generalization of their own and world experience of research and development in the projected industry or production. The application of all methods of expert assessments is based on the hypothesis that the expert has the so-called "practical wisdom", insight related to a particular field of knowledge or practice.

Analysis of the recent research and publications. At present, considerable attention is paid to both the methodological issues of the examination and the forms of the examination. Experts estimate that there are now at least 100000 articles and books that offer a variety of approaches to dealing with expertise or processing information on peer reviews. At the same time, all the variety of conditions and situations in which experts have to work and take responsibility for the adequate assessment of various factors and indicators is noted.

G. Bammer, M. O'Rourke and G. Richardson (2020) note that during the examination most of the knowledge is hidden. The application of expertise should be comprehensive. This should include three areas: (a) specific approaches, including interdisciplinarity, transdisciplinarity, systems thinking and the science of sustainability; (b) individual experience that is independent of those specific approaches; and (c) research examining elements of integration and implementation. The authors propose to create a knowledge bank that will accumulate success in solving complex problems, including social and environmental.

J. MacMillan and D. Entin (1993) note the specifics of conducting expertise in complex areas, where there may be no agreed levels of knowledge and there is no single correct answer to the problems, and monitoring and measuring the actual work of experts is difficult. During the experiment, the qualification of specialists in decision-making was assessed depending on the level of their theoretical training.

C. Hmelo-Silver and M. Pfeffer (2004) emphasize that only trained experts can assess complex systems. They should be able to build a network of concepts and principles in the area being assessed that represents the key phenomena and their interrelationships. Newcomers who were invited as experts evaluated the static components, while more experienced experts gave an assessment considering dynamic phenomena.

St. Beck (2015) pays attention to the fact that a balanced theoretical and methodological approach is required when conducting an examination. The author proposes a new methodological approach to carrying out an examination, considering the relational conceptualization of experience, while they compare anthropological and pragmatic theories.

M. Thomas and L. Buckmaster (2013) point out that all complex and problematic issues, especially those related to public risks, should be reviewed. This applies to areas such as science, engineering, law and economics and others, as well as for legislators in providing them with a fundamental basis for making legitimate decisions when discussing complex issues of public policy.

R. Grundmann (2017) offers a theoretical framework for analyzing experiences and experts in modern societies. The author focuses on the fact that the issues of conducting an examination in the historical and social context, as well as using the relational aspect of expert knowledge, are not sufficiently considered.

Thus, it can be noted that the specifics of the examination largely depends on the object and characteristics of the research. Many aspects of the system and the

external environment must be taken into account.

Purpose of the article. Considering the peculiarities of production at enterprises with specific production conditions, as well as the specifics of monitoring the efficiency of equipment and facilities, management of production processes and timely decision-making, it is necessary to develop an effective methodology for examination of all.

Formulation of the main material. The solution of complex problems of systems analysis is usually carried out using a multivariate research approach. However, when carrying out the procedure for expert assessment of various objects and factors, within the same system, researchers are faced with a variety of nature and a variety of properties of the objects under study. From this point of view, expert analysis can be carried out using various methods of implementation, methods of processing estimates, etc. Therefore, the expert analysis is divided into separate procedures for expert assessment of individual factors, which is called expert examination.

Expert analysis includes such processes as model formation, obtaining and processing expert assessments and interpretation of results. The main stages of the expert analysis and the functions of the persons involved can be represented as follows (Fig. 1):

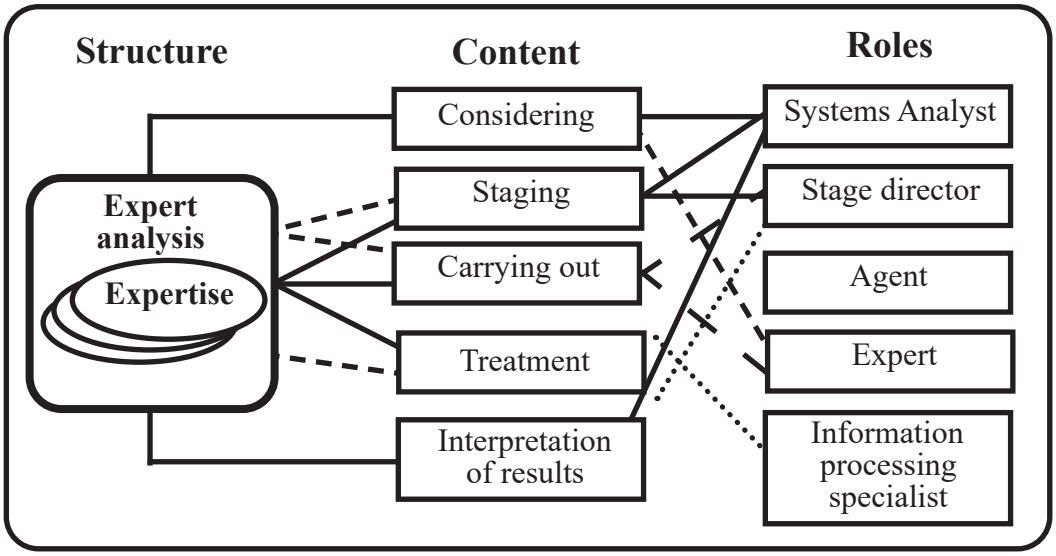

Figure 1 – The structure and content of the expert analysis

– Building a model. The purpose of this stage is to structure the subject area and the task of analysis. The main actor here is the analyst, who interacts with experts to identify factors and their interrelationships.

– Statement of expert analysis. The task of this stage is a formalized description of the procedure for obtaining expert assessments. The task designer, together with the analyst, chooses the methods of assessment, criteria, scales, and the scenarios of the survey and questionnaires are developed.

– Conducting an expert survey and obtaining estimates. This stage involves direct interaction of the director with experts. At this stage, such difficulties arise as the high workload of the director, the geographical remoteness of the experts, and communication failures. To solve these problems, an intermediary is involved, i.e. agent.

– Processing of expert assessments. The task of this stage is to obtain a generalized opinion based on multiple judgments of experts. At this stage, a specialist in the processing of statistical material can be involved, who is able to select and implement the correct processing technique.

– Interpretation of results. The purpose of this stage is to answer the question for what aim this work was carried out. The systems analyst interprets the results

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according to the meaning that was put into the model at the initial stage.

It should be noted that often the role of an analyst, director and information processing specialist is combined by one person. This structure of expert analysis allows us to specify the basic requirements for an automated system, which are as follows:

– to allocate subsystems and determine their tasks and functional purposes;

– to determine the composition and attributes of the main information objects of expert analysis;

– highlight the main analytical tasks;

– to classify the users of the system;

– for each of the users of the system, determine the content requirements for the interface;

– on this basis to design the structure of the system.

It should be noted that all methods of expert evaluation are divided into two types – methods of individual and methods of collective expert evaluation (Fig. 2) (Arrow, 2004, 204 p).

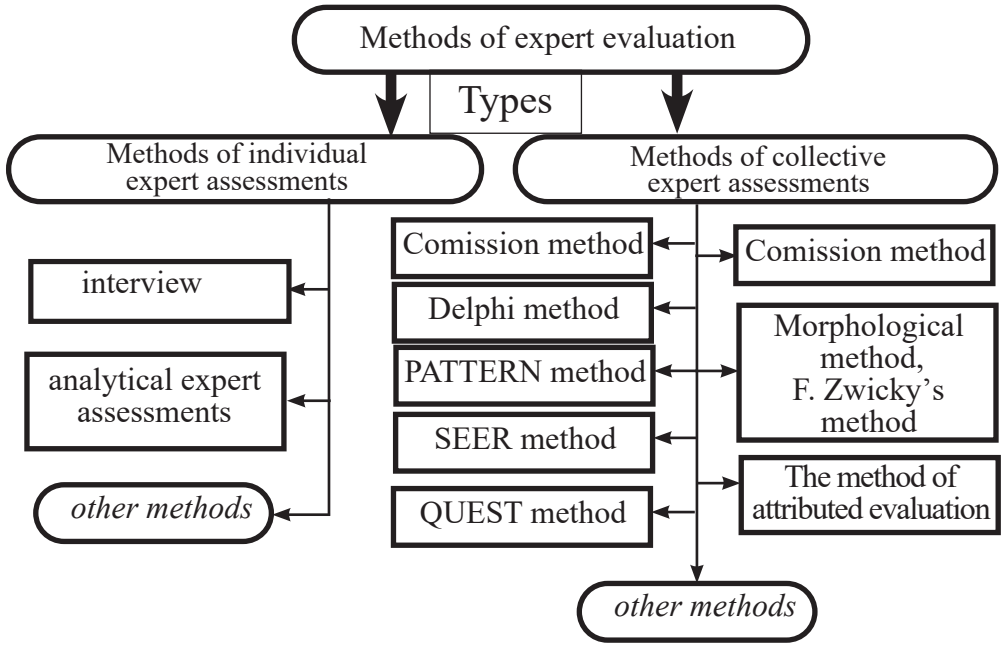

Figure 2 – Types and methods of expert assessments

In this case, the division into methods of individual and collective expert assessments is carried out on a quantitative basis, on the basis of which a forecast is developed based on the opinions of one expert or group of experts.

B. Mirkin (1974) pay attention to the fact that in economic research, decision theory, an important role is played by advantages, which include such concepts as choice, usefulness, probability. There are four main components to all types of assessments: subject, subject, nature, and basis.

The subjects of the assessment are individuals and legal entities that regulate and control it, can order such an assessment or implement it.

The subject of evaluation is those objects to which values are attributed or objects whose values are compared.

By their nature, estimates are divided into absolute and comparative. In absolute assessments, terms such as "good", "bad", "good", "evil" are used. Comparative assessments are made using the terms "better", "worse" and "equivalent".

The basis of the assessment is understood as the position or those arguments

that incline it to a certain advantage. In expert evaluation, different assessments can be obtained for example but different grounds.

It is proposed to divide the features of objects into two types. The first includes quantitative characteristics measured using known standards. For example, in monetary units it is possible to estimate innovations, the profit, a salary, the income per capita; distribution of working time to perform production functions – in hours; age of staff – in years and so on. The second type of feature used in the object research is qualitative. Qualitative characteristics of objects do not have established measurement standards. They are set according to the structure of the object itself and according to the research hypothesis.

To evaluate qualitative characteristics, it is necessary to determine the measure of the intensity of the expression of the property of the object, ie to obtain a quantitative expression of qualitative evaluation. For this purpose of measurement of qualitative characteristics of objects the special standard of measurement (scale) which has to satisfy the following basic requirements is constructed:

– it must measure the properties and characteristics that are planned for measurement, without mixing them with others (the principle of validity of measurement);

– repeated measurements of the object should give the same results as the previous ones (scale stability requirements);

– the degree of reflection of the property or feature should be clearly visible (scale accuracy requirement).

In the expert evaluation of objects, two types of scales are most often used (B. Flyuverh, 2006): the scale of intervals and the scale of orders. Using them as benchmarks makes it possible to score and rank objects.

The interval scale is used to display the magnitude of the difference between the properties of objects and is a fully ordered numerical series with measured intervals between points. The same number is assigned to the equivalent of the compared characteristics of the objects. The main property of the interval scale is the equality of intervals, and it can have arbitrary reference points and scale.

The scale of order is used to arrange objects individually or in a set of features on the principle of "better", "worse", "less than", "more than" and the like. In this case, it is said that the ordered elements are ranked. The values in the order scale show only the order of the objects and do not allow you to determine the numerical value of the advantage of one object over another.

To use probabilistic expert assessments in research, the interpretation of probability theory in terms of weights is also used, when the weight of probabilistic expert assessment is understood as the degree of expert confidence in a given event result. Determining probabilistic expert estimates in terms of weights implies an implicit scaling of expert preferences. The following rules for assigning (setting) weights to any of the probabilistic events are used:

– the weight assigned to any event must be a number between zero and one inclusive;

– the sum of the weights assigned to any number of mutually exclusive events must be equal to one;

– if two or more mutually exclusive events are grouped into one event, the weight assigned to that event must be equal to the sum of the weights assigned to the initial events.

B. Mirkin (1974) offers the following classification of types of expert assessments (Fig. 3). It should be noted that quantitative indicators are used when it is possible to compare values – how many, or how many times, one estimate is greater than another.

Scores on a scale and rank scale usually characterize the subjective opinions of experts. The value of the scale is a limited discrete series of numbers spaced at the same distance.

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Ranking refers to the representation of objects in the form of a sequence in order to reduce their preference. Ranking can be represented as a score on a scale: the rank of the object a (i.e. the value of f(a)) can be considered the number of places it occupies in the ranking in the reverse numbering of places.

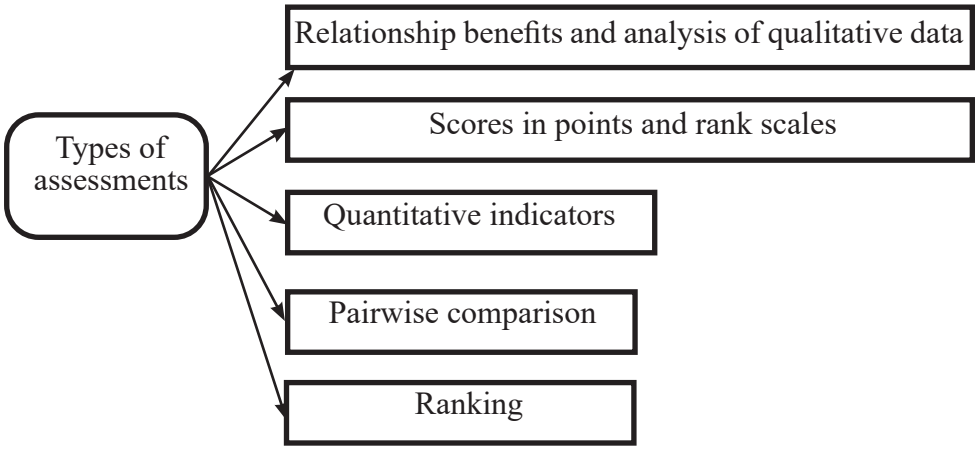

Figure 3 – Classification of types of expert assessments

A pairwise comparison indicates the object that is preferred for each selected pair of objects. It is sometimes permissible to characterize them as both equal or incomparable.

However, as the scientists note (N. Bazaliys'ka, & B. Flyuverh, 2006), that that the number of objects increases, the number of required comparisons increases almost in proportion to the square of the number of objects. Therefore, for 11 – 15 objects (which requires from 55 to 105 comparisons) the application of the method is almost impractical.

Benefit relationships and quality data analysis are used to reconcile individual assessments and objective indicators of objects measured on different scales by moving to the same data type, numerical or qualitative.

Of the methods most often used in practice, the following should be noted: the method of Academician V. Glushkova, morphological method, QUEST, PATTERN, SEER methods and Delphi method.

The essence of the method proposed by Academician V. Glushkov is to build and further analyze the model of a complex network of relationships that arise in solving promising scientific and technological problems. This provides the opportunity to form many different options for scientific and technological development, each of which leads in the long run to achieve the goals of the projected industry. Further analysis of the model allows to determine the optimal (according to a number of criteria) ways to achieve the goal.

The morphological method was proposed by the Swiss astronomer F. Zwicky. This method is based on a pre-designed scheme of consideration of predicted objects, designed to identify possible solutions to a multifaceted problem. There are different types of characteristics of the analyzed objects, their different properties with the characteristics of the elements of each type.

The QUEST method is an abbreviation of the English phrase Quantitative Utility Estimates for Science and Technology, which means "quantitative assessments of the usefulness of science and technology". This method was developed to improve the efficiency of resource allocation decisions allocated to research and development. The method is based on the idea of allocating resources on the basis of taking into account the possible contribution (method of expert assessment, which is determined) of different branches of technology and research in solving a certain range of tasks. The QUEST method involves the following steps:

– quantitative expert assessment of the significance of various tasks;

– quantitative expert assessment of the possible contribution of different branches of technology in solving problems, both in the case of regular funding and in the case of additional funding of relevant industries;

– determination of the total significance of each branch of technology for solving the whole set of tasks, which is carried out by summing the products of the significance of different tasks and the corresponding estimates of the contribution of this branch;

– distribution of resources between different branches of technology according to their total weights.

The peculiarities of the QUEST method are the involvement of a wide range of highly qualified specialists working in various fields of science and technology, as well as the provision of reliable, diverse and relevant information to experts.

To improve the efficiency of decision-making processes in the field of long-term scientific and technical orientation of a large industrial company, the PATTERN method was developed (an abbreviation of the English phrase Planning Assistance Through Technical Evaluation of Relevance Numbers, meaning – "planning assistance with relative technical evaluation indicators").

The essence of the method is based on the formulated goals of the consumer of the company's products for the forecast period, the deployment of some multilevel hierarchical structure, which is called the goal tree. For each such level, a number of criteria are introduced, and with the help of expert assessment, the weights of the criteria are determined, as well as the coefficients of significance that characterize the importance of the contribution of objectives to the criteria.

The significance of a goal is determined by the relationship coefficient, which is the sum of the products of the weights of the criteria to the corresponding coefficients of significance. The overall correlation coefficient of a goal (in terms of achieving a higher level goal) is determined by multiplying the corresponding coupling coefficients in the direction of the top of the tree.

The SEER method – System for Event Evaluation and Review was developed and applied for forecasting purposes in the field of information processing technology. This method eliminates some disadvantages of the Delphi method, namely:

– a large number of consecutive repetitions of assessments by experts;

– the need for the expert to repeatedly review their own answers, which causes the experts to react negatively.

The SEER methodology provides for two rounds of assessment, which significantly reduces the time of examination.

The Delphi method or the "Delphic oracle" method is an iterative questionnaire procedure and, in contrast to the traditional approach to reaching a consensus of experts, through open discussion, involves a complete rejection of collective discussion. This method requires the absence of personal contacts between experts and providing them with complete information on all evaluation results after each round of the survey, while maintaining the anonymity of evaluations, arguments and criticism. This is done in order to reduce the influence of such psychological factors as joining the opinion of the most authoritative specialist, unwillingness to renounce a publicly expressed opinion or following the opinion of the majority.

In the Delphi method, direct debates are replaced by a carefully designed program of consecutive individual surveys, which are usually conducted in the form of questionnaires.

The experts' answers are summarized and, together with new additional information, are made available to the experts, after which they clarify their initial answers. This procedure is repeated several times in order to achieve an acceptable convergence of the set of opinions.

The main advantage of the Delphi method is that any expert receives information that is available to the entire team of experts, and can clarify their own assessment.

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Based on the analysis of existing methods of examination, which are most used in practice, and consider the specifics of individual enterprises, we propose a combined method (Fig. 4), which allows to take into account the positive aspects and eliminate the shortcomings of some methods of examination.

The main emphasis of the proposed method – the examination takes place in three rounds. Experts of the first two rounds are practitioners (managers of middle and lower levels of government) of enterprises. The first two rounds are based on the Delphi method.

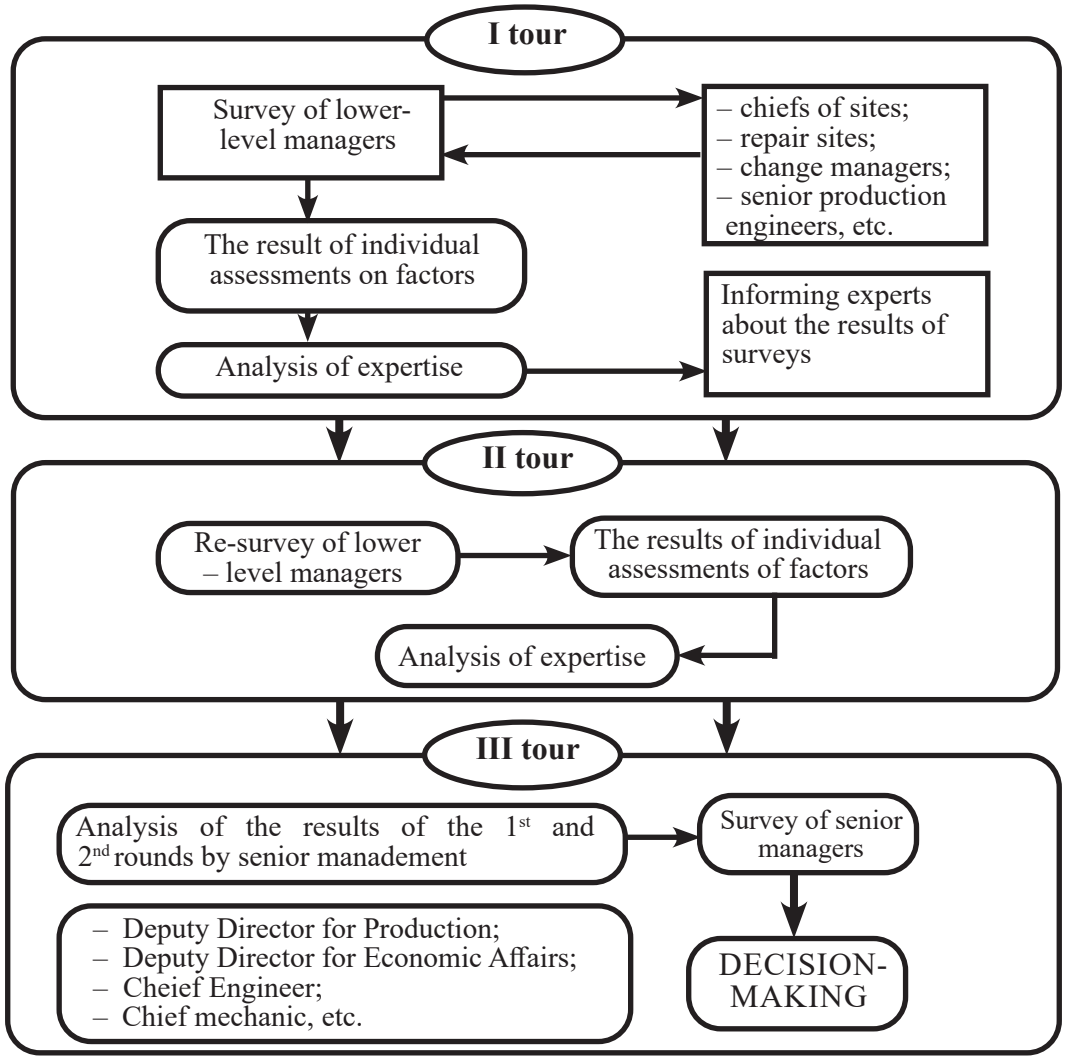

Figure 4 – Algorithm of examination

Each expert provides an individual assessment of the factors, based on their experience and the information provided to them. Experts are usually interviewed in the form of questionnaires. Experts provide answers without arguing them. Then the results of the polls are processed and the collective opinion of a group of experts is formed, arguments in favor of different opinions are identified and generalized.

Statistical processing of estimates is provided, the results of which are given to experts for use in the next round of surveys.

The expert of each round does not return to the consideration of his answers, except the cases when his answer falls out of the interval where there are most of the estimates. Thus, the expert can adjust his opinion by getting acquainted with the opinions of other experts.

Third-round experts are decision-makers, usually top management.

Conclusions. The proposed methodology, which covers all production units and levels of management of enterprises with specific production conditions, will allow you to quickly and adequately determine the issues that require a qualified solution.

Expert analysis of complex problems includes five stages – construction of a heuristic model, statement of the expert analysis, carrying out interrogation and reception of estimations, processing of expert estimations, interpretation of results of examination.

Among the main classes of modern tasks, where expert assessments can be used, we can also note the following: structural analysis – analysis of production, market structure, sales channels, market conditions, society, etc.; quality analysis – the quality of products, projects, personnel, knowledge, decisions, etc.; assessment of consequences – decisions taken, consequences of catastrophes, accidents, environmental pollution, conflicts, etc.; assessment and allocation of resources – credit policy, budget allocations, development of natural resources, etc.; strategic planning – long-term planning of companies, public services, large complexes, industries, etc.; policy development – financial, foreign economic, tax, technical, etc., those issues that are within the competence of the highest level of government.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Юрій Паршин, Маргарита Паршина, Володимир Єфімов

ПІДХОДИ ДО РОЗВИТКУ КОМПЛЕКСНОГО МЕТОДУ ЕКСПЕРТИЗИ НА ПІДПРИЄМСТВАХ

Анотація. У статті звертається увага на те, що для прийняття обґрунтованих рішень необхідно опиратися на досвід, знання та інтуїцію фахівців. Зазначається, що існує велика кількість методів щодо отримання експертних оцінок, використання яких має свої особливості та умови.

Методи проведення експертизи також відрізняються, в одних з експертом працюють окремо, в інших проблема обговорюється колегіально, вивчається думка інших експертів, невірні шляхи вирішення відкидаються. Також підкреслюється, що існує і різноманітність на всіх етапах проведення експертизи: формування групи за чисельністю, кваліфікації експертів. Використання статистичної обробки даних також суттєво відрізняються від математизованих до комп'ютеризованих. Надано основні методи і етапи експертного оцінювання. Акцентується увага на оцінках, їх класифікації за різними критеріями та ознаками. Зазначаються умови вимірювання якісних та кількісних характеристик та основні вимоги, що пред'являються до них. Звертається увага на умови використання шкали інтервалів і шкали порядків. Описується методика роботи експертів у випадку визначення ймовірнісних експертних оцінок. Описуються особливості використання методів, які найчастіше використовуються на практиці, серед яких: метод академіка В. Глушкова, морфологічний метод, методи QUEST, PATTERN, SEER і метод Дельфі. Запропоновано комбінований метод проведення експертизи на підприємствах зі специфічними умовами роботи. Розроблено алгоритм проведення експертизи та визначені основні її етапи проведення, а також функції осіб, що приймають участь у експертизі. Виокремлено основні вимоги до автоматизованої експертної системи.

Keywords: *експертиза, метод, оцінка, класифікація, етапи, експерти*

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ECONOMIC CRIME AND ITS IMPACT ON THE SECURITY OF THE STATE

Abstract. For Ukraine, as an independent country, in the current state of the economy, the problem of ensuring sustainable socio-economic development, forming concepts of combating external and internal threats, improving living standards, developing economic relations with other countries is especially important. The generality of these problems and the algorithm for solving them is related to such a concept as “security”. Changing certain factors that arise from external and internal conditions of national economic development makes it relevant to study the issue of national economic security.

Economic security is a key component in ensuring national security and an important basis for its socio-economic development. The national economic security is being considered as a mean to ensure sustainable development, reliable protection of economic interests of enterprises, all industries, and economic entities, regional and national development.

The economic security of the country is considered from the standpoint of ensuring the protection of vital interests of all inhabitants of the country, society and the state in the economic area from possible internal and external threats.

A more comprehensive definition of economic security involves achieving a state of the economy that provides high and sustainable economic growth of all economic indicators, effective satisfaction of economic needs, governmental control over the movement and use of national resources, protection of economic interests at national and international levels.

Economic security characterizes the balance of the economic system and its effective development, which is ensured by many factors that determine the ability of the national economy to provide its competitiveness in the international economic space, as well as reliable protection against possible risks and threats.

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Keywords: *economic security, economic crimes, national security, international economic security, national resources, business fraud*

Introduction. Ensuring the economic security is one of the most important government function, so this problem has never existed in itself, but has always been derived from the challenges of economic growth at every stage of society development. The specific content of the problem of economic security varies depending on the current internal and external conditions.

The concept of "national security" is broader than the concept of "economic security", as it includes defense, environmental, energy, information and a number of other types of security. But, considering certain latter aspects, it is impossible to bypass their economic and legal aspects.

Economic security is one of the factors including the number of concepts that form a systematic approach to assessing the modern life of society and the state. First, it is difference in national interests, the desire for a more complete separation of common interests, despite the development of integration processes. The current state of development requires the definition of mechanisms for their implementation and development of an appropriate strategy.

Secondly, the limited natural resources, varying degrees of security of individual countries contains a potential opportunity to aggravate economic and political struggle for the usage of these resources (Report to the Nations, 2021).

Third, the importance of competition in the manufacturing and sale of goods and services, especially in banking and finance area, is increasing.

That is why the growth of countries' competitiveness is considered to be a real danger, a threat to their national interests.

Involvement of scholars and researchers in solving the problem of economic security is justified today also by the following vital issues for Ukraine (L. Rybalchenko et al., 2020, 180 p.):

– the systemic crisis in many areas of society continues, which affects the reduction of production, the deformation of the sectoral and territorial structure of the economic complex, the loss of strategic prospects for socio-economic development;

– the accumulated resource, production, personnel, scientific, technical and intellectual potential in the interests of a decent entry into the world system and the prosperity of national interests is being preserved;

– conditions are being created for further improvement of the People's welfare.

The research object is the processes that affect the development of economic security of Ukraine.

The purpose of this work is to identify factors and features of threats for Ukraine's economic security.

Formulation of the main material. Ukraine's national security, along with foreign policy and foreign economic factors, directly depends on the state of not only the domestic economy but also the international one. Therefore, the assessment of economic security should be carried out in the scope of all areas of life, regarding political, geopolitical, socio-economic and other conditions that provide full protection of society's vital interests.

Balanced and dynamic development of all industries and territories, the building of mechanisms of internal immunity and external protection against destabilizing factors at the territorial and regional levels, making conditions for achieving leadership in the world market of goods, labor and capital will be the basis for further strengthening economic security (L. Rubalchenko, 2019).

Indicators of economic security include: GDP and its growth, quality of life constabering their levels, rising inflation, competitiveness of the state among other countries, unemployment rate, criminal sector of economy, scientific and

technological potential, export-import operations, national domestic and external debt and more.

According to the State Statistics Service of Ukraine (State Statistics Service of Ukraine), the country's GDP declined in 2014-2020, which significantly affected the state of the national economy. If in 2012 the GDP was 180.2 % (in % to the corresponding period of the previous year), then in 2014 it was 134.9 %, and in 2020 – 116.09 % (in % to the corresponding period of the previous year).

Examining the structure of industrial products sold in 2020, we can say that the processing industry in Ukraine is 57.9 %, mining – 11.2 %, electricity and gas supply – 29.6 %, water supply – 1.3 % (Fig. 1).

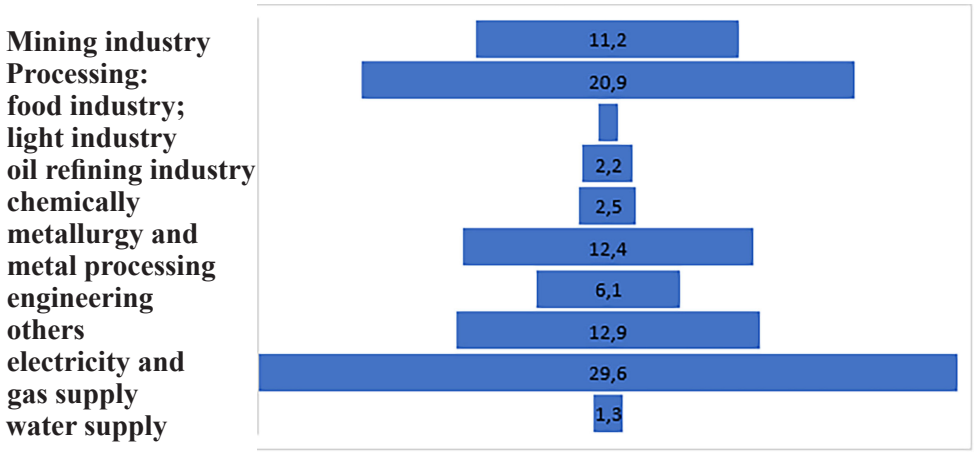

Figure 1 – Structure of sold industrial products in 2020 (%).
Source: built by the authors according to the data (State Statistics Service of Ukraine).

The economic security of the country depends on many factors. Considering the profitability of private enterprises in Ukraine (State Statistics Service of Ukraine), it should be noted that the total volume of sold services was 68.4 %. More than 80 % of all enterprise services were provided by such regions as: Kyiv (87.8 %), Mykolayiv (87.6 %), Donetsk (87.5 %), Kirovohrad (87.2 %), Odesa (82.3 %) and Dnipropetrovsk region (81.5 %).

Regarding the volume of services sold by enterprises by type of economic activity (State Statistics Service of Ukraine) in Dnipropetrovsk region in 2020, the most developed are transport and postal services, the share of which is 49.73 %. Real estate transactions are 14.24 %, professional, scientific and technical activities account for 9.97 %. Other types of services are significantly less than 10 %.

Comparing the profits of all enterprises in the country, it should be noted that 74.4 % of enterprises were profitable, and 25.6 % of enterprises had a loss in 2020 (State Statistics Service of Ukraine) (Fig. 2).

Thus, almost a quarter of all Ukrainian enterprises in 2020 had unprofitable activities.

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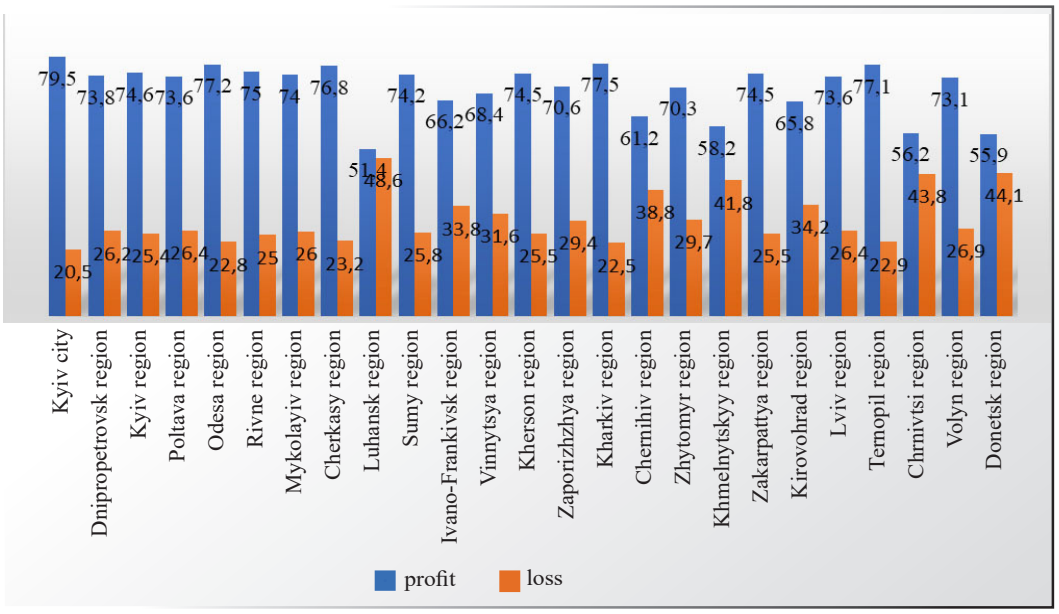

Figure 2 – Financial outcome of Ukrainian enterprises in 2020 (%).
Source: built by the authors according to the data
(State Statistics Service of Ukraine)

There are doubts about the lawful doing business by enterprises of the country. To make their profits and donot pay all taxes to the state, many companies choose criminal ways, which can be interpreted as crimes in the economy or economic crimes.

Economic crimes occur in many areas of activity, including manufacturing, services, banking, construction and more.

Criminal groups are trying to take control over banking systems and financial institutions, because through them there is the process of converting money, where they are taken overseas. There is also another mean of legalization and money laundering through the usage of fictitious companies and conversion centers.

Examining the international experience of economic security, we must say that this issue is strategically important and most relevant for both enterprises and the government. To implement strategies for the development of economic security in the country, it is necessary to use the experience of other countries in this regard.

According to research made by the Institute of Economics and Peace in 2021 (Report to the Nations), the state of economic freedom in Ukraine in 2017-2021 has slightly improved (Fig. 3).

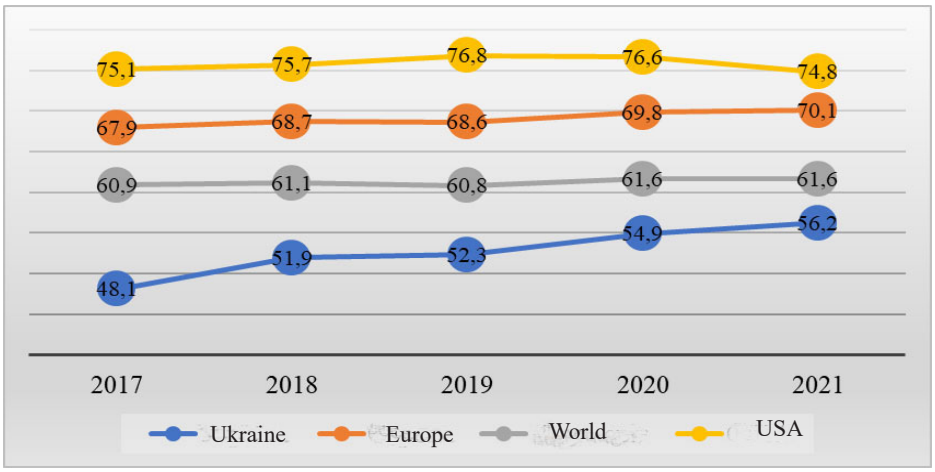

Figure 3 – Index of economic freedom of Ukraine in comparison with the countries of the world in 2017-2021.
Source: built by the authors according to the data (Report to the Nations)

Comparing the economic freedom index of Ukraine with the countries of the world (L. Rybalchenko, & E. Ryzhkov, 2021), it should be noted that over the past five years Ukraine has strengthened its position, but is at a level much lower than the world average (Fig. 3). Ukraine ranks last among 45 countries in the European region. European countries are significantly different from the world level, because they are above the world average. Examining the US position on the index of economic freedom, it is clear that its rating is higher than the world average and the European countries level. The study of main indicators of economic freedom in Ukraine, Norway and China showed that Ukraine has an extremely high tax burden (Report to the Nations, low levels of government honesty, judicial efficiency, property rights protection and monetary stability, Fig. 4).

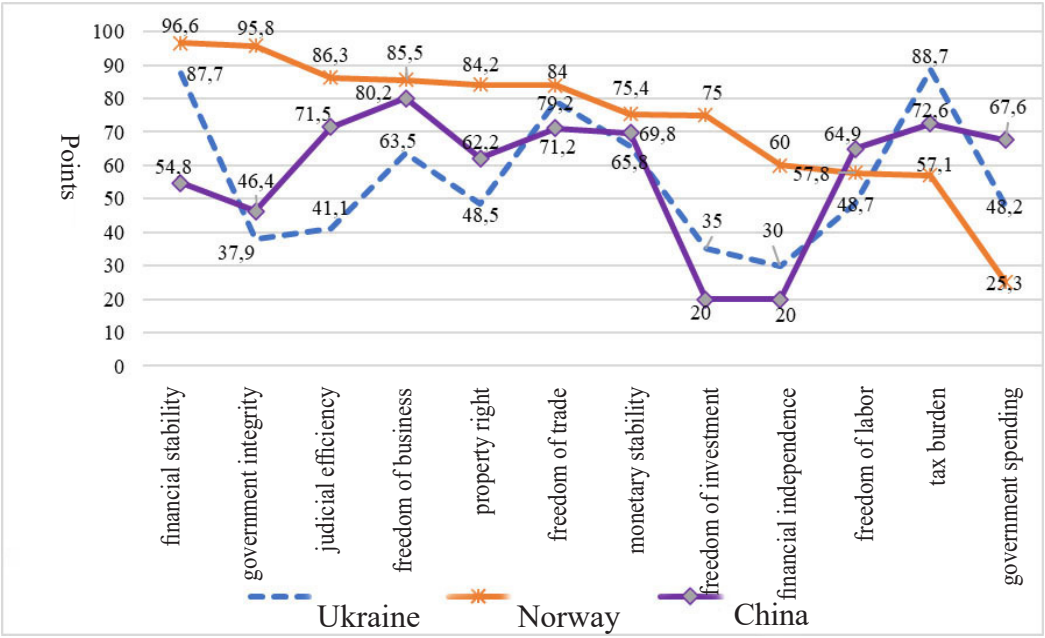

Figure 4 – Index of economic freedom of countries after key indicators in 2020
Source: built by the authors according to the data (Report to the Nations).

ISSN 2786-491X (Print)

The individual's income tax is one of the most important taxes in Ukraine due to its economic, social and political role. With its help it is possible to regulate the investment process, the level of real incomes of the population and, accordingly, to maintain stability in society (L. Barannyk et al., 2021).

To maintain the growth of economic freedom in Ukraine, the government needs to increase investor confidence, implement reforms to improve the rule of law, gurantee property protection, the efficiency of the judiciary and government confidence, increase government transparency and integrity, and reduce corruption at all levels.

Regarding peculiarities of economic concepts in modern society, European countries and the United States have a significant impact on the qualitative indicators of economic security, which have changed significantly in terms of quantitative and positive changes. Economic security includes the concept of prevention of economic crimes, which have a tendency to increase in recent years, which significantly affects the development of the country, the structure of socio-economic development of the state and population (O. Tymoshenko, & A. Oleshko, 2018).

In order to prevent economic crimes in European countries, measures are taken to involve and cooperate with the population of the country to inform the authorities about possible crimes, their detection, work is carried out to prevent minors from committing offenses, etc.

Prevention is a priority of national policy in preventing economic crime in the United States. It is based on control over and reduction of economic crimes. In recent years, the involvement of such a program in activities has allowed to reduce the economic crime level, improve methods, take measures and newest developments to train law enforcement personnel in this area to prevent illegal economic crime (L. Rubalchenko, & E. Ryzhkov, 2019).

The British government has organized objective methods to combat economic crime. There are nine collections of criminal law statistics in the country, namely: Criminal Statistics of England and Wales; Judicial statistics of England and Wales; Prison Statistics of England and Wales; Probation statistics in England and Wales; Report of Her Majesty's Chief Constable; Report of the Bureau on Parole; Annual report on the condition of prison staff and their maintenance costs; Report of the Chief Inspector; Annual Report of the Royal Prosecution Service (How are economic crimes punished in Ukraine and what to do about it?).

In the United Kingdom, the main source of criminological information can be considered the British Crime Survey – BCS, which contains the main quantitative and qualitative indicators of crime, prepared by the Home Ministry of the country.

There are many issues in various areas of national development, including macroeconomic, financial, energy, food, production, investment, social, innovation, demographic, and foreign economic. All this hinders the economic and social development of the country, leads to unstable development and reduced national economic security.

The relevance of the study of economic crime and its impact on the national security in recent years has become a matter of global importance.

The economic condition of the country is an important criterion in terms of assessing the development of national economic security, life population, innovative development, social condition, life safety and economic development.

Causing damage to the state through the creation of organized criminal groups, smuggling of goods, corruption, financial crimes, drug trafficking, tax evasion, illegal currency conversion, state theft of property leads to the decline of the state and threats to economic and political stability (V. Melnyk, & Yu. Garust, 2018).

Forms of crime include domestic and interstate ones. The main areas of

economic crime are: industrial, distributive, exchange and consumer. The most dangerous types of economic crime are: smuggling, theft of information from the company, corruption, crimes against property, illicit currency, crimes in the financial and credit area.

The main types of crime in the economy are: offenses in the budget funds use, offenses in the field of taxation, offenses of officials in economic activities, offenses in business, offenses in foreign economic activity, official crimes, illegal acts in the field of economics.

Organized economic crime not only in our country, but also in the world, threatens economic and political stability, and organized criminal groups pose a global threat to the state, the fight against which is international in nature (How are economic crimes punished in Ukraine and what to do about it?).

Such a type of crime as money laundering, shadow economy, cybercrime, creation of fictitious companies, criminal bankruptcy, conversion centers, etc. also leads to economic decline of the state.

There are schemes of legalization of shadow economy incomes, which include: uncontrolled criminal share of the shadow economy, illegal criminal share of the shadow economy, operations to conceal the share of circulation, unaccounted transactions, pseudo operations, operations of unregistered economic crime, registered unregistered in economic accounting, income from criminal business, useful crime, corruption crime, the formation of shadow capital through tax evasion, the formation of criminal capital, the export of illegally earned funds and more.

It has been studied that banking, financial and credit institutions are threatened by criminal groups that control all their financial flows and, using various means, convert money and take it out of the state. Also, fictitious firms are created to convert currency, the existence of which lasts only one day. Another economic crime is cybercrime. Today, cybercrime has a very wide field of activity and its rapid development is associated with the use of modern information technology. Digital technology simplifies human life, but it also allows criminals to use these technologies for dangerous acts. It has been proven that the situation with the use of cybercrime in the world is deteriorating. Most often, organized crime uses the Internet, commits criminal offenses and uses information technology to promote cybercrime. Domestic legislative regulation of legal relations in the field of information technology is rapidly becoming obsolete due to the rapid and dynamic development of modern software and new information technologies (L. Rybalchenko et al., 2020, 180 p., A. Grebenyuk, & L. Rybalchenko, 2020, 144 p).

Violations against the confidentiality and integrity of information, fraud, copyright infringement, interference in the data systems of corporate enterprises, banks and institutions are becoming more common.

According to research by the Association of Certified Fraud Experts (ACFE), the loss of professional fraud to enterprises is estimated at $ 1.5 million, which is an average of 5 % of annual revenue. In 2020, there were 2504 cases of fraud in enterprises in 125 countries. Considering the period of fraud, which lasted about 14 months until they were discovered, the average loss of enterprises was $ 8,300 per month.

In detecting fraudulent activities, companies prefer litigation and internal punishment, rather than the transfer of fraudulent crimes to law enforcement agencies. The number of companies that have chosen lawsuits has grown to 28 % in 2020 compared to 23 % in previous years. The number of appeals to law enforcement agencies decreased from 69 % in 2008 to 59 % in 2020. Most companies have taken steps to improve domestic discipline and civil justice rather than prosecute.

In recent years, the growth of order and requirements for improving internal discipline in enterprises has led to a reduction in fraud. The introduction of a hotline, the establishment of anti-fraud policies, and the strengthening of enterprise

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data protection tools have led to a 13 % reduction in the consequences of fraud.

Fraud is a global issue for businesses around the world. Professional fraud is often undetectable, so it leads to large-scale costs, which is a global threat. Fig. 5 shows the number and percentage of cases of fraud in the world.

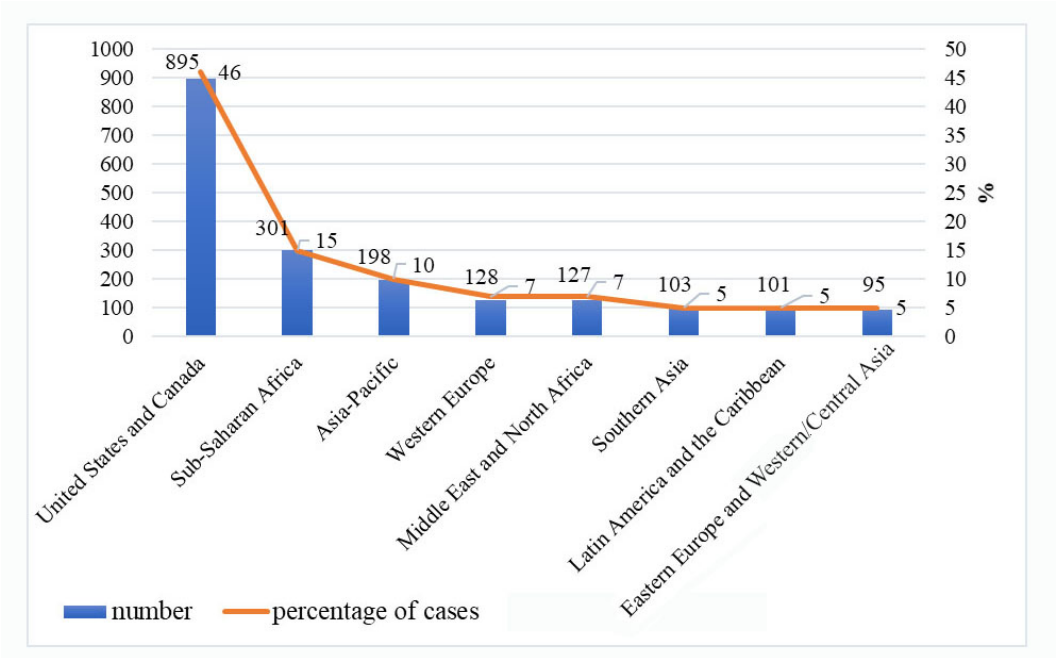

Figure 5 – Professional fraud in the world in 2020
Source: built by the authors according to the data (Report to the Nations).

Losses from professional fraud are growing every year, which has a significant impact on the ability to create jobs, production of goods and services, providing reliable service (Fig. 6).

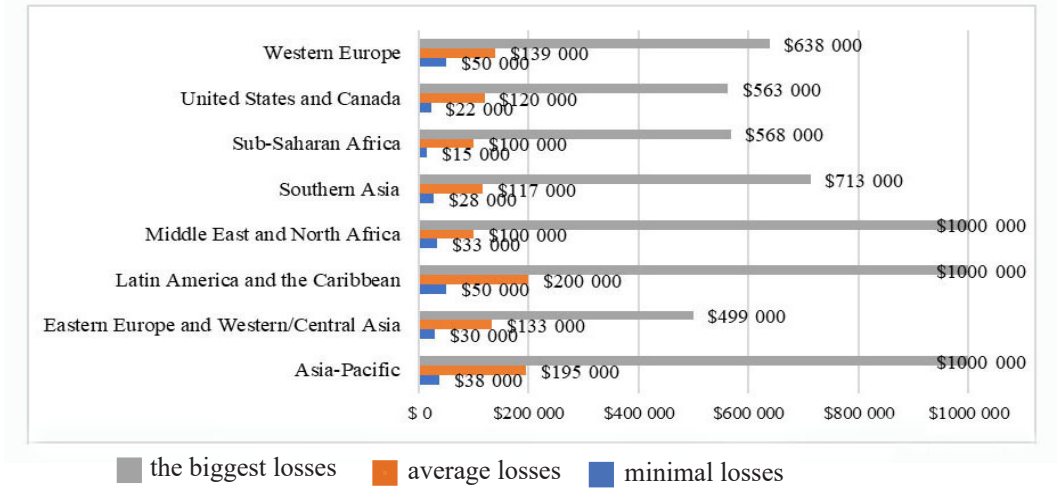

Figure 6 – Losses from fraud in the world in 2020
Source: built by the authors according to the data (Report to the Nations).

There are three main categories of professional fraud. Misappropriation of assets, which includes theft by employees or misuse of resources by employers, which is the case in 86 % of fraud schemes. Such schemes lead to the smallest

losses – 100 thousand US dollars. The second category of professional fraud includes corruption, which includes crimes such as bribery, conflict of interest and extortion, which cause financial losses to 43 % of enterprises with an average loss of 200 thousand US dollars (Report to the Nations).

Financial reporting fraud is the lowest, in 10 % of cases, but leads to the largest losses, 954 thousand US dollars.

Examining the duration of fraud schemes, it must be said that not all fraud can be stopped and prevented. Even in the most dangerous enterprises, it is likely that in time, fraud will occur withe the part of employees. Therefore, early detection of fraud is essential to protect the organization from potential threats and losses. The average duration of fraud from the beginning of fraud to its detection is 14 months.

Fig. 7 shows that the longer the fraud remains undetected, the greater is the financial loss for the company.

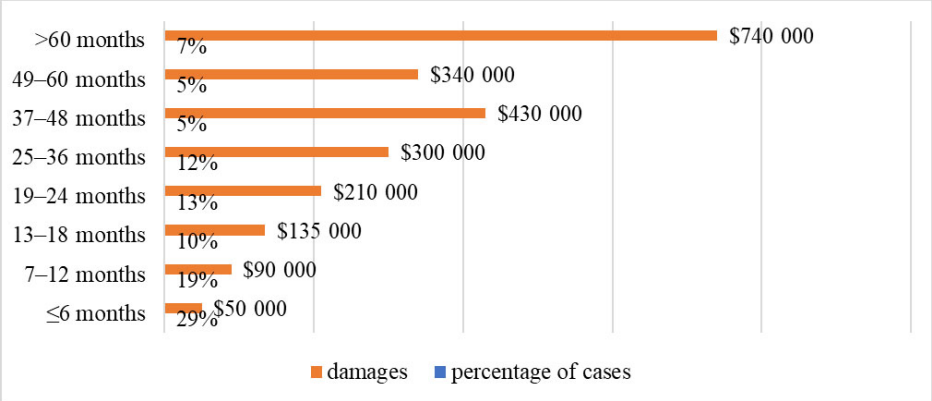

Figure 7 – Duration of fraud schemes and financial loss
Source: built by the authors according to the data (Report to the Nations).

According to the speed of various professional fraud schemes, the fraud with financial reporting leads to the greatest loss, the average level of which is 39.8 thousand US dollars per month. Next are corruption schemes, with a loss of 11.1 thousand US dollars per month. It is these schemes that cause the greatest losses and occur very quickly. Therefore, companies need to take measures to create priority areas for rapid prevention and detection of such types of fraud.

The following types of fraud and their losses (per month) are:

– non-cash – 6 thousand dollars;
– falsification of checks and payments – 4.6 thousand dollars;
– billing – 4.2 thousand dollars;
– theft of cash 4.0 thousand dollars;
– skimming 2.9 thousand dollars;
– salary 2.6 thousand dollars;
– cash in the box office 1.7 thousand dollars;
– reimbursement of expenses 1.4 thousand dollars;
– registration of payments of 0.8 thousand dollars.

Thus, if the losses in the company are not so fast and their level is not so significant, the company has more time to stop such fraudulent actions.

Corporate fraud is an economic criminal activity that benefits from deception, trickery, abuse of trust, concealment of the truth, and so on.

Economic crimes are more common in countries where the level of shadow economy is quite high. Corporate fraud is common in developed countries with high level economies. Ukraine ranks sixth in the national ranking of corporate fraud (45 %); Russia – 1st place (71 %), South Africa – 2nd (62 %), Kenya – 3rd (57 %), Canada – 4th (56 %), Mexico – 5th place (51 %) (according to research

ISSN 2786-491X (Print)

by PwC "Economic Crimes" during the economic downturn). 59 % of domestic companies have been victims of economic crimes in the last two years, which is higher than the world average (43 %).

According to recent studies, 67 % of all fraud cases are committed by persons aged 31–40 years (Report to the Nations). Employees (77 %) who work in the fields of finance, accounting, sales, procurement, and senior management have the best chances of fraud. According to Ukrainian companies, the most common types of corporate fraud are corruption, abuse of office and misappropriation of assets.

The high level of economic crime in society is due to the reasons for the imperfect structure of government, personnel policy, legal shortcomings, rising unemployment, rising prices for goods and services, high inflation and significantly lower wages.

The fraud level in enterprises is growing because the level of detection of such crimes is very low and difficult for identifing. More often, corporate fraudsters commit crimes in large companies, so the losses of companies become very significant.

Fraud is a problem for corporations, manufacturing companies, organizations and institutions, misappropriating their assets, manipulating money, taking large amounts of them out of the country.

In 2020, about 70 % of all enterprises in the world suffered from professional fraud (Report to the Nations), 44 % of which were private organizations and 26 % were public companies, 16 % were government enterprises and 9 % were non-profit. Private and public companies suffered an average loss of $ 150,000, government ones losses $ 100,000, and nonprofits suffered the least $ 75,000.

Enterprises with annual revenues of less than $ 50 million USA, have a loss of 114 thousand US dollars (this includes 38 % of enterprises). The biggest losses are enterprises (Report to the Nations), whose revenue is more than 1 billion US dollars. US $ 150,000 (26 % of enterprises).

Professional fraud leads to material loss, legal costs and can lead to bankruptcy. By creating a strategic plan and monitoring the development of the enterprise, you can reduce the risks that may occur in enterprises and take measures to avoid professional fraud. Modern policy of corporations and enterprises should be aimed at applying modern methods and tools to prevent fraud and ensure their sound economic development ("On National Security of Ukraine" Law of Ukraine).

There are money laundering schemes published by the National Bank of Ukraine, which include (I. Palchevsky, 2018):

– "withdrawal of capital". This scheme has law effect on the exchange rate and allows them to move outside the state;

– "cash transfer". This scheme allows you to withdraw cash as a form of payment for any work performed by an individual;

– "corruption". This scheme belongs to illegal activities, is not regulated by economic laws and is aimed at committing crimes;

– "boiler". These are transactions that are illegal and intended to transfer funds in cash. For this purpose the banking system is used and the interest for carrying out illegal operation is received, as a reward;

– "receiving cash". Companies pay for raw materials for the manufacture of products and receive cash through the bank;

– "cash without cash". Non-cash conversion without cash collection is used.

It has been studied that the modern international practice of crime prevention is the most advanced, innovative and effective methods of combating crime and its individual manifestations mainly occur in developed and prosperous Western countries. This can be interpreted as:

1) the financial capacity of the government and law enforcement agencies, the competent authorities of these countries ensure the rule of law and maintain law and order;

2) it is connected with the existing scientific developments, established criminological traditions and theories, the basis of the practice of crime prevention;

3) long-term strategy for the introduction of public influence, the combatting crime through the formulation and implementation of various prevention plans and projects (A. Volkov, 2021).

In recent years, there has been a general decline in crime in Europe, with a few exceptions. An analysis of data provided by Eurostat in 2020, as well as data from the latest edition of the European Collection of Crime and Criminal Justice Statistics, allows us to examine the level of crime and some of them: criminal activity in EU member states until 2019, including (Eurostat).

In particular, the highest absolute indicators of the number of crimes recorded by the police in 2019 are observed in such EU member states as: Great Britain – 6.54 million, Germany – 6.5 million, France – 4.11 million, Italy – 2.23 million, Spain – 2.18 million crimes. The lowest absolute figures for the number of crimes registered in 2019 are: in Cyprus – 4.8 thousand, in Malta – 17 thousand, in Luxembourg – 26 thousand, in Latvia – 49.3 thousand, in Estonia – 53.3 thousand of crimes (Eurostat).

Despite the rather optimistic trends in European crime, it should be noted that during 2017-2019, the number of convicts serving sentences in prisons increased in 17 of the 28 EU member states. At the same time, the number of police officers has increased in half of European countries during this period.

In the context of the crisis of EU migration policy, a significant increase in the number of illegal migrants trying to find employment in the most economically developed European countries, as well as increasing property crimes, European authorities are trying to strengthen the criminal justice system's response to recent crime in Europe (General Prosecutor of Ukraine).

Thus, as the analysis and generalization of the leading modern approaches to crime prevention in the leading European countries shows, the main element of this activity is not government repression for the committed crime, but the expansion of private sector participation. Society keeps silence in all its manifestations. This concept is based on:

– first, on a regulatory framework for crime prevention across Europe;

– secondly, on the criteria of economic feasibility, as it helps to save public spending on prevention through the use of free state aid;

– thirdly, it meets the requirements of those times, which are characterized by the humanization of criminal penalties and the expansion of prevention activities (Eurostat).

Conclusions. Research and generalization of current and best foreign experience in the field of public participation in the prevention of economic crime provide a basis for choosing some proposals to improve law enforcement by introducing public participation in crime prevention strategies. In the field of crime prevention, various areas of improving national domestic policy through public use can be divided into several types according to their nature, including political, regulatory, organizational and managerial, socio-psychological and technical measures (Eurostat).

Based on a broad understanding of the concept of "public" in Western countries, it is necessary formulate to properly public policy in the field of involvement of various social institutions in crime prevention activities in Ukraine. From now on, the public will include not only law enforcement officers and individual citizens, but also educational and health care institutions, self-organizing institutions, churches, religious organizations, the media, volunteers, offenders and close relatives of offenders. Policy measures are the political will that exists in Ukraine to use current alternative methods to modernize law enforcement and streamline criminal justice, mainly through increased participation of non-governmental actors in preventing and combating crime.

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Over the last three years (from 2018 to 2020), Ukraine has improved its position in the crime rankings and climbed ten steps from 36th to 46th place (The crime rate in the world), the United States climbed three steps from 47th to 50th place, the United Kingdom from 47th (2018) to 65 (2020), Germany from 87th to 90th place and Poland from 90th to 105th place. Among other countries studied, Ukraine occupies the lowest positions in the ranking.

Today, in the world, especially in Western countries, public understanding of crime prevention differs from public understanding in Ukraine. If according to the current Ukrainian legislation, the public is represented by public law enforcement agencies and individual citizens, in foreign countries there are many participants in the public: the media, churches, religious organizations, volunteers, institutions of various forms of ownership, providing public services, offenders and their relatives, etc.

Ensuring national economic security is based on the creation of political and legal international conditions of the country existence, providing free choice and implementation of strategic objectives of economic development, ensuring the achievement of macroeconomic goals at national and regional levels by creating domestic subsystem of economic security and protection of economic entities from illegal encroachments, unfair competition using the of forces and means of all government institutions of power, including the objects of protection (A. Volkov, 2021).

Ensuring the national economic security is one of the main functions of the state, which serves as a guarantee of state independence, implementation of the strategy of social and economic development, stability and reliable protection against possible threats (General Prosecutor of Ukraine).

The economic security of the state is aimed at ensuring the independence of the national economy, creating stability and sustainability, ensuring effective economic development and improving the living standards of the population.

Legal guarantees for the economic security of the state are stable legal regulation of relations in all sectors of the economy, regulation of market relations, and prevention of economic and financial crises, minimization of shadow economy, reducing fraud and increasing product competitiveness.

The state policy on economic security must ensure the stable functioning of all its components. In addition, it should be aimed at reducing inflation, reducing external and domestic debt, the stability of the national currency, increasing incomes and improving the quality of life.

International economic security will contribute to the improvement of its international law on the basis of these principles through the conclusion of multilateral and bilateral treaties and agreements, the establishment and operation of international (especially interstate) organizations to promote cooperation and economic security of member states. The implementation of the concept of international economic security will ensure the cooperation of states in solving not only national problems but also global problems of mankind and will become the material basis of peaceful existence in the world, a guarantee of progress in eliminating economic backwardness of individual countries.

National economic security, at first glance, is the protection of the country's economy from dangerous influences, which can be both a deliberate source of danger and a consequence of natural market relations. Danger also arises when the economic situation of any state deteriorates to a critical level and so on.

Thus, at the state level it is important to develop appropriate mechanisms to monitor threats to economic security and develop measures to minimize them, improve existing legislation in the field of economic security, create a system to guarantee protection of economic security from possible threats, identify factors influencing economic security, will ensure the creation of sustainable economic development and a reliable competitive state in the international economic space.

To ensure an adequate level of national economic security, it is necessary to improve the legal regulation of the judiciary, which does not have the appropriate level of public confidence, protection from poor competition from monopolists and importers, reducing the shadow economy and shadow employment, preventing and combating corruption, control over the use of state and local budgets, increase professionalism and responsibility in the national security and defense sector, and create a system for assessing risks and threats in the economic area for criminal prosecution of persons whose criminal activities threaten the economic security of the state.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Людмила Рибальченко, Едуард Рижков, Сергій Охрименко

ЕКОНОМІЧНА ЗЛОЧИННІСТЬ ТА ЇЇ ВПЛИВ НА БЕЗПЕКУ ДЕРЖАВИ

Анотація. Для України, як для самостійної незалежної держави, в сучасному стані економіки, особливо важливою є проблема забезпечення стійкого соціально-економічного розвитку, формування концепцій протидії зовнішнім та внутрішнім загрозам, підвищення рівня життя населення, розвиток економічних взаємовідносин з іншими країнами. Загальність даних проблем та алгоритм їх вирішення пов'язано із таким поняттям, як "безпека". Зміна тих чи інших факторів, які породжуються із зовнішніх та внутрішніх чинників розвитку національної економіки робить актуальним дослідження питання проблематики забезпечення економічної безпеки держави.

Економічна безпека є основною складовою у забезпеченні національної безпеки та важливим підґрунтям її соціально-економічного розвитку. Економічну безпеку країни розглядають як засіб у забезпеченні стабільного розвитку, надійного захисту економічних інтересів підприємств, усіх галузей промисловості, господарюючих суб'єктів, розвиток регіонів та держави.

Економічна безпека країни розглядається з позиції забезпечення захисту життєво важливих інтересів усіх мешканців країни, суспільства і держави в економічній сфері від можливих внутрішніх і зовнішніх загроз.

Більш розгорнуте визначення економічної безпеки передбачає досягнення такого стану економіки, при якому забезпечується досить високе та стійке економічне зростання усіх економічних показників, ефективне задоволення економічних потреб, контроль держави за рухом і використанням національних ресурсів, захист економічних інтересів країни на національному і міжнародному рівнях.

Економічна безпека характеризує рівновагу економічної системи та її ефективний розвиток, яка забезпечується багатьма факторами, що визначають здатність національної економіки забезпечити її конкурентоспроможність на міжнародному економічному просторі, а також надійний захист від можливих ризиків і загроз.

Ключові слова: *економічна безпека, економічні злочини, національна безпека, міжнародна економічна безпека, національні ресурси, підприємницьке шахрайство*

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COGNITIVE APPROACH TO MODELING POPULATION'S QUALITY OF LIFE

Abstract. Assessing the position of economic and human capital development level, building a strategy to improve the quality of life is extremely important for the state, so the study of indicators that form the quality of life and have the greatest impact on it remains relevant. Since the very concept of quality of life is a multicomponent category, characterized by both objective and subjective indicators, we consider it appropriate to structure knowledge about the factor environment that shapes the quality of life, their reflection by forming a cognitive model, its static analysis to identify the factors that have the greatest impact on quality of life to improve its level, which reflects the purpose of the study. A cognitive model of quality of life in the form of a balanced digraph was built based on 22 indicators of socio-economic conditions of Ukrainian households, grouped into four groups: population, education and health, socio-economic indicators. Structural analysis of the cognitive model made it possible to assess the classes of factors, establish the system characteristics of the model, identify the factors that have the greatest impact on the system, and

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assess their importance in modeling the self-development of the situation. Considering the weights of factors and external influences, it is determined that the assessment of the quality of life is most influenced by a group of health factors, while the growth of the quality of life indicator contributes most to the growth of the population and reduces its migration.

Keywords: *Quality of life, Cognitive Modeling, Static analysis, digraph, Socio-economic indicators*

Introduction. Advancing the quality of the life of the population is a priority task of the state of any country, and also demonstrates the effectiveness of the social and economic policy. The very understanding of life is a rich-component category, how to characterize both the active and sub-active indicators. That is why it's victorious to be flexible to gain awareness in the capacity of life of the population of the other countries. For example, the approach to measuring the quality of life used by Eurostat is to measure various aspects of quality of life that take into account indicators of economic and social development. According to the study "Quality of Life – 2020". Ukraine ranks 65th among countries. Assessing the position on the level of development of economic and human capital, building a strategy to improve the quality of life is extremely important for the state, so the study of indicators that shape the quality of life and have the greatest impact on it still remains relevant. Assessing its position on the level of development of economic and human capital, building a strategy to improve the quality of life is extremely important for the state, so the study of indicators that shape the quality of life and have the greatest impact on it remains relevant.

Analysis of recent research and publications. The works of many scientists are devoted to the formulation of the definition of "quality of life" and the study of its factors. Rahman (2011) notes that, in essence, quality of life is a multidimensional category in which each of its components can in itself serve as a measure of quality of life. As well ae there are many approaches to determining the quality of life, there are large number of methods for assessing it. Zagorski, for example, (2014) explores three components of the quality of life of Europeans:

– well-being, ie quality components such as happiness, life satisfaction;

– financial quality of life, which includes indicators of satisfaction with living standards, availability of goods and services, subjective poverty;

– health, namely self-assessment of health, satisfaction with health.

Maggino (2012) notes that the quality of life depends on the objective conditions and capabilities of people. Therefore, to improve it, measures should be taken to improve People'shealth, education, personal activities and the environment. State policy in this direction is recommended to focus on the implementation of measures to develop social ties, the importance of political voice and reduce insecurity. Zagorski (2014) in his study proves the positive impact of GDP per capita on subjective well-being, financial quality of life and health, while income inequality does not reduce the importance of these indicators. That is, for European countries there is an irrationality of investing additional financial resources to reduce inequality for the majority of the population.

Novakova (2016) consider the quality of life through material living conditions based on the calculation of the integrated index and made a comparison among European countries.

Royuela (2011) in its study identifies current trends in population distribution within the capital and identifies the impact of quality of life on population growth, as well as the positive impact of population growth on improving quality of life. There are also studies linking quality of life with a certain economic sphere, in particular, Croes (2018), Andereck (2011) assess the relationship between quality of life and the development of tourism.

In the monograph (L. Cherenko, 2021) the standard of living of the population is considered as a category that combines both its quantitative dimension and

qualitative characteristics and is an indicator of the effectiveness of the economic model of the country. This approach is used to build a model of living standards, which also takes into account the factors of direct and indirect action that occur in an unstable socio-economic environment, formed a forecast of living standards and poverty based on the epidemic situation in the country.

The article (V. Brych et al., 2021) used a dynamic approach to the study of living standards, which allowed the authors to conclude that the growth of average wages does not sufficiently affect the living standards of workers because the level of the real wage index does not sufficiently meet their needs. The assessment of the life quality of the population is proposed to be carried out using the DSGE class (dynamic stochastic general equilibrium) models. Each of the selected entities has its own target function.

The authors of the article (A. Stavytsky, & K. Molokanova, 2020) also note that the assessment of the quality of life associated with the socio-economic development of the country can not be carried out only in areas that shape the material sphere of life, it is necessary to take into account intangible indicators such as social equality, health care and the like.

Bucur (2017) notes that various approaches are used to study the quality of life, including methods of mathematical statistics, probability theory, fuzzy systems, time series and other methods. Her research is based on the concept of definite integral, compound function and mathematical optimization. The following indicators are used as objective characteristics of quality of life : health; family life; community life; financial position (GDP per capita, in US dollars); political stability and security; climate and geography; job security (unemployment rate); political freedom; gender equality; life expectancy at birth; life expectancy index; degree of access to education; period of study; income indicator; gross national income at purchasing power parity per capita.

Cognitive approach to modeling poorly structured tasks is used in the research of many scientists, in particular, in the article (O. Kravets, & G. Kucherova, 2019) it is used to study the level of socio-economic development, in the article (O. Yeliseyeva, & V. Sarychev, 2017) – to study the state of health care, etc, Kucherova H. (2020) uses fuzzy cognitive modeling to study the poorly structured category of information transparency. Napoles (2018) notes that the methodology for constructing fuzzy cognitive maps (FCM) is effective for modeling systems characterized by ambiguity, the presence of causal relationships between variables.

Therefore, we consider it appropriate to structure knowledges about the factor environment that formes the quality of life, their reflection by forming a cognitive model, conducting static analysis to identify factors that have the greatest impact on quality of life to improve its level.

Methods. Since we believe that the concept of quality of life is a poorly structured and complex category, which is a qualitative feature characterized by a significant number of factors and causal relationships that have both quantitative and qualitative expression, this category will be explored using soft modeling with the construction of a cognitive model. This approach allows you to explore the system for stability, complexity, balance, to obtain strategies for the development of the built system and more. Quality of life is chosen as the object, which is defined as the target peak. The study aims to structure knowledge about the factor environment that shapes the quality of life, to identify the factors that have the greatest impact on the development of the system in general, and the target peak, in particular, to improve its level.

Next, we present a method for constructing a cognitive model. The algorithm of analysis and research of the cognitive model consists of a sequence of stages defined in (H. Kucherova et al., 2020). First, it is necessary to determine the purpose of modeling and to identify targets. At the next stage, a set of factors is formed, that meet the purpose of the study. All factors are classified into target

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factors (corresponding to the main purpose of modeling), controlled (those that can be directly influenced), intermediate (used to describe the subject area of research), external factors. The next step is to form a causal graph, justifying the direction and strength of the relationship between the factors. That is to form an digraph G=<V, E>, where V is the set of vertices of the digraph corresponding to the set of certain factors, E is the set of arcs of the digraph, which reflects the causal relationship between the factors.

The direction and weight of the arc, ie the relationship between factors, are determined by the direction and degree of intensity of influence between factors and takes values on the segment [- 1, 1]. During this period, the relationship between the factors may have the following meanings:

a) 0, if the effect is absent;

b) from 0 to 1 with a positive effect, ie if a change in the value of the vertex-cause on ei leads to a change in the value of the vertex-consequence on ei;

c) from -1 to 0 with a negative impact, ie if the change of the value of the vertex-cause on ei leads to a change in the value of the vertex-consequence on – ei;

Given that certain factors are characterized by different initial levels, we investigate the constructed cognitive model, considering the fuzzy logical conclusions about their impact on quality of life. The vertices of the sign digraph are denoted as Bi – linguistic variables, the values of input and output variables are transmitted through a linguistic description of the values of the factors T = {"Very low", "low", "medium", "high", "very high"}, given by fuzzy sets $T=\{(\alpha, \mu(\alpha)): \alpha \in X, \mu(\alpha)\in[0; 1]\}$, where α – elements of the set X, $\mu(\alpha)$ – the membership function of the corresponding fuzzy set:

$$\mu(\alpha) = \begin{cases} low \in [0, 0{,}2) \\ belowmedium \in [0{,}2; 0{,}37) \\ medium \in [0{,}37; 0{,}63) \\ abovemedium \in [0{,}63; 0{,}8) \\ high \in [0{,}8; 1] \end{cases} \qquad (1)$$

Measured values of linguistic descriptions are represented by the generalized Harrington desirability function, the range of this scale varies from 0 to 1, where the lowest measured value of the state of the factor corresponds to zero, and the largest – to "1".

At the next stage, a static analysis of the constructed model is performed by determining the balance of the constructed system, consonance and dissonance of influence (V. Silov, 1995, 228 p). This analysis allows to identify indirect interactions of factors on each other. Consonance determines how consistent the presence of concepts in the modeled system is, how adequate the chosen direction and influence is (a measure of the difference between positive and negative influence). Dissonance – how well-argued is the impact of the system on each of the concepts.

At the last stage, dynamic modeling of the constructed system is carried out to form a basic set of alternative strategies for system development and justification of priority strategies for achieving targets.

Results. For the research, we select 22 indicators of socio-economic situation of households in Ukraine, grouped into four groups, namely: Population, Education and Health, indicators of Economic condition (Table 1).

Table 1

Socio-economic indicators of the population of Ukraine

Code	Indicators	Code	Indicators
Population		Economic condition	
X1	Population	Q1	Unemployed population of working age
X2	Population migration	Q2	The average monthly salary
X3	Households without children	Q3	Self-assessment of households by income level
Education		Q4	Signs of poverty
Y1	Preschool and secondary education institutions	Q5	Populations with incomes below the subsistence level
Y2	Institutions of higher and professional higher education	Q6	Satisfaction with their living conditions
Y3	Art schools, libraries, theaters, museums, publishing books and brochures, concert activities	Q7	Funds for any professional education
Y4	Internet access	Q8	Funds for recreation and leisure
Y5	Level of education of the population	Q9	Consumption of a sufficient amount of quality food
Health		Q10	Privileges and subsidies for housing and communal services, electricity and fuel
Z1	Pollution, environmental problems (smog, odors, contaminated water, etc.)	Q11	Debts for housing and communal services
Z2	Satisfaction with the state of the health		Quality of life
Z3	Households in which any of the members were unable to receive medical care during the year		

Source: data generated from the source (State Statistics Service of Ukraine)

Examining the country's population statistics according to official data (State Statistics Service of Ukraine), a sharp decline in population was found due to low birth rates, high mortality rates and migration. Analyzing the indicators of the economic condition it was found an increase in unemployment and, despite the growth of the average monthly wage, a great need for funds for basic things. The study of health indicators revealed a decrease in consumption of almost all products, which, in our opinion, has a negative impact on the quality of life, but during the study period there was a reduction in pollutant emissions in Ukraine. Regarding the education indicator, there is a decrease in the number of students in both schools and institutions of higher education.

Based on their own theoretical conclusions (O. Kravets, & A. Didenko, 2021), using 22 indicators, built a cognitive model of population's quality of life of Ukraine (Fig. 1). Factors that form the system of indicators of population's quality

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of life are presented in the form of vertices of a digraph, where each vertex ui at discrete moments of time takes value $v_i(t)$ t = 0, 1, 2, …. The interaction between the vertices is presented in the form of arcs of the digraph, where the dotted line indicates the negative impact of one factor on another, and the solid line – a positive impact. The next step is to conduct a static analysis of the cognitive model, which will identify the factors that have the greatest impact on the population's quality of life.

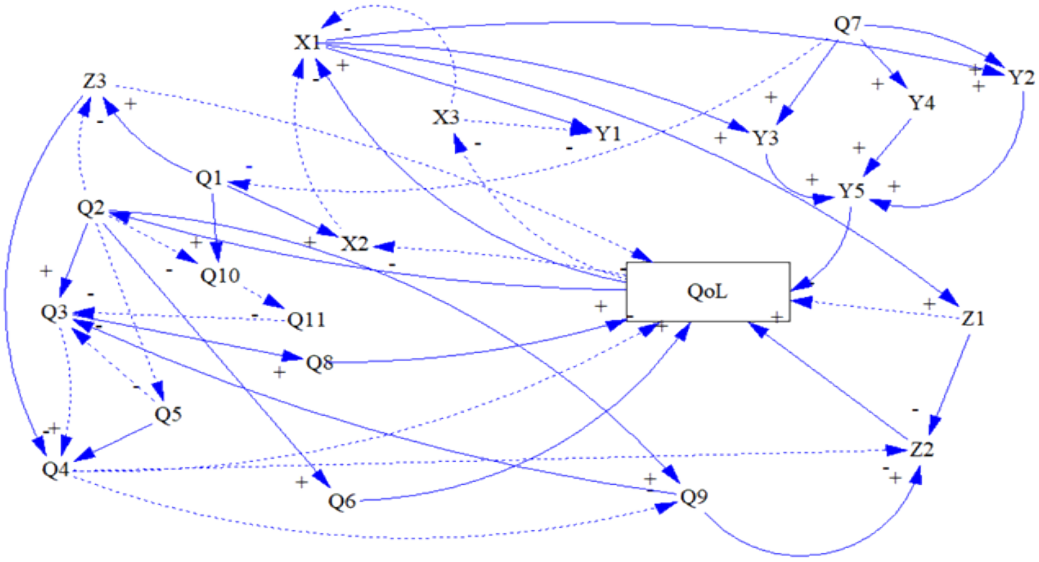

Figure 1 – The digraph of the cognitive model
Source: author's reseach

We turn to the static analysis of the cognitive model of Fig. 1. The fuzzy built model is manifested in the level variation of factors and relationships between them in the constructed system. For static analysis of the situation, the system characteristics of the cognitive model were calculated (see Table 2) according to the approach proposed in the research (V. Silov, 1995, 228 p).

Based on Table 2, the largest values of the consonance of the factor's impact on the system are the indicators of average monthly wages (0.798) and Privileges and subsidies for housing and communal services, electricity, and fuel (0.751). Analysis of the dissonance of the system's impact on the factor revealed the need to increase the level of education of the population as a whole (0.678) and contribute to increased satisfaction with health (0.578). Factors Signs of Poverty (Negative Impact) and Average Monthly Wages (Boosting Impact) are the biggest ones that strengthen the system. At the same time, the system itself has little impact on the Signs of Poverty, and the system has the greatest impact on the level of education. As a result of the analysis using the software product FCMapper, which allows to set the initial weights of the vertices and study their impact on other indicators of the system, cognitive model (Fig. 1), the following results were obtained: the density of the digraph is determined at the level of 0.09, this indicator measures the share of existing connections from potential ones, its value is within the interval [0; 1], the greater its value, the more active is the interaction between factors. The constructed model in the conditions of self-development of the system came to a stable state, which was provided by the availability of feedback, with the largest number of 47 iterations for factors "Population", "Pollution, environmental problems", "Consumption of sufficient quality food" and "Satisfaction with the state of the health", the lowest number of 42 iterations was set for the factor "Internet access".

Table 2

System characteristics of the cognitive model

Factors	Consonance of the factor's influence on the system	Consonance of the system's influence on the factor	Dissonance the factor's influence on the system	Dissonance of the system's influence on the factor	Influence of the concept on the system	Influence of the systems on the concept
X1	0,449	0,756	0,551	0,244	0,072	0,008
X2	0,469	0,731	0,531	0,269	-0,073	-0,054
X3	0,494	0,703	0,506	0,297	-0,002	-0,062
Y1	0,692	0,122	0,309	0,878	0,045	0,027
Y2	0,692	0,791	0,309	0,209	0,045	0,055
Y3	0,692	0,791	0,309	0,209	0,045	0,055
Y4	0,692	0,731	0,309	0,269	0,045	0,046
Y5	0,653	0,322	0,347	0,678	0,046	0,115
Z1	0,687	0,776	0,313	0,224	-0,068	0,029
Z2	0,653	0,422	0,347	0,578	0,046	-0,027
Z3	0,699	0,745	0,302	0,255	-0,044	-0,040
Q1	0,609	0,731	0,391	0,269	0,007	-0,046
Q2	0,798	0,703	0,202	0,297	0,084	0,062
Q3	0,734	0,623	0,266	0,377	0,045	0,041
Q4	0,717	0,671	0,283	0,329	-0,090	-0,003
Q5	0,740	0,712	0,261	0,289	-0,050	-0,050
Q6	0,653	0,712	0,347	0,289	0,046	0,050
Q7	0,684	0,712	0,316	0,289	0,043	0,050
Q8	0,653	0,632	0,347	0,368	0,046	0,040
Q9	0,740	0,757	0,260	0,243	0,067	0,027
Q10	0,751	0,745	0,250	0,255	-0,001	-0,040
Q11	0,742	0,754	0,258	0,246	-0,041	-0,002
QoL	0,619	0,669	0,381	0,331	0,049	0,080

Source: calculated by the authors in decision support system "NEEDLE"

Next, we have analyzed three scenarios of system development when changing the values of the factors that have the greatest impact on the system: "Average monthly wages" and "Benefits and subsidies for housing and communal services, electricity and fuel". To quantify the dynamics of the system, the degree of influence of one factor on another is divided into values on a scale (1). For the first scenario, the initial value of the level of the vertex "Average monthly wages" and "Benefits and subsidies for housing and communal services, electricity and fuel" was chosen as low (0.1); for the second scenario – at the level of medium value (0.5), for the third at the level of high value (0.9).

Low and medium values of the factor "Average monthly wages" have the greatest impact on "Households in which one of the members during the year could not receive medical care", "Signs of poverty", "Populations with incomes below the subsistence level", "Benefits and subsidies for payment for housing and communal services, electricity and fuel".

With the increase in the factor "Average monthly wages" the greatest positive shift

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is in the vertex "Consumption of sufficient quality food", while decreasing the number of households in which any member during the year could not receive health care, decreases the number of households in need benefits and subsidies for housing and communal services, electricity and fuel, and the sign of poverty in general is declining. Low average monthly wages negatively affect a person's satisfaction with their health, reduce household self-esteem in terms of income, satisfaction with their living conditions, reduce funding for vocational education and consumption of a sufficient amount of quality food.

Changing the factor "Privileges and subsidies for housing and communal services, electricity and fuel" to a low and medium value increases arrears of housing and communal services and reduces the self-esteem of households by income level. With a high value of the factor "Benefits and subsidies for housing and communal services, electricity and fuel" decreases "Signs of poverty" and "Debts for housing and communal services", while increasing "Leisure and leisure" and "Self-assessment of households by income level".

The assessment of quality of life is most influenced by a group of health factors, and this group also has a significant impact on population decline. Lack of work is a determining factor for migration, rising arrears of housing and communal services and deteriorating access to health care. The growth of the quality of life indicator contributes the most to the growth of the population and reduces its migration.

Conclusions. Structural analysis of the cognitive model made it possible to assess the classes of factors, establish the system characteristics of the model, identify the factors that have the greatest impact on the system, and assess their importance in modeling the self-development of the situation. Considering the weights of factors and external influences, it is determined that the assessment of the quality of life is most influenced by a group of health factors, while the growth of quality of life contributes most to population growth and migration. Further research is aimed at a dynamic analysis of the cognitive model and the construction of scenarios for improving the population's quality of life.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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КОГНІТИВНИЙ ПІДХІД ДО МОДЕЛЮВАННЯ ЯКОСТІ ЖИТТЯ НАСЕЛЕННЯ

Анотація. Оцінка свого положення щодо рівня розвитку економічного та людського капіталу, побудова стратегії для підвищення якості життя є вкрай важливим для держави, тому дослідження показників, що формують якість життя та виявляють найбільший на неї вплив досі залишається актуальним питанням. Оскільки саме поняття якість життя є багатокомпонентною категорією, яку характеризують як об'єктивні, так і суб'єктивні показники, тому вважаємо доцільним структуризацію знань про факторне середовище, що формує якість життя населення, їх відображення шляхом формування когнітивної моделі, проведення її статичного аналізу для виявлення факторів, що мають найбільший вплив на якість життя для підвищення її рівня, що й відображає мету дослідження. Побудовано когнітивну модель якості життя у вигляді зваженого орграфу, який створено на основі 22 показників соціально-економічного становища домогосподарств України, що об'єднані у чотири групи, а саме: населення, освіта та здоров'я, показники економічного стану. Структурний аналіз когнітивної моделі дав змогу оцінити класи факторів, встановити системні характеристики моделі, виявити фактори, що мають найбільший вплив на систему та оцінити їх вагомість при моделюванні саморозвитку ситуації. З урахуванням ваг факторів та зовнішнього впливу визначено, що на оцінку якості життя населення найбільший вплив здійснює група факторів здоров'я, при цьому зростання показника якості життя найбільше сприяє зростанню чисельності населення та зменшує його міграцію.

Ключові слова: *якість життя, когнітивне моделювання, статичний аналіз, орграф, соцально-економічні індикатори*

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PENITENTIARY CRIME AS A SOCIAL PHENOMENON INHERENT IN PLACES OF NON-FREEDOM IN UKRAINE

Abstract. Penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine is described in the article. The opinions of foreign and domestic scientists on the concept of penitentiary crime are analyzed. Penitentiary crime in places of incarceration is identified according to the typology of the object of a criminal offense. The author's definition of penitentiary crime is formulated.

We have identified crime in places of non-freedom according to the typology of the object of a criminal offense committed in places of non-freedom, dividing it into the following groups: 1) penitentiary criminal offenses; 2) violent criminal offenses; 3) narcotic criminal offenses; 4) criminal offenses against property; 5) official and corruption offenses. All of them together characterize penitentiary crime.

Keywords: *crime, offense, convicted person, employee, institution, punishment*

Introduction. Ukraine is independent for 30 years and we are all standing in the way of developing a democratic state governed by the rule of law. Unfortunately, we can note that the criminal situation in the country is such that a person and his life have not become a priority of the state. Although, the state should provide the country with such a procedure for regulating legal relations that could protect a person, society and the state from criminal offenses.

One of the paradoxes of the national penitentiary system is that persons who are isolated from society for committing criminal offenses in order to correct them, resocialize them and prevent the commission of a new criminal offense, repeatedly violate the criminal law norm, again commit new criminal offenses, sometimes even of greater severity than those one for which they are serving a sentence.

Studying the criminological theory of penitentiary crime in places of non-freedom of Ukraine, we may to the conclude that its manifestations at all levels of the development of public relations were a destructive force for human life, its protection of rights and freedoms. Unfortunately, the country's state institutions, first of all law enforcement agencies, are not able to resist penitentiary crime, which by its actions threatens not only the authority of justice, but also the national security of Ukraine.

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Analysis of recent research and publications. The theoretical basis for the study of penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine was the scientific works of domestic and foreign scientists representing various branches of scientific knowledge, such as: L. Bagria-Shakhmatov, A. Bogatyrev, O. Bogatyreva, V. Grischuk, T. Denisova, A. Juzha, A. Dolgova, A. Dudorov, O. Kolb, V. Kuznetsova, I. Kopotun, V. Kudryavtseva, O. Mikhaylik, S. Miroshnichenko, Yu. Okud, M. Puzyrev, A. Stepanyuk, B. Trubnikov, O. Shkuta and other researchers.

The purpose of this work is to study penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine. Therefore, we set the task to analyze the impact of general crime on penitentiary crime in places of non-freedom in Ukraine, as well as to formulate its author's definition.

Formulation of the main material. Penitentiary crime is formed in the conditions of execution and serving of criminal sentences and its constant powerfully affects the human consciousness in places of non-freedom of the State Penitentiary Service of Ukraine. If someone thinks that penitentiary crime can be overcome by various forms and methods, they are deeply mistaken. C. Beccaria offered the theory of a "born Criminal", where he expressed his own opinion that there are people who are prone to committing a crime from birth (C. Beccaria, 2014, p. 222).

We should agree with this theory, moreover, the change in social formations, the scientific search for the prevention of penitentiary crime, have changed the views of criminologists, in general, on the problem of crime. Today, there are all reasons to say that biologically every person is prone to committing a criminal offense, and it is important to note that he commits it, it is another matter in what form.

In order to prove that penitentiary crime is a social phenomenon which is inherent in places of non – freedom in Ukraine, we will try to apply a comparative method of solving this problem. Without going into a scientific discussion with domestic and foreign theorists regarding the problems of crime, at first we conducted a certain cross-section of the scientific vision of crime in general. Thanks to this, we were able to express our own vision on the problem of committing a new criminal offense in places of non – freedom by persons serving sentences.

Firstly, there is such natural phenomenon as crime in society, and it is generated by people themselves in its various manifestations. According to the results of public opinion polls conducted in recent decades, people in many countries of the world put it in second or third place according to importance after economic problems (O. Juzha et al., 2020, p. 50). So in places of non-freedom there are persons who not only committed a criminal offense for the first time, but also those one who have a criminal record, are authorities in places of non-freedom, adhere to a certain subculture, and so on. Therefore, the commission of a new criminal offense on their part is not something extraordinary. This is their lifestyle and behavior.

Therefore, it is appropriate to refer to foreign experience in this context. So, in foreign criminology, the theory according to which a prison is considered as a "school of crime" is called the theory of differential association theory. Its founders and followers are such American criminologists as Edwin Sutherland and Donald Cressy (E. Sutherland, & D. Cressey, 1966). The theory of differentiated communication has determined the development of scientific thought of American criminologists and other scientists dealing with the problem of crime. Moreover, now this theory is the most common in western criminology, judging by the number of journal articles which talk about how it is tested, analyzed and developed (E. Sutherland, & D. Cressey, 1966, p. 7).

The existence of these problems in a comparative context puts on the agenda of not only national, but also foreign science the need to introduce innovative methods of preventing penitentiary crime. Particularly, according to F. Potier, director of the

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National School of prison staff of France, it is advisable to introduce the study of criminological programs in French universities in order to help solve a number of problems in the prison sphere. In addition, as the French penitentiary experience shows, this European country has tested "non-standard" methods which help overcome the criminogenic qualities of the convicted person's face. Thus, those convicted persons of violent crimes, or persons who are prone to violence while serving their sentences ("violent inmates") are involved in a special program in which they work to tame wild horses, which ultimately teaches them to control themselves (P. Pottier, 2015).

Secondly, the change of one social formation to another, the creation of knocking obstacles in the form of social and economic vices, crime acquires new transformational processes. So the foreign scientist N. Kuznetsova studying the causes and conditions of crime characterized it such way – it is a relatively massive, historically changing social, having a criminal-legal character, a phenomenon of class society, consisting of the entire set of crimes committed in a certain state in a certain period of time (P. Pottier, 2015, p. 173).

Today, in criminological science, you can count more than ten author's definitions of crime, each of which corresponds to the subject and object of crime. As for the concept of penitentiary crime, domestic scientists note it as a criminal offense committed by those one sentenced to imprisonment, and who encroach on the established procedure for the execution/serving of this sentence (O. Juzha et al., 2020, p. 548).

Thirdly, the state, level, dynamics, geography of crime, its qualitative indicators are influenced by negative social phenomena (in criminology they are called background phenomena), which are dangerous, because they feed and interact with crime. Among such negative social phenomena, it is worth highlighting: drug addiction, prostitution, alcoholism, sexual promiscuity, the spread of sexually transmitted diseases and Aids, vagrancy, and so on.

At the same time, according to some domestic scientists, negative social phenomena should also include the harmful anti-legal policy of the state, leading to general impoverishment of the population, being in a constant stressful state, the survival of the individual and his family members, lack of care or ostentatious care for the underprivileged. Victims of such policies become vulnerable categories of citizens and can become victims of committing a criminal offense (A. Babenko et al., 2018, p. 127).

It is important to note that places of non-freedom, unfortunately, do not exclude the commission of such negative social phenomena as drug addiction, alcoholism, sexual promiscuity, the spread of sexually transmitted diseases and aids, the carrying of prohibited items, and so on. At the same time, over the past five years, there has been a tendency to increase the level of penitentiary crime in places of non-freedom. Among the most common criminal offenses committed in places of non-freedom, it is worth highlighting: penitentiary criminal offenses which are provided for (articles 391, 392, 393 of the Criminal Code of Ukraine); criminal offenses in the sphere of drug trafficking; criminal offenses in the sphere of property (Article 185 of the Criminal Code of Ukraine is particularly highlighted).

Our study of penitentiary crime in places of non-freedom (2016-2020) showed that the above-mentioned criminal offenses are most often committed by convicts on working days (70 %); in residential areas of institutions (8.6 %); in industrial areas (3.6 %); in disciplinary insulator, chamber-type premises (27.3 %), at night (17 %), which indicates a difficult operational and official situation in institutions for the execution of criminal sentences.

According to the data of the Ministry of Justice of Ukraine, according to the results of the work of bodies and institutions for the execution of sentences in 2017, the most criminogenic are Correctional colonies of medium security, where persons who have already served a sentence of imprisonment are held. By the

way, more part of criminal offenses is committed at night in these colonies and on working days of the week in residential areas (Ministry of Justice, 2017, p. 7).

Fourthly, the state policy in the field of countering and preventing crime against the background of public changes requires updating the criminal law block of legislation. First of all, society needs a new and, most importantly, effective law on criminal liability, as well as the adoption of a new penitentiary law.

At the same time, the study of this problem has shown, if scientists in the field of criminal law are working powerfully on the new law on criminal liability, the Ministry of Justice of Ukraine as the legal successor of the State Penitentiary Service of Ukraine for the entire period of existence of the Criminal executive code of Ukraine (2004-2021) has made so many changes and additions to it that in the general aggregate gave rise to total haphazardness, ambiguity of interpretation of its norms and created significant obstacles in the practical activities of bodies and institutions of execution of sentences.

Moreover, constant changes and additions to the criminal executive legislation of Ukraine indicate the lack of a proper theoretical base and modern scientific methodology for understanding the social essence of criminal executive legal relations and the formation of its system, the subjects of which are, on the one hand, the state through its institutions, and, on the other hand, prisoners and convicts. So penitentiary crime is a special type of crime, so it is inherent only in those criminal offenses which are committed by convicted persons while serving a sentence. Otherwise, the commission of criminal offenses by a person who has not received a court verdict cannot be considered as penitentiary crimes. Because penitentiary crime is a special type of crime, so it is inherent only in those criminal offenses which are committed by convicted persons while serving a sentence. Otherwise, the commission of criminal offenses by a person who has not received a court verdict cannot be considered as penitentiary crimes.

Fifthly, crime in places of non-freedom is considered by national scientists as the most socially dangerous act, because it is committed in strict isolation, previously convicted person, under the supervision and control of personnel. Recently conducted applied studies in the field of crime prevention in places of non-freedom have shown that there is no single point of view on the type of such crime among national and foreign scientists.

In particular, foreign scientists V. Kudryavtsev and V. Eminov believe that crime in places of non-freedom is a part of recidivism, which is characteristic of penitentiary institutions (1995, p. 421). Ukrainian scientist O. Juzha believes that crime in places of non-freedom is the so-called “penitentiary recidivism”, which provides for the commission of a new criminal offense by persons serving a sentence in the form of imprisonment (2004, p. 134).

Another Ukrainian scientist Yu. Orel considers crime in places of non-freedom as penitentiary crime, which is a component of crime in general and recidivism in particular, and which is characterized by a specific place of committing a criminal offense, its peculiar subject and expressed by its orientation against other convicts or the staff of the penitentiary institution (2016, p. 140).

This position is supported by domestic scientists in the field of penitentiary science I. Bogatyrev, M. Puzyrev, who consider crime in places of non-freedom as penitentiary crime. They note that it is a type of recidivism and collectively combines criminal acts related to the process of execution and serving sentences, has its own patterns, quantitative characteristics and in this regard requires specific state and public anti-criminal measures of influence (2012, p. 170).

Modern research has also established that the problem of recidivism is relevant both for the countries of the world as a whole and for Ukraine in particular. At the same time, recidivism exists due to its subject composition, that is, recidivists. It is important to note that the relevance of considering the relevant categories is explained by the following circumstances:

1) public danger, which is characterized by the repeated commission of criminal offenses by the same persons after serving the sentence (or in the process of serving the sentence, that is, after the fact of conviction) for a criminal offense committed for the first time. In other words, there is a possibility of repeated harm to values taken under the protection of the law on criminal liability, such as life, health, property, etc.;

2) the fact of committing a recidivist indicates that an effective punitive, correctional and preventive effect was not carried out on the person of the recidivist (so the goal of special prevention was not achieved), which, firstly, indicates the need to increase attention to the relevant subject on the part of authorized subjects, and secondly, the development of additional measures for general social and special criminological prevention of recidivism. Considering these features, a system of penitentiary institutions (correctional colonies) has been built in Ukraine, taking into account the corresponding categories of convicts for persons of both sexes: both men and women (S. Khalymon et al., 2021).

A change in the paradigm of penitentiary crime in places of non-freedom in connection with the Resolution of the Cabinet of Ministers of Ukraine no. 343 (2016). Unfortunately, the transfer of the State Penitentiary Service of Ukraine to the subordination of the Ministry of Justice of Ukraine did not show the positive result which society expected. Nothing new hasn't been created for the last five years, except for the complete dismantling of the penitentiary service, the state has incredibly weakened its influence on organized crime and recidivism, thereby creating the ground for penitentiary crime. Taking this into account, Ukrainian scientist A. Bogatyrev in the process of conducting a study of crime among convicts in places of non-freedom noted that he had established cases when convicts did not want to be released from places of non-freedom, explaining that no one expects them, except for unemployment, homeless, destitute in freedom, and therefore they calmly go to commit a new criminal offense (2019, p. 97). By the way, such cases are also confirmed by the results of a poll of personnel of penitentiary institutions. So, crime in places of non-freedom can reach such proportions that we can say about the systemic crisis in the activities of bodies and institutions of execution of sentences, about their inability to ensure personal safety of both convicts and personnel of places of non-freedom.

The most dangerous thing is that over the past two years, mass disobedience of convicts has taken place in State Penitentiary institutions. In particular, during 2019, the facts of mass disobedience were commented on April 28, 2019 in the state institution "Cherkasskaya correctional colony" (no. 62), individuals who were held in the colony showed group disobedience to the legal requirements of the administration, committed an attack and inflicted injuries of varying severity on employees of the institution. One of the injured employees of the institution was admitted to the hospital in serious condition. About 30 convicts participated in the incident. On May 27, 2019, in the state institution "Pivdenna correctional colony (51)", while transporting 6 convicts from the colony to other institutions, led by the so-called "watchers", other convicts showed group disobedience to the legal requirements of the administration, attacked and inflicted injuries of varying severity on 7 employees of the institution, set fire to the fire truck, the duty station and the library of the institution. On June 5, 2019, in the Pyatikhatskaya correctional colony (no. 122), a group of convicts refused to comply with the colony's daily routine, namely, to go out for an evening check. In response to comments on this issue from the colony administration, they incited other convicts to group disobedience, called for not going to the canteen and non-compliance with other measures provided for in the daily routine. In the local section of the Department, convicts set fire to mattresses, clothes of the established sample, bedside tables, and demanded that the administration weaken the regime of detention (2019, p. 13).

The above facts of group disobedience of convicts confirm our hypothesis

that the operational situation in places of non-freedom is quite tense. Among the reasons for this condition are the following ones:

– influence on crime in places of non-freedom of organized criminal groups located outside Penitentiary institutions;

– the presence of serious shortcomings and contradictions in the activities of the administration of the penitentiary institution seriously affects the criminal motivation of the convicted person and encourages him to commit a new criminal offense in places of non-freedom;

– non-compliance with the current legislation with the conditions of serving a sentence, in particular, it applies to the norms of living space, rules of sanitation and hygiene, catering, medical care, etc. The convicted person must be sure that the state respects his rights and freedoms, honor and dignity, and helps him to embark on the path of correction and re-socialization;

– the presence of illegal connections of convicts with the staff, especially in carrying prohibited items and substances, which give rise to the commission of corruption acts, abuse of official position among the staff, etc.;

– the use of various types of torture by the staff of penitentiary institutions to convicts causes a negative reaction by convicted persons, so they are forced to take extreme measures to protect their rights and freedoms;

– the lack of scientifically based applied researches of problems of crime prevention in places of non-freedom in the administration of penitentiary institutions, scientific and practical recommendations, educational and methodological literature on these issues, in our opinion, limits the legal opportunities of personnel of places of non-freedom to use them at preventive work with convicts who are prone to committing a new criminal offense in places of non-freedom.

Summing up the conducted research of penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine, we can say that this crime, having its own determinants, shows the imperfection of assigning such a type of punishment as imprisonment for a certain period of time to persons who have committed a criminal offense. At the same time, it shows insufficient professionalism on the part of employees of penitentiary institutions in working with convicts, as well as their professional deformity, which requires constant monitoring by the Ministry of Justice of Ukraine.

Conclusions and prospects: the segment of the studied material presented in this article allowed us to record the following conclusions. First, we have identified crime in places of non-freedom according to the typology of the object of a criminal offense committed in places of non-freedom, dividing it into the following groups: 1) penitentiary criminal offenses; 2) violent criminal offenses; 3) narcotic criminal offenses; 4) criminal offenses against property; 5) official and corruption offenses. All of them together characterize penitentiary crime.

Secondly, we have proposed the following author's definition of penitentiary crime as a social phenomenon which is inherent in places of non-freedom in Ukraine-this is a certain group of criminal offenses committed by a special subject, during the period of serving a sentence, only in places of non-freedom, characterized by a specific public danger, aimed at undermining the authority of justice and the administration of penitentiary institutions.

Thirdly, the transfer to the Ministry of Justice of the state criminal service of Ukraine gave rise to insufficient state control over places of non-freedom and, as a consequence, penitentiary crime poses a serious danger to the state, hindering the achievement of the goals of punishment, correction and re-socialization of convicts. Another conclusion is quite obvious : the punitive system, types and system of punishments is such one, which society wants it to be.

Fourth, own position is justified that the dismantling of the penitentiary service of Ukraine carried out by the Ministry of Justice of Ukraine for five years, unfortunately, did not stabilize the operational situation and the status of law and

order in places of non-freedom. A proposal is being made to remove the current State Penitentiary Service of Ukraine from the subordination of the Ministry of Justice of Ukraine, providing for the creation of an independent central executive authority.

Conflict of Interest and other Ethics Statements
The author declare no conflict of interest.

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Іван Богатирьов

ПЕНІТЕНЦІАРНА ЗЛОЧИННІСТЬ ЯК СОЦІАЛЬНЕ ЯВИЩЕ, ЩО ПРИТАМАННЕ МІСЦЯМ НЕСВОБОДИ В УКРАЇНІ

Анотація. У статті розкрита пенітенціарна злочинність як соціальне явище, що притаманне місцям несвободи в Україні. По-перше, автор виділив злочин у місцях несвободи за типологією об'єкта кримінального правопорушення, вчиненого в місцях несвободи, поділивши його на такі групи: 1) пенітенціарні кримінальні правопорушення; 2) насильницькі кримінальні правопорушення; 3) наркотичні кримінальні правопорушення; 4) кримінальні правопорушення проти власності; 5) службові та корупційні правопорушення. Усі вони разом характеризують пенітенціарну злочинність. По-друге, запропоновано таке авторське визначення пенітенціарної злочинності як соціального явища, яке притаманне місцям несвободи в Україні – це певна група кримінальних правопорушень, вчинених спеціальним суб'єктом під час відбування покарання лише в місцях несвободи, що характеризуються конкретною суспільною небезпекою, спрямованих на підрив авторитету правосуддя та управління пенітенціарними установами. По-третє, наголошено, що передача до Міністерства юстиції Державної кримінальної служби України призвела до недостатнього державного контролю за місцями несвободи, і, як наслідок, пенітенціарна злочинність становить серйозну небезпеку для держави, перешкоджаючи досягненню поставлених цілей. По-четверте, обґрунтовано

власну позицію стосовно того, що демонтаж пенітенціарної служби України протягом п'яти років, який проводив Міністерство юстиції України, на жаль, не стабілізував оперативну обстановку та стан правопорядку в місцях несвободи. Вноситься пропозиція вивести діючу Державну пенітенціарну службу України з підпорядкування Міністерству юстиції України, передбачивши створення самостійного центрального органу виконавчої влади.

Ключові слова: *злочинність, правопорушення, засуджений, працівник, установа, покарання*

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LIQUIDATION OF MULTI-APARTMENT BUILDING CO-OWNER ASSOCIATION UNDER THE COURT DECISION

Abstract. The article examines the grounds, the procedure for liquidating a multi-apartment building co-owner association (MABCOA) under the court decision. The strategic (the need to adapt national law to EU law) and regulatory (substantive and procedural) measurements of the feasibility of improving the legal mechanism for liquidating the MABCOA under the court decision are indicated. A classification of rules regarding the grounds and order of such liquidation into causal and procedural ones is proposed. The markers for resolving the dispute on the liquidation in the MABCOA have been concretized: will the claim be satisfied before the restoration of the rights and legitimate interests of the co-owner in the MABCOA?; will there be any court interference in the activities of the MABCOA?; will the satisfaction of the claim not violate the rights and legitimate interests of other participants in the MABCOA? The signs of violations during the creation of the MABCOA as grounds for its elimination have been clarified: such violations must be of a significant, collective nature, and they cannot be eliminated in the current activities of the MABCOA. The expediency of introducing class action lawsuits into the national system is reasoned since evidence of the fact of collective violation of the rights of co-owners of a multi-apartment building during the creation of the MABCOA is possible only if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to go to court since the conflict is based on the issue of the same-type violation of the rights of such co-owners. It is proposed to enshrine the guarantees of voluntary execution of a court

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decision on the liquidation of an economic entity by granting the state registrar the right to apply to the court with a statement of claim on the appointment of officials of the economic entity responsible for carrying out the liquidation procedure after a certain period has elapsed since the registration of information about the termination procedure of such economic entity.

Keywords: *multi-apartment building co-owner association, co-owner, liquidation, liquidation procedure, collective violation, class action lawsuit, state registrar, guarantee*

Introduction. The strategic development of the national economic system is determined by the need to adapt national legislation to the EU legislation, deregulation, and liberalization of public regulation of economic activity. Article 89 of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, provides for the gradual liberalization of the conditions for starting a business and a constant review of the legal framework for the establishment of a climate for it following the obligations of the parties under international agreements (Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, 2014). Clear and understandable grounds, the procedure for the liquidation of economic entities by a court decision is one of the conditions for liberalization and implementation of the principle of legal certainty in business, and investment, including foreign investment, in the national economy.

Multi-Apartment Building Co-Owner Association (here in after referred to as MABCOA) in Ukraine, Comunidal depropietarios (condomio) in Spain, Lacooperative d'habitans (residents' cooperative) in France, house associations in Lithuania, housing associations in Poland is a relatively common form of joint property management and maintenance of housing stock in good condition. According to statistics in Ukraine, the number of MABCOAs for the period from January 2021 to October 2021 is constantly increasing: in January – 35.353; in February – 35.492; in March – 35.641; in April – 35.834; in May – 36.050; in June – 36.223; in July – 36.420; in August – 37.069; in September – 36.650; in October – 36.870 (State Statistics Service, 2021).

However, in Ukraine, this form of association has emerged relatively recently in comparising with developed countries. Therefore, the practical implementation of the provisions of the Laws of Ukraine On the Multi-Apartment Building Co-Owner Association, On Housing and Communal Services, On Peculiarities of the Exercise of Ownership in a Multi-Apartment Building in the context of the economic and civil legislation (Economic Code of Ukraine, Civil Code of Ukraine, Economic Procedure Code of Ukraine, the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations) indicates legal gaps and the expediency of specifying the procedure for liquidating the MABCOA under a court decision.

This problem has one strategic and two regulatory dimensions mentioned above. Regulatory dimensions are the material and procedural aspects of the liquidation of the MABCOA under a court decision. The material aspect is due to the lack of procedural rules regarding the grounds, order, and guarantees for the execution of a court decision on liquidating the MABCOA in the Law of Ukraine On Multi-Apartment Building Co-Owner Association, the Model Statute of the MABCOA approved by the Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine. The procedural aspect is due to the impossibility of compulsory execution of a court decision on liquidation of the MABCOA, changes in the legal position of the Supreme Court of Ukraine concerning appropriate legal remedies in disputes on liquidation of the MABCOA.

Analysis of recent research and publications. In the scientific doctrine, the issue of liquidation of the MABCOA under a court decision is investigated fragmentarily in the context of the analysis of the legal status of such an economic

entity as a whole. In particular, Voinovskyi investigated the issues of strengthening the institutional capacity of the local government system through the development of the MABCOA (Voinovskyi, 2019). It is necessary to pay attention to the author's analytical information regarding the foreign experience of the functioning of the MABCOA analogs in developed countries and the countries of the former Eastern Bloc (Poland, Germany), which had to solve the issue of changing the form of ownership from public to private concerning housing facilities (Voinovskyi, 2019). Myrza investigated the contractual component of providing services for managing a multi-apartment building (2011). Demchenko specified the peculiarities of the legal regime of property in a multi-apartment building (2011). Chekhovska considered the administrative and legal regime for de-shadowing the relations in the production and sale of housing and communal services (2006). Significant scientific achievements in the chosen research area are the works by Adamovych (2021), Bohatyr (2021), Doroshenko (2017), Zhekov (2015), Zubatenko (2008), Pohut (2020), Tytova (2006) on the liquidation of economic entities, termination of non-profit associations. Adamovych points out the inconsistency between the legally defined procedure for the liquidation of the MABCOA and the judicial practice that was formed at that time (2021).

Issues related to the activities of the MABCOA in foreign countries were studied by Maignan, Arnaud, Chateau Terrisse (2018), Szczepańska (2014), Curzydło (2015), Sikorska-Lewandowska (2021), Douglas C. Harris (2011). Substantially, MABCOA analogs in other countries perform a function similar to national associations: they combine private ownership of a separate unit in an apartment building with an inseparable part of the common property in the building and the right to take part in the collective management of the private and shared property. Regarding the grounds for the liquidation of such economic entities, they can be conditionally divided into two groups: states that provide special grounds for liquidation for the MABCOA and states in which general grounds for liquidation are indicated for all economic organizations (including MABCOA).

A review of the scientific research indicates the lack of a comprehensive analysis of the grounds, the procedure for liquidating MABCOA under a court decision, considering current legislation, the latest judicial practice, the experience of developed countries and countries of the former Eastern Bloc.

Purpose of the article is to develope proposals for improving the legal mechanism for the liquidation of the MABCOA under a court decision.

Formulation of the main material. In the national legislation, the procedure for liquidating the MABCOA under a court decision is regulated by Articles 110, 111 of the Civil Code of Ukraine, Article 28 of the Law of Ukraine On Multi-Apartment Building Co-Owner Association, Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations, Article 327 of the Economic Procedure Code of Ukraine, Section VIII Grounds and Procedure for Liquidation, Reorganization (Merger, Division) of Associations and Resolution of Related Property Issues of the Model Charter of the MABCOA. Conventionally, these rules can be divided into causal and procedural ones.

Causal rules determine the grounds for liquidating the MABCOA under a court decision (Article 110 of the Civil Code of Ukraine, which is common to all legal entities and economic entities). The legal basis for the liquidation of the MABCOA under a court decision is violations committed during the creation of a legal entity that cannot be eliminated (Civil Code of Ukraine, 2003). The initiators of applying to the court with a statement of claim may be participants of a legal entity or relevant state authorities. Among public authorities, the tax authorities are vested with the powers to go to court with claims for the termination of a legal entity and/or invalidation of constituent documents (subparagraph 20.1.37 of Article 20 Tax Code of Ukraine) (Tax Code of Ukraine, 2010); National

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Commission on Securities and Stock Market on the termination of a legal entity-issuer due to its inclusion in the list of issuers with signs of fictitiousness, a joint-stock company (Article 8 of the Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996). Based on the peculiarities of the legal status of the MABCOA, tax authorities may initiate an appeal to the court with a claim for its liquidation since MABCOAs are not issuers of securities, financial institutions.

Analysis of judicial practice indicates that the initiators of the liquidation of MABCOA in most cases are participants of MABCOA, co-owners of premises (both residential and non-residential) in a multi-apartment building, tenants of non-residential premises in a multi-apartment building, competing service cooperatives. The dispute between one of the co-owners of a multi-apartment building, a tenant of non-residential premises, a service cooperative, and a MABCOA has economic jurisdiction (decisions of the Grand Chamber of the Supreme Court of April 18, 2018, in case no. 904/2796/17 (Decision of the Grand Chamber of the Supreme Court, 2018, of February 6, 2019, in case no. 462/2646/17). In case of an appeal against the fact of creation of a MABCOA by an individual who is not its participant or co-owner of premises in a multi-apartment building, the dispute is subject to consideration in civil proceedings (Decision of the Grand Chamber of the Supreme Court of February 26, 2020, in case no. 473/2005/19, Decision of the Grand Chamber of the Supreme Court, 2020).

When formulating the subject matter of the claim, plaintiffs, as a rule, choose the following method of defense: on invalidating the constituent documents on the creation of the MABCOA and canceling its state registration. Thus, the requirement to eliminate the MABCOA is derivative and depends on the satisfaction of the main one.

One of the most common grounds for invalidating the constituent documents on creating a MABCOA is a violation of the mandatory procedure for notifying the Constituent Assembly of co-owners of a multi-apartment building (Article 6 of the Law of Ukraine "On Multi-Apartment Building Co-Owner Association"). Thus, for the liquidation of a MABCOA in court, it is necessary to prove the fact of violation of the rights of co-owners of premises in a multi-apartment building when creating the MABCOA. It should be noted that such grounds for satisfying claims are indicated by both owners of premises in the house and other service cooperatives that provided housing and communal services before the creation of the MABCOA, tenants of non-residential premises in the building. According to the established judicial practice, only the claims of the owners of the premises of the residential building are subject to satisfaction. Concerning other persons (tenants, servicing cooperatives), the initiation of such litigation is due to the establishment by a MABCOA of higher rent or an attempt to interfere with the activities of the MABCOA, which has signs of abuse of procedural rights and the choice of an inappropriate method of protection.

It should be noted that in terms of satisfying the derivative claim, the legal position of the Supreme Court of Ukraine has changed. According to the decision of the Grand Chamber of the Supreme Court of Ukraine of June 29, 2021, the cancellation of state registration of a MABCOA is not a proper legal means since the cancellation of state registration of the MABCOA (registration record) under a court decision cannot be the very liquidation of a legal entity, which occurs under the procedure provided for in Paragraph 2 of Part 1 of Article 110 of the Civil Code of Ukraine, and does not lead to the termination of the MABCOA, taking into account the requirements of Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations. Consequently, a claim to cancel the state registration of an existing legal entity (MABCOA), which is established following the relevant procedure and carries out its activities for a long time, during the period of its existence having acquired the appropriate

rights and obligations, will not lead to the restoration of the rights and legitimate interests of the person filing such a claim (Decision of the Grand Chamber of the Supreme Court, 2021). Thus, since the grounds for liquidation of a legal entity by a court decision set out in Article 110 of the Civil Code of Ukraine are evaluation categories, it is advisable to specify which violations of legal rules are sufficient grounds for liquidation of a MABCOA under a court decision.

The chosen methods should be accessible and effective. There is a correlation between the specific protection method and the content of the violated right and interest. The main activity of the MABCOA is to perform functions that ensure the implementation of the rights of co-owners to own and use the common property of co-owners, proper maintenance of a multi-apartment building and adjacent territory, assistance to co-owners in obtaining housing and communal services, and other services of decent quality at reasonable prices and fulfill their obligations related to the activities of the association.

The court, resolving such a dispute per se, must find answers to the following questions: will satisfaction of the claim per se lead to the restoration of the rights and legitimate interests of the co-owner in the MABCOA?; will there be any interference by the court in the activities of the MABCOA?; will the satisfaction of the claim violate the rights and legitimate interests of other participants in the MABCOA?

The analysis made it possible to clarify the following thesis: for the liquidation of the MABCOA in court, violations in the creation of the MABCOA must be of a significant, collective nature. They cannot be eliminated during the current activities of the MABCOA.

Noteworthy there are the regulations specified in the Code of Commercial Companies of the Republic of Poland. One of the grounds for termination of an economic entity is a decision of the register court, which is issued if there are qualified constituent defects up to 5 years from the registration of the company, i.e., recognition of the invalidity of the company (Vasilieva, Kovalishyn, & Gerbet, 2016, p. 126). According to Article 271 of the Code of Commercial Companies of the Republic of Poland, the termination of the company's activities may result from a court decision issued at the request of a participant or member of the company's body if the achievement of the company's goal is impossible or if other valid reasons have arisen, or also at the request of a state body defined in a special law if the company's activities violate the right or threaten public order (Code of Commercial Companies of the Republic of Poland).

The fact that the position of the Supreme Court of Ukraine regarding the improper method of protection has changed does not exclude the facts of violations of the rights of co-owners of the MABCOA due to the creation of the MABCOA and the need to restore them. The way out of this situation may be through implementation of class action lawsuit mechanism into the national legal system. Proof of the fact of collective violation of the rights of co-owners of a multi-apartment building when creating a MABCOA is possible precisely if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to appeal to the court because the conflict is based on the issue of the same-type violation of the rights of such co-owners. This practice can also be extended to corporate disputes.

Class action lawsuits are actively applied both in the states of the Romano-Germanic and general legal systems (Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005), at the EU level. They are also the subject of research in foreign legal doctrine (Mulheron, 2004, Redish, Julian, Zyontz, 2010, Weber, Franziska and Van Boom, Willem H., 2017, Meller-Hannich, Caroline & Höland, Armin, 2011, Clausnitzer, 2020). An analysis of foreign legislation and scientific doctrine allows concluding that the introduction of a class action lawsuit system, on the one hand, will help protect the rights of co-owners of a MABCOA, and on

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the other hand, neutralize possible abuses by tenants of non-residential premises, serving cooperatives.

Procedural rules determine the procedure for liquidating a MABCOA under a court decision. Procedural rules are contained in Article 28 of the Law of Ukraine On Multi-Apartment Building Co-Owner Association, Section VIII Grounds and Procedure for Liquidation, Reorganization (Merger, Division) of the Association and Resolving Related Property Issues of the Model Charter of the MABCOA; Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations, Article 327 of the Economic Procedure Code of Ukraine.

Execution of a court decision on the liquidation of the MABCOA involves a procedural component. The procedure for liquidation of a legal entity provides for a range of mandatory actions – repayment of existing accounts payable, alienation of assets, dismissal of employees, and transfer of documents to the archive, etc. Only after these actions have been performed and the relevant documents have been submitted to the state registrar, an entry on the termination of the legal entity is made in the register and not an entry on the cancellation of its state registration.

This procedure does not provide for enforcement. According to Part 2 of Article 327 of the Economic Procedure Code of Ukraine, a court decision is executed by sending it to the state registrar in the order of information interaction between the Unified State Register of Court Decisions and the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations (Commercial Procedural Code of Ukraine, 1991). However, the state registrar does not exclude a MABCOA from the State Register of Legal Entities, Individual Entrepreneurs and Public Formations but only records that the economic entity is undergoing the termination procedure. An economic entity can stay in this state for an extended period. Until the economic entity itself carries out the liquidation procedure, the state registrar cannot fully comply with the court's decision and exclude it from the register. It can be stated that the legislation does not have effective mechanisms for influencing an economic entity to implement a court decision regarding liquidation. The law of EU countries provides for control by administrative or judicial authorities over the liquidation of economic entities (Hnativ, 2016).

This indicates the expediency of enshrining guarantees of voluntary execution of a court decision on the liquidation of an economic entity at the level of the law. One of the options may be to grant the state registrar the right to apply to the court with a statement of claim for the appointment of officials of the economic entity responsible for conducting the liquidation procedure after a certain period from the moment of registration of information about the termination procedure of such an economic entity.

Conclusions. Thus, the conducted research allows formulating the following conclusions and suggestions regarding improving the legal mechanism for the liquidation of the MABCOA under a court decision. The grounds for the liquidation of the MABCOA under a court decision are valuation categories. It seems appropriate to provide them with the following content characteristics. To liquidate the MABCOA in court, violations in the creation of the MABCOA must be significant, massive, and cannot be eliminated during the current activities of the MABCOA. The expediency of introducing a class action lawsuit mechanism into the national legal system is argued. Proof of the fact of a massive violation of the rights of co-owners of a multi-apartment building during the creation of the MABCOA is possible only if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to go to court because the conflict is based on the issue of the same-type violation of the rights of such co-owners. This practice can also be extended to corporate disputes. The introduction of a system of class action lawsuits, on the one hand, will help protect the rights of co-owners in the MABCOA, and on the other hand, it will neutralize possible

abuses on the part of tenants of non-residential premises, serving cooperatives. It is necessary today to enshrine legally the guarantees of voluntary execution of the court decision on the liquidation of an economic entity. One of the options may be to grant the state registrer the right to apply to the court with a statement of claim for the appointment of officials of the economic entity responsible for conducting the liquidation procedure after a certain period from the moment of registration of information about the termination procedure of such an economic entity.

The implementation of the proposals will contribute to streamlining and providing some certainty to the process of liquidation of the MABCOA under a court decision. However, there are other contradictory aspects in the activities of the MABCOA that are not sufficiently regulated by the legislation: the legal regime of the land plot, the adjacent territory for servicing the house, the mechanism of control of the MABCOA members over its current activities, etc. The following scientific research can be used to find ways to solve such problems.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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Людмила Руденко, Богдан Деревянко

ЛІКВІДАЦІЯ ОРГАНІЗАЦІЇ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ ЗА РІШЕННЯМ СУДУ

Анотація. У статті розглядаються підстави та порядок ліквідації організації співвласників багатоквартирного будинку (ОСББ) за рішенням суду. Зазначено стратегічні необхідність адаптації національного законодавства до законодавства ЄС та нормативні (матеріально-процесуальні) виміри доцільності вдосконалення правового механізму ліквідації ОСББ за рішенням суду.

Запропоновано класифікацію правил щодо підстав та порядку такої ліквідації на причинно-наслідкові та процесуальні. Конкретизовано ознаки вирішення спору про ліквідацію в ОСББ: чи буде задоволено позов як такий до відновлення прав та законних інтересів співвласника в ОСББ?; чи буде судове втручання в діяльність ОСББ?; чи

не порушить задоволення позову права та законні інтереси інших учасників ОСББ? З'ясовано ознаки порушень під час створення ОСББ як підстави для його усунення: такі порушення мають носити істотний, колективний характер і не можуть бути усунені в поточній діяльності ОСББ.

Обґрунтовано доцільність запровадження колективних позовів у національну систему, оскільки доведення факту колективного порушення прав співвласників багатоквартирного будинку під час створення ОСББ можливе лише за умови наявності конкретної спільноти співвласників. власникам багатоквартирного будинку надається юридична можливість звернутися до суду, оскільки конфлікт ґрунтується на однотипному порушенні прав таких співвласників.

Пропонується закріпити гарантії добровільного виконання рішення суду про ліквідацію суб'єкта господарювання шляхом надання державному реєстратору права звертатися до суду з позовною заявою про призначення посадових осіб суб'єкта господарювання, відповідальних за ведення суб'єкта господарювання. вийти з процедури ліквідації через певний строк з моменту реєстрації відомостей про процедуру припинення такого суб'єкта господарювання.

Ключові слова: *організація співвласників багатоквартирного будинку, співвласник, ліквідація, ліквідаційна процедура, колективне порушення, колективний позов, державний реєстратор, гарантія*

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POLYGRAPH IN CRIMINAL PROCEEDINGS: PROSPECTS OF USE

Abstract. The problematic issues of using a polygraph in criminal proceedings, which are relevant for many countries, are considered. Based on the analysis of judicial practice and publications of recent years, including foreign ones, the solution of the following issues is proposed: what should be the form of application of polygraph in criminal proceedings (definition of investigative action); what is the basis for the use of a polygraph in criminal proceedings; who can be the direct authorized subject of the polygraph application; what should be the method of using a polygraph in criminal proceedings. Attention is drawn to the importance of resolving these issues for investigative and judicial practice in accordance with the laws of a country.

It is noted that the use of a polygraph requires the use of special knowledge in the field of psychology. Therefore, the use of a polygraph in criminal proceedings is possible only during

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the psychological examination of a person in order to obtain indicative information to solve the tasks set by the initiator of the examination. It is substantiated that the basis for the use of a polygraph is the nature of the tasks of the initiator of the examination in the absence of medical contraindications in the subject, as well as his written consent to the survey using a polygraph. Only a psychologist with a polygraph operator as a technical assistant can be the subject of the polygraph application and evaluation of the test results. The method of con-ducting a human study using a polygraph expert determines independently, based on the tasks formulated by the initiator of the examination.

It is noted that a separate study requires the preparation of a criminal psychological examination using a polygraph, defining its tasks, methods of conducting and evaluating its results. The solution of these problems in different countries will depend on the specifics of national legislation.

Keywords: *criminal proceedings, polygraph, psychological examination, polling*

Introduction. From the very beginning of the polygraph (scientific and technical means of diagnosing psychophysiological features of a person) invention, its active use began. Already in the early 2000s in the United States three main areas of its use formed:

1) hiring to law enforcement agencies;
2) employees check, especially in security-related professions;
3) crime investigation.

In Ukraine practice of using a polygraph in these areas gradually formed. A corresponding commercial market appeared: there are companies that produce (import) polygraphs, sell them, train specialists, provide services in conducting polygraphic examinations for hire. The corresponding specialty "polygraph examiner" also appeared. But the fact that polygraph testing of a suspect in a criminal activity usually requires the use of a different technique than screening a future civil servant, is often ignored. Montezinos (2010), J. Synnott, D. Dietzel, M. Ioannou (2015), note that when using the same equipment, these techniques have significant differences, as they must include different sets of tests (J. Montezinos, 2010, J. Synnott, D. Dietzel, & M. Ioannou, 2015).

The first and second directions of using a polygraph in Ukraine do not cause much controversy in the application of its ability to identify people who by their psychological qualities do not meet the requirements for a particular profession. The third area, which is the use of a polygraph to obtain evidence in criminal proceedings, causes discussions regarding possibilities of obtaining evidence, the form and subjects of application of this technical means. The international experience of the use of a polygraph by the police and the evaluation of its results by courts is also quite ambiguous and contradictory.

Analysis of recent research and publications. The international experience of using a polygraph by the police has a long history, which has generally received a positive assessment. Many publications note the widespread use of the polygraph in many countries (USA, Canada, Israel, Hungary, Russia and others) to obtain data that allow to identify suspect in crime commission and other data relevant to criminal proceedings. The practice of using a polygraph is based on the fact that it allows to detect unconscious reactions of the human body to certain irritation (questions, demonstrated items). For example, when a person answers questions and tells a lie, he/she experiences physiological changes – increased heart rate and respiration, increased blood pressure, increased sweating, and so on. The polygraph is able to record such manifestations with the help of special sensors. Such unusual for a given person reactions, recorded by a polygraph, give grounds to conclude when a person told the truth and when a lie. Quite a significant role in the active promotion of the widespread introduction of polygraph in the activities of law enforcement agencies and courts is played by commercial companies interested in expanding the market for their products and services.

But there are several negative aspects of using a polygraph, which are observed by lawyers, psychologists and journalists who deal with this issue

in many countries. J. Stromberg (2014) notes that the polygraph received an aureole of errorfree lie detector, but this is far from the case. There are no specific physiological reactions that can serve as indicators of untruth, the polygraph is able to detect only the state of anxiety of a person at a certain point of his/her testing. The same position is taken by the Singapore Bar Association (2018), providing its clients with recommendations on behavior when taking a polygraph test.

The active use of a polygraph by the police and the emphasis on its effectiveness are most often associated with the psychological influence on the suspect (accused) which is determined by prevailing notion of the infallibility of this technical means. The effectiveness of the polygraph is based on the idea that the interrogated person who is trying to hide the truth, even before the test can change his/her position and tell the truth. This does happen sometimes because a person believes that his/her deception will still be detected by a "lie detector". That is, a positive result is achieved not as a result of using the "outstanding" scientific and technical capabilities of the polygraph, but due to the psychological impact of the very fact of using the "lie detector".

This attitude to the use of the polygraph by law enforcement agencies raises well-founded objections. Thus, A. Katwala (2020) notes that polygraph tests can be easily transformed from a means of verifying other evidence into a way of pressuring the accused to provide information that can already be used to obtain evidence in a biased manner. An analysis of the practice of using a polygraph in British Columbia (2016) states that the Supreme Court of Canada in one court case stated that the results of the use of a polygraph cannot be presented in criminal proceedings because they violate established rules of evidence, are not necessary and lead to complications and confusion that can undermine justice. The ambiguity of the results of polygraph testing of participants in criminal proceedings, the possibility of violation of the rights of the accused and the established rules of evidence is recognized as an obstacle to the recognition of such evidence in courts of many countries where the polygraph is still used by police. At the same time, it is recognized that one of the areas in which law enforcement agencies can effectively use a polygraph is the control of convicts. This is especially true for sexual offenders. What is meant here is a system of supervisory and social-educational measures for convicts in the execution of certain types of criminal punishments not related to imprisonment (probation). J. Wood, E. Alleyne, C. Ciardha, & Gannon (2019) emphasize that the polygraph allows the police to obtain information which is used by the police and the probation service to manage the risks that may be posed by the offender while in society. Other authors also point to the sphere of control over sex offenders released from serving a sentence under a license as to direction of quite effective use of a polygraph by the police (O. Miller, 2020, O. Bowcott, 2020, M. Graham, N. Wragg, R. O'Donnell, 2021). The same tendencies of using a polygraph in criminal proceedings have appeared in Ukraine, what is quite logical. It all started with an attempt to use the polygraph in operational and investigative activities and in criminal proceedings for interrogation purposes. The results were similar to those in other countries. From time to time, a "lie detector" was used to persuade a person who initially intended to conceal certain information to give truthful testimony. The fact and results of the use of the polygraph were recorded in the certificate, interrogation report, conclusion of psychophysiological examination. Thus, by exploiting the notion of the polygraph's infallibility in detecting lie, it was possible to obtain important information that could be used to obtain evidence. On this basis, the expression "pass a polygraph test" became very popular, which was interpreted as a method of obtaining evidence in criminal proceedings. This practice has found support among Ukrainian researchers (Yu. Orlov, 2014, I. Pirig, V. Kaiko, & L. Vardanyan, 2018, O. Motlyakh, 2015, 30-37). But Ukrainian courts treated the results of polygraph testing differently. In some cases, they recognized such results as a source of evidence, and in others,

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they did not even recognize the conclusions of psychophysiological examinations conducted by "polygraph specialists". At the same time, the courts referred to the absence of such expert specialty in the current regulations, as well as the absence of polygraph examiners in the state Register of certified forensic experts (O. Dufenyuk, & A. Kuntiy, 2016, p. 124).

The purpose of this article is to address controversial issues of using a polygraph in criminal proceedings and to determine ways to resolve them.

Formulation of the main material. Of course, such situation can not be acceptable. It seems that for the courts to recognize the results of the use of a polygraph as evidence, a clear solution to the following problematic issues is required:

– what should be the form of application of the polygraph in criminal proceedings (determination of investigative method);

– what is the grounds for the use of a polygraph in criminal proceedings;

– who can be the direct authorized subject of the polygraph application;

– what methodology of using a polygraph should be applied in criminal proceedings.

The solution to these problems is seen in the following. First of all, it is necessary to treat the use of a polygraph as an examination (diagnosis) of the inner world of the person, where the polygraph acts as a tool, a technical means of recording psychophysiological reactions of the person to certain incentives (irritations). The manifestation of these reactions is recorded in the form of drawings with curved lines (polygrams), which need to be evaluated using special knowledge in the field of psychology. In addition, it should be noted that such an examination requires special conditions. Such conditions should exclude the impact on the examined person of external irritations (bright light, noise, vibration). Experiments with a polygraph in an ordinary room showed that most of the exemined men were strongly psychologically influenced not only by the questions asked, but also by the knocks of women's shoes in the hallway (G. Karpyuk, 2012, p. 13). Therefore, testing a person using a polygraph is possible only in a specially equipped laboratory. Thus, answering the question about the form of application of the polygraph in criminal proceedings, it can be argued that such a form can only be a forensic examination. The Ministry of Justice of Ukraine has determined that such an examination is a forensic psychological examination. In accordance with the approved scientific and methodological recommendations, during the psychological examination in order to obtain indicative information, a questioning can be conducted using a special technical means – a computer polygraph. The aim of such questionning is to obtain indicative information on: the degree of probability of the information reported by the respondent; the completeness of the information provided by the respondent; sources of information received by the respondent; the respondent's ideas about a certain event; other indicative information needed to construct clues for investigation of certain events (On the amendment to the order of the Ministry of Justice of Ukraine, Order of the Ministry of Justice of Ukraine).

As for the grounds for the use of a polygraph in criminal proceedings, they are also reflected in the scientific and methodological recommendations of the Ministry of Justice of Ukraine on forensic psychological examination – the expert may conduct a questioning using a computer polygraph, based on the questions posed by the initiator of the forensic examination. In this aspect, another important condition is the presence of the written consent of the person who is questioned with using a polygraph, based on the provisions of Part 2 of Art. 28 of the Constitution of Ukraine, which prohibits medical, scientific or other experiments on humans without their free consent. In other countries, this issue is resolved in accordance with national law.

We also must add that the condition of the examined person must be considered, which may interfere with obtaining reliable examination results (acute period of

somatic diseases, acute pain, intoxication, etc.). A person may consciously put him/herself into a condition that will not allow the expert to obtain reliable information, for example, before testing the exemided person can drink alcohol, use drugs or take certain pharmacological drugs. This is the way to deceive the polygraph. It seems that a preliminary medical examination of the exemined person should be a prerequisite to forensic psychological examination.

As for who can be the direct authorized subject of the polygraph testing, the following should be noted. Since it is a forensic psychological examination, its implementation is entrusted to an expert psychologist, who must meet the following requirements specified in Art. 10 of the Law of Ukraine "On Forensic Examination": higher education in the field of psychology; education and qualification level not lower than the specialist; passing special training and obtaining the qualification of a forensic expert in the specialty "Psychology".

Since such an examination involves the use of a complex technical means – a computer polygraph, turning of which has significant influence at reliability of the results of the examination, another specialist should be also involved – operator of the polygraph (polygraph specialist). The polygraph operator is a technical assistant of the expert who performs the function of managing the hardware and software complex during the questioning. Therefore, the use of the term "polygraphologist" seems incorrect.

The question of the methodology for using a polygraph in criminal proceedings during a forensic psychological examination is problematic. The issue is that currently in Ukraine there is no tested and approved in the prescribed manner a single methodology of interviewing a person using a special technical means – a computer polygraph. The study of publications on this issue gives grounds for the conclusion that the general methodoogy should include two stages: 1) identification of the normal background level of psychophysiological activity of the human body (neutral questions leading to guaranteed true answers and control questions which are uncomfortable for the exemined person and lead to anxiety state of the examined person); 2) identifying the nature of the examined person's body response to verification questions coming from the investigation subject matter (N. Azarova, 2016, 198 p.), psychophysiological methods of research and examination using a polygraph: the curriculum of the refresher course of the Faculty of Psychology and Social Work (Odessa National University named after I. Mechnikov). Physiological responses to test questions are compared with responses to neutral and control questions, on the basis of which the expert concludes about the subjective significance for the person of these questions in the context of the test.

The expert independently determines the methodology and procedure for conducting a specific examination of a person with the use of a polygraph, depending on the tasks formulated by the initiator of the forensic examination. The findings of the examination are purely plausible and indicative and are only one among other sources of information to be verified and evaluated, along with another set of data obtained concerning the examined person.

Conclusions. Summarizing the above, we can draw the following conclusions:

1) the use of a polygraph in criminal proceedings is possible only in the framework of the forensic psychological examination of a certain person in order to obtain indicative information to address tasks of the initiator of the forensic examination;

2) the grounds for the use of a polygraph is the nature of the tasks of the initiator of the forensic examination in the absence of medical contraindications for the examined person, under condition of his/her written consent to the ques-tioning with the polygraph use;

3) the subject of application of the polygraph and evaluation of the examination results (testing) is an expert psychologist, whose technical assistant is the

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operator of the polygraph;

4) the methodology for conducting forensic examination of particular person with the use of polygraph is determined by the expert independently, based on the tasks formulated by the initiator of the forensic examination.

It seems that these provisions can serve as guidelines for deciding on the in-itiation of a forensic psychological examination with the use of polygraph. Issue of preparation to such an examination by one or another party of criminal proceedings, determination of its tasks, methods of conducting and evaluation of its results requires further research. The solution of these issues in different countries will depend on the specifics of national legislation.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ПОЛІГРАФ У КРИМІНАЛЬНОМУ ПРОЦЕСІ: ПЕРСПЕКТИВИ ВИКОРИСТАННЯ

Анотація. Розглядаються проблемні питання використання поліграфа у кримінальному провадженні, актуальні для багатьох країн. На основі аналізу судової практики і публікацій останніх років, у тому числі зарубіжних, пропонується вирішення наступних питань: якою повинна бути форма застосування поліграфа у кримінальному провадженні (визначення слідчої дії); що є підставою для застосування поліграфа у кримінальному провадженні; хто може бути безпосереднім уповноваженим суб'єктом застосування поліграфа; якою повинна бути методика застосування поліграфа у кримінальному провадженні.

Підкреслено, що:

1) використання поліграфа у кримінальному провадженні можливе лише в рамках судово-психологічної експертизи певної особи з метою отримання орієнтовної інформації для вирішення завдань ініціатора судово-медичної експертизи;

2) підставою для використання поліграфа є характер завдань ініціатора судово-медичної експертизи за відсутності медичних протипоказань у обстежуваної особи за умови її письмової згоди на опитування з поліграфом. використання;

3) суб'єктом застосування поліграфа та оцінки результатів обстеження (тестування) є експерт-психолог, технічним помічником якого є оператор поліграфа; 4) методика проведення судово-медичної експертизи конкретної особи з використанням поліграфа визначається експертом самостійно, виходячи з завдань, поставлених ініціатором судово-медичної експертизи.

Автори вважають, що ці положення можуть слугувати орієнтиром для вирішення питання про початок судово-психологічної експертизи з використанням поліграфа. Вирішення цих питань у різних країнах залежатиме від специфіки національного законодавства.

Ключові слова: *кримінальне провадження, поліграф, психологічна експертиза, опитування*

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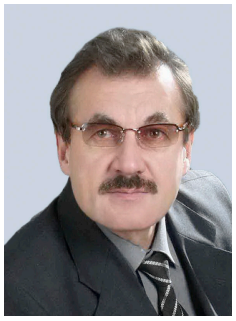

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LEGAL ASSISTANCE AND PROTECTION IN CRIMINAL PROCEEDINGS: INTERNATIONAL STANDARDS AND INTEGRATIVE DOCTRINE

Abstract. The article analyzes the international standards of legal aid and protection institutions in criminal proceedings, reveals doctrinal aspects of these institutions, highlights ways to improve legislation taking into account the case-law of the ECHR, discloses the issues of eliminating legal collisions, ensuring the effectiveness of institutions of protection and legal assistance.

When deciding on the circle of persons who can perform the function of protection in criminal proceedings, it is necessary to be guided by the provisions of international legal acts. In particular, the national legislation should enshrine the main provisions of such an act as "Principles and Guidelines of the United Nations regarding access to legal assistance in the criminal justice system" (UN Economic and Social Council Resolution 2012/15, July 26, 2012).

The solution of the problem is seen in the need to supplement the criminal procedure doctrine with a theoretical model of the legal counsel (legal counsel, legal attorney) and, accordingly, to consolidate it to supplement the CPC of Ukraine with the norm "Legal assistance to legal attorneys". Legal assistance to witnesses, applicants, representatives of the legal entity in respect of which the proceedings are carried out, taken, pledges, translators, experts, specialists, is provided by their chosen legal attorneys (legal attorney).

Legal assistance – multiple-aspect bar activities, aimed at ensuring the rule of law, which constitute the exercise of legal advice, assistance in drafting legal documents, initiating and participating in the conduct of procedural action, evaluation of the appropriateness, reliability and admissibility of evidence, the analysis of the legitimacy of legal decisions, the implementation of measures for the restoration of violated rights.

Institute of protection – it is a holistic system of relatively isolated and independent and joint special subject of regulation of specific legal norms that regulate an important part of public relations in the State to ensure the rule of law and the protection of rights and freedoms of members of the criminal justice.

In today's criminal counsel may participate in criminal proceedings in three different status: 1) as a defender of the suspect, accused, convicted, justified; 2) as a representative of the victim of physical persons; a legal entity that is affected civil plaintiff, civil respondent; third person; 3) as legal assistant to the witness.

Prescription of the Constitution that exceptionally lawyer carries out representation of

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another person in court, as well as protection from criminal prosecution does not mean establishing the monopoly of lawyers to perform the function of protection.

Wise will introduce a new conceptual system of legal assistance and protection: 1) Protection of the suspect can make as lawyers and other professionals in the field of law, for which there is no reason for removal. 2) Defendant and defendant in court should carry only a lawyer who offered to appoint judicial agent. 3) Legal assistance to victims, civil plaintiffs, civil and for third parties (art. 63 of the CPC of Ukraine) can make as lawyers and other specialists in the field of law, which can act in the procedural status of the representatives of the respective parties. 4) Legal assistance to witnesses, applicants to other participants of the process can make as lawyers and other professionals in the field of law.

Implementation of the constitutional principles of legal assistance and protection in criminal proceedings requires a clear definition of the procedural status of the Defender, the representative and law agent, development and adoption of the law on the independent Institute the investigation, which has become an independent institution of the criminal procedural law.

Keywords: *international standards of protection, the legal doctrine, protection, legal aid, an independent human rights inquiry*

Introduction. The legal system of legal assistance and protection in criminal proceedings, based on the norms of the Constitution of Ukraine, Ukraine, develops taking into account international legal acts and case-law of the ECHR. Judicial and legal reform in Ukraine has taken certain steps in this direction to ensure the rule of law, but has not ensured the formation of a holistic doctrine of legal assistance and protection.

The norm "Exclusively a lawyer shall defend against criminal charges" (article 131-2) is fixed in the Constitution of Ukraine by the newly elected Parliament of Ukraine, under the slogans of abolishing the monopoly of lawyers to perform the functions of protection and legal assistance in 2019. On the one hand, the "advocate's monopoly" in criminal proceedings leaves unchanged and, on the other hand, the concept of "prosecution" in the law is insufficiently legally certain, because in the pre-trial stages of criminal proceedings against persons who are held to responsible, the act of notification of suspicion is done. So the question about subjects of protection from the ongoing public act of suspicious.

The relevance of the topic under study is caused by new revolutions of legal reform, imperfection of existing laws, and insufficient analysis of legal aid problems.

Analysis of recent scientific researches and publications shows that the problem of legal assistance and protection in criminal proceedings, despite some attention of domestic (A. Biryukova, 2018, & I. Golovan, I. Dubivka, 2017, V. Zaborovsky, 2017, P. Malanchuk, O. Maslak, & M. Voronkova, 2017, O. Maslyuk, 2017, V. Nor, & A. Voynarovych 2016, S. Overchuk, 2016, V. Tertyshnyk, 2018), and foreign researchers (Anagnostopoulos, Ilias. The right of access to a lawyer in Europe: A long road to travel? (Speech at the CCBE Seminar on Human Rights – Athens, 2013), Case of Shabelnik in Ukraine, Case of Zagorodniy in Ukraine, Coster van Voorhout & E. Jill, 2016, Gavilan, & Jodesz, 2017, D. Giannoulopoulos, 2016, Gilbert, & Dominic, 2018, Judgment of the European Court of Human Rights in the case "Golovan in Ukraine", 2012 (Application no. 41716/06), G. Letsas, 2013, Mutual Legal Assistance Manual. Council of Europe. Belgrade, 2013, A. Soo, 2010, Te. Theodore, 2018, "ANALYSIS-Deep Dive, Community legal aid service: Too much, too soon?", requires more integrative analysis taking into account modern international legal acts (United Nations Principles and Guidelines relating to access to legal assistance in the criminal justice system) and the case-law of the ECHR (Decision of the European Court of Human Rights, 2011).

The purpose of this work is to determine ways to harmonize the doctrine of protection and legal assistance in criminal proceedings, taking into account international legal standards.

Formulation of the main material.

The doctrine of legal aid is a holistic and harmonious system of principles,

beliefs, perceptions, ideas, concepts and model rules concerning the formation of the legal Institute and operationalize effective legal assistance to persons entering in any relationship. It is based on intellectual, spiritual, cultural and scientific development of society, state, morality, and the political and ethical culture of a holistic and harmonious system of principles, beliefs, perceptions. It is a system of knowledge, which is the core theoretical and conceptual framework of law-making, law enforcement and the right of interpretation activities, which is aimed at ensuring rule of law in the state.

The doctrine of legal aid is due to the intellectual, spiritual, cultural and scientific development of society, the state of morality and the political-legal and ethical culture of the people a holistic and harmonious system of principles, views, ideas, ideas, concepts and model norms for the formation of a law institution and the practical provision of effective legal assistance to persons entering into any legal relations, a system of knowledge that acts as a theoretical core and conceptual basis for law-making, law-enforcement and the right of interpretive activity.

Legal assistance is activity of lawyers, which is focused on the rule of law in the state and ensuring the protection of individual human rights, implemented in the form of application of the Institute of protection and other types of legal assistance, the contents of which are: implementation of legal advice and clarification; assistance in preparing and submitting applications, petitions, complaints and other legal documents; initiation and participation in the proceedings and a proper record of their progress and results; assist in the evaluation of supplies, reliability and the admissibility of evidence, the analysis of the legality of legal decisions, taking measures to restore violated rights, compensation for damage caused by the offense.

Separate forms of legal assistance are: a) legal advice, which are held by lawyers and representatives of public human rights organizations and other experts in the field of law; b) representation of the victim (article 58 of the Code of criminal procedure of Ukraine) civil plaintiff, civil defendant; a third party (article 63 of the Code of criminal procedure of Ukraine), and the representation of persons, property of whom can be arrested (article 64-2 of the Code of criminal procedure of Ukraine); c) legal assistance to a witness (article 66 of the Code of criminal procedure of Ukraine); d) protection of a suspect, accused, defendant, convicted and acquitted, a person of whom compulsory medical or educational measures are envisaged and person who can be sent in extradition to a foreign state and a person of whom the Institute of rehabilitation in criminal proceedings is applied.

Forms and methods of legal assistance are not exhaustive and they are formed and developed, they need a clearer legal certainty.

Taking into account the trends of educational reform, multi-level education system and the formation of master's programs today it is advisable to provide a separate discipline "Legal assistance and protection" in the curricula for masters, the content of which would include both legal and organizational, forensic and psychological aspects of providing professional legal assistance and protection. Accordingly, the components of this discipline can be "legal assistance and protection in criminal proceedings", as the most complex and multifaceted special part of this discipline. It will be right if the scientific specialty "12.00.09 – criminal procedure and criminalistics; forensic examination; operational-search activity" is supplemented with the important direction "legal assistance and protection in criminal proceedings".

To improve the mechanisms of legal aid and protection, in our opinion, it is necessary to systematize and codify the existing constitutional norms, international legal acts, legislative norms and legal positions and case-law of the European court of human rights, to develop and adopt a separate code – *"Code of legal aid and protection"*.

Protection in criminal proceedings is a kind of legal aid and acts as a legal form of opposition to the prosecution and is carried out by a participant in the criminal process, which is called the defender.

The function of the protection is legal professional activity of specifically authorized to execute it by independent subject of the criminal process – the defender. It is aimed to ensuring the rule of law in criminal proceedings, protection of rights and legitimate interests of the person, who can be brought to criminal liability, denial of suspicion and accusation, the establishment of innocence of a person or the circumstances mitigating her responsibility, rehabilitation of illegally convicted person.

Usually, the exercise of protection in criminal proceedings is often considered in the context of the activities of a lawyer. But the lawyer's activity and the activity of the defender are not identical.

In the modern criminal process, a lawyer, as a representative of a human rights institution, which should do the function of legal assistance, can take part in criminal proceedings in three different statuses: 1) as a defender of a suspect, accused, convicted, acquitted, a person of whom compulsory medical or educational measures are envisaged and person who can be sent in extradition to a foreign state (article 45 Code of the criminal procedure of Ukraine), a person against whom the Institute of rehabilitation is applied in criminal proceedings; 2) as a representative of the victim (article 58 of the Code of criminal procedure of Ukraine) civil plaintiff, civil defendant; a third party (article 63 of the Code of criminal procedure of Ukraine), and as a the representation of persons, property of whom can be arrested (article 64-2 of the Code of criminal procedure of Ukraine); 3) as a legal assistant (consultant) of witness (article 66 of Code of criminal procedure of Ukraine) – legal assistance or in other words legal counsel.

None of the outlined competencies in Criminal procedure law has received a proper systemic legal definition yet. The law has not adequately regulated both the legal aid function as a whole and the protection function, which creates many problems in ensuring proper justice.

Insufficient clear regulation of the function of protection, means and forms of legal assistance is aggravated with existing legal fictions, lack of legal norms, insufficient logic and terminological shortcomings of the law, they reduce the effectiveness of all criminal legal activities.

It is logical in the Code of criminal procedure of Ukraine to abandon the logic of the concept according to which "the defender uses the rights of the person who is protected by him", and the representative with "rights of the person who is represented by him". This concept has not found continue to provide legal assistance to the witness, the person who came to confession and other participants in the process. Accordingly, there is a need for analogous status of the defender or representative to clearly determine the procedural status of a specialist who will provide legal assistance to other participants in the process, and moreover, in the Code of criminal procedure of Ukraine in certain norms systematically and separately to form the rights in accordance with the "defender", "representative", "legal assistance".

Article 131-2 of the Constitution of Ukraine with the following content became a novelty of law: "advocacy operates for rendering professional legal assistance in Ukraine. The independence of the advocacy is guaranteed. The principles of the organization and activity of the advocacy and the implementation of advocacy in Ukraine are determined with the law. Only a lawyer shall defend against criminal charges".

These provisions create a certain competition of legal norms of national legislation and international legal acts, they are internally contradictory and controversial. First, the requirement of Art. 131-2 of the Constitution of Ukraine that "only a lawyer shall defend against criminal charges" does not mean the establishment of a monopoly of lawyers to perform the function of protection in criminal proceeding. So according to part 2 of article 42 of the Code of criminal procedure of Ukraine the guilty person is a person, the indictment about him is carried out to the court, according to the article 291 of Code of criminal procedure of Ukraine. Under the current Code of criminal procedure of Ukraine,

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protection from the act of suspicion is carried out at the pre-trial investigation, and protection from prosecution is possible only in the judicial stage of the process. Consequently, the provisions of the constitutional regulations that "exclusively a lawyer shall defend against criminal charges" do not exclude the protection of a suspect (a person, who has not accused yet) by another lawyer who is not an advocate. Secondly, this novella does not meet the requirements of art. 22 of the Constitution of Ukraine, concerning inadmissibility of restriction of the existing rights and freedoms at adoption of new laws, and also it contradicts the decision of the Constitutional Court of Ukraine (Decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of the citizen Golovan Igor Vladimirovich on the official interpretation of the provisions of Article 59 of the Constitution of Ukraine (case on legal assistance, 2009), the basic international legal acts (United Nations Principles and Guidelines relating to access to legal assistance in the criminal justice system) and case practice of ECHR (Decision of the European Court of Human Rights, 2011).

The Constitutional Court of Ukraine in its decision on the 30th of September, 2009 in the case of the constitutional appeal of the citizen Golovan Igor Vladimirovich concerning the official interpretation of the provisions of article 59 of the Constitution of Ukraine (the case of the right to legal aid), determined: 1. The provision of the first part of article 59 of the Constitution of Ukraine "everyone has the right to legal assistance" should be understood as a state-guaranteed opportunity for any person, regardless of the nature of his legal relations with state bodies, local governments, associations of citizens, legal entities and individuals to freely, without undue restrictions to receive assistance on legal issues in the scope and forms as he requires; 2. A person during interrogation as a witness in the bodies of inquiry, pre-trial investigation or giving explanations in legal relations with these and other state bodies has the right to legal (juridical) assistance from a person elected at his own request in the status of an advocate, this situation does not exclude the possibility of obtaining such assistance from another person, if the laws of Ukraine don't have restrictions.

The European court of human rights in the case "Zagorodny V. against Ukraine" clearly defined its position. In its decision of the 24th of November, 2011, the European court of human rights found a violation of paragraphs 1 and subparagraph "C" paragraph 3 of article 6 of the Convention, because the applicant's right to free choice of counsel was limited, and the state created a situation incompatible with the principle of legal certainty, which is one of the basic aspects of the rule of law.

The new international legal source of law, such as the "United Nations Principles and guidelines on access to legal assistance in the criminal justice system" (UN Economic and Social Council Resolution 2012/15, July 26, 2012), should also be guided by the conceptually appropriate provisions for democratic societies in addressing the problem of the range of persons who can serve as a defender in criminal proceedings. Let us take attention, in particular, to its main concepts and provisions aimed at expanding access to legal assistance in criminal justice systems: "the person providing legal assistance is called a "legal counsel", that is, a legal adviser; "States use various forms of legal assistance, it can be public defenders, private lawyers, lawyers by agreement, paralegals and others"; "without prejudice to the rights of the accused, legal assistance should be provided to victims and witnesses at all stages of criminal justice"; "States should recognize and encourage the contribution of the Bar Association, universities, civil society and other groups and institutions in the provision of legal aid"; in order to facilitate the functioning of the national legal aid system, if it is necessary, States should, take measures to:.. "to enable paralegals to provide the forms of legal assistance permitted by domestic law or practice to arrested, detained, suspected or accused persons of a criminal offence, in particular in

police stations or other places of detention.“...” (United Nations Principles and Guidelines relating to access to legal assistance in the criminal justice system).

First of all, in the Code of criminal procedure some gaps should be removed on the definition of the status (including the right to protection) about following persons: a) persons appearing to confess; b) persons, who actually became under investigation because of registered statement about the crime, but he is not detained and has not reported about suspicion yet (has not received the status of a suspect); c) persons who have committed socially dangerous acts, but have not reached the age of criminal responsibility; g) persons who have committed socially dangerous acts in condition of insanity and in respect of which the investigation is being carried out.

In this aspect, the criminal procedure legislation of Germany was explored. In the Code of criminal procedure of Germany four concepts are applied respectively to stages of process: “verdachtider” – the person concerning whom there are bases for suspicion him in commission of crime; “berschuldigter” – the person concerning whom criminal procedural production is carried out;“angeschuldigter” – the person concerning whom the charge is brought; “angeklagter” – the defendant.

We propose to establish a single status – “under investigation” – in respect of all named persons who become parties to criminal legal relations. In the Ukrainian language synonyms of the word “suspicion” are the words “assumption” and “doubt”. The “doubtful” participant in the process is the bitter reality of the present. The use of the term “under investigation” would be more correct. It indicates the actual position of the person, and not a subjective view of the situation on the part of the investigator. In addition, it is stylistically neutral and from the whole synonymous series has minimal expression, carries less emotional coloring. It is characteristic that in relation to the stage of the trial, the legislator has long used the term “defendant”.

The use of the term “suspect” should be abandoned, because it has more elements of subjectivity and is not associated with the actual state of the person. And this condition of the specified persons is a condition which is covered by the universal concept – “the person under investigation”.

It is necessary, fulfilling the requirements of part 2 of article 5 of the European Convention for the protection of human rights and fundamental freedoms, to restore the concept of a preliminary investigation – “the accused”. It defines: “Everyone who is arrested must be immediately informed in a language understandable to him the reasons for his arrest and any charge brought against him”.

Therefore, at the pre-trial investigation in respect of persons against whom the proceedings are carried out, two possible statuses must be legally defined – the defendant and the accused, accordingly in court the accused becomes the defendant.

Therefore, in our opinion, the law ought to give such a definition: “Defendants are persons who gave surrender, in respect of whom there are allegations of committing a crime and criminal proceedings, as well as persons, who were detained on suspicion of committing a crime, who has restraint if such persons have not been charged, and also no jurisdiction or young person in respect of which the proceedings are held to solve the issue on application of compulsory measures of educational or medical nature”.

The person under investigation should be entitled to primary legal assistance from a lawyer or other legal specialist (the rules of the legal monopoly do not apply to the protection of such persons).

Consequently, it would be appropriate to introduce a new conceptual system of legal aid and protection:

1) Protection of all persons under investigation (including a suspect under modern legislation) may be provided by both lawyers and other specialists in the field of law, in respect of which there are no grounds for recusal.

2) Protection of the accused and the defendant must be done only by a lawyer, who is proposed to be called a judicial attorney and his close relatives can be as representatives of the interests of the defendant.

3) Legal assistance to victims, civil plaintiffs, civil defendants and third parties (article 63 of the Code of criminal procedure of Ukraine) may be provided by both lawyers and other legal experts and close relatives who may act in the procedural status of representatives of the relevant persons.

4) legal assistance to witnesses, applicants and other participants in the process may be provided by both lawyers and other specialists in the field of law, who may act in the procedural status of professional attorneys (Legal Counsel), that is, persons providing legal assistance outside the application of representation or protection.

Granting the defender the rights of the person whom he protects, the new Code of criminal procedure of Ukraine, is not coordinated with the new Law "On advocacy", in the complicated constructions for logical understanding confused idea of parallel lawyer investigation and complicated implementation of the principle of competitiveness of the parties.

The analysis of practice shows that, firstly, the procedural rights granted to a professional defender are not enough for the realization of their tasks and socially useful professional knowledge and abilities, secondly, it is clearly not enough for adequate opposition in an adversarial trial to the prosecution, and thirdly, the rights thus granted are not clearly spelled out in the law with legal fictions and unsuccessful, vague terminology, which makes difficult to effectively use them.

In the list of the rights of the lawyer there are quite problematic definitions. For example, according to paragraph 7 of article 20 of the Law of Ukraine "On advocacy" lawyer has the right in the manner prescribed by law to ask, receive and withdraw things, documents, copies. "Used here the concept of "withdraw", in contrast to the more correct "receive voluntarily issued" can be interpreted as their forced seizure.

But it should also be noted that the use of certain in article 20 of the Law of Ukraine "On advocacy" rights in criminal proceedings, even "defender-lawyer" is unlikely to be possible. According to part 3 of article 9 of the Code of criminal procedure of Ukraine "laws and other regulatory legal acts of Ukraine, the provisions of which relate to criminal proceedings, must comply with this Code. A law that contradicts this Code cannot be applied in criminal proceedings". Moreover in the article 1 Code of criminal procedure contains the requirement – "criminal procedure in Ukraine is determined only by the criminal procedural legislation of Ukraine". In addition, according to part 1 of article 84 of the Code of criminal procedure "evidence in criminal proceedings are factual data obtained in accordance with this Code", and in accordance with part 1 of article 8 of the Code of criminal procedure "evidence is admissible if it is obtained in the manner prescribed by this Code".

Evidence in criminal proceedings may be only things, which were obtained in accordance with the procedure provided with the Code of criminal procedure. And everything else, according to the developers of the Code of criminal procedure of Ukraine – is "materials" of unknown status to science.

It should be noted that such a problem does not arise when a lawyer provides legal assistance in civil proceedings. A simpler concept is defined about admissibility of evidence – "the court does not take into account the evidence obtained in violation of the order established by law" (article 59 of the Code of civil procedure of Ukraine). And article 8 of the Code of civil procedure of Ukraine fairly defines the principle of legality more tolerant in relation to the system of law, fixing the order of this content: "the Court decides cases according to the Constitution of Ukraine, laws of Ukraine and international treaties, which were allowed by the Verkhovna Rada of Ukraine. The court shall apply other normative-legal acts adopted by the relevant body on the basis, within the powers and in the manner established by the Constitution and laws of Ukraine".

This approach is more appropriate. It is necessary to remove artificial barriers to the use in criminal proceedings of factual data obtained outside the criminal

process, in the manner prescribed with other laws.

Obviously, in the current Code of criminal procedure of Ukraine artificial formalization of evidentiary law and the institution of protection was done, it contradicts the objective laws of knowledge, logic and natural law, is able to turn the trial in long process, when it will be difficult to see the concern for the fate of man. Criminal procedure legislation and the law on advocacy and legal practice need to be harmonised and substantial improvement.

It is necessary to develop and legally define in the Code of criminal procedure of Ukraine The Institute of evidentiary activity of the defender and legal attorney – the Institute of independent human rights investigation.

Independent human rights investigation in criminal proceedings is a separate Institute of Criminal procedural law and the activities of legal counsel and attorney based on the evidence. It consists in self-realization in a special procedural form of the system of cognitive, practical and authoritative actions, which due to the subject and objectives of protection and legal assistance to identify sources of evidence, receipt and record the actual data, their verification and clarification belonging to the case, admissibility and reliability, enabling the use to achieve the goal of justice.

The rights of the defender about carring out evidentiary activities should be expanded and described systematically and specifically in the Code of Criminal procedure. The Institute of independent human rights investigation in criminal proceedings should include the possibility of the defender for help by the private detective in getting evidence and using the thus obtained actual data in evidence, a clear definition of the procedure for temporary access to documents, their seizure and conservation. The implementation of an independent human rights investigation in criminal proceedings should be attributed exclusively to the competence of the defender, legal counsel and the Commissioner of the Verkhovna Rada for human rights and it should not be the competence of other representatives of the defense.

The status and rights of the defender must be clearly spelled out in a separate norm in the Code of criminal procedure of Ukraine.

In particular such basic rights of the defender should be prescribed in this norm:

– to have a confidential face-to-face meeting with the detained person under investigation before his first interrogation and to provide him with the necessary legal advice, and after the first interrogation-to have a meeting with the defendant without limitation of their number and duration;

– to be present at interrogations of the client and also at implementation of other investigative actions which are carried out with his participation or at his request;

– to appeal with lawyer inquiries, including concerning receipt of copies of documents, to public authorities, local governments, their officials and officials, the enterprises, establishments, the organizations, public associations and also physical persons (by consent of such physical persons);

– to get acquainted with the necessary documents and materials for advocacy at enterprises, institutions and organizations, except those ones which contain information with limited access;

– to collect evidentiary information which is not prohibited by law;

– to request and receive voluntarily issued audio-video materials, electronic and other material carriers of evidentiary information, copies of documents, to make copies of documents, to interview persons with their consent;

– to use technical means, including for copying the materials of the case in which the lawyer is defender, representer or provides other types of legal assistance, to record the procedural actions in which he participates and to record the course of the court session in the manner prescribed by law;

– to contact with experts and receive written opinions of specialists, experts on issues requiring special knowledge;

– to prepare and to submit applications, complaints, petitions and other legal documents and to submit them in accordance with the procedure established by law.

Feature of activity of the defender in criminal process consists on receiving from the client the data which would not report to other person under any circumstances. The lawyer, in general, as well as the defender, in particular, is obliged to keep equally secret both the information received from the client and information about the client.

Certain guarantees of the defender should be determined in the Code of criminal procedure of Ukraine. It will be justified to note that lawyer has all guarantees, which are provided by Article 23 of the Law of Ukraine "On advocacy".

Granting a witness the right to use the help of a lawyer (article 66 of the Code of criminal procedure of Ukraine) does not solve the problem of providing him with effective legal assistance. The lawyer is the representative of the legal Institute of advocacy and he is only a potential participant in the process and may become the participant in the process only after receiving a certain procedural status, for example to protect a suspect, he receives the status of the defender, to provide legal support to the victim – status of the representative, and to provide legal assistance to the witness no procedural status, while remaining "just a lawyer". There is a question – what rights will be used by him and is it admissible here to use the formula which has already been applied by the legislation "the person rendering legal aid-uses the rights of the person whom he helps". The legislator did not give an answer, leaving these questions to the conscience of law enforcement practice and legal science.

The solution of the problems we see in the need to supplement criminal procedure doctrine with the theoretical model of the Institute of legal attorney and, accordingly, to supplement the Code of criminal procedure of Ukraine with a norm "legal assistance by legal attorney".

"Legal assistance to witnesses, applicants, representatives of the legal entity in respect of which the proceedings are carried out, witnesses, pledgers, translators, experts, specialists shall be provided by legal attorneys elected by them at their discretion".

Legal attorney can act as a lawyer or his assistant and other specialist in the field of law, in respect of which there are no statutory grounds for withdrawal from participation in the case.

Legal attorney has the right to:

1) be notified about the procedural status of the person who needs a legal assistance;

2) to get acquainted with the document about the call or other documents about presence of the person in the law enforcement Agency;

3) to provide to the person, to whom the legal aid is provided, consultation on legal questions in enough volume and forms, including confidentially within time, which does not infringe the rights of other persons;

4) to apply for a change in the procedural status of a person, if it does not comply with the requirements of the law;

5) to declare, in the presence of the bases provided by the law, challenge to the detective, the investigator, the prosecutor, the investigating judge, the judge;

6) to apply for the application of security measures provided for by law to the person to whom legal assistance is provided;

7) to be present at carrying out investigative and other procedural actions which are carried out with participation of the person to whom the legal aid is rendered;

8) to explain to the person who is provided with legal assistance the right to refuse to testify and answer questions about himself, his family members and close relatives;

9) during carrying out procedural actions to put questions, to submit the remarks and objections concerning the order of carrying out actions which are brought in the Protocol;

10) get acquainted with the protocols of investigative (search) and other procedural actions performed with his participation and make written comments, clarifications and additions;

11) to apply technical means for fixing of results of procedural actions in which he is participant;

12) to submit evidence to the investigator, prosecutor, investigating judge, court;

13) to object to illegal actions of the detective, the investigator, the prosecutor, the investigating judge, the judge;

14) to provide legal assistance to a person in the preparation of written applications, complaints, petitions or claims, or with the consent of such person to make on her behalf written documents of a legal nature;

15) to file complaints against decisions, actions, inaction of the detective, the investigator, the prosecutor concerning interests of the person to whom the legal aid is rendered.

Legal attorney is obliged: to respect the rights and freedoms of human and citizen; not to impede establishment of the truth; to observe the principle of fair trial and under no circumstances to inform the court obviously incredible or unreliable information; not to disclose without the permission of the investigator, prosecutor, court, pre-trial investigation data and other information which has become known to him in connection with participation in criminal proceedings and which is the secrets protected by the law; to prevent the disclosure in any way of confidential information which has been entrusted to him or has become known in connection with the performance of his duties; to avoid committing acts which would harm the interests of the person assisted or the rights and freedoms of others.

Conclusions. The implementation of the constitutional foundations of legal aid and protection in criminal proceedings requires a clear definition of the procedural status of the defender, the representative of the person and the legal attorney, the development and adoption of the Institute of independent legal investigation, which should become an independent Institute of criminal procedure law.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Володимир Тертишник, Андрій Фоменко

ПРАВНИЧА ДОПОМОГА ТА ЗАХИСТ У КРИМІНАЛЬНОМУ ПРОЦЕСІ: МІЖНАРОДНІ СТАНДАРТИ ТА ІНТЕГРАТИВНА ДОКТРИНА

Анотація. У статті аналізуються міжнародні стандарти інститутів правничої допомоги та захисту в кримінальному провадженні, розкриваються доктринальні аспекти даних інститутів, висвітлюються шляхи удосконалення законодавства з урахуванням прецедентної практики ЄСПЛ, розкриваються питання усунення юридичних фікцій і колізій, забезпечення дієвості інститутів захисту та правничої допомоги.

При вирішенні кола осіб, які можуть виконувати функцію захисту в кримінальних провадженнях, слід керуватися положеннями міжнародно-правових актів. Зокрема, в національному законодавстві варто закріпити основні положення такого акта, як "Принципи і керівні положення Організації Об'єднаних Націй, що стосуються доступу до юридичної допомоги в системі кримінального правосуддя" (Резолюція Економічної та Соціальної Ради ООН 2012/15 від 26 липня 2012 р.).

Розв'язання проблеми бачимо в необхідності доповнити кримінально-процесуальну доктрину теоретичною моделлю інституту правничого повіреного (legal counsel, legal attorney) та відповідно для його закріплення доповнити КПК України нормою "Юридична допомога правничим повіреним".

Юридична допомога свідкам, заявникам, представникам юридичної особи, щодо якої здійснюється провадження, понятим, заставодавцям, перекладачам, експертам, спеціалістам, надається обраними ними на власний розсуд правничими повіреними (legal attorney).

Правничим повіреним (legal attorney) може виступати як адвокат чи його помічник, так і інший фахівець в галузі права, відносно яких немає передбачених законом підстав для відводу від участі в справі.

Ключові слова: *міжнародні стандарти захисту, правова доктрина, захист, правнича допомога, незалежне правозахисне розслідування*

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IMPACT OF THE FIGHT AGAINST THE COVID-19 PANDEMIC ON HUMAN RIGHTS IN LATIN AMERICA

Abstract. Latin American countries and their populations have not only suffered the devastating consequences of the COVID-19 pandemic but also those of their governments' pandemic inactions, mismanagement and corruption practices. The particularities and the extension of the fight against the COVID-19 pandemic as well as the lockdowns in Latin America have caused the violation of basic universal and fundamental human rights. *Objective:* Assess the catastrophic consequences of the COVID-19 pandemic in Latin America and provide sustainable evidence that governments' inactions, mismanagement and corruption practices to fight it, including severe and over extensive lockdowns, have caused several violations to basic universal human rights. *Methods:* i) Comparative analysis of quantitative data corresponding to different regions (including Latin America) and referred to total COVID-19 total casualties due to the pandemic, measured as a ratio to million inhabitants. Data was published by Worldometer (Figure 1); ii) Comparative analysis of the Effective Lockdown Index corresponding to different geographical regions including Latin America, published by Oxford University, Google, Apple, Wind and Goldman Sachs Global Investment Research (Figure 2); iii) Regional comparative analysis of the impact of the Effective Lockdown Index on Gross Domestic Product corresponding to different geographical regions including Latin America, published by Goldman Sachs Global Investment Research (Figure 3); iv) COVID-19 Stringency Index on government restrictions strictness in different geographical regions including Latin America published by Our World in Data, corresponding to 2020 (Figure 4a); v) COVID-19 Stringency Index on government restrictions strictness in different geographical regions including Latin America published by Our World in Data, corresponding to 2021 (Figure 4b); vi) Comparative Transparency Perception Index 2020 vs. Transparency Perception Index 2018 reflecting different geographical regions including Latin America published by Transparency International (Figure 5); vi) Share of Population fully vaccinated against COVID-19 comparing different geographical regions including Latin America published by Our World in Data (Figure 6); vii) The Pandemic Democratic Violations Index comparing June, 2021 (Figure 7a) with March to June, 2020 (Figure 7b) for different regions including Latin America published by V-Dem Institute. *Results:* The research performed and the resulting data, show that despite very severe and extended lockdowns implemented by Latin American governments to fight the COVID-19 pandemic, the region has suffered devastating consequences not only on the health side but also on their economies. Government mismanagement, inactions and corruption practices to fight the COVID-19 have caused very serious violations of basic universal human rights in the continent such as the ones related to education, circulation, trade and business management, work, healthcare, healthy environment enjoyment, data privacy. *Discussion:* After relating Latin American results with those of other regions, it is evident that governments in the Latin American region have wrongly or ineffectively implemented extended lockdowns which have caused flagrant human rights violations

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instead of increasing PCR tests and implementing effective and accelerated vaccination programs. *Conclusion:* There is sustainable data which provides significant evidence that the fight against the COVID-19 pandemic in Latin America has caused serious restrictions and violations of basic universal human rights.

Keywords: *Human rights, violation, Latin America, pandemic, corruption*

Introduction. There is no doubt at this stage of the strong evolving global relevance of universal human rights, in a very complex global scenario like everyone has to face today. The COVID-19 pandemic and lockdowns have produced and are still causing an overwhelming negative impact on the standard citizens' life. Such affirmation, as drastic as it is, is sustained on the serious deterioration that is being reflected in a considerable number of democracies around the world but specially in Latin America, a region of six hundred million inhabitants (Werthein & Abrantes, 2021). Unreasonable extended lockdowns and other misleading and inappropriate measures implemented by different Latin American administrations, have had unsurmountable and very dramatic consequences for inhabitants in the region. This is due to the fact that quite a relevant number of Latin American governments, implicitly or explicitly, have inadvertently put in place two excluding options for their populations affected by the COVID-19 pandemic. It had to be either healthcare and fight against COVID-19, on the one side, or economic sustainability, on the other, but not the two at the same time. With no real choice at all, citizens have been obviously forced to focus on fighting COVID-19, without really imagining that such a fight had to be at a very high, unsurmountable and unpredictable cost. Losses of thousands of lives, economic devastation, thousands of business shutdowns, millions of job losses, educational catastrophes, lack of basic freedoms, all of which have caused the violation of individuals' basic universal human rights recognized by modern constitutions, including those in force in Latin America.

Governments of advanced economies around the world have been using massive financial resources, both to fight the COVID-19 pandemic as well as to help businesses heavily affected by the lockdowns, to survive and be able to continue with their operations. In most Latin American countries, where financial resources have been always scarce and corruption indexes are high, there has been a lack of sufficient financial aid and support from governments to avoid devastation for businesses as a consequence of long, unreasonable and very strict lockdowns. In addition, fiscal stability and employment levels heavily plunged, and relevant indicators reflected a massive fall of gross domestic products in the economies all over the region. As it will be analyzed later on, mismanagement of the pandemic, including corruption practices by certain Latin American governments, despite extensive lockdowns, have led to catastrophic results both in the healthcare and economic areas. Although there has been a general worldwide economic slowdown and breakdown, the Latin American countries gross domestic products have had an abrupt and steep fall as it has not been seen before, coupled with a massive violation of basic universal human rights as the consequence of the failure to effectively manage the fight against the COVID-19 pandemic.

Analysis of recent scientific researches and publications. Since the end of 2019 the world has been facing an unexpected and tremendous never ending nightmare. The irruption of the COVID-19 pandemic has caused a severe and devastative impact in the different countries around the globe. In quite relevant geographic areas including Latin America, the detrimental consequences of the pandemic, and specially of the unreasonable extended lockdowns and other mismanagement actions, are visibly reflected in a deterioration of democracies, the transformation of democracies into autocracies as well as on violations of basic universal human rights (Beteta, 2020). The COVID-19 pandemic is testing the societies of the world's most unequal continent, where many depend on informal work for their livelihood. Social distancing measures directly affect their

livelihoods, and make immediate social assistance imperative. The crisis is also testing political leadership, as some presidents are emerging as strong, unifying leaders, while others face complex difficulties, in a continent where historically trust in formal political institutions is low. What is today absolutely clear is that the COVID-19 pandemic has affected the life of millions of people. They were compelled to change their style of life, as interaction between human beings has been totally disrupted. The state of huge uncertainty is dominating People's lives.

The purpose of this work is to study the impact of the fight against the COVID-19 pandemic on human rights in Latin America.

Formulation of the main material. The present article will focus on Latin America, where the negative effects of the lockdowns and other misleading actions, have had catastrophic effects on the rule of law, and specifically on the principle of the supremacy of the constitutions which are considered to be, in this part of the world, fundamental law of the State. Many democratic governments have taken undue advantage of the pandemic outbreak, by purportedly and illegally stepping into infringement and violations of individual rights and guarantees widely recognized by those constitutions. Either because those lockdowns and other restrictive actions, have largely overextended in time more than really necessary, or because the different governments have only taken an insufficient reactive rather than proactive approach to face the lack of vaccines, hospital and medical infrastructure and materials, the end result was a clear and devastating deterioration of democratic institutions in the Latin American region.

It is hereby essential to review the basic universal human rights recognized by western-style constitutions in Latin American countries. The identification of all of those rights is crucial to portray the dimension of those infringements and violations by legitimate and non-legitimate governments, that is to say, those political authorities which have been appointed to public office through free elections, and those which do not have, for various reasons, a legitimate standing. It is true that under international human rights law, States can limit the exercise of most human rights if it is necessary to protect the rights of others or collective interests. However, it is necessary to conduct a thorough assessment of the seriousness and extent of those restrictions and the length of time the same have been in place, in order to determine whether or not they have legal and practical sustainability, considering that human rights have a very supreme value and priority. A key response to this dilemma is that government actions should not have disproportionally harmed common citizens' interests such as the recognition and protection of human rights (Lebret, 2020).

In addition, the wide diversity of actions taken by the different governments to enforce the lockdowns and other restrictions to human rights' enforcement, have also derived in violations to the traditional concept recognized by Montesquieu as the division of powers (Fairlie,1923). Western constitutions, including many of the Latin American ones, have widely recognized the independence of powers, namely the Executive, Legislative and Judiciary. However, in many cases, there were situations in which the Executive Branch in certain countries in the region, has taken advantage of the strong lockdown context, to leave the Legislative aside and issue executive orders as well as promote bills of law designed to unduly change the rules of democracy. Debate and decision of these key topics where human rights are restricted, generally fall within the power or the confirmation by the Legislative, as mandated by the fundamental laws of the State. These actions were specially focused to interfere on the appointment of judges, design and implement changes in the selection process of attorneys general as well as proposals to change the composition of the Supreme Courts, all of which had the clear intention of supporting or favoring decisions taken by the Executive All of these actions are reserved to the compliance of specified legal procedures where all of the political parties with sufficient representation in the Legislative branch, were to be involved.

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However, such compliance has been simply bypassed and ignored.

It is true that the institutional and economic performance of democratic governments, especially in Latin America, has been disappointing and frustrating for a very long period of time (Fukuyama, 2015). If someone couples the failure of citizens' expectations with the governments' mismanagement of the COVID-19 pandemic and the unreasonable extended lockdowns, the raise of protest demonstrations should not be taken as a mere surprise by anyone. This is not, in anyway, a justification of such disrupting demonstrations, but it is only a conscious reasoning to understand why citizens step out and protest in situations when their basic universal human rights have been flagrantly infringed or violated. The capacity of the State in Latin America has not follow the necessary pace to meet citizens' demands and in a pandemic scenario. Such failure has been highly visible, namely, there were not enough hospital and medical supplies and infrastructure, as well as insufficient medical staff to satisfy the overwhelming demands of infected patients, among other very serious gaps and deficiencies. More importantly, healthcare workers heavily exposed to infections have not and are not having adequate and reasonable access to personal protective equipment, safety procedures, and diagnostic protocols, necessary for safe working conditions (Delgado et al., 2020). In addition, there has been a lack of enough number of vaccines, necessary to reduce the number of infections and therefore the number of casualties. Non-compliance of vaccine programs has led to unfairly assign vaccines to government officials' family members and active members of political parties which constituted flagrant corruption practices.

Modern western democracies are known to share three principles, namely, the State, the rule of law and democratic accountability (Fukuyama, 2015). Unfortunately, the consequences of the COVID-19 pandemic and the actions taken by some governments, both democratic and non-democratic in Latin America, have proved that such principles have been flagrantly violated. The pandemic caught the States and their governments, totally unprepared to face the effects of such a crisis, no matter what the extent of such pandemic has been. Despite millions of financial resources, Latin American States failed to effectively manage the pandemic, conducting the populations to healthcare and economic devastation, and causing millions of casualties (Lago, 2020).

According to Our World in Data publications, Latin America is losing the fight against COVID-19, and therefore human rights enforcement is in real danger. When measuring the number of casualties as a percentage of total population, 9 out of 10 countries in the region are at the top of this slot. Vaccination campaigns have appeared to be very slow and chaotic, and therefore, have not been successful to stop the virus circulation among the population. Notwithstanding the long lasting lockdowns and human rights' restrictions imposed by governments in the region, which have caused economic devastation, the number of casualties in the region in terms of population, is still the highest. Numbers in all sectors appear to be overwhelming as will now be reflected. A recent United Nations (UN) report has reflected that in 2020, an additional twenty-two million people in the Latin American region plunged into poverty. In addition, nearly sixty million people fell out of the middle class. According to the UN Economic Commission for Latin America and the Caribbean, the population of Latin America represents less than 9 % of the world's population and has had over a quarter of the world's casualties due to the COVID-19 pandemic. The post pandemic era certainly presents a historic opportunity for the region to launch a true transformative agenda, but there is a long road still ahead to repair the health and economic damages which the pandemic has caused and is still causing.

The key and relevant aim of this research article is to analyze the impact of the fight against the COVID-19 pandemic on human rights in Latin America, which have derived in serious violations in many cases and in diverse areas. It has first

been necessary to give an overview of the Latin American context after suffering the consequences of the pandemic on the political, healthcare and economic fronts. In addition, the research has been designed to establish a cause-and-effect relationship which in this case is reflected in the mismanagement of the pandemic by several Latin American governments and its negative consequences on basic universal human rights, deriving in their violation.

In order to be able to achieve the above referred aim, both quantitative and qualitative data have been used. Both primary and secondary data have been collected to complete the research task, and arrive to sustainable conclusions. In this sense, it has been considered that there was a need to look at both quantitative and qualitative data to gather evidence on the cause-and-effect relationship that has been established, namely, that the mismanagement in the fight of the pandemic in certain countries in Latin America has caused devastating effects on the economy, healthcare and governments' institutions, with infringement and violations of fundamental human rights.

There were also ethical and philosophical considerations in the design of the research and its aim. How has this been reflected? Corruption practices and violation of integrity principles and standards have also been taken into account to assess whether or not violation of ethical conducts by Latin American governments have been common in the mismanagement of the pandemic, and have played a key role in the violation of human rights. Despite the fact that the World Health Organization made an international and overwhelming call for fair, transparent and equitable access to vaccines and treatments, in Latin American countries there has been and still is a very strong pressure to secure vaccines for the population. Why? Corruptive practices have threatened and it is still threatening massive access to vaccines, as there has been an evident lack of transparency in the development, procurement, supply and distribution processes, which have had a very negative effect on the different pre-established vaccination programs (i.e. Argentina).

Abstract concepts, such as violation of democratic standards and restriction of rights caused by the governments' mismanagement of the fight against the COVID-19 pandemic, as well as the fear of contracting the virus, cannot be easily measured. There are millions who have lost their jobs, thousands of businesses were closed, students were restricted from having regular classes, circulation has been limited and other violations of basic universal human rights, have occurred. Psychological and healthcare negative effects of the pandemic, have been exacerbated by Latin American governments' mismanagement actions. Those abstract concepts have been turned in this research into measurable observations making good use of operationalization. Operationalization have been used to reduce subjectivity and increase the reliability of the data that have been collected. A good sample of this operationalization is the magnitude of the violation of democratic standards as well as the extent of the stringencies imposed during the fight against of the COVID-19 pandemic in Latin America.

The information that have been included in this section, is focused on reflecting comparative data of Latin America and other geographical regions, among other type of data.

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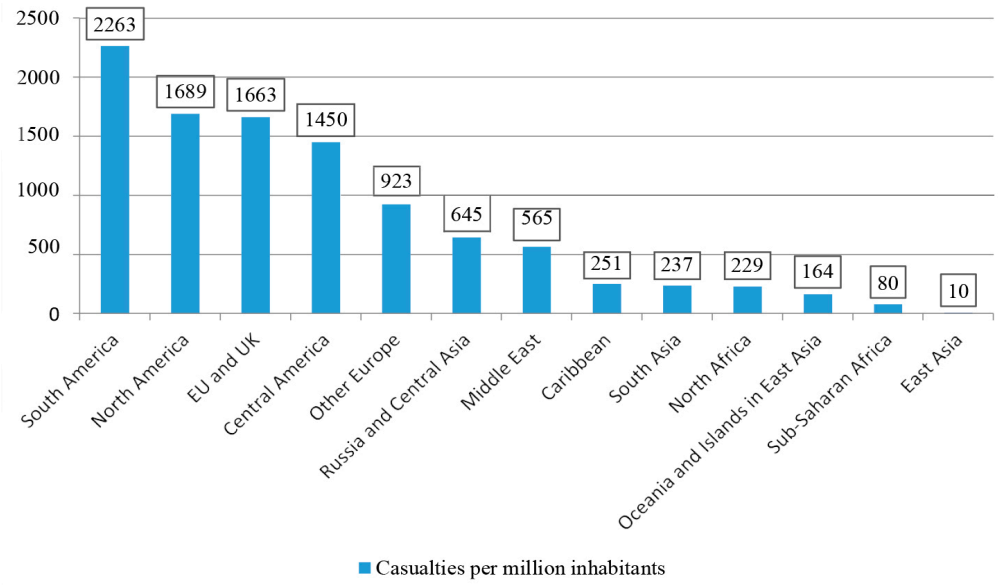

Figure 1 – COVID-19 pandemic number of casualties per million inhabitants
Source: Worldometer
Results: Latin America (South America and Central America)
COVID-19 deaths per million inhabitants: 2263.

Despite high ELIs (as defined below) in Latin America, casualties ratio per million inhabitants show that Latin America has been hit more than the European Union & UK, South Asia, Countries Non-Members of the European Union, Middle East, Russia & Central Asia, Oceania & Islands in East Asia, North Africa, East Asia and the Caribbean. Such ratios are worse than all of those in all regions shown on the Figure 1 above.

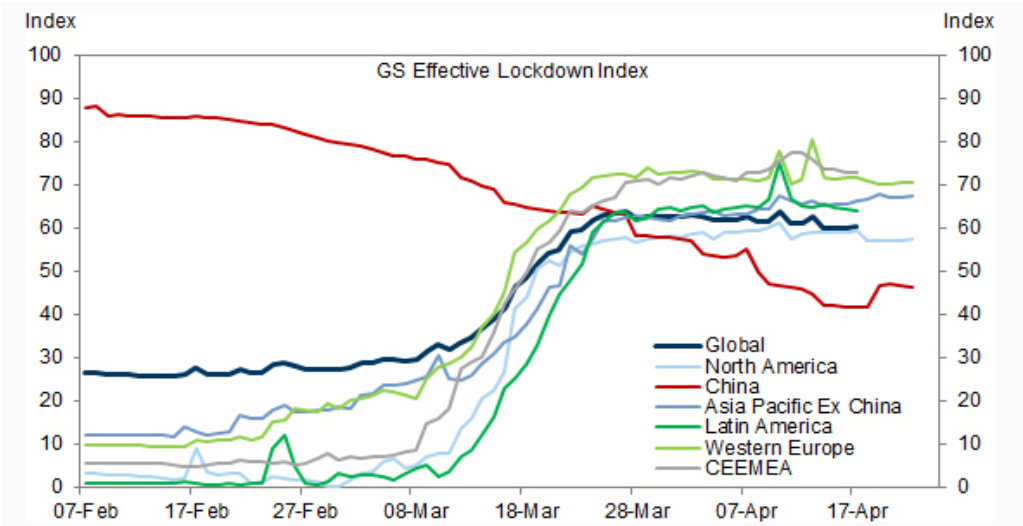

Figure 2 – Investment Research. 2020. The "Effective Lockdown Index (ELI)", provides an equal weight to a "virus policy" measure – an adjusted version of the Oxford index – and a "social distancing" measure – a summary of the Google data
Source: Oxford University, Google, Apple, Wind, Goldman Sachs Global
Results: The ELI for Latin America is higher than the Global ELI, the one in China and in North America, and lower than in Western Europe. Despite this fact, the number of casualties per million inhabitants in Latin America is higher than in Western Europe and UK, and North America.

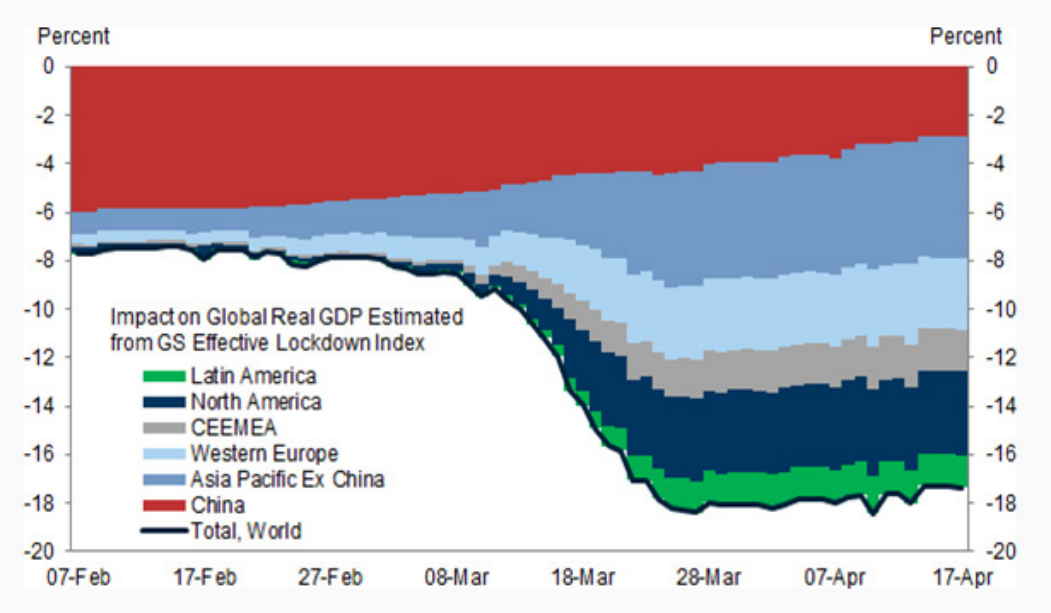

Figure 3 – Impact of ELI on Gross Domestic Product (GDP) Source: Goldman Sachs Global Investment Research

Results: There is a direct relationship between a high ELI and high GDP fall. Comparing Figures 2 and 3, the former shows that the ELI in Latin America is higher in a given period of time compared to ELI Global, ELI North America and China. A high ELI has caused Latin America to have the highest GDP fall compared to other geographical regions such as North America, China, Western Europe and Asia Pacific.

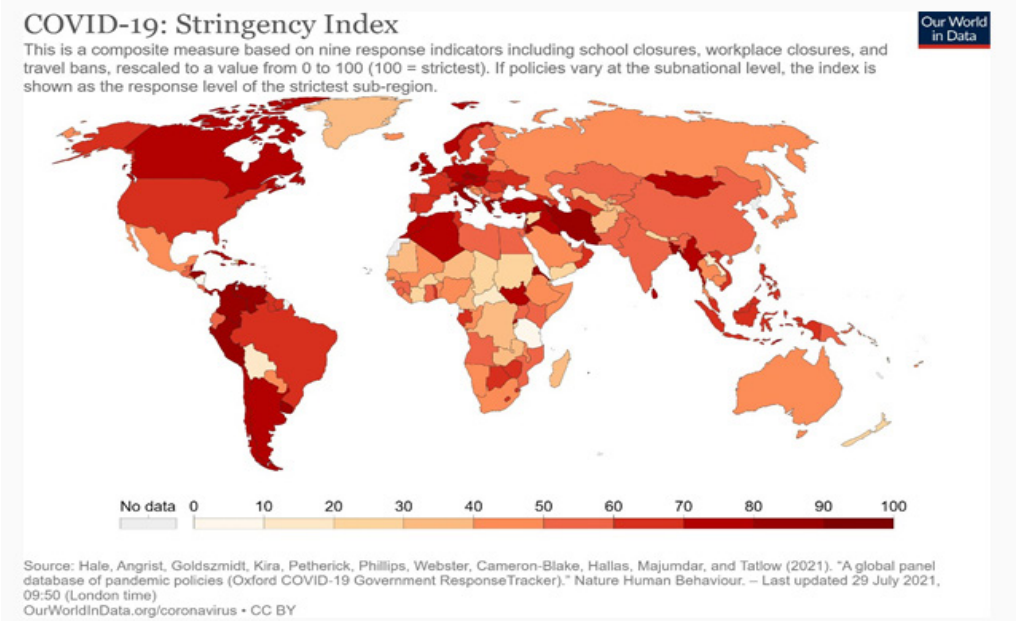

Figure 4a – Stringency Index March 15, 2020 published July 29, 2021 showing Latin America.
Source: Our World in Data

ISSN 2786-491X (Print)

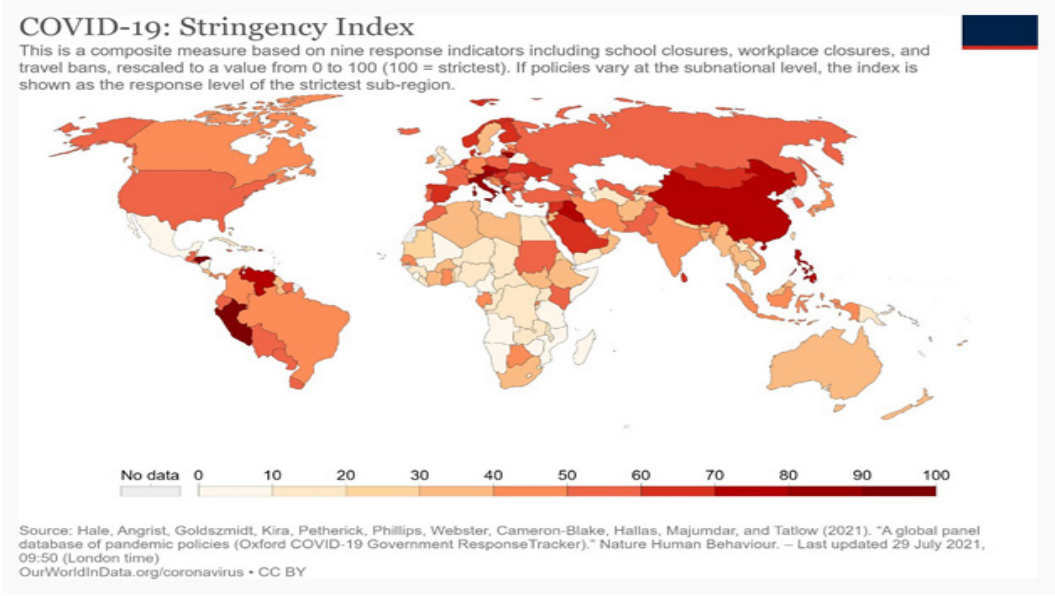

Figure 4b – Stringency Index March 16, 2021 published on July 29, 2021, showing Latin America
Source: Our World in Data
Results: The nine metrics used to calculate the Stringency Index are: school closures; workplace closures; cancellation of public events; restrictions on public gatherings; closures of public transport; stay-at-home requirements; public information campaigns; restrictions on internal movements; and international travel controls. Comparing Figures 4a and 4b, showing the Stringency Index on March 15, 2020 (average 30) and March 16, 2021 (average 60) in Latin America, there is a significant deterioration of the basic universal human rights and freedoms in this region.

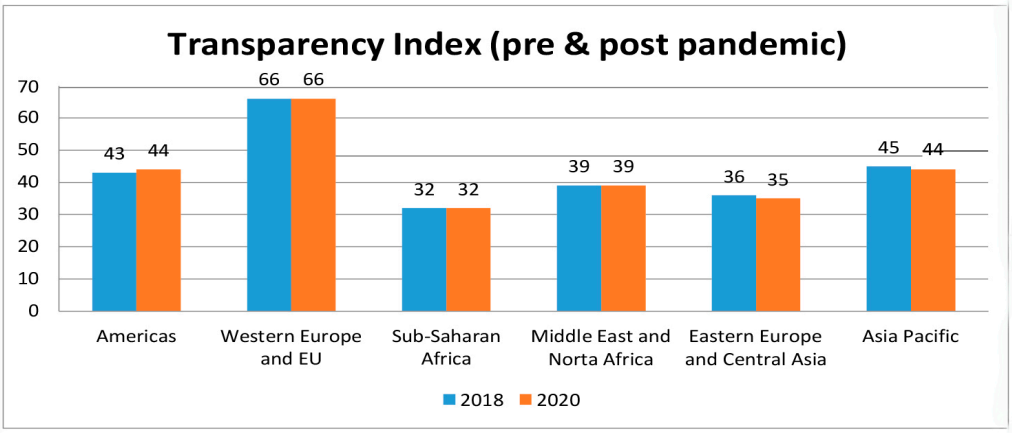

Figure 5 – Transparency Perception Index 2020 (published in 2021) vs. Transparency Perception Index 2018 (published in 2019)
Source: Transparency International
Results: The Transparency/Corruption Perception Index elaborated by Transparency International in 2020 shows that the Americas (including Latin America) is a geographical region where transparency is seen as lower than that in the European Union and Western Union and the Asia Pacific Region. When comparing Transparency Perception Index 2018 with that of 2020, there is a deterioration in the Americas (44 vs. 43) and the highlights of such a weakening in the index, can be attributed to corruption practices during the beginning of the COVID-19 crisis with ongoing investigations of corrupt contracts, embezzlement, and inflated pricing of medical supplies like face masks and body bags in many Latin American countries.

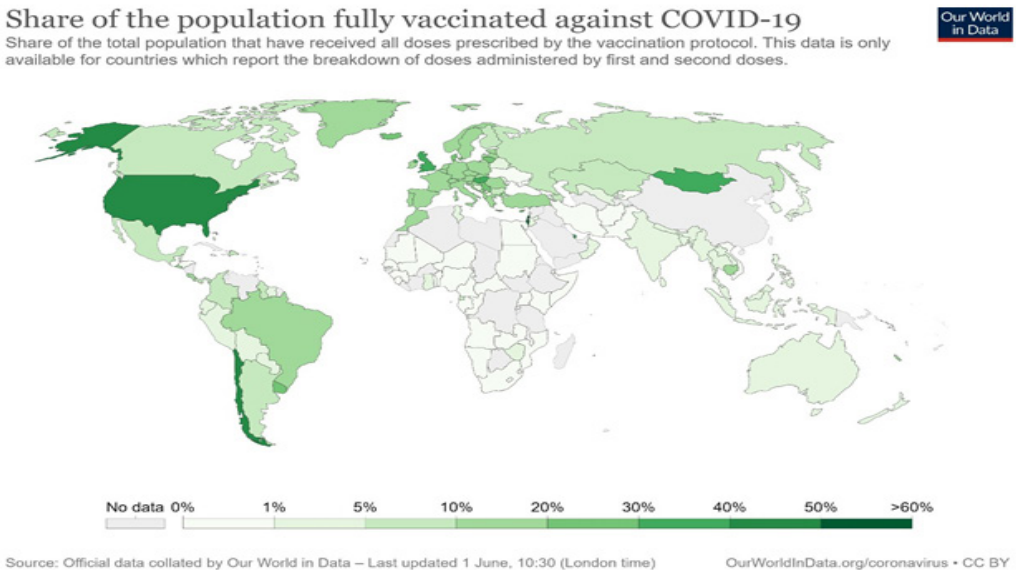

Figure 6 – Share of the Population fully vaccinated against COVID-19
Source: Our World in Data
Results: Latin America is one of the geographical regions where only 10-15 % average of the population has received all doses of prescribed vaccines. This is a very low percentage compared to North America (40 % average), Europe (30 % average) and Asia (20 % average).

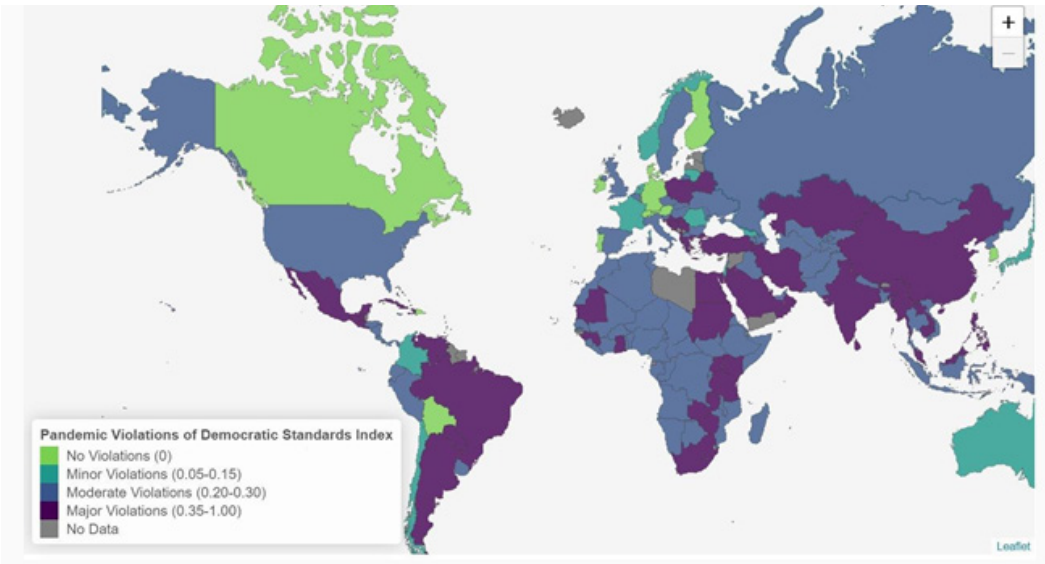

Figure 7a – Pandemic Violations of Democratic Standards Index (June 2021)
Source: V-Dem Institute

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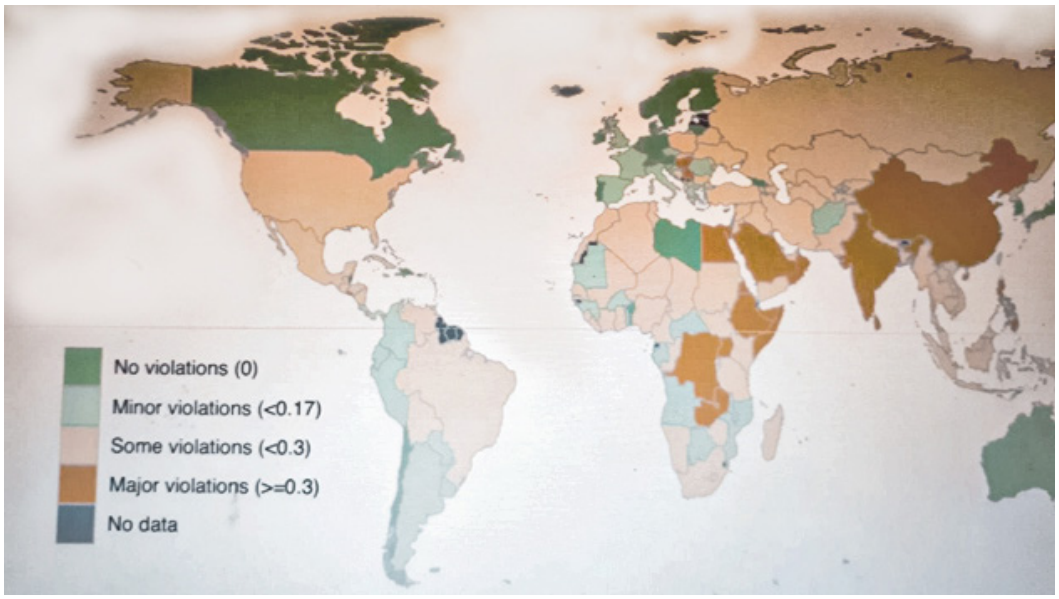

Figure 7b – Pandemic Violations of Democratic Standards Index (March to June, 2020)
Source: V-Dem Institute
Results: The Pandemic Democratic Violations Index measures the following violations: (i) No time limit on emergency measures; (ii) Discriminatory measures; (iii) Derogations from non-derogable rights; (iv) Restrictions on media freedoms; (v) Disproportionate limitations on the role of the legislature and (vi) Abusive enforcement. When comparing Figure 7a and 7b, the number and seriousness of the violations, there has been a very strong increase and aggravation of all type of democratic violations after measuring a twelve (12) months period of the COVID-19 pandemic.

For the purpose of this research, it is essential to identify the so-called basic universal human rights. According to the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 of December, 1948, these are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom of opinion and expression, the right to work and education, among others. Everyone is entitled to these rights, without discrimination. The International Covenant on Economic, Social and Cultural Rights which entered into force in 1976, seeks to promote and protect the right to work in fair and favorable conditions; the right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well-being; the right to education and the enjoyment of benefits of cultural freedom and scientific progress. As a consequence of certain Latin American governments' mismanagement of the COVID-19 pandemic, and that regional GDPs plunged, social protection levels as well as citizens' standards of living have dramatically deteriorated, the right to work and to receive education were severely affected. Millions of jobs were lost and there were thousands of business shutdowns.

Amnesty International has supported the idea that violations of human rights usually do not contribute to facilitate adequate responses to emergencies in the public health area, undermining their efficiency (Amnesty International, 2020). The World Health Organization also requested countries to ensure that the measures are taken to fight the COVID-19 pandemic, should not negatively affect human rights. Most modern constitutions or national fundamental laws, including those in force in Latin American countries, recognize the protection and guarantee of basic human

rights. Human rights are characterized as universal entitlements applicable to all individuals. They are solely focused to preserve and defend human dignity. States have the obligation to protect, promote and enforce human rights (Sikkink, 2014) Such traditional human rights can be identified as economic, social and cultural rights, including the right to health, to education, to work and fair remuneration, to enjoy a culture leisure, to social security benefits, and the right to secure food, shelter, the right to circulate within and outside the countries' geographic boundaries, the right to receive and give education, the right to do lawful business, among other fundamental rights (2021). In accordance with international law, the right to life is one that cannot be suspended even in emergency circumstances (Queensland Human Rights Commission, 2019). No doubt that the right to health care guarantees the right to life because it is closely related to human life. States are obliged to take actions to prevent threats to public health and to provide medical care to those who need it. Indeed, in Latin America and even in developed economies, the COVID-19 pandemic has reflected strong deficiencies in health-care systems and health inequities characterized in many cases by shortages of medical materials and equipment (Kalra, 2020). Also, some countries suffered from a collapse in the health system and poor quality of medical facilities, which specially affected low-income sectors of the Latin American population (Bambra et al., 2020).

The Latin American region has been characterized by a key period of constitutional change, which fundamentally took place between the end of the 1980s and 2000 (Gargarella, 2014).

During this period, Brazil amended its constitution in 1988, Colombia in 1991, Argentina in 1994, Venezuela in 1999, Ecuador in 2008, Bolivia in 2009, and Mexico in 2011. In all cases, protection of universal human rights has been emphasized and new rights were added. As examples, Section 14 of the Argentine Constitution provides that all inhabitants are entitled to fundamental rights, in accordance with the laws that regulate their exercise, namely, among others, to work and perform any lawful industry; to navigate and trade; to petition the authorities; to enter, remain in, travel through, and leave the Argentine territory; to profess freely their religion; to teach and to learn. Many of these fundamental rights have been severely violated during the COVID-19 pandemic with the implementation of severe and extended lockdowns, despite that the number of casualties in Argentina were at the top ten of the worldwide ranking. In addition, Section 2 of El Salvador Constitution provides that every very person has the right to life, physical and moral integrity, freedom, security, work, property and possession. Section 53 guarantees the right to receive education. In one way or other, all of these rights have been restricted or violated by government mismanagement and abuses.

Sanitary, economic, social and political conflicts are strongly disturbing the life of inhabitants in the Latin American geography today. In a relevant number of cases, these conflicts existed even before the COVID-19 pandemic, but nobody can doubt at this stage, that the consequences of such pandemic has exacerbated problems and has turned on a red light for societies that are suffering the emerging negative consequences which are being observed today. The context is extremely challenging for both Latin American democracies and autocratic regimes in place today. It is well known that Latin America is the world's most unequal continent where a relevant portion of the population really depend on informal work for their own livelihood (Lacase, 2021).

The COVID-19 pandemic has truly represented a strong challenge to political leadership in Latin America, where institutions are historically weak and do not enjoy the trust of the populations (Acacio & Passos, 2020). Some of the Latin American leaders have increased their political power violating the principle of the division of powers to face the crisis of the pandemic. From El Salvador to Nicaragua in Central America, the current administrations in those countries have used the COVID-19 pandemic to incur in different type of abuses of power, restricting and/or deleting key human rights, with the sole intention of having no opposition parties in the

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political arena. In El Salvador, President Nayib Bukele, dismissed Supreme Court of Justice's members and replaced them with individuals who are more in line with his political thoughts. In Nicaragua, President Ortega is persecuting political opponents and several political leaders are suffering from unjustified imprisonment to avoid opposition in the next presidential elections. In South America, the Colombian well-established democracy has been threatened by massive demonstrations in key cities, complaining about new tax bills which represent a huge burden for taxpayers and which had the sole purpose of financing additional healthcare costs. Brazil, Peru and Argentina are the countries in the region which have suffered the effects of the COVID-19 pandemics most in terms of deaths per million inhabitants, despite that Argentina has implemented the longest lockdown in the world (Larrosa, 2020). In addition, in a worldwide rank reported by the World Health Organization, Peru is first with the highest number of casualties (5.915) per million inhabitants, Brazil is ninth with 2.704 casualties and Argentina is eleventh in the ranking with 2.443 casualties per million inhabitants. Lockdown has been implemented as a way of reducing mobility and then potential contagion These countries enjoy democratic governments which have emerged from free elections.

However, and especially in the case of the Argentine, democracy has turned into a kind of autocracy with an unreasonable extended lockdown of almost 8 months in 2020 and newly extended and very strict lockdowns in 2021. The violations of human rights in certain provincial jurisdictions are in the process of being investigated by the United Nations Commission for Human Rights. In Brazil, the highest populated country in Latin America, and after an initial very soft approach to fight the COVID-19 pandemic by President Bolsonaro, such approach has changed into a stricter and more conservative one, as the number of casualties placing Brazil at the top of the rank, were severely hitting the Brazilian society, turning Bolsonaro as an unpopular leader As a consequence of this, President Bolsonaro is suffering congressional investigation as well as huge demonstrations claiming for more volumes of vaccines to avoid additional casualties. Corruption represents a very serious threat to individuals' lives and established living styles, and particularly when a public health emergency such as the COVID-19 breaks out (Kos, & Wasserstrom, 2020).

It is very relevant to realize that transparent government administrations bring higher investments in healthcare and offer strong epidemiological surveillance mechanisms which are key to fight a pandemic and preserve human lives as much as possible (Layachi, 2020). Transparency International, has referred to the COVID-19 pandemic not only as just a health and economic crisis but also as a corruption crisis, in the sense that those government administrations with higher levels of corruption have been in a highly weaker position to face the pandemic challenges. There is, undoubtedly, a severe impact of corruption in the Latin American States' ability to cope with its obligations in order to guarantee compliance with several universal human rights in a pandemic situation.

Unfortunately, this is the context in a great number of Latin American countries. Priority has been given to purchasing testing kits, medicines, patients' protective equipment, ventilators, special beds and other relevant medical devices, and that was the right thing to do. However, despite the urgency with which those supplies were required, the truth was that the purchasing processes have been characterized, in many cases, by an evident lack of transparency. According to Transparency International, direct purchasing mechanisms were used without complying with standard regular bidding processes, which was reflected in illegal and corruption practices. In Colombia such practices became a common standard. Procurement rules were eased and there was an increase in the discretion of public servants in awarding contracts. which generated favoritism, lack of transparency and corruption. The negative consequences of such discretion have offset any potential benefits in promoting flexibilities in the procurement process for emergency reasons (Gallego, Prem & Vargas, 2021).

In Latin America, the sanitary and economic crises, are closely linked. Despite very extended lockdowns which have caused large economic devastations which will require country economies several years to recover, there were very high rates of casualties and very poor vaccination campaigns, Chile being an exception to this rule. According to Prensa Internacional magazine, Latin American countries have been very dogmatic when taking steps towards closing their economies. Peru is at the top of the rank followed by Argentina in the second place. In 2020, and just for comparison purposes, while global gross domestic product (GDP) had a 3 % fall, the average GDP decline in the Latin American and Caribbean region was 7 %, with certain countries declining 10-12 %. Such is the case of Argentina and Peru. In addition, in 2020 the work force in Latin America worked 16 % fewer hours, which is almost twice the loss occurred on a worldwide basis.

After analyzing the key economic indicators in Latin America, the World Trade Organization (WTO) considered that the recovery of Latin American economies would depend on the path of vaccination and its expansion. Further, in the G-7 meeting which recently took place in England, the WTO expressed its fears that the steps taken by Latin American governments to provide vaccines to their population were not as fast as they should be. In addition, the WTO desires that developed economies as those of the countries conforming the G-7, would reach a global agreement to provide developing countries with a more extensive access to vaccines. Although countries in the G-7 have initiated the process of a massive donation of vaccines to developing countries, the WTO considered that an extra United States Fifty Billion Dollars will be needed to accelerate the deployment of vaccines supply. While in Europe, the European Commission took very relevant actions to support short-time work and invested the amount of Euros Thirty-Seven Billion to support small and medium companies as well as the healthcare sector (Lebret, 2020), this was not clearly the case in Latin America. Subsidies and financial aid from the States were not sufficient for recovery purposes.

Moreover, children of different ages and in every geographic region, especially in Latin America where school shut-downs have been for very long periods of time, have been severely affected by the political, social and economic impacts of the COVID-19 pandemic, and, in some cases, by mitigation actions and policies from different government administrations that may advertently or inadvertently have caused, in many instances, more harm than good. Undoubtedly, the negative impact for children will be lifelong, according to the opinion of qualified educational and healthcare experts. It is also clear at this stage, that the harmful effects of the pandemic will not be distributed equally among the world's population. Those severe consequences are expected to be most damaging for children in the poorest countries, and in the poorest neighborhoods, and for those children which are already in disadvantaged or more vulnerable situations.

According to reports prepared and submitted by the John Hopkins University, as December 3, 2020, the COVID-19 pandemic had claimed more than 1.400.000 lives and infected more than 64 million people around the world. COVID-19 has strongly impacted on People's access to healthcare worldwide. Recently, the Save the Children non-governmental organization issued a report which surveyed 25.000 participants in 37 countries, including several Latin American ones. Conclusions were that 90 % of families had severe restrictions to access not only healthcare services but also medicines (Ritz, O'Hare & Burgess, 2020). It is evident that not the pandemic but also the inappropriate actions and mismanagement incurred by the governments to fight it, has increased structural and societal inequalities. Levels of poverty have increased in Latin America, and traditional educational standards were set aside. Millions of children ceased to have in-person classes and had no access to electronic and video devices to be able to have on-line classes. The very negative impact on students' educational standards is evident and will be more visible in the future.

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Faced with an overwhelming crisis, Latin American governments have had, in general, reactive approaches towards the pandemic. Except Chile, which designed and implemented an aggressive vaccine program, there was no other relevant proactive approach. There is a general belief that extended school shut-downs in Latin America have harmed and are still provoking a lasting damage on a full generation. Empty classes are considered a real tragedy. There were Latin American governments that decided to close schools for an extended period of time. A common argument sustaining that decision was not students' physical attendance. Namely, it was parents' circulation and gathering on school entrances and exits that could increase COVID-19 circulation. Closures have also impacted on working parent's daily routines, as many of them have to work from home sharing time with their children. Poverty levels in Latin America, have not allowed students to receive on-line education as they did not have laptops and/or Wi-Fi connections available.

On average, 38 % of workers in Latin America are employed in the informal economy, many of them without access to health or unemployment insurance. Expecting people living hand-to-mouth to comply with lockdown restrictions is perhaps unrealistic. While government-funded relief helped alleviate this problem, it was probably insufficient. Implementing a lockdown correctly is critical in reducing its cost, and several factors may prevent it. Some are particular to individual countries, but a few structural factors common to the region stand out. One is limited government capacity to enforce lockdowns, especially in more remote regions where law enforcement presence is weak. Combined with low trust in government and media, the result was that a certain number of citizens chose to ignore government mandates. The International Labor Organization (ILO) has warned of the need to adopt immediate strategies to face the labor crisis caused by COVID-19 which has led to the loss of at least 34 million jobs in Latin America and the Caribbean. The situation could generate an increase of inequalities in the region even as early indications of recovery have been observed in recent weeks.

Conclusions. There is no doubt at this stage of the 21st century, that basic universal human rights constitute true, significant and supreme values in all modern societies and that they are required to be fully protected by governments. In an extremely complex global context governed by freedom restrictions of all kinds, a good number of Latin American administrations have incurred in a severe and serious mismanagement and corruptive actions in their intent to fight against the COVID-19 pandemic. Such actions, including extended lockdowns, have proved totally ineffective to attack the pandemic and have led to serious restrictions and violations of basic, essential and universal human rights. As analyzed in this research, those violations have not only negatively impacted on citizens' lives (i. e. thousands of casualties, insufficient access to vaccines, no access to education, massive loss of jobs, business shut-downs, lack of medical infrastructure and supplies), but also on democratic institutions, converting some democracies into new real autocracies where lack of transparency and corruption practices have been and currently are common standards. Undoubtedly, Latin American governments will face new challenges during the post-pandemic era, for which they should be prepared to reinvent themselves, and should be thinking on planning and designing appropriate and effective policies to protect basic essential human rights and avoid further and more serious economic and social devastation.

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Conflict of Interest and other Ethics Statements

The author declare no conflict of interest.

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ВПЛИВ БОРОТЬБИ З ПАНДЕМІЄЮ COVID-19 НА ПРАВА ЛЮДИНИ В ЛАТИНСЬКІЙ АМЕРИЦІ

Анотація. Країни Латинської Америки та їх населення постраждали не тільки від руйнівних наслідків пандемії COVID-19, а також від наслідків бездіяльності їхніх урядів. Особливості та продовження боротьби з пандемією COVID-19, а також карантин в Латинській Америці спричинили порушення основних прав людини.

Метою дослідження є оцінювання катастрофічних наслідків пандемії COVID-19 в Латинській Америці та забезпечення стійких доказів того, що бездіяльність та неефективне управління, а також корупційна практика урядів спричинили порушення основних універсальних прав людини. В процесі дослідження автор застосовував наступні методи: 1) порівняльний аналіз загальної кількості жертв COVID-19, виміряної по відношенню до мільйонів жителів (по різним регіонам, включаючи Латинську Америку); 2) порівняльний аналіз індексу блокування, включаючи Латинську Америку; 3) регіональний порівняльний аналіз впливу індексу ефективного карантину на валовий внутрішній продукт, включаючи Латинську Америку; 4) індекс жорсткості COVID-19 щодо державних обмежень, у тому числі в Латинській Америці; 5) порівняльний індекс сприйняття прозорості 2020 порівняно з індексом сприйняття прозорості 2018, який відображає різні географічні регіони; 6) оцінювання частки повністю вакцинованого населення проти COVID-19.

Проведене дослідження та отримані дані показують, що незважаючи на дуже суворі та тривалі обмеження, запроваджені урядами Латинської Америки у боротьбі з пандемією COVID-19, регіон зазнав руйнівних наслідків не лише в контексті здоров'я громадян, а й для економіки в цілому. Бездіяльність та корупційні практики урядів впродовж боротьби з COVID-19 спричинили дуже серйозні порушення основних універсальних прав людини на континенті, наприклад, пов'язані з освітою, торгівлею та бізнесом, роботою, охороною здоров'я, здоровим довкіллям, задоволенням, конфіденційністю даних тощо.

Ключові слова: *права людини, порушення прав, Латинська Америка, пандемія, корупція*

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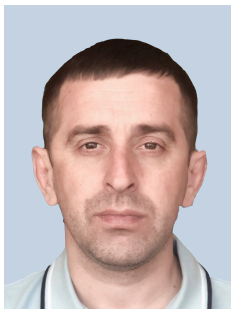

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WAR ON CRIME: FROM PASSIVE BEHAVIOUR OF AN UNDERCOVER AGENT TO ACTIVE FORMS OF COVERT INFLUENCE ON ACCOMPLICES OF CRIMINAL ACTIVITIES

Abstract. The research is dedicated to the operative work of law enforcement agencies in terms of the use of undercover agents for conducting operative-search operations in the criminal environment for searching for the criminal activity of previously unknown persons (unknown

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accomplices). A comprehensive analysis of the main provisions of the Ukrainian legislation and fundamental international acts that regulate the use of undercover activities in Ukraine was conducted chronologically. It has been established that the European standards defining the limits of legal behaviour of undercover agents in the criminal environment are mainly based on the provisions of fundamental international acts on the protection of human rights and freedoms adopted in the 1948−1980s; the Ukrainian legislation regarding the issue under research began to be formed in 1990s; only since 2006, the Ukrainian justice system began to actively recognise the European judicial practice when passing verdicts in the field under study. It has been emphasised that the effectiveness of legal regulation of the use of undercover activities by law enforcement agencies depends on the ability to combine and direct positive factors accompanying the legal norm and block those that hinder it. The disparity of legal acts that fragmentarily regulate legal foundations of undercover activities negatively affects the efficiency of using the obtained results for combating crime. It is suggested to solve this issue through the unification of the provisions of the legal acts in order to achieve uniformity in the use of undercover methods by law enforcement agencies for combating crime according to the European legal standards. Taking into account a high crime rate in modern Ukraine, it is quite challenging to comply with or implement the latter in order to avoid incitement or entrapment to the extent of the regulation of lawful behaviour of undercover agents in the criminal environment, since solely passive behaviour of undercover agents not only fails to contribute to detecting criminal activities and documenting criminal intents of accomplices but rather exposes the undercover agents to the criminal world, which poses a threat to the life and health of both undercover agents and their relatives. In order to improve the effectiveness of crime-fighting activities in Ukraine, this research justifies the legal regulation of the general principles of permissible lawful behaviour of undercover agents as regards empowering them to use active forms of denunciating the criminal activities of people in the criminal environment.

Keywords: *entrapment, incitement, undercover agent, lawful behaviour, passive waiting*

Introduction. The conducted analysis of the fundamental international legal acts on the protection of basic human rights and freedoms from unjustified intervention and imposing restrictions by law enforcement agencies, relevant national legislation in the mentioned field, criminal case-laws of the European Court of Human Rights, where the evidence is based on the result of the undercover activities of law enforcement agencies, as well as national practical realities of covert operations in the criminal environment demonstrated a sufficient imbalance in the implementation of the state policy, particularly in the field of respect for human rights and freedoms during the operative-search operations in Ukraine (as based on the work of police units). The current legislative framework for undercover activities of law enforcement agencies as regards the use of undercover agents is versatile, but in general, it does not correspond to the actual crime rate in Ukraine, since it does not offer a comprehensive approach to ensuring and regulating the sufficiently effective lawful behaviour of undercover agents in the criminal environment to actively detect the criminal intents of the subjects, which have not yet been identified by the law enforcement agency as perpetrators of the crime being prepared or committed.

Analysis of recent research and publications. The issue of permissible behaviour of undercover agents in the criminal environment has been studied by a range of scholars, such as S. Albul, L. Arkusha, O. Bandurka, I. Basetsky, V. Bobrov, L. Brusnitsin, V. Vasilinchuk, A. Venediktov, A. Voznyi, V. Volobuyev, Zh. Bygu, M. Boguslavsky, O. Gida, V. Glazkov, V. Glushkov, O. Granin, M. Gribov, D. Grebelskyi, L. Gula, O. Dolzhenkov, O. Dulsky, V. Zakharov, L. Katsan, A. Kyslyi, V. Klimchuk, I. Kozachenko, M. Kornienko, O. Kopan, V. Kroshko, V. Krugly, Yu. Mantulyak, D. Nikiforchuk, S. Nikolayuk, V. Omelchuk, Yu. Orlov, S. Pichkurenko, M. Pogoretsky, S. Popov, S. Prikhodko, I. Servetsky, V. Silyukov, O. Skakun, E. Skulysh, S. Slynko, V. Stolbovoy, A. Subbot, O. Tsvetkov, V. Tsymbalyuk, Yu. Cherkasov, S. Chernykh, V. Shendryk, I. Shynkarenko.

Of course, the above list of the researchers, who directly or indirectly touched upon the discussed issue in their research, is not complete. Following the analysis of the existing significant scholarly research in the context of ambiguous

and often controversial issues regarding undercover activities of law enforcement agencies and in the absence of the up-to-date comprehensive monography on the topic under study, we can conclude that the studied problem is topical especially in the light of modern methods of countering organised criminal activity and the need to incorporate the international judicial decisions in the national law enforcement practice.

The purpose of this work is to justify the need to revise the legal regulations of the limits of the permissible undercover influence exercised by an undercover agent on a subject of the non-obvious (latent) criminal activity.

The achievement of the goal presupposes the consistent implementation of the following tasks: to analyse international and national legislative framework for the legal regulation of the use of covert methods of combating crime applied by the Ukrainian law enforcement agencies as regards using undercover agents to detect the wrongful intents in latent subjects of criminal activities; to review the European case-law in terms of interpretation of lawfulness of the use of undercover agents by law enforcement agencies; to outline the national tendencies in the use of undercover agents for detecting criminal intents in the latent subjects of the criminal offence; to draw the conclusions concerning the limits of permissible use of undercover agents by law enforcement agencies to detect the criminal intents in the latent subjects of the criminal offence (crime).

Taking into account the topic, goal and tasks of the research, the latter is done with the help of the following methods: the method of systemic and structural analysis (1) allowed us to study the theoretical aspects of the use of undercover agents in accordance with the international legislative acts, and (2) was applied during processing and generalisation of the empirical material concerning the legal regulation of undercover activities; comparative, logical legal, logical normative and comparative legal methods were used (1) to analyse the legislative acts and their equivalents that regulate the legal basis of using undercover agents and (2) to draw the conclusions regarding the limits of the permissibility of law enforcement agencies' using undercover activities to detect the criminal intents in the latent subjects of the criminal offence (crime); the dogmatic approach was used to determine the reason for the use of undercover agents; structural and functional method (analysis) is used to study the legal basis for the use of undercover agents; sociological methods (questionnaire and interview) were used to get primary information from the initiators of agent operational activities concerning the limits of lawful behaviour of undercover agents in the criminal environment; Aristotelian method contributed to drawing the conclusion of the conducted research.

Materials of the presented study include scientific and theoretical framework based on the research of famous experts in the field of Criminal Procedural Law, Criminal Law, operative-search operations and other branches of Law; legal framework based on the provisions of international legislative acts, the Constitution of Ukraine, the Criminal Code of Ukraine, Criminal Procedure Code of Ukraine, current normative legislative acts and their equivalents that define the fundamental constitutional, criminal-procedural, criminal-intelligence principles of using undercover agents by law enforcement agencies for detecting the legal intents of latent subjects of the criminal offence; an empirical basis based on the provisions of international and national normative legislative acts, regulations, court judgments; theoretical basis comprising the references to certain scientific research papers available to the public.

Formulation of the main material. The crime that comes to the police's notice is just the tip of the "crime" iceberg that "actually took place". From the viewpoint of criminal science, the non-detected delinquency (or hidden crime) is a set of actions that were committed but not noticed by the criminal investigation agencies and, consequently, not included in the official criminal statistics (H. Shnaider, 1994). As far as combating crime is concerned, the law enforcement agencies are intended

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to detect yet unknown criminal offences (crimes) and, henceforth, those who have committed them. In addition, they are supposed to identify problems before they arise in order to prevent dangerous consequences, i.e. to take investigative measures in the criminal environment in order to detect a criminal offence (crime) that is being prepared, as well as persons who have criminal intents and are preparing for or involved in the unlawful activities that can develop into crime. Therefore, the law enforcement agencies are to work in the conditions of non-obviousness, i.e. when criminal acts and their subjects are not specified (identified), and the gathered information is not enough to start a pre-trial investigation. One of the most effective methods of operative-search operations used to solve and prevent (stop) grave and particularly grave crimes, disclose and eliminate criminal groups is the infiltration of the undercover staff and non-staff agents of the criminal intelligence unit into the criminal association, whose testimony as witnesses in criminal proceedings would be very important for both solving and investigating the circumstances relevant to the case (V. Klymchuk, 2018). Therefore, the main instrument used by the state to combat non-obvious crime includes undercover activities conducted by law enforcement agencies, i.e. the use of people who are consciously hiding their relation to the law enforcement agency to conduct search activities in the criminal environment for the detection of unlawful activities and persons involved herein (subjects, accomplices, etc.). A concomitant goal of such activities is to prevent unlawful activities by means of preventive investigation into the criminal environment. European judicial practice allows law enforcement agencies to use secret methods of investigating criminal offences (crimes) provided that there is no incitement by law enforcement agencies. International legislative acts on human rights and freedoms do not prohibit law enforcement agencies to use covert influence and means at the pre-trial stage if it is justified by the nature of the criminal offence. However, the court will consider the further use of the evidence obtained in such a way legally valid only if the relevant procedures for granting permission to use covert measures against a person, their implementation and control will be enshrined in the national law. Notwithstanding, in most cases, the legal restraints that predispose the undercover agent to act passively in order to detect the person's criminal intent do not contribute to the decisive manner of combating crime and, therefore, need to be revised, since modern criminal trends have revolutionised if compared to those that existed at the time of the adoption of the fundamental international act on human rights and freedoms. The infiltration of crime into every sphere of public life and governance in Ukraine requires the active transition from crime prevention to combating crime, as far as combating crime must result in the defeat of the crime, while the crime prevention, judging from its definition and semantics, leads only to neutralising the consequences and localising the activity. National criminal trends tend to be flexible and quickly diversify following all political, economical and social changes in the state, as criminal activities enable quick enrichment of corrupt government officials, unlike law enforcement agencies that are obliged to act in strict adherence to the law, which is extremely difficult to change, let alone the time required to develop a new practice of combating crime. Therefore, it is high time to rethink the boundaries of legal and moral tolerance of the state, society and citizens for criminal activity, which leads to the necessity to revise the limits of the permissibility of the covert influence on the non-obvious subject of latent criminal activity.

In the following lines, we will generalise and analyse in chronological order the provisions of the fundamental international legislative acts that authorise law enforcement agencies to lawfully apply covert methods of combating crime.

The Universal Declaration of Human Rights (adopted in 1948) establishes that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation (Article 12); in the exercise of his rights and freedoms, everyone shall be subject

only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (Article 29, part 2, 1948).

The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in 1950) proclaims that everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no intervention by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8). The convention defines the legal interference by the state to person's exercise of rights as justified (particularly, the use of means of operational (special) equipment in investigative and/or undercover criminal proceedings), in particular when the interference is carried out in accordance with the law (the interference must be carried out in accordance with the current law, that is, the admissibility, grounds (conditions)) and procedure for conducting such a measure must be provided for by applicable regulations, which are available to the public, interference measures cannot be stipulated in certain secret instructions, and the person whose rights have been violated should have an opportunity to challenge the measures taken against him or her by the competent state authorities; the law must be necessary in a democratic society. That is, the law must contain a provision that a measure involving a restriction of citizens rights can only be carried out to the extent necessary for the security of democratic institutions; can be carried out under exceptional conditions necessary in a democratic society; in the interests of national and public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8, part 2, 1950).

The International Covenant on Civil and Political Rights (adopted in 1966) sets forth that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation (Article 17 §1, 1966).

Code of Conduct for r Law Enforcement Officials (adopted in 1979) enshrines that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons (Article 2); matters of a confidential nature in the possession of law enforcement officials shall be kept confidential unless the performance of duty or the needs of justice strictly require otherwise (Article 4, 1979).

Naples Political Declaration and Global Action Plan against Organized Transnational Crime (adopted in 1994) recommends that measures be taken to encourage members of criminal organizations to cooperate and give testimony, and within the limits established by the national law their sentence will be commuted if they cooperate in criminal proceedings.

The UN Convention against Transnational Crime (adopted in 2000) defines that "if permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime" (Article 20 §1).

Of course, this list of fundamental international acts is to be supplemented. This is enough though to understand the European legal position on the issue under study.

In the case law concerning bribery of a government official (deputy

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governor), discovered and documented by the undercover agent, the European Court of Human Rights has found that the line between legitimate infiltration by an undercover agent and the instigation of a crime is more likely to be crossed if no clear and foreseeable procedure was set up under the domestic law for authorising and implementing undercover operations (Tchokhonelidze, 2018). Hence, we will turn to the provisions of the Ukrainian Law that regulate temporary restrictions of human rights and freedoms by law enforcement agencies during covert recourse to force, means and measures to counter crime. It should be taken into account that in accordance with the provisions of the Constitution of Ukraine, existing international treaties ratified by the parliament are considered as a part of national legislation (Article 9). In addition, it is generally accepted that in the event of a dispute between international acts and national legislation (in the context of our research with the norms of the Criminal Procedure Code − author's note), the provisions of the relevant international treaty shall prevail (S. Solotkyi, 2018). According to the Constitution of Ukraine (adopted in 1996), the latter is considered the highest law, and its provisions are directly applicable (Article 8). Ukraine recognises and is governed by the rule of law. Everyone shall have the right to freely collect, store, use, and disseminate information by oral, written, or other means at his discretion (Article 34, Part 2). However, the exercise of this right may be restricted by law in the interests of national security, territorial integrity or public order as to prevent turmoil or crime, to protect public health, the reputation or rights of others, to prevent the disclosure of information obtained confidentially, or to maintain the authority and impartiality of Justice. The highest national law shall guarantee the inadmissibility of accusation based on illegally obtained evidence, and this guarantee cannot be restricted. The Constitution of Ukraine shall guarantee human rights and freedoms and require a person to adhere to a certain code of conduct in relation to other people and the state, as well as establish respective requirements and restrictions. Everyone shall be guaranteed the right to appeal to the court against the judgments, actions, or inactivity of State power, local self-government bodies, officials, or officers while exercising their powers. Everyone shall have the right to appeal for the protection of his rights to the Authorised Human Rights Representative (Ombudsman) to the Verkhovna Rada of Ukraine (Articles 55, 56, Constitution of Ukraine, 1996). Public prosecutor's supervision of undercover operations conducted by law enforcement agencies to combat crime shall guarantee respect for human rights and freedoms during their organisation and implementation. The public prosecution shall be entrusted with supervision over the observance of laws by bodies that conduct operative-search operations, inquiry, and pre-trial investigations (Part 1 of Article 121 §4 of the Constitution of Ukraine). General jurisdiction courts shall have absolute authority to ensure and protect human rights in Ukraine. Justice in Ukraine shall be administered exclusively by the courts (Article 124 of the Constitution of Ukraine). At the same time, courts shall not only ensure the right to judicial protection but also decide on the use of the operative-search operations (Article 8 of the Law of Ukraine "On Operative-Search Operations"), measures to ensure criminal proceedings (Article 131 of the Criminal Procedure Code of Ukraine) and covert investigative actions (Article 246 of the Criminal Procedure Code of Ukraine, 2012).

The Law of Ukraine "On Operative-Search Operations" (adopted in 1992) regulates the use of covert forces, means and measures by law enforcement agencies to combat crime; in particular, Article 6 defines the legal grounds for conducting operative-search operations, Article 8 determines the rights of the operational units to use covert forces, means and measures; Article 9 safeguards the rule of law in the course of operative-search operations (1992).

The Law of Ukraine "On Organisational and Legal Bases for Combating Organised Crime" (adopted in 1993) specifies the powers of the state agencies created established to combat organised crime. In the context of this research, we would like

to focus on the provisions of Article 13 of the above-mentioned law, which regulate public relations arising in the relation to the use of undercover agents.

The law of Ukraine "On the Procedure for the Compensation of Damage Caused to a Citizen by the Unlawful Actions of Bodies of Inquiry, Pre-trial Investigation, Prosecutors and Courts" (adopted in 1994) regulates the issue of compensation of damage caused to the citizen in the course of illegal use of covert forces, means and measures.

The Law of Ukraine "On Measures to Counter Illicit Trafficking of Narcotic Drugs, Psychotropic Substances, Precursors and their Abuse" determines the implementation of the covert operation through controlled delivery (a method of identifying sources and channels of illegal trafficking of narcotic drugs, psychotropic substances and precursors, as well as individuals involved herein) (Article 4); operational purchase (an operation to purchase narcotic drugs psychotropic substances or precursors to obtain evidence of criminal activity) (Article 5, 1995).

The Law of Ukraine "On Counter intelligence Activities" (adopted in 2002) authorises specially authorised state agencies to uncover, record, and document openly and secretly intelligence, terrorist, and other encroachments upon the state security of Ukraine; to conduct counterintelligence operations to forestall, uncover in good time, and put a stop to subversive intelligence, terrorist, or other illegal activity intended to harm the state security of Ukraine; to employ publicly known and covert staff and non-staff personnel (Article 5).

The Law of Ukraine "On the Public Prosecutor's Office" (adopted in 2014) determines that the public prosecutor shall supervise the observance of laws by the agencies conducting operative-search operations, inquiries and pre-trial investigation enjoying the rights and fulfilling the duties as stipulated in the Law of Ukraine "On Operative-Search Operations" and the Criminal Procedure Code of Ukraine (Article 25).

The Law of Ukraine "On Intelligence" (adopted in 2020) authorises intelligence agencies to organise and conduct intelligence activities, use undercover agents, maintain cooperation with individuals on a confidential basis (Article 12).

A significant number of law enforcement agencies have been established and operate in Ukraine, each of which is guided by its own regulatory legal acts. In order not to analyse the respective legal regulation provisions of each law enforcement agency related to the topic under study, we will analyse the regulations governing the activity of the most numerous law enforcement agency in Ukraine – the National Police. In accordance with the Law of Ukraine "On National Police", the rule of law and respect for human rights and freedoms shall be fundamental principles of police activities (Articles 6, 7). Restriction of human rights and freedoms is allowed only on the basis and according to the procedure defined by the Constitution and Laws of Ukraine, if needed and to the extent necessary for the accomplishment of police missions (Part 2 of Article 7); the implementation of measures restricting human rights and freedoms must be stopped immediately if the purpose of applying such measures is achieved or there is no need for their further application (Part 3 of Article 7, 2015).

In view of the above, it can be stated that the Ukrainian legislation stipulates both powers of law enforcement agencies to apply covert methods of combating crime and procedures for obtaining respective permissions to carry out such activities, forms of supervision and procedure for using the obtained factual information. The European Court reminds that the phrase "prescribed by law" not only requires compliance with national law but also refers to the quality of the law requiring it to comply with the rule of law.

In the context of covert control by public authorities, in our case – lawenforcement agencies, the country's legislation shall guarantee that there is no arbitrary interference with human rights guaranteed by Article 8 of the European Convention on Human Rights. In addition, the law must be formulated

in sufficiently clear terms to provide for an adequate notion of circumstances and conditions under which public authorities shall be authorised to resort to such covert operations (Khan, 2000).

According to the provisions of the Law of Ukraine "On Enforcement of Decisions and Application of Case-law of the European Court of Human Rights", the decisions of the European Court of Human Rights shall be binding on the territory of Ukraine (Part 1 of Article 2), and its case-law shall be applicable in the national courts as a source of law (Article 17, 2006).Therefore, we will attempt to identify and group the most common provisions of the court judgments of the above-mentioned judicial authority, which are referred to by national courts when passing judgments in criminal proceedings, in which evidence was based particularly on factual information on a person's implication or participation in criminal activities obtained with the help of covert forces, means, measures and operations used by law enforcement agencies.

In addition to the protection of personal data and the right to privacy, the notion of a person's private life includes the right to establish and develop relationships with other human beings (ECHR, 1992). The concept of "private life" also covers the physical and moral integrity of a person, including his or her sexual life. One of the social aspects of private life is the freedom to unite with other people (X and Y, 1985). The state is authorised to regulate certain aspects of the realisation of freedom of sexual relations as a part of a person's private life, in order to protect public morals (Modinos, 1993). Secret surveillance violates a person's right to private life (Klass, 1984). The collection and use of information about a person without their consent is an interference with their privacy. This rule covers both official censuses of a person (X, 1982) and obtaining their fingerprints and photographing during an investigation (Murray, 1994). The collection of information is justified, but it does not mean that the storage and use of such information will not constitute a legal wrong. For instance, fingerprints obtained during the investigation of a crime should be destroyed in case a person is dismissed as a suspect of a crime (ECHR, 31.01.1995).

The European Court of Human Rights has enshrined the general principle of a fair hearing, which declares that the public interest cannot justify the use of evidence obtained as a result of incitement by law enforcement agencies (Bannikova, 2010, Ramanauskas, 2008, Veselov et al., 2012). According to the above-provided case law, such evidence shall be considered inadmissible, since it was obtained as a result of a significant violation of the human right to a fair hearing, which is enshrined in Paragraph 1 of Article 6 of the European Convention on Human Rights. The above-mentioned legal position meets the requirements of the Ukrainian legislation, in particular the provisions of Part 1 of Article 87 of the Criminal Procedure Code of Ukraine. European Court of Human Rights points out that incitement takes place when the law enforcement officers or people acting on their instructions step beyond an essentially passive investigation, but with an aim of establishing a crime, i.e. obtaining evidence and initiating a criminal case, exercise an influence such as incitement the commission of an offence that would otherwise not have been committed (Ramanauskas, 2008). This court has also developed a number of aspects for distinguishing incitement from permissible conduct of law enforcement agencies (Bannikova, 2010), namely: a) substantive aspect (presence/absence of significant features of incitement by law enforcement agencies); b) procedural aspect (whether the court can check information about possible incitement during a hearing on the basis of adversarial and equality principle). Regarding the substantive aspect, the European Court of Human Rights notes that the state shall have at its disposal concrete and objective evidence confirming that the accused has taken specific steps to commit the offence for which he or she will subsequently be persecuted; any information relating to an existing criminal intent or offence being committed shall be verifiable, and the public prosecution shall be

able to demonstrate whenever it is necessary that it has good and sufficient cause to carry out operational activities; any information obtained as a result of covert activities shall comply with the requirement that the investigation is conducted in an essentially passive manner. In particular, this aspect excludes any actions that can be interpreted as an influence on the accused as to incite the commission of an offence, such as initiating a contact, repeated offer, persistent reminders etc. (Bannikova, 2010, Vanyan, 2005, & Veselov et al., 2012).

Sepil, 2013 concerns the prosecution of the applicant for the illegal sale of drugs, which was discovered and terminated in course of undercover test purchasing operation – which, as the applicant states, incited him into the commission of the crime. When determining whether Article 6 §1 of the European Convention of Human Rights was violated due to entrapment, the European Court of Human Rights assesses the situation (1) for the presence of elements of incitement of a person to commit a crime by law-enforcement officers (substantive aspect) and (2) for state's compliance with its positive obligations to properly examine a person's statement for his or her having been incited to commit a crime by law-enforcement officers (procedural aspect). According to the European Court of Human Rights, the incitement of a crime essentially occurs when law enforcement officers do not confine themselves to an essentially passive investigation of circumstances of a person's possible commission of a crime in order to collect relevant evidence and, on reasonable grounds, bring him or her to justice, but incite that person to commit a crime. When determining whether law-enforcement officers have confined themselves to the essentially passive investigation of the circumstances of the possibly committed crime, the European Court of Human Rights considers two factors: the existence of grounds for taking the relevant measures and the involvement of law enforcement officers in the commission of the crime. The European Court of Human Rights recognizes specific and sufficient factual data indicating that a person may have committed a crime as appropriate grounds for taking the above-mentioned measures. With regard to the role of law enforcement officers in the commission of the crime, the European Court of Human Rights examines the moment when they start implementing the relevant measure in order to determine whether they have merely "joined" a crime that a person has already started committing without any instigation. If the prosecution does not have clear evidence that the incitement, in fact, did not take place, it is up to the domestic court to examine the person's statement about their being incited to commit a crime, to establish the relevant factual circumstances of the case and to find out whether there are elements of the incitement. Therefore, instigation of the crime in the sense in which it is prohibited by Article 6 §1 of the European Convention of Human Rights occurs when there are no grounds for carrying out the relevant measures, law enforcement officers are not confined to passive investigation or the domestic courts neglect their positive obligations indicated above. First of all, in the above-cited case, although the applicant had previously been prosecuted for possession, use and sale of drugs, as well as the presence of the detention order based on the guilty plea for his using illegal drugs, the European Court of Human Rights refused to accept aforementioned evidence provided by the Turkish government as the basis for conducting test purchasing operation against the applicant. The European Court of Human Rights issued such a verdict since this information was revealed to the Turkish authorities already after the applicant's detention as a result of the undercover operation carried out against him, which, accordingly, could not have been the basis for the decision to conduct this operation. In this case, the European Court of Human Rights also noted that the possession and use of narcotic drugs do not equal their sale, in respect of which a test purchasing operation was carried out. Although it should be noted that, as had already been mentioned, the applicant had a criminal background of drug trafficking. The Turkish authorities also referred to the fact that the applicant turned out to possess more drugs than the

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law enforcement officers wanted to buy from him in the course of the undercover operation, In reply, the European Court of Human Rights pointed out the applicant's immediate admission of the fact that he was using the drug he had sold in the course of test purchasing operation, which he occasionally bought from another person (O. Anishchak, 2013).

In the case of Volokhy in Ukraine, the European Court of Human Rights indicated the need for changes in Ukrainian legislation, as there are no clear boundaries and conditions of surveillance, as well as sufficient guarantees of protection against abuse (ECHR, 2006). The general requirements of fairness expressed in Article 6 of the European Convention of Human Rights apply to proceedings in all forms of criminal charges, from the simplest to the most complex. The public interest cannot justify the use of evidence obtained as a result of police incitement. There is no reason to believe that without intervention by agents the crime would have been committed. Such intervention and its use in dubious criminal proceedings meant from the outset that the applicant had been permanently deprived of the right to a fair trial. Accordingly, it can be stated that the violation of Article 6 §1 of the European Convention of Human Rights indeed took place (A. Miliutin, 2019).

In countries with Anglo-Saxon law, there is no clear distinction between criminal action and operative-search operation, and therefore between investigative and detective actions and methods (V. Klymchuk, 2018).

In the Federal Republic of Germany, pursuant to §§ 110a-110c of the Criminal Procedure Code, the criminal investigation can involve undercover agents represented by the police officers, who work undercover and, subsequently, can participate in legally significant action without the right to commit a crime, except in the case of necessary defence and extreme necessity. In France, the use of police agents is stipulated in Article 706-81 of the Criminal Procedure Code, which authorises the latter to watch persons suspected of serious or less serious offences by pretending to be another perpetrator, accomplice or dealer in stolen goods. For this purpose, a judicial police officer receives special permission to use a synthetic identity and perform, if necessary, certain actions that are clearly provided for in the Code of Criminal Procedure, which may, under normal circumstances, contain elements of a crime. In the UK, informants involved in the commission of a crime have the right to file a claim for abuse of procedural rights if they are charged with a crime whose commission or participation was necessary in order not to give themselves away. The Criminal Procedure Code of Switzerland allows undercover agents to commit acts that violate drug trafficking laws, as well as to use counterfeit banknotes, but that will be that. Undercover agents cannot incite anyone to the commission of the crime and direct the commission of serious offences. At the same time, their activity in relation to a person's decision to commit a crime can only be of helping nature. The Criminal Procedure Code of Lithuania prohibits instigating a person to commit a crime during crime reconstruction in order to identify the person who committed the crime. In accordance with Article 32 of the Criminal Code of the Republic of Lithuania, the person, who reconstructs the circumstances of the crime through its imitation according to the official order of the law enforcement agency, cannot be arraigned on a criminal charge for reconstructing the committed or alleged crime. In Moldova, undercover agents are expressly prohibited to incite the commission of a crime (M. Bahryi, 2017).

The European Court of Human Rights emphasises that in cases when the activities of undercover agents are aimed at inciting a crime, and there is no reason to believe that the crime would have been committed without their intervention, such actions go beyond the notion of the undercover agent and can be considered an incitement; intervention and its use in criminal proceedings may result in the fairness of the trial being irremediably undermined (Vanyan, 2005). The European Court of Human Rights has pointed out in its case-law that undercover operations

must be carried out in an essentially passive manner without any pressure being put on the applicant to commit the offence through means such as taking the initiative in contacting the applicant, insistent prompting, the promise of financial gain or appealing to the applicant's sense of compassion (Nosko, & Nefedov, 2014).

It is well known that the undercover activities of all law enforcement agencies are primarily aimed at detecting the secret illegal activities of criminal groups. At the same time, undercover forces of the law enforcement agency obtain and record factual data that may have evidentiary value for the future prosecution of accomplices in a crime that is being prepared, continues or committed. It is undercover work that ensures the covert and confidential use of forces, means and measures of law enforcement activities when overt methods of combating crime are ineffective.

The introduction of law enforcement and intelligence officers, as well as other persons into organised criminal groups, provides a unique opportunity to achieve the following goals: to clarify the structure, composition, head of an organized criminal group, to determine the distribution of roles among all of its members, to identify their relationship with other groups; to determine the mechanism of illegal activities, to establish crimes and other acts threatening the national interests of Ukraine; to establish the scope of persons aware of the criminal activities of the group, who can act as informants and witnesses, to determine the means of recording and documenting crimes for use as evidence; to determine the location of persons, to ensure tactical operations, collecting other intelligence information that cannot be obtained by other means (V. Burba, & O. Suvorov, 2019).

With regard to the subject of this research, it is important to clarify the scope of subjects authorised to be introduced into the criminal environment for identification of non-obvious accomplices in criminal activities. This aspect has been thoroughly studied in the research papers of the Ukrainian scholars, particularly N. Abdullaiev, A. Anapolskyi, P. Andrushko, V. Burba, V. Kotov, O. Lemeshko, A. Rysheliuk, O. Suvorova. Based on the summary of their research, we can outline the following structure of subjects that can be introduced into the criminal environment: 1) staff and non-staff employees of operative-search, intelligence and counterintelligence agencies; 2) members of organised groups or criminal organisations with which the law enforcement agency has established secret (during operative-search, intelligence or counterintelligence operations) or confidential cooperation (during the pre-trial investigation); 3) persons who agreed to cooperate with the law enforcement agency. For the sake of convenience, we will further use the term "undercover agent" in this research.

On the following pages, we will summarise the use of undercover agents by the National Police of Ukraine, which can be generalised as follows:

1.To conduct undercover operations (e.g. operative-search ones) to find out the immediate information that will be of interest for the criminal intelligence unit depending on its functions and missions. In this case, the undercover agents carry out general search activities for any factual data that may have elements of criminal offence committed or being prepared, and establish the scope of people who may be of intelligence interest.

2. For criminal intelligence analysis within the detective case. In this case, the undercover agent acts purposefully with full transparency (when targets of the investigation are already known) or partial transparency (targets of the investigation are unknown, but there is actual data on criminal activity), i.e. in general the undercover agent knows where, what and whom he is supposed to look for.

3. To conduct covert investigative actions with the involvement of persons with whom confidential cooperation was established or undercover agents of the criminal intelligence unit. Procuring evidence involves the undercover agent who is to carry out specific tasks defined by the investigator (prosecutor).

In the first case mentioned above, the undercover agent can accomplish

the tasks set by in the criminal intelligence unit in an essentially passive manner (i.e. using their professional aptitude and spying capabilities), but in the next two instances. the passive manner would be ineffective. In addition, the Ukrainian legislation provides more solid legal grounds for the use of undercover agents for special missions to uncover the criminal activities of an organised group or criminal organisation, which can be identified as a detective measure taken in course of criminal intelligence analysis for detective case or as a secret investigative search action during a pre-trial investigation in a specific criminal proceeding. In the first case, this process is formalised in writing by the act of implementation, and in the second case – by the decision of the investigator or prosecutor. Less regulated is the possibility of using the undercover agent to conduct one-time operative-search operations (operational and technical measures, test purchasing operations) or control over the commission of a crime in criminal proceedings.

The legislation of Ukraine in the field of combating crime regulates the activities of law enforcement agencies in countering non-obvious (latent) crime and its subjects (known and unknown persons), in particular, the provisions of Article 6 of the Law of Ukraine "On Operative-Search Operations" authorise especially determined subjects (defined in this Law) to conduct operative-search operations in relation to crimes that are being prepared. It means that the law enforcement agency is aware of the elements of the crime committed or being prepared, but its accomplices remain unknown. At this stage of countering crime, the main task of the law enforcement agency is to establish the involvement of the particular person in a criminal act, which is unusually established with the help of undercover agents of law enforcement agencies. Undercover agents, regardless of whether they are agents or police officers who act under cover of a law enforcement agency, having previously given voluntary consent and realising the danger of their profession and the risks associated with it, are introduced into the criminal environment in order to assist law enforcement agencies in neutralising the criminal groups with their subsequent destruction, i.e. bringing accomplices to justice, confiscating assets and property obtained through crime. In contrast, criminals take various actions not to be exposed. Such actions abide by neither civil ethics nor law, while law enforcement agencies are obliged to strictly comply with both national and international law. To put it straight, this is sort of a war, where an attacker feels free to do what he wants on foreign territory, while a defending party must take into account the protection means so as not to harm its citizens and not to exceed the limits of the so-called justifiable defence. As one can see, the warring parties are not on pari passu basis. It is generally believed that the resources allocated and provided by the state to combat crime are significantly wider than those available to criminals to commit criminal offences and counter law enforcement agencies. However, the effectiveness of their use by the criminal environment is much greater, which is confirmed by a significant number of identified criminal offences and persons involved and a very small number of court convictions and property (valuables) confiscated to the state income.

The criminal environment, which consists of individuals, organised groups and criminal organisations, is essentially an anti-society that sponges on the society as a whole, the state and its citizens. It is difficult for society to accept a person who has committed an act that trespasses against social or moral values and, thus, turned out to be a betrayer once or several times. The anti-society also draws upon its own rules, which are established and regulated by criminal lords, corrupt officials, and criminal subculture. Members of both civil and criminal society must effectively prove their worth. In the first instance (civil society) it is done through education, socially useful activities, respect for social and moral values, taxpaying, but the second instance presupposes activities useful for the criminal environment and corrupt officials which help them not only thrive but also develop, gradually obtain legal status, penetrate into the top government echelons, support adoption

of the respective laws and turn state institutions into secret criminal organisations.

We are convinced that in the absolute majority of cases, the organiser of the criminal activity does not want to be punished, and prisoners cherish liberty most of all. Therefore, one of the most difficult tasks of the undercover agent is to earn the "enemy's" trust. Due to fear of imprisonment, the latter is often convinced that all "newcomers" (new members of the criminal group) collaborate with law enforcement agencies. One of the dangerous means of confirming trustworthiness in organised groups commonly motivated by either greed or violence is to take a test task by inflicting bodily harm on a victim, which directly threatens his or her life and health. The latter is strictly prohibited for an undercover agent, although there are situations when there is no choice: they are to choose either their own life or someone else's. As a result, the undercover agent is brought to justice. Usually, it is difficult to predict an unfavourable development of the operative-search operation. The national legislation contains only several general rules that are supposedly designed to protect an undercover agent from the strict punishment for committing an intentional, albeit forced criminal offence. In particular, Article 42 of the Criminal code of Ukraine envisages the exemption from liability for committing an act justified at risk; Article 43 of the Criminal Code of Ukraine outlines specificities of imposition of punishment to a person undertaking a special mission to prevent or uncover criminal activities of an organised group or criminal organisation (2001).

The Ukrainian courts occasionally declare covert activities conducted by law enforcement agencies against the subject of the crime as an incitement. The unskilled work of undercover agents or police officers cannot be considered the main reason for that, because an undercover agent has to face the criminal environment one on one. He is to conduct a special mission relying solely on his or her own professionalism, experience and ability to survive in a hostile environment. On top of the, he is also to perform detective, intelligence or counterintelligence missions, strictly observing the law. On an everyday basis, the undercover agent is hiding behind the legend playing a role in accordance with a behavioural pattern predetermined by the law enforcement agency. An unintentional deviation from the legend may pose an immediate threat to his or her life. It is well known that professional skills and search capabilities form the basis for the formal admission of the undercover agent or police officer to operational information related to the criminal environment. However, access to specific factual data is provided by the subject of crime, who is aware of the danger from revealing such information. Passive behaviour of the undercover agent or imitation of the criminal activity that bears formal elements of the crime does not always allow to disclose secret criminal activities and previously unknown accomplices of a higher level than the crime abettor, co-conspirator or perpetrator.

The legend, behavioural pattern, imitation of illegal activities have a common goal – to establish credibility with the subject of criminal environment that theoretically assumes the danger of a new person's direct or indirect awareness about the illegal activities of the subject or his/her involvement in such activities. The undercover agent should create conditions under which the initiative and intent to commit the crime is shown by the subject of the criminal environment him/herself.

According to the provisions of the national criminal law, an abettor shall be a person who has persuaded another accomplice to commit a criminal offence, namely, inducing another accomplice to commit a criminal offence in the sense of arousing desire (belief in desirability, benefit, need), arousing determination or strengthening the intention of another accomplice to commit a criminal offence. The specific criminal law regulation (Part 4 of Article 27 of the Criminal Code of Ukraine) defines the ways of persuading another accomplice to commit a criminal offence, in particular, persuasion (systematic or one-time urgent request

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(persuasion) of a person), bribery (providing or promising to provide a person with material or other benefits), threat (intimidation of a person to cause harm), coercion (harassment by violence, damage to property, blackmail), persuasion in another way (instruction, advice, order, call, order), which can be expressed in both open and veiled forms. In addition, criminal actions in Ukraine are recognised as active actions of a person to facilitate the commission of a crime by providing tools or means of removing obstacles, pre-promised concealment of a criminal, property obtained by criminal means, its sale, concealment of traces of a criminal offence (Part 5 of Article 27, 2001).

The operational combination, as well as the imitation of criminal activity by the undercover agent, can and should at least formally contain elements of aiding and abetting, which will ensure credibility of legend and behavioural pattern of the undercover agent or police officer and make the subject of the criminal environment believe in the imaginary criminal capabilities of the undercover agent embedded in a life-threatening criminal environment to accomplish a task of the state represented by the law enforcement agency. One should admit that the passive behaviour of law enforcement agency aimed at formal implementation of the methods of aiding and abetting in order to detect criminal intents and crime committed by the subjects of the criminal environment is generally disproportionate to the risks that the undercover agent constantly faces for the sake of the national interests. It is highly unlikely that passive waiting will bring the law enforcement agency the desired results and there is no guarantee that another criminal offence will not be committed at the same time without being unsolved for a long while. Therefore, taking into account the international case law based on judicial decisions, the state must take full responsibility for the undercover operations by law enforcement agencies, whose undercover agents put their lives at risk, not for the sake of their own interest, but for the sake of the society, country, each and every honest person who has nothing to be afraid of, as even if their rights and freedoms are violated the state will guarantee the full compensation for material and moral damage and officially refute suspicions. Ukraine is gradually moving in this direction particularly after having introduced the concept of a "model decision". Based on the circumstances of a particular case, the essence of contentious relations and the content of claims, the Supreme Court provides a sample interpretation of the regulatory order. This sample, according to the stare decisis principle, is mandatory for lower-level courts to take into account when delivering judgments in similar cases (D. Hudyma, 2019). This certainly points to an effective reinterpretation of the significance of decisions of the Supreme Court as the highest court in the Ukrainian judicial system, which ensures the constancy and unity of judicial practice for lower general jurisdiction courts. This also confirms that the state takes steps to introduce the elements of "case law", although some experts, in particular judges, see this as "unification of judicial practice but not case law, since the term "case law", which has been long theoretically and practically applied and interpreted primarily in the countries with Anglo-Saxon law, has acquired quite a lot of features creating a rather complicated and multifaceted system that is much more complex than simply "binding force" of the legal stance of the Supreme Court" (N. Blazhyvska, 2020).

Hence, after having earned the trust of the criminal environment, one can only expect that their passive behaviour alone will let them establish contacts with new subjects, who, in addition, must reveal their criminal intents on their own. The harmonisation of the national laws and bylaws with the European case law will regulate the use of the elements of operative-search activities, namely undercover activities as a part of operational combination. Summarising the constitutive rules and regulations, we can formulate an axiom that the use of an operational combination is considered legitimate if the illegal activities are initiated by the subject of the criminal environment, i.e. the specific person, who, according to the factual data of law enforcement agency, is involved in the preparation or

commission of the criminal offence, as well as other illegal activities. National legislation prohibits inciting the person, who does not show criminal intent, to commit the criminal offence, which the European Court of Human Rights interprets as incitement of the crime.

The selection, training and introduction of the undercover agent into the criminal environment is accompanied not only by risks dangerous both for his/her life and the lives of his/her loved ones but also by significant financial costs on the part of the state represented by the law enforcement agency for material support of the legend and certain behavioural pattern, imitation of illegal activities, secret compensation costs or compensation for damage caused to law enforcement agencies under justified risk in order to achieve a socially useful goal – exposing criminal activity. The introduction of the undercover agent into the criminal environment usually takes place when two conditions are fulfilled: 1) firstly, the law enforcement agency, as the subject of the operational search, intelligence or counterintelligence activities, is reasonably oriented and reliably aware of the presence of illegal activities directly or indirectly related to the preparation or commission of grave and especially grave crimes predominantly by the organised group (criminal organisation), less often by a particular subject; 2) secondly, it is not possible to detect and stop such activities using other forces, means, measures and methods. In accordance with the provisions of national law, secret cooperation is possible as part of the operational search, intelligence or counterintelligence activities, and confidential cooperation is allowed as part of undercover activities of the pre-trial investigation body in specific criminal proceedings. This status quo coincides with the legal stance of the European Court of Human Rights, which has repeatedly emphasised that the state must have concrete and objective evidence confirming that the accused has taken specific steps to commit an act for which he is later prosecuted. At the same time, any information concerning an existing intention to commit an offence or an offence being committed must be verifiable, and a public prosecution must be able to demonstrate at any stage that it has sufficient grounds to carry out an operational measure.

Law enforcement officers must first respond to information about preparations for a crime or the beginning of such actions, and only then investigate it. The key question to be answered is who formed such intent in the person. If it is proved that the person's intent to commit a crime arose independently, and it was just timely prevented, then there is no incitement. And yet, in order to start any active actions, law enforcement officers should have objective information about the preparation for a crime. If the authorities claim that they acted on the basis of information received from a private individual, the European Court of Human Rights distinguishes between an individual complaint and information received from a person cooperating with the police or from an informant. Simultaneously, there is a risk that an agent or informant will play the role of "agents provocateurs", which allegedly violates Article 6 §1 of the European Convention of Human Rights (V. Frankiv, 2020).

Therefore, law enforcement agencies, in particular the police, take such actions when there is solid evidence suggesting organised crime, grounds for taking such actions and documentary proof of involvement of known and unknown persons in the crime. The level of public danger and consequences of criminal activity previously unknown to the law enforcement agency is also assessed. In other words, the undercover activities of the law enforcement agency are not initiated without reason, and even more so, it does not pursue an operational and preventive goal, since, as already mentioned, the entire process is accompanied by the highest risks and significant material costs. In the process of criminal intelligence analysis of subjects that are directly or indirectly related to the criminal environment, the attention of the undercover agent focuses on a specific known or previously unknown person (group) who compromise themselves, i.e. according to the analysis of the

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law enforcement agency, such person (group) is characterised by skills, abilities, behaviour, status, and sometimes specific actions that do not always seem criminal in nature. But the latter happens less often due to the fact that the criminal world is aware of the methods of undercover activities of law enforcement agencies. Therefore, when the undercover agent as a new potential formal accomplice to illegal activities waits passively for active actions that should contain elements of crime, even without taking test tasks, it compromises his/her status, calls him/her into question, which causes distrust. Even the slightest signs of distrust in the undercover agent introduced into the criminal environment can threaten his/her life. Depending on the type of criminal organisation, the dangerous agent can be eliminated immediately or in a short time, not sufficient to remove a person from the criminal investigation and ensure proper protection protection. The question about the criminal environment's feeling remorseful about neutralising or destroying a non-agent is clearly rhetorical. Due to booming organised crime on both global and national levels, dangerous international criminal trends, as well as extreme risk the undercover agent puts him/herself at – danger to his/her life – the very essence of the boundaries of the undercover activities related to incitement of crime and conducted by the undercover agent or police officer need to be reviewed by introducing the concept of active incitement to crime. It should be recognised that the imitation of criminal activity or illegal behaviour by the undercover agent; purposefully making a person aware of his/her capability to commit a crime; demonstration of skills and abilities that can be used to achieve the criminal goal – each of the mentioned actions is formally considered incitement, and together they can be equally considered directed incitement, which depending on the operational search, intelligence or counterintelligence situation in combination with possible life troubles can provoke the absolute majority of people to an illegal act or even a crime.

The present research puts particular stress on the concept of a "lawful act", which must correspond to the following criteria: 1) to determine the admissibility and legality of the deed taking into account other essential elements of the act; 2) to distinguish the act from other types of circumstances that exclude criminality of the act; to be explicitly provided for in the criminal law or have unambiguous interpretation; 3) not to be derived from other features; 4) to characterise, as a rule, one element of the lawful act (Yu. Mantuliak, 2005).

Therefore, investigation of the activities of the undercover agent in relation to exposing the criminal activities of the particular person should be investigated in a comprehensive manner only, taking into account not only operative-search, intelligence and counterintelligence findings but also psychological factors. We agree that there is an unjustified cautiousness about the possible violation of the rights and freedoms of citizens and limiting the power of entities authorised to counter crimes, while neglecting the rights and freedoms of persons who have already been subjected to criminal influence from persons selling restricted or prohibited items and substances (S. Popov, 2018). Numerous and systematic offers to sell narcotic drugs or weapons should not be considered an incitement to crime; in contrast, physical and psychological coercion to do so should be considered incitement. A person who considers himself not guilty of any crime, who, due to a confluence of difficult circumstances, an unfavourable operative-search, intelligence or counterintelligence situation, got into wrong place and at wrong time, by virtue of which the operational unit mistakenly decided on his possible involvement in a secret illegal activity and who was subjected to targeted criminal analysis, has the right for legal protection of his allegedly violated rights and freedoms, which is guaranteed by national and European legislation. The state, in case of confirmation of the damage caused to the protected interests, must compensate the damage caused and "clean" the reputation of the person in his family and society. If the actions of a law enforcement agency show signs of active

incitement to a crime, the state can offer all necessary mechanisms for conducting an objective investigation (e.g. newly created law enforcement agencies, such as the State Bureau of Investigation and the National Anti-Corruption Bureau of Ukraine, the reformed Attorney General's Office) and bringing law enforcement officials to justice (reformed judicial system), which would not have been possible without the comprehensive support and participation of the United States of America and the European Union and in case Ukraine's had chosen a wrong path of pro-Russian integration. In addition, there are ten powerful subjects of operative-search activities in Ukraine, which, according to the plan of the legislative power representative – the Verkhovna Rada of Ukraine – are authorised to provide a prompt response in all spheres of public life vulnerable to crime in order to prevent timely its preparation and commission, thus protecting a person from arbitrary violation of his or her rights and freedoms by any law enforcement agency.

The analysis of the case-law of the European Court of Human Rights concerning the difference between incitement and legitimate methods of investigating crimes, which involve the so-called "infiltration" of law enforcement officers into criminal groups for committing crimes, shows that such criteria are formulated in rather abstractedly. At the same time, it is also clear that it is impossible to narrow down such criteria (R. Babanly, & O. Tarasenko, 2020).

Law enforcement agencies of the Russian Federation conducted a covert operation targeted at a business leader who allegedly ordered a contract killing of his former business associate, and a supposed contract killer reported the preparation of the crime to law enforcement agencies. The cover operation presupposed that the alleged perpetrator visited organiser's house in order to inform the latter about execution of the murder; their conversation was secretly recorded by law enforcement officers who were outside the house. Several days earlier, the crime was staged, which was widely covered in the mass media (press). According to the common position of the European Court of Human Rights, there was no entrapment on the part of the undercover agent who, acting as the perpetrator of the crime (murder) in course of the operative experiment organised by the law enforcement agency, used an audio recorder to record the conversation about organising the murder during his visit to the contractor's house (Bykov, 2009). According to the partially dissenting opinion of ECHR Judge J.-P. Kosta, this ploy, despite its specific characteristics, is not in itself far removed from the ruses, traps and stratagems used by the police to obtain confessions from persons suspected of criminal offences or to establish their guilt, and it would be naïve, indeed unreasonable, to seek to disarm the security forces, faced as they are with the rise in delinquency and crime (2009). The different partly dissenting opinion was voiced by Judge D. Spielmann, who was joined by four other Judges believing that in the present case the purpose of staging was to make the applicant talk. The covert operation undermined the voluntary nature of the disclosures to such an extent that the right to remain silent and not to incriminate oneself was rendered devoid of all substance. As in the Ramanauskas case, the applicant was entrapped by a person controlled from a distance by the authorities, who staged a set-up using a private individual as an undercover agent. Thus, according to Judges, the information obtained in such a way was disclosed by means of entrapment, against the applicant's will (2009).

In fact, there are two opposite stances on the lawfulness of the undercover agent's behaviour during clearance of crime.

The Supreme Court of Canada distinguishes between "dirty tricks" (which are considered socially outrageous) and simple "trickery", concluding the following: "Behaviour [of the authorities] that outrages society should be stopped in every possible way". If a police officer pretends to be a prison chaplain and listens to a suspect's confession, this is a socially outrageous behaviour; the same conclusion can be drawn if he pretends to be a state-appointed lawyer, who tries to elicit

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testimony from suspects and accused persons; injecting sodium thiopental ("truth serum" − author) to a suspected diabetic under the guise of a daily dose of insulin and using his or her statements as evidence would also outrage society; but in general, pretending to be a drug addict with the aim of destroying the drug supply channel would not outrage society; it is also permissible to impersonate a truck driver for the purpose of conviction a drug dealer (K. Leimer, 1981).

The guiding instructions of the Federal Court of Justice of the Federal Republic of Germany state: as part of the search and combat against especially dangerous and difficult-to-solve crimes, the use of police agents-provocateurs against both suspected and non-suspected people is fundamentally permissible, necessary and legitimate. This report indicates that it is impossible to enter the environment of drug and arms dealers without taking action that are not subjectively considered at least minor crimes, so such action is justified. It is claimed that the purchase of certain items (stolen items, weapons, drugs, etc.) as part of the undercover operation is a necessary prerequisite for gaining the trust of criminals with further access to the organisers of criminal activities (R. Hesner, & U. Khertsoh, 1990).

In the mid-70th, drug trafficking in New York was mainly under the control of the Bonnano family, whose criminal activities were exposed during the undercover operation Donnie Brasco named after the undercover alias of Federal Bureau of Investigation agent Joe Pistone, who worked undercover for 6 years. As a result, more than 200 charges and hundreds of sentences were announced to Mafia members (2019).

It is hard to believe that for 6 years of working undercover, the agent did not take any active actions to identify criminal activities against mafia members.

In the case "Miliniene in Lithuania", the initiative was taken by SS (law enforcement agency − authors), a private individual, who, after having understood that the applicant would demand a bribe to reach a favourable outcome in his case, complained to the police. Thereafter the police approached the Deputy Prosecutor General who authorised and followed the further investigation within the legal framework of a criminal conduct simulation model, affording immunity from prosecution to SS in exchange for securing evidence against the suspected offender. To the extent that SS had police backing to offer the applicant considerable financial inducements and was given technical equipment to record their conversations, it is clear that the police influenced the course of events. However, the European Court of Human Rights does not find that police role to have been abusive, given their obligation to verify criminal complaints and the importance of thwarting the corrosive effect of judicial corruption on the rule of law in a democratic society. Nor does it find that the police role was the determinative factor. The determinative factor was the conduct of SS and the applicant. O this extent, the Court accepts that, on balance, the police may be said to have "joined" the criminal activity rather than to have initiated it. Their actions thus remained within the bounds of undercover work rather than that of agents provocateurs in possible breach of Article 6 § 1 of the Convention (ECHR, 2008).

During 2017−2019, employees of criminal intelligent units of the National Police of Ukraine were trained on the basis of the higher education institution with specific training conditions that train police officers (Lviv State University of Internal Affairs, Ukraine). As a result of a sociological survey conducted by the method of a questionnaire organised by the scientific and pedagogical staff of the Department of Operative-Search Activity, it was found that 78 % of respondents, i.e. 209 employees of criminal intelligent units with access to agent operational activity, confirmed the ineffectiveness of passive behaviour of an undercover agent in a criminal environment in order to identify criminal intentions of subjects of non-obvious illegal activities; 72 % of respondents from the previous group were consistent with their opinion and agreed that undercover agents need to switch from passive waiting to active actions in order to identify person's criminal intent, which

should be enshrined in law by appropriate amendments to the national legislation; the latter would guarantee no prosecution for the active lawful conduct of the undercover agent in the criminal environment, if it formally contains elements of a criminal offence.

We support the opinion of scientists that the professional activity of persons working in the criminal environment, regulated by the current legislation, requires optimisation regarding the components of effective legal, social, physical and psychological protection of undercover agents who conduct special missions to uncover criminal activities (A. Subbot, 2013).

Conclusions. Guarantees of inviolability of human rights and freedoms determine the content and direction of the activities of the modern Ukrainian state. The correlation of guaranteed rights of undercover agents and the interests of society and the state in the fight against crime can be considered as a sort of indicator of the development of the law-bound state. Clear legal regulation of the lawful behaviour of the undercover agent, as well as his/her peremptory legal protection from acts at occupational risk, will undoubtedly contribute to increasing the effectiveness of combating crime in terms of implementing and observing the principles of the rule of law in all spheres of the public life of the state. Legal security of the undercover agent is the legal protection of the living conditions of the undercover agent against threats, which is guaranteed by international and national legislation. Legal security should not be an end in itself, but only a system of timely detection, prevention and neutralisation of real and potential threats to the implementation of state goals by legal means. Without proper legal safeguards of the undercover agent's activities, inhibiting the rise of organised crime loses its meaning, and the state's obligations in this area acquire only a declarative form.

Statutory regulation of occupational risk resulting from undercover operations, operative-search, intelligence, counterintelligence activities should be recognised as a socially determined prerequisite and the need for an effective fight against crime. Unfavourable conditions of operative-search work can be compared to an extreme situation in everyday life, which is essentially characterised by the emergence of exceptional circumstances characterised by danger, transience, information, organisational and legal uncertainty, the presence of warring parties. It is often difficult to distinguish between lawful methods of covert work aimed at detection of the criminal offence and actions, which can be actually considered incitement to a crime. Any imitation of criminal activity contains formal elements of incitement and instigation that can affect a person in different ways, depending on the situation and circumstances, which the person faces. The undercover agent working under constant risk should be granted the authority to take active actions to detect the criminal intents of a person who is can be a potential accomplice. The limits of active actions of the undercover agent, given the high criminal rate in Ukraine and public intolerance to crime, should be clearly regulated by national legislation, and not reduced only to passive behaviour in standby mode; at the same time, active outright entrapment or obvious systemic incitement of a person to commit a criminal offence should be excluded.

Ukraine needs to radically change its state policy by replacing the strategy of countering the crime with its combating, which will demonstrate that the authorities and the people are united in their intolerance to crime in all its manifestations and forms, especially since innovations in the field of fighting corruption are not only welcomed but also strongly supported by our international partners, particularly the United States of America and International Monetary Fund, with which collaborate. In the case of operative search work, the lack of codification of national legislation regulating law enforcement activities, mainly its internal inconsistency, accumulation of legal norms, ignorance of law enforcement agencies, and sometimes disregard for decisions of the European Court of Human Rights (in criminal proceedings based on the materials of agent operational and undercover

police work) lead to systemic legal nihilism, which eventually downplays the results expected by society in combating crime. At the state (legislative) level, it is necessary to regulate the general grounds and principles of cover work of law enforcement agencies, in particular by expanding the boundaries of passive behaviour of undercover agents during search activities in a criminal environment, to ensure the offensive of law enforcement agencies in the fight against crime. This will result in the formation of a true law-bound state and a law-based society capable of joining the European Union on equal terms and defending European values together.

It is obvious that the resources of law enforcement agencies of the European Union, the United States of America and other mature economies are much larger than ones in Ukraine; their state bodies and judicial systems are by an order less contaminated with corruption and fused with the criminal environment than ones in Ukraine; therefore, it is too early to introduce precedents from international law enforcement and judicial practice into national legislation and legal proceedings. The integration of decisions of the European Court of Justice into the National Criminal Procedure Code partially unbalances the criteria for a legal assessment of the limits of permissible behaviour of undercover agents introduced into the criminal environment to detect criminal intents in non-obvious subjects of criminal offences. The use of the latter in the law enforcement practice of Ukraine should be balanced with mandatory consideration of national, state, political, judicial enforcement realities and national criminal trends.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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НАСТУП НА ЗЛОЧИННІСТЬ:
ВІД ПАСИВНОЇ ПОВЕДІНКИ НЕГЛАСНОГО ПРАЦІВНИКА ДО АКТИВНИХ ФОРМ НЕГЛАСНОГО ВПЛИВУ НА СПІВУЧАСНИКІВ ЗЛОЧИННОЇ ДІЯЛЬНОСТІ

Анотація. Дослідження присвячується оперативній роботі правоохоронних органів в частині застосування негласних працівників для вирішення завдань оперативно-розшукової діяльності в злочинному середовищі щодо пошуку кримінальної активності раніше невідомих осіб (невідомих співучасників). В хронологічному порядку проведено комплексний аналіз основних положень національного законодавства та основоположних міжнародних актів, які урегульовують застосування негласної роботи правоохоронними органами в Україні. Встановлено, що європейські стандарти, які визначають межі правової поведінки негласних працівників в злочинному середовищі, здебільшого ґрунтуються на положеннях основоположних

міжнародних актів щодо захисту прав і свобод людини, прийнятих у період 1948-1980 років; саме ж українське законодавство в досліджуваній сфері почало формуватися у 90-х роках 20 століття, а українське судочинство лише з 2006 року почало активно враховувати європейську судову практику при ухваленні рішень, що стосуються досліджуваної проблематики.

Акцентовано, що ефективність правового урегулювання застосування негласної роботи правоохоронними органами залежить від здатності об'єднувати та спрямовувати позитивні чинники, які супроводжують дії правової норми, і блокувати ті, що перешкоджають. Розрізненість правових актів, які фрагментарно урегульовують правові засади застосування негласної роботи, негативно впливає на ефективність використання отриманих результатів у сфері боротьби із злочинністю, що пропонується вирішувати шляхом уніфікації їх положень з метою однакового застосування негласних методів правоохоронними органами у боротьбі із злочинністю у відповідності до європейських правових стандартів. Дотримання або ж виконання останніх для виключення умов провокації кримінального правопорушення (злочину) чи підбурювання до злочинної діяльності в частині урегулювання правової поведінки негласних працівників в злочинному середовищі є доволі проблематичним в умовах складної кримінальної ситуації, яка сьогодні склалася в Україні, оскільки лише пасивна поведінка негласних працівників не тільки не сприяє виявленню кримінальної активності і фіксації злочинних намірів співучасників, а, навпаки, здебільшого викриває їх перед злочинним світом, чим ставить під загрозу життя та здоров'я не лише негласних працівників, але й їхніх близьких.

Для підвищення ефективності боротьби із злочинністю в Україні обґрунтовується необхідність урегулювання на законодавчому рівні загальних засад допустимої правової поведінки негласних працівників в частині розширення меж їх повноважень із використанням активних форм викриття кримінальної активності осіб в злочинному середовищі.

Ключові слова: *підбурювання, провокація, негласний працівник, правомірна поведінка, пасивне очікування*

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FORMALIZATION OF HUMAN RIGHTS TO DIGNIFIED LIVING CONDITIONS IN INTERNATIONAL AND NATIONAL LEGAL ACTS

Abstract. The novelty of the article is to substantiate which living conditions should be considered as decent given the social orientation of the state economy, as well as as a figure of decent living conditions in terms of the main duty of the state to assert and ensure human rights and freedoms. The essential criteria of decent living conditions and their unification in the form of

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global indices of living standards and quality of life are clarified; the system of criteria (indicators) of decent living conditions in the context of three generations of human rights (tangible and intangible benefits) is considered.

It was found that at this stage among scolars and practitioners there is no in the understanding of the category of "decent living conditions", there is no legal definition of this concept. The concept of "decent standard of living" is very illusory, relative and differentiated in different countries. Depending on the extent to which the rules of law established by the state correspond to natural rights and human freedoms, a measure of democracy and justice is determined. For the purpose of constitutional reform in Ukraine, it is expedient to apply innovative approaches to filling the construction the "right to decent living conditions" with content.

Decent living conditions are an integrated concept that encompasses many heterogeneous and non-quantifiable factors. This concept covers the totality of all forms of human activity and embodies the synthesis of material (adequate nutrition; clothing; housing; medical care; social services; improvement of living conditions; adequate housing; security; electricity; water supply; transport; communications, etc.), spiritual and creative aspects; life (the level of realization of the inner potential of man, his intellect, creative meaning of life, etc.). The development of society as a whole is more and more determined by the level of human knowledge and abilities.

The true meaning of the concept of "decent living conditions", which comes from the existing in the public and individual consciousness of human dignity, social justice, freedom and equality should be understood as guaranteed and protected by the state natural and inalienable human right to own and enjoy sufficient tangible and intangible benefits. It is necessary to ensure the possibility of comprehensive implementation of its biological, social and spiritual needs.

The criteria for decent living conditions at the constitutional level are determined by the obligations of the state to the person. Inherent attributes of decent living conditions are unified global indices of living standards and quality of life. The system of criteria (indicators) of decent living conditions should be considered in the context of three generations of human rights (tangible and intangible benefits).

The system of criteria for decent life should contain two groups: 1) criteria that characterize the level of fulfillment by the state of it's obligation to provide the decent living conditions for its citizens; 2) criteria that characterize the level of human performance of duties to live with dignity (lead a decent life). Since the first group of criteria for the decent life is determined by the obligations state's to man, its essential attributes are such categories as a decent or sufficient standard of living and quality of life. Accordingly, this group of criteria, in turn, is divided into two subgroups: 1) contains criteria for a decent (sufficient) standard of living, which means an indicator that characterizes the quantity and quality of goods and services consumed by man, the degree of basic needs; 2) contains criteria that characterize the quality of life, which means an integrated indicator designed to characterize the social well-being of the individual, satisfaction with civil liberties, human rights, security of life, level of protection, realization of human potential, intelligence, creativity, etc.: the first block of indicators characterizes the level of adequacy of intangible benefits acquired as a result of the realization of human rights of the second and third generation; the second block – the level of satisfaction of citizens with intangible benefits acquired as a result of the realization of the rights of the first generation; the third block – the level of guarantee and protection of the right to a dignified life.

The second group of criteria for a decent life is subjective, their implementation already depends mainly on the person. This group of criteria is focused on a decent way of life, which means a way of life when a person not only has knowledge about the content of social norms accepted in society (moral, religious, legal, etc.), but also consciously fulfills them.

The duty of the state to ensure inalienable human rights is an integral part of the true meaning of the rule of law. There is a gradual formalization of the concept of decent living conditions in international and national legal acts. The principle of the rule of law and human rights are recognized by two aspects of the same principle – the freedom to live in dignified conditions. There is a definition of the range of inalienable human rights on the basis of the Constitution of Ukraine.

Keywords: *human rights, decent living conditions, index of standard and quality of life, three generations of human rights, rule of law*

Introduction. The constitutional and legal category of "decent living conditions" is used in the modern world as a human right and an integral characteristic of a legal state. The right to decent living conditions is aimed at ensuring dignity, reliable protection of rights and fundamental freedoms. The

decent living conditions in the preamble of the Constitution of Ukraine is among one of the main tasks of the state, the right to a decent life is possible only if the full range of rights and freedoms based on such inalienable and inviolable human rights as the right to life, personal dignity and freedom.

At this stage, among scholars and practitioners there is no unambiguity in the understanding of the category of "decent living conditions", there is no legal definition of this concept. The very concept of "decent standard of living" is very illusory, relative and differentiated in different countries. Depending on the extent to which the rules of law established by the state correspond to natural human rights and freedoms, a measure of democracy and justice is determined. For the purpose of constitutional reform in Ukraine, it is expedient to apply innovative approaches to filling the construction the "right to decent living conditions" with concrete content.

The meaning of democracy is lost, and its stability is threatened when there is a lack of trust, the human person is devalued, human rights are narrowed. History has shown that a democracy without values very quickly turns into overt or covert totalitarianism.

In fact, the need to develop the integrity of the human person motivates us to uphold such high values that govern every organized and mature human society: truth, justice, love and freedom. The higher the well-being of citizens and the more consistently civil rights and freedoms are ensured, the stronger and more democratic the state is. Therefore, the state can be interpreted as a tool that provides and guarantees the personal and social search for good. The need for law and order in the socio-political life of society is due to human nature.

Analysis of recent research and publications. N. Rao and J. Min about the material preconditions for human well-being and the standard of living with dignity. Researchers have identified a set of universal material conditions for achieving basic human well-being, along with indicators and quantitative thresholds that can be applied to societies based on local customs and preferences. The problem of a decent standard of living is revealed in terms of basic justice, the approach to capacity and basic needs (2018).

A. Ayala and B. Meier developed a human rights approach to food and food security, in particular, identified legal mechanisms for the "domestication" of relevant international human rights standards through national policies. Recognizing food safety as a determinant of public health. The authors identified important links between the four main elements of food security and the regulatory attributes of the right to health and the right to food (usefulness, accessibility, acceptability and quality) (2017).

Some legal aspects of decent living conditions have been covered in the works of foreign authors. In particular, the concept and criteria of a decent life and the concept of a decent standard of living were developed by V. Barsukova and I. Pavlova (Barsukova, 2016, & Pavlova, 2015). A. Novikova revealed the issue of a decent standard of living as a factor in minimizing human rights risks and ensuring the security of the constitutional order (Novikova, 2018). G. Shajhutdinova researched the concept of a decent standard of living according to the European Social Charter (2012).

K. Casla argued that human rights and civic responsibilities are mutually reinforcing ideas in health emergencies. The author, based on rights and responsibilities, and taking as a starting point the principle of non-retrogression of human rights, justified the need to define positive commitments to protect and implement economic and social rights in response to a serious public health crisis (Casla, 2020).

I. Cruz, A. Stahel and M. Max-Niff revealed the issues of a systemic approach to development, based on the paradigm of human development (Cruz et al., 2009). D. O'Neill, A. Fanning, W. Lamb, and J. Steinberger have developed the issue of

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the "good life" that intersects with decent living conditions (O'Neill et al., 2018).

Rejecting innovative subjectivist and cultural relativistic approaches, L. Doyal and I. Gough in their work "Theory of Human Needs" argue that people have common and objective needs for health and autonomy and the right to their optimal satisfaction (Doyal, 1991). Basson's work highlights the problematic issues of the state's obligations in international law related to the right to an adequate standard of living for people with disabilities (2017).

I. Ali's research touches on the issue of personality traits that affect innovation among people and satisfaction with the perception of life (subjective well-being). The author proposed a conceptual model of life satisfaction (2019).

Our study also covered the aspect of sustainable global use of material resources according to the article by S. Bringezu. The author focuses on how a secure workspace for global resource use materials can be delineated based on available general economic material flow indicators (Bringezu, 2015).

It should be noted that the problem of the right to decent living conditions is one of the few studied, as evidenced by the lack of special monographic studies that would fully and objectively cover it. In addition, at the level of legal regulation, such an inalienable element of the true meaning of the integral concept of "decent living conditions of man" is missed, as a spiritual and creative feature that cannot be quantified.

The purpose of this work is to reveal some aspects of the concept of decent living conditions that have been formalized in international and national legislation.

Formulation of the main material. Decent living conditions are a value and a common duty based on a reasonable and moral social order. The provision of decent living conditions by the state is based on an understanding of the essence of the human person, which is made possible by recourse to natural law (principles and values prevailing in nature and society).

Human rights, in particular the right to decent living conditions, is constitutional protection and an natural dimension of constitutional development. In addition, this is fully consistent with the provisions of Article 29 of the Universal Declaration of Human Rights. It is worth nothing that its first part states: "Everyone has responsibilities to a society in which the full and free development of his personality is possible". Therefore part 2 of this article states that the enjoyment of the rights and freedoms must be consistent with the rights and freedoms of other members of society. This, in turn, establishes a link between the rights and the observance of certain responsibilities (A. Novikova, 2018).

The understanding of human well-being follows from the philosophical tradition of Eudaemonia, in contrast to hedonism. Eudaemonia refers to the process of good living, prosperity, the ability to fully participate in society. It is necessarily a social process that takes place over time, so long-term sustainability is especially important for well-being. Another important characteristic of the so-called "good life" is that there is a clear distinction between needs and their satisfaction, between basic capabilities and specific functions (I. Cruz, A., Stahel, & M. Max-Neef, 2009).

There are now more than seven billion people on Earth. Mankind strives for happiness, health and prosperity. The UN predicts that by 2050 the world's population will grow to 9.8 billion people. Our planet has "boundaries", and their intersection endangers human life. The amount of resource consumption and its relationship to quality of life are extremely important issues. In a unique research published in Nature Sustainability, Dr. Daniel O'Neill and colleagues at the University of Leeds to address these issues by establishing the relationship between social performance and environmental pressures. Social indicators include basic needs such as food, electricity and sanitation, as well as more complex aspects of well-being such as life satisfaction. For each of the social indicators, have identified a domestic threshold that depicts a "good life" (O'Neill et al., 2018).

The definition of "food security" includes food safety, which is recognized as a key link between food and health. The food security has been outlined in

terms of "safe" and "nutritious". The Food and Agriculture Organization of the United Nations (FAO) emphasizes the food safety an important component of food security. The provisions cited above defined food security in the world in 1996 at the Food Summit. Food security is closely linked to water, sanitation and hygiene. Lack of access to safe drinking water, sanitation and hygiene can lead to infectious diseases such as diarrhea and other intestinal diseases, which can significantly impair the person's ability to absorb essential nutrients (A. Ayala, & B. Meier, 2017, V. Barsukova, 2016).

The principle of the rule of law presupposes the obligation of the state to ensure the inalienable human rights enshrined in the Universal Declaration of Human and Civil Rights, enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights.

The rule of law and human rights are inextricably linked. The rule of law is a mechanism for the implementation of human rights that contributes to the implementation of the principle of human rights. This inseparable link was fully recognized by Member States since the adoption of the UN Universal Declaration of Human Rights in 1948, which has proclaimed that "everyone has the right to such a standard of living, including food, clothing, shelter, medical care and the necessary social services, services necessary to maintain the health and well-being of herself and her family, and the right to unemployment, sickness, invalidity, widowhood, old age or other loss of livelihood due to circumstances beyond her control" (Art. 25) (United Nations General Assembly 1948). The provisions are rightly interpreted as the right to a decent standard of living.

The protection of human rights is one of the six basic criteria of the rule of law, which is approved in the document of the Venice Commission "Rule of Law Checklist". In addition, such elements as: legality; legal certainty; prohibition of arbitrariness; access to justice; non-discrimination and equality before the law (The Venice Commission, 2016).

Some aspects of the concept of decent living conditions have been formalized in international and national acts. Constitutional and legislative regulation of the right to decent living conditions is consistent with international law.

Thus, in accordance with the content of paragraph 1 of Art. 11 of the International Covenant on Economic, Social and Cultural Rights, as well as Art. 25 of the Universal Declaration of Human Rights, decent living conditions include adequate nutrition, clothing, housing, medical care and necessary social services necessary to maintain the health and well-being of man and his family, as well as the right to steady improvement of living conditions (United Nations General Assembly, 1966).

International human rights law recognizes the right of everyone to an adequate standard of living, including adequate housing. The Committee on Economic, Social and Cultural Rights has issued several general comments explaining the components of this right: the right to decent housing (general comments 4 and 7), the right to food (general comment 12), the right to water (general comment 15), as well as the right to social security (general comment 19). Through these general comments, the Committee clarifies what criteria must be met in order to achieve a decent level of the right to housing, food and water and provides a single comprehensive interpretation of these rights in accordance with international law.

The problem of sufficient living space should be decided on the domestic level. National guidelines for minimum living space in rich but densely populated countries should be chosen as a guide. For example, in Taiwan, the recommended minimum living space ranges from 7-13 m^2 per person, depending on the number of members. In Korea, the minimum standard is 12 m^2 for one person and 8–10 m^2 for each additional member (N. Rao, & J. Min, 2018).

The Declaration on Social Progress and Development (Adopted by UN

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General Assembly Resolution 2 542 (XXIV), 11 of December, 1969) reaffirms that the purpose of social progress and development is the continuous improvement of the material and spiritual standard of living of all members of society while respecting and exercising freedoms (Part II. Goals). All peoples and all peoples, regardless of race, color, sex, language, religion, nationality, ethnic origin, marital or social status, political or other beliefs, have the right to live in dignity and freedom and to enjoy the fruits of social progress and must in turn contribute to it (Article 1) (United Nations General Assembly, 1969).

According to Art. 14 of the Convention on the Elimination of All Forms of Discrimination against Women (as amended on 06.10.1999): "States parties must take all appropriate measures to eliminate discrimination against women in rural areas in order to guarantee the right to adequate housing, especially housing, sanitation, electricity and water supply, transport and communications" (United Nations, 1951). The Committee on the Elimination of Racial Discrimination recognizes the right of everyone, regardless of race, color, national or ethnic origin, to enjoy, inter alia, the right to housing, as well as the right to social security and social services (United Nations, 1951).

In addition, some documents aimed at protecting people in certain circumstances also contain provisions concerning decent living conditions. For example, the Convention relating to the Status of Refugees provides for the right to housing (Article 21), government assistance and support (Article 23) and social protection for refugees (Article 23). The right to an adequate standard of living is also enshrined in Additional Protocol № 1 to the Geneva Conventions, which deals with the protection of victims of international armed conflicts (Article 54, Protocol no. 2, Article 14).

International legal acts in the field of protection of the rights of the child also do not ignore the right of the child to a sufficient standard of living, although they do not contain the wording "decent standard of living". For example, the provisions of Part 1 of Article 27 of the Convention on the Rights of the Child, every child is entitled to the standard of living necessary for his or her physical, mental, spiritual, social and moral development.

Article 28 of the Convention on the Rights of Persons with Disabilities deals with a standard of living. States Parties recognize the right of persons with disabilities to an adequate standard of living not only for themselves but also for their families. The Convention discloses the concept of a decent standard of living, which includes adequate food, clothing and housing, as well as the continuous improvement of living conditions. Contracting states are committed to take appropriate measures to ensure and promote the implementation of this right without any discrimination on grounds of disability (Y. Basson, 2017).

According to the World Bank findings ("World Disability Report"), there is a general perception that people with disabilities tend to be the poorest in their respective social contexts. The approach used to assess the level of poverty faced by people with disabilities cannot consist of a numerical assessment alone. It must take into account the distribution of resources, the level of inequality, and the level of social isolation. Only then can a balanced conclusion be drawn about the position of people with disabilities in relation to other members of the same society. It should also be noted that poverty in itself creates an additional exception. Thus, poverty and disability are not only interrelated but also cyclical, and it is this cycle that needs to be taken into account when implementing poverty reduction schemes for people with disabilities (Y. Basson, 2017).

The European Social Charter also uses the concept of a decent standard of living. In the context of the right to a rair remuneration (in paragraph 1 of Article 4) the Committee on Social Rights, which analyzes and collects data on the implementation of the Charter by states, noted that the very concept of "decent standard of living" is very illusory, relative and differentiated in different states. In

the fifth supervisory cycle, the Committee set a "limit of dignity". The Committee has determined that the minimum allowable earnings should be 68 % of the average earnings in a given country. If the amount of earnings falls below this percentage, the Committee takes into account the availability of social, family and educational benefits, as well as tax benefits for those who receive low wages in the country (Council of Europe, 1996).

The International Labor Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) have also dealt with specialized UN agencies with rights related to the standard of living. At the disposal of these organizations there are certain tools for the protection of appropriate standard of living. Notably, there were adopted such ILO documents as no. 117 on social policy and no. 169 on local and tribal people. The UN Guiding Principles on Refugees and Internally Displaced Persons require competent authorities to ensure safe access to : essential food and drinking water, housing, appropriate clothing and basic health services and sanitation.

It is worth to note that the appropriate physical and mental health are essential conditions for optimal social participation. Without such participation, mankind has no chance to prosper. We learn who we are and what we can do to people through our interactions with others. The level of loss of potential for such interaction due to physical and mental illness is growing. Not only our immediate health and well-being are at stake (L. Doyal, & I. Gough, 1991, p. 49).

The United Nations General Assembly adopted 4 of December 1986, the Declaration on the Right to Development, recognizing development as a comprehensive economic, social, cultural and political process aimed at continuously improving the well-being of all peoples and nations through their participation in development and equitable distribution.

In the final document of the United Nations Conference on Sustainable Development (Rio + 20) 2012 "The future we want", the heads of state reaffirmed the importance of ensuring freedom, peace and security, respect for all human rights, including the right to development and the right to a decent standard of living (paragraph 8) (United Nations, 2012).

Attempts to expand the true meaning and specify the provisions of paragraph 4 of the preamble of the Constitution of Ukraine, namely the words "decent living conditions" were made in decisions of the Constitutional Court of Ukraine. In particular, the Constitutional Court of Ukraine has already applied such constructions as "sufficient standard of living for oneself and one's family", "right to a sufficient standard of living", "ensuring the welfare of all citizens", "(additional) guarantees of social protection", "sufficient conditions life", "a decent standard of living", "creating appropriate conditions for the maintenance and upbringing of children". The main problem is that socio-economic and cultural rights are recognized as inalienable, but their standard level is reduced too unacceptable to the people, but acceptable to the state.

According to technical and legal rules, the undefined notion of "decent living conditions" should be determinated by using the well-known and established in world practice terms "standard of living", "quality of life". Quite often the legislator makes mistakes when trying to define certain terms, which are special legal constructions, and not well-known and widely used. The most notable common mistake is to define the unknown through the unknown. Thus, the concepts of "standard of living", "quality of life" are part of the scope of the concept of "decent living conditions", but do not exhaust it. "Standard of living" and "quality of life" are concepts that partially intersect, the volume of one is partially included in the volume of another and vice versa. In addition, the provisions of paragraph 4 of the preamble of the Constitution of Ukraine are systematically related to the norms that enshrine personal, political, socio-economic and cultural rights (Constitution of Ukraine, 1996).

In the basic law of Germany there are no formulations "decent standard of living", "sufficient standard of living". At the same time, the articles enshrine

provisions that indicate the social orientation of the state. For example, in Article 6 lists some state guarantees for families, children, and mothers. The situation is similar with the basic law of Estonia, which in Articles 27 and 28 only lists some aspects of the state's obligation to support parents, children, and citizens in need of additional protection due to old age, disability, poverty, and so on. The Basic Law of Kuwait also enshrines the right of everyone to an adequate standard of living in Article 205, without deciphering what is necessary to maintain such a standard of living. Interestingly, the constitutions of Egypt and Morocco, on the contrary, do not contain general provisions on living standards, but establish those minimums that ensure a sufficient standard of living: adequate housing (Article 31 of the Moroccan Constitution), the right to water, healthy and adequate nutrition (Article 79 of the Constitution of Egypt) (A. Novikova, 2018).

It is obvious that the provision of a decent (sufficient standard of living) by the state depends on the available material resources. For example, countries such as Japan and Germany are currently developing policies to increase resource productivity. As the use of natural resources increases, so will social and environmental conflicts. Monitoring of such conflicts, for example through the Ejolt project, shows that many, if not most, of these involve human-induced materials, from mining and abiotic processing, or from biomass and land to waste management issues (S. Bringezu, 2015, p. 47).

It seems important to form a certain benchmark of the standard of living, which would be appropriate to the possibility of development and realization of the individual, as well as its involvement in cultural capital, based on general vision of the individual as a creative subject. This view, in our opinion, differs from the perception of an individual as a simple creature that consumes resources. However, such a vision contributes to the formation of some indicator that meets not only the basic needs of the Maslow pyramid, but also its "higher" levels.

At the same time, such an indicator should be limited due to the possibility of finding a number of resources that provide the opportunities described by us for the development and realization of personality. Nevertheless, without equating a decent standard of living with a standard of living that meets all the needs of the individual (which due to the unlimited needs is not possible to achieve), we make it possible to determine some indicator that corresponds to this level. This concept, it seems to us, should correspond to certain objective quantitative indicators (I. Pavlova, 2015, p. 198).

The most common ratings and indices of quality and living standards used in Ukraine and abroad are: Human Development Index (HDI); English Human Development Index (HDI); the Quality-of-Life Index, developed by the Economist Intelligence Unit, which is based on a methodology that links the results of subjective assessments of life in countries to objective determinants of quality of life in those countries; the study uses 9 factors of the quality of life to determine a country's esteem (health; family life; public life; material well-being; political stability and security; climate and geography; job security; political freedom; gender equality); the prosperity index of the world according to the prosperity rating of the Legatum Institute (The Legatum Prosperity Index); Satisfaction with Life Index (SWL) was created by British analytical sociopsychologist Adrian White and is based on data from his methodological study of various surveys and indices on the level of happiness of citizens; The Happiness Index (HPI) is an international index that shows the well-being of people around the world.

It seems that the system of criteria for a decent life should include two groups:

1) criteria that characterize the level of fulfillment by the state of the obligation to provide decent living conditions for its citizens;

2) criteria that characterize the level of human performance of duties to live with dignity (lead a decent life).

Since the first group of criteria for a decent life is determined by the

obligations of the state to man, its essential attributes are such categories as a decent or sufficient standard of living and quality of life. Accordingly, this group of criteria, in turn, is divided into two subgroups:

1) contains the criteria of a decent (sufficient) standard of living, which means an indicator that characterizes the quantity and quality of goods and services consumed by man, the degree of satisfaction of basic living needs;

2) contains criteria that characterize the quality of life, which means an integrated indicator designed to characterize the social well-being of the individual, satisfaction with civil liberties, human rights, security of life, level of protection, realization of human potential, intelligence, creativity, etc.: the first block of indicators characterizes the level of adequacy of intangible benefits acquired as a result of the implementation of human rights of the second and third generation; the second block – the level of satisfaction of citizens with intangible benefits acquired as a result of the realization of the rights of the first generation; the third block – the level of guarantee and protection of the right to a dignified life (V. Barsukova, 2016, p. 134).

The second group of criteria for a decent life has a subjective character, and their fulfillment already depends mainly on the will of a person. This group of criteria is focused on a decent way of life, which means a way of life when a person has not only knowledge of the content of social norms accepted in society (moral, religious, legal, etc.), but also consciously fulfills them.

The emergence of second-generation rights has influenced the concept of human rights, because their implementation does not depend on the absence of coercion, but on the wealth of resources. That is, if the first generation of rights is based on a negative understanding of freedom, the second generation of rights is associated with the justification of a positive concept of freedom. After all, a person cannot be politically free if he or she is economically dependent, and vice versa. Thus, the free development of man is possible only under the condition of "freedom from need" (V. Barsukova, 2016).

The concept of life satisfaction is fundamentally subjective, as each person has a unique set of criteria for what constitutes a full life. Although the concept of success in life has relatively more objective criteria, such as family, good health and a successful career, life satisfaction is strongly associated with unique human circumstances in seven key areas of life, including family, health, social relations, work, financial situation, self-worth and leisure (I. Ali, 2019, p. 40).

The Declaration on the Right and Duty of Individuals, Groups and Bodies of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1998 freely speaks of individual responsibility for the protection and promotion of democracy, human rights and social and international order. This broad idea of citizenship is useful for understanding the difference between a legal obligation and a civil obligation. As individuals, we have a legal claim to certain rights and are obliged to respect the rule of law, even though the law restricts our rights, as this is necessary and proportionate (K. Casla, 2020).

Conclusions. Decent living conditions are an integrated concept that encompasses many heterogeneous and non-quantifiable factors. This concept includes the totality of all forms of human activity and embodies the synthesis of material (adequate nutrition; clothing; housing; medical care; social services; improvement of living conditions; adequate housing; security; electricity; water supply; transport; communications, etc.), spiritual and creative aspects; life (the level of realization of the inner potential of man, his intellect, creative meaning of life, etc.). The development of society as a whole is increasingly determined by the level of human knowledge and abilities.

The true meaning of the concept of "decent living conditions", which comes from the existing in the public and individual consciousness of human dignity, social justice, freedom and equality should be understood as guaranteed and protected by the state natural and inalienable human right to own and enjoy sufficient tangible and

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intangible benefits. These are necessary to ensure the possibility of comprehensive implementation of its biological, social and spiritual needs.

Criteria for decent living conditions at the constitutional level are determined by the obligations of the state to a person. Indispensable attributes of decent living conditions are unified global indices of living standards and quality of life. The system of criteria (indicators) of decent living conditions should be considered in the context of three generations of human rights (tangible and intangible benefits). The Rule of Law Checklist of the European Commission for Democracy through Law (Venice Commission), approved at the 106th plenary session of the Venice Commission (March, 11-12, 2016), is used as a tool to help to measure quality indicators of the rule of law, including on the basis of indicators to ensure decent living conditions for every citizen in the Member States of the Council of Europe.

The duty of the state to ensure inalienable human rights is an integral part of the true meaning of the rule of law. There is a gradual formalization of the concept of decent living conditions in international and national legal acts. The principle of the rule of law and human rights are recognized by two aspects of the same principle – the freedom to live in dignified conditions. Determining the range of inalienable human rights on the basis of the Constitution of Ukraine is problematic, as it enshrines inalienable human rights along with social, economic and cultural, which do not belong to the category of inalienable, but can be recognized as such only in the future.

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Ігор Онищук

ФОРМАЛІЗАЦІЯ ПРАВА ЛЮДИНИ НА ГІДНІ УМОВИ ЖИТТЯ В МІЖНАРОДНИХ ТА НАЦІОНАЛЬНИХ ПРАВОВИХ АКТАХ

Анотація. Метою статті є розкриття деяких аспектів поняття гідних умов життя, які були формалізовані в міжнародних і національних правових актах. Новизна статті полягає в обгрунтуванні, які умови життя людини слід вважати гідними з урахуванням соціальної спрямованості економіки держави, а також що є показником гідних умов життя людини в аспекті головного обов'язку держави затверджувати та забезпечувати права і свободи людини. З'ясовано неодмінні атрибути гідних умов життя та їх уніфікацію у формі глобальних індексів рівня життя і якості життя; розглянуто систему критеріїв (показників) гідних умов життя в контексті трьох поколінь прав людини (матеріальні та нематеріальні блага).

Гідні умови життя – це інтегроване поняття, яке охоплює багато різнорідних і таких, які не піддаються кількісній оцінці факторів.

Дійсний зміст поняття "гідні умови життя", яке походить від наявних у суспільній та індивідуальній свідомості уявлень про людську гідність, соціальну справедливість, свободу та рівність треба розуміти як гарантоване і захищене державою природне та невідчужуване право людини користуватися достатньою кількістю матеріальних і нематеріальних благ, необхідних для забезпечення можливості комплексної реалізації її біологічних, соціальних і духовних потреб.

Критерії гідних умов життя людини на рівні Конституції детерміновані зобов'язаннями держави перед людиною. Неодмінними атрибутами гідних умов життя є уніфіковані глобальні індекси рівня життя і якості життя. Систему критеріїв (показників) гідних умов життя доцільно розглядати в контексті трьох поколінь прав людини (матеріальні та нематеріальні блага).

Обов'язок держави – забезпечити невідчужувані права людини, які є складовою частиною дійсного змісту принципу верховенства права. Відбувається поступова формалізація поняття гідних умов життя в міжнародних і національних правових актах.

Принцип верховенства права і права людини визнаються двома аспектами одного і того ж принципу – свободи жити в гідних людини умовах. Визначення кола невідчужуваних прав людини на підставі Конституції України є проблематичним, оскільки в ній невідчужувані права людини закріплені поряд із соціальними, економічними і культурними, що не належать до категорії невідчужуваних, а можуть бути визнані такими тільки в перспективі.

Ключові слова: *права людини, гідні умови життя, індекс рівня та якості життя, три покоління прав людини, верховенство права*

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A REVIEW OF ANTI-DISSENT LAWS IN INDIA, PAKISTAN AND BANGLADESH

Abstract. India, Pakistan and Bangladesh were united during the era of British colonialism before they separated into new nations in the post-1947 developments. As a result, several laws in these countries find genesis in colonial times. One set of them are the anti-dissent laws which were framed by the erstwhile colonizers to scuttle any voice or movement that may snowball into a threat for the British raj. Interestingly, these penal provisions, especially the ones relating to sedition, continue to be administered in the same colonial form and spirit in all three countries even today. In fact, with the influx of technology and increasing avenues of public expression, these anti-dissent laws have got what we can call an upgrade' in the form of information technology related regulations.

This paper attempts a broad overview of these developments in the light of the judicial discourse in the countries under examination.

Keywords: *dissent, sedition, freedom of speech, technology*

Introduction. *Nothing strengthens authority so much as silence*, said Leonardo da Vinci. While the proposition (of right and duty to dissent where necessary) is politically attractive and potentially radical, its pith and substance is yet to attain maturity. Especially, in the erstwhile unified British colonies – India, Pakistan and Bangladesh (IPB), the post-independence constitutionalism vis-à-vis dissent seems to have fallen short of accommodating what Upendra Baxi calls "citizen interpretation". British era penal code of 1862 continues to operate as the principal substantive law of crime, with very limited modifications in either of the three. Procedurally also Pakistan and Bangladesh continue to administer the 1898 Code of Criminal Procedure. It is only paradoxical that leaders of the anti-colonial freedom movement in IPB, ranging from Sardar Patel to Jawaharlal Nehru and Muhammad Ali Jinnah passionately wrote and spoke against the provisions in these laws that were abused to cut down freedom of speech and expression [henceforth "free speech"].

Analysis of recent research and publications. In addition to these ante-dated laws, free speech facilitated through technology has brought in a new range of the 21st century legislations; Information Technology Act, 2000 (IT Act) in India, Digital Security Act, 2018 (DSA) in Bangladesh and Prevention of Electronic Crimes Act, 2016 (PECA) in Pakistan. As sub-trickle of the colonial psyche, these legislations have drawn flak by Amnesty International that sees them as tools against free speech. Similar concerns have been raised by the UN's Special Rapporteur on Freedom of Opinion and Expression who finds them against the promises made under the International Covenant on Civil and Political Rights, 1966.

Civil society and adjudicators in IPB have struggled to contain the repression

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of dissent by the power-wielding political dispensations. Judges in the superior courts have supplied observations only to address the ostensive symptom that they faced in an individual case. For instance, striking down of Section 66 A of the IT Act in India and acquittal of Asia Bibi in Pakistan. This approach, although laudable in spirit, is deficient in the diagnosis and treatment of the larger *problématique*, which is the nature of biopolitics itself. Consequently, the culture of intimidation through arrests or ban continues to manifest. More often relating (but not limited to) the content shared on social media.

The purpose of this work is to evoluate and applicate of anti-free speech laws in the three jurisdictions in their own tailored forms.

Formulation of the main material.

Shared History

IPB have a shared pre-1947 history as far as the criminal laws in these nations are concerned. It was a single British colony where resistance against the colonisers started brewing after the 19th century had half passed. First mutiny happened in 1857 and the last Mughal emperor – Bahadur Shah was declared the ruling authority by the rebels. The mutiny was squelched with brute force and the powers of the day realized that they have to do something radical with the criminal laws so as to ensure that the "natives' remained policed and controlled. The structure was supposed to be applied equally to all, but this equality was more driven by market forces than any real consideration for social hierarchies prevalent in the then united India". And thus, came the Indian Penal Code of 1960 along with Section 124-A, notorious and tilted in its conception of what constitutes the Sedition in the first place. The cases of *Bangobasi*, Bal Gangadhar Tilak, *Pratod* and Amba Prasad were critical in bringing out varied facets of sedition. Chitranshul Sinha's expositions on sedition in his book about Justice Strachey's and Justice Ranade's take on "disaffection" (a ground under Section 124A) as "disloyalty" while interpreting Section 124A in Tilak's case is particularly interesting. It brings out the binary in approaches of British and Indian judges of those times. While Justice Strachey's understanding of "disloyalty" includes "every possible form of bad feeling for the government", Justice Ranade restricted its scope to "*a defiant* insubordination of authority" or the secret alienation of the people.

Post Rowlatt Act and Jallianwala Bagh massacre, sedition charges could hardly scare people. Nehru, Gandhi, Jinnah, Tilak and many other leaders who were integral to the freedom movement made sure that sedition does not stop their mission of a free India. Gandhi, in his own trial for writings in Young India termed sedition as the "highest duty of the citizen". In the same stride, Abul Kalam Azad in his trial and conviction felt privileged to belong to that "band of pioneers [which] sowed the seed of such agitation... [and]... holy discontent". Nehru declared laws like sedition as manifestations of "extraordinary vulgarity of imperialism" that demanded preaching of nothing less than disloyalty. It is another matter that Jinnah's politics led to the creation of Pakistan later on, but his defence of Tilak in his third sedition case is a coveted memory of the collective Indian struggle against the British.

The IPB Free Speech Trajectories – Post 1947

India

The Constituent Assembly of India removed Sedition as one of the constitutionally imposed restrictions on the right to free speech. In essence, this ousting made sedition an alien idea to the democratic ethos of India. But the law survived in the Indian Penal Code and till date continues to haunt anyone who dares to dissent.

The Supreme Court of India (SC) did hint at the possible unconstitutionality of Section 124A but fell short of explicitly striking it down. After a few flip-flops at the High Court level, the provision did come up for an assessment by

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the constitutional bench in *Kedarnath Singh v. State of Bihar*. The court declared that Section 124A can be considered within permissible limits of "reasonable restrictions" laid down in Article 19 (2) of the Constitution. It laid down the "public order" test that would make it convenient for the Supreme Court to arrive at a conclusion siding with a limited and rare application of Section 124 A. Sinha does a fair job by contextualising the *Kedarnath Case* with its geopolitical background (proximity of the communist thought with Sino-Indian war) and hence creates space for a possibility of an even more liberal application of Article 19 (1), when no such political exigencies exist. However, he could have better explained the deviations in the rulings of lower courts (like in cases relating to Binayak Sen and P. Hemlatha), despite the *Kedarnath Case*. It was mainly because of the subjectivity and undefined scope of the term "public order" itself.

Justice Fazal Ali in his dissenting opinions upheld the restriction on free speech in *Brij Bhushan v. State of Delhi and Romesh Thapar v. State of Madras*. He stated that the constituent assembly "decided not to use the word "sedition' in clause (2) but used more general words which cover sedition and everything else which makes sedition such a serious offence". A necessary implication of this is, even when sedition was dropped by the constituent assembly from the draft on fundamental rights, semantics of other subjective grounds (such as "public order" or "incitement to an offence") paved way for harsher interpretations in future.

Most of the cases where Section 124A appears to have been misapplied, the problem lies in the loophole of the procedure. That is the reason why, as mentioned in the book, *Common Cause* NGO approached the court in 2016; seeking a mechanism that makes it mandatory for the director general of police to give a reasoned order certifying "that any alleged seditious act either led to violence or had tendency to incite violence" before an FIR is registered in a particular case. But the Supreme Court missed an opportunity of dealing with very important issues raised in the petition and settled with reiterating the *Kedarnath* standard. Till date, sanction from the government is required only before trial and not before arrest under Section 124A. Once arrested, the accused "will have to obtain bail, attend proceedings, make themselves present for investigations".

One cannot also ignore the close association of dissent stifling Sedition with that of the offence under the Unlawful Activities (Prevention) Act, 1967 (UAPA). This is a heavily criticised terror law with a vague definition of what constitutes a "terrorist act'". It has a history of abuse with more recent examples being those of the booking of the student leaders from the Indian Universities' campuses, which have emerged as citadels of dissent against the rising authoritarianism of the present dispensation. The law was also amended in 2019 making it legal for the government to declare an individual a terrorist even before a trial is completed.

As far as online speech on social media platform is concerned, the Supreme Court of India in *Shreya Singhal v. Union of India* struck down Section 66A of the Information Technology Act, 2000. It read: any person who sends by any means of a computer resource any information that is grossly offensive or has a menacing character; or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult shall be punishable with imprisonment for a term which may extend to three years and with fine.

Despite striking down Section 66A the state persecution for social media posts has not stopped. Computer related offences continue to vaguely exist in the Information Technology law of the country and arrests are still very common. Interestingly, many of such arrests are also accompanied by the charges under Section 124-A of the IPC.

Pakistan

Recently in 2019, Pakistan charged hundreds with Sedition for taking part in Students Solidarity March that demanded restoration of student unions in the country. It was very similar to the action taken by the Indian state against the

students at the Jawaharlal Nehru University. The only silver lining, like the Shreya Singhal Case in India was the decision of the Pakistani Supreme Court in the Asia Bibi case who was acquitted of the charges of blasphemy. She was charged under Section 295-C of the Pakistan Penal Code which read as follows:

"Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine".

Without striking down the blasphemy law, the Supreme Court of Pakistan through Justice Khosa freed Asia Bibi on account of lack of evidence and doubtful witnesses.

On the digital front Pakistan has its own legal equivalence of the Indian IT Act called the Prevention of Electronic Crimes Act, 2016. Section 37 of this Act gives sweeping powers to the Pakistan Telecommunications Authority (PTA') regarding the removal of the unlawful online content. It reads as follows:

"The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission or incitement to an offence under this Act".

This law has received criticism from the United Nations' Special Rapporteur on Freedom of Opinion and Expression and has generated significant anxiety among the common citizens of Pakistan.

Bangladesh

Sedition laws are often invoked in Bangladesh to scuttle free speech. The legislature in Bangladesh enacted Information and Communication Technology Act in 2006 which had the controversial Section 57 that authorised the prosecution of any person who publishes, in electronic form, material that is fake and obscene; defamatory; "tends to deprave and corrupt' its audience; causes, or may cause, "deterioration in law and order"; prejudices the image of the state or a person; or causes or may cause hurt to religious belief.

Because of grave criticism of this provision the law was replaced with a new Digital Security Act in 2018. Unfortunately, the new law did not just retain many of the previous provisions but included new provisions with a potential to criminalise free speech. The arrest/remand of the dissenters under the new Act continues even in the COVID times.

Conclusions. The IPB nation-states borne out of the labour of decolonisation are yet to get out of the policing hangover of their erstwhile colonial masters. The British have substantially removed the sedition law since the assertion by Justice Minister Claire Ward's that marked an end to the sedition laws in England. She declared, offences related to sedition "are arcane offences- from a bygone era when freedom of expression wasn't seen as the right it is today [i.e.] the touchstone of democracy. The IPB should pick up clues and try to assess whether the new gagging laws should really be framed in a way to suppress the political dissent? Or, should they be a source of confidence building amongst the citizens with mind without fear and heads held high.

Conflict of Interest and other Ethics Statements

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Мохаммад Умар

ОГЛЯД ЗАКОНІВ ПРОТИ ІНАКОМИСЛЕННЯ В ІНДІЇ, ПАКИСТАН І БАНГЛАДЕШ

Анотація. Індія, Пакистан і Бангладеш були об'єднані в епоху британського колоніалізму, перш ніж вони розділилися на нові країни в результаті подій після 1947 року. В результаті кілька законів у цих країнах знаходять походження в колоніальні часи. Один із них – це закони проти інакомислення, які були створені колишніми колонізаторами, щоб знищити будь-який голос чи рух, який може загрожувати британській владі. Цікаво, що ці каральні положення, особливо ті, що стосуються заколотів, продовжують застосовуватися в тій же колоніальній формі й духу в усіх трьох країнах навіть сьогодні. Насправді, з впровадженням технологій та розширенням можливостей публічного вираження, ці закони про боротьбу з інакомисленням отримали те, що ми можемо назвати "оновленням" у формі нормативних актів, пов'язаних з інформаційними технологіями. У цій статті зроблено спробу широкого огляду цих подій у світлі судового дискурсу в досліджуваних країнах.

Державам, які виникли внаслідок праці деколонізації, ще не вийти з поліцейського насилля своїх колишніх колоніальних господарів. Британці скасували Закон про заколот внаслідок твердження міністра юстиції Клер Уорд, що поклало кінець законам про заколот в Англії. Вона заявила, що правопорушення, пов'язані з заколотами, "є таємними злочинами з минулої епохи, коли свобода вираження поглядів не вважалася правильною, вона є сьогодні каменем демократії". Держави мають оцінити, чи дійсно нові закони про заборону висловлення своїх думок громадянами мають бути сформульовані таким чином, щоб придушити політичне інакомислення? Або вони повинні стати джерелом довіри серед громадян.

Ключові слова: *інакомислення, крамола, свобода слова, технології*

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INTERNATIONAL AND NATIONAL LEGAL COUNTER TERRORISM MEASURES IN NIGERIA

Abstract. One of the major aspects of the globalization era is the emergence of religious fundamentalism and terrorism. Islam is a way of life, inspired by the holy Quran, which prone peace. Its necessary to out pin that, not all Muslims are terrorist, but some are usually misled by radical teachings or religious order (fatwa) from radical leaders with no conscience. In their duty to establish a self-proclaimed caliphate, under the banner of Islam, such groups and individuals claim religious beliefs as source of legitimacy for jihadists tendencies.

According to Sun Tzu, "You need not fear the results of a hundred battles". This rule applies to counter terrorism strategy, for this paper explores national and international legal instruments implemented by the Nigerian government to combat terrorism, but first point the origin of Boko Haram. In essence, this paper evaluates the tenacity and challenges facing the mutations of terrorist activities on national security from a legal perspective.

Keywords: *Terrorism, Boko Haram, Counter Terrorism, Law, Nigeria*

Introduction. Religion is not the cause of religious conflict; rather for many... it frequently supplies the fault line along which intergroup identity and resource competition occurs (Seul, 1999, p. 58).

Analysis of recent research and publications. The Federal Republic of Nigeria is made of 36 states, and considered as the United States of America in Africa, because of its political configuration. The country is known because of several military coups, though the country has succeeded to keep most of her formal statesmen from international prosecutions. Leadership in the country is rotatory (the electoral pattern is termed zoning), with maximum of two mandates, with over 250 ethnic groups, the country is faced with several challenges; ethno-regional, religious and resource capture with Biafra and terrorism by criminal sect Boko Haram. However, her "federal character" is enshrined in the 1999 constitution, with reflection on cultural diversity and assertion in to state duties. In 2011, the country almost engaged in socio-politic "game" because of frustrated expectations that a northerner would retain the presidency after the death of former statesman (President Umaru Yar'Adua).

The purpose of this work is to study international and national legal counter terrorism measures in Nigeria.

Formulation of the main material.

History of jihad in Nigeria

Boko Haram draws inspiration from the Islamic empire of Usman Dan Fodio's Sokoto Caliphate of the 19th century, which institutionalized Islam in northern Nigeria. The Sokoto Caliphate consisted of Sharia-based emirates led by local emirs (commanders), which existed after the British colonial powers

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integrated part of Nigerian territory. The sultan of the Sokoto caliphate is considered as the religious leader of Nigeria's more than 70 million Muslims (Kastfelt, 2015), though considered as infidels by Boko Haram. Boko Haram denies the authority of the secular state; they do not acknowledge the sultan of Sokoto as the ruler of Muslims (Solomon, 2015).

The emergence of Boko Haram is traceable to radical Islamic reform movement inspired by Wahhabism and Salafism that flourished in northern Nigeria in the 1980th. groups which paved the way for Boko Haram, included but not limited to anti-modern and violent Maitatsine movement (AA, 2012, p. 120) and Izala movement, founded scholars, following their academic parkour in the 1980th in Nigeria and abroad, drawn from Arabic teaching and community-led projects as well as providing scholarships for university students to study in Saudi Arabia.

The radicalism and religious extremism began in northern Nigeria following the return of members of the Izala movement from Saudi Arabia in the 1990s. Flag bearers of the Izala movement, were eager to spread new ideas contrary to the older generation of Islamic intellectuals who did not wish to give them space, voice and power in the religious arena (AA, 2012, p. 121). Hence, creation of a new Salafiya youth group, which subsequently followed by violent contestations and splinter cells aspiring to establish a caliphate from the recruitment of local and foreign fighters for jihadist tendencies. The proliferation of new theology led to the emergence of more ultra-radical groups like Boko Haram, with the leader Mohammed Yusuf (Kastfelt, 2015). According to AA (2012) and Mohammed (2014), the rejection of Western democracy by Mohammed Yusuf was fashioned by his readings and interpretations of Saudi based scholars. Radical Islamic interpretations were, is translation of 19th century religious clerics to contemporary ethno-religious tendencies in northern Nigeria, in the process of which new flag bearers are recruited.

Origin of Boko Haram

Boko Haram is a terrorist Islamic sect, based in Nigeria, a major menace to states of Borno, Yobe, and Adamawa, as well as to Cameroon and Chad. Its originate from a Sahaba Islamic group, formed in 1995 and led by Abubakar Lawan, who focus on proselytization on orthodox Islamic doctrine. When Lawan departure to University of Medina, paved the way for Malam Mohammed Yusuf, to leadership of Boko Haram.

Yusuf a brilliant and favorite student of Sheik Jafar Mohammed, a Maiduguri based Islamic cleric, who was assassinated in Kano in 2007, while leading an early morning prayer with his adherents in mosque. Though exposed to orthodox Islamic teachings of Sheik Mohammed, Yusuf faith was primordially radical doctrine of the Islamic jihad. During his leadership orthodox Islamic doctrine was canceled and radical doctrine, which abhorred Western education and support of jihadist tendencies were major issues.

Emerging as one of the historical society built on Islamic tradition, with a legacy of Islamic warfare in the 19th century, Boko Haram drew inspiration from visions of Usman Dan fodio, for a return to the old Islamic order in northeastern Nigeria. The strength and audacity of Boko Haram, is linked to the radical Islamic ideology of jihad, sharia, and contemporary socio-economic problems of poverty, inequality, and unemployment. The support from AQIM, ISIS, and al Qaeda, have given the group global recognition, and jihadist tendencies in the Sahel region are similar to that of ISIS in Europe. Boko Haram is a major menace to Nigeria, and countries of CEMAC region.

Boko Haram's particularity in Nigeria is not its criminality but the sectarian agenda, which is distinct from the dynamics of resource-driven localized violent conflicts between different ethnic groups in Plateau state, or the ethnic claims of insurgent groups such as the O'odua People's Congress (OPC), the Movement for the Emancipation of the Niger Delta (MEND) and the Movement for the Actualization of the Sovereign State of Biafra (MASSOB).

Based in Nigeria's semi-arid northeast, Boko Haram does not have access to the economic leverage to pressure the government. Boko Haram adopted some of the tactics of foreign jihadist movements, suicide attacks on schools, diplomatic structures and even security officers, which had never before been seen in Nigeria. Meanwhile, its extreme nature of violence against children, prompt international community, as well as other countries to engage in the security response to the "game' ".

The National Counterterrorism Center of the U.S. government analysis on the Nigerian terrorist sect and other terrorist groups, pose that "Boko Haram' ", means "Western education is forbidden' ". Foluso Ajibulu, a contributing writer for the Vanguard, articulates that, "Boko in Hausa language means book and Haram abomination, which translate book is abomination".

Murray Last argues that, jihadist tendencies by Boko Haram, are not new phenomenon and will definitely not be the last in relation to international and national security issues. Meanwhile, Olojo (2013) is of the opinion that terrorism is sectarian in nature, out pin two aspects of the group which inter-relates; brainwash and misinterpretation of Quranic verse which lead to radicalization and jihadist tendencies.

Shabayany (2012, p. 33) out pin that terrorism "is a fanatical war waged by a puritan few against the massive army of innocent people who belong to different religious beliefs and faiths, including people who belong to different classes and gender". The modus operandi is a major issues, as it consist of surprise aggression, clandestine attacks and guerrilla warfare, which is usually considered as being asymmetric in nature. In terms of possessing an organized strategy for jihadist tendencies, terrorist groups engage in suicide bombings, the use of improvised explosives, hostage taking and kidnapping, propaganda and media advocacy, recruitment of combatants (Okoli & Iortyer, 2014), below are some national and international legal instruments use to combat terrorism in Nigeria.

International and national laws in combatting terrorism

The 11 of September attacks in the united states of America led to the promulgation of UN Security Council (UNSC) resolution 1373, which appeals for all states to pass comprehensive counter-terrorism laws and measures, as well as ratify various international instruments and complying with legally binding UNSC resolutions. The global response is focused on national legal instruments, with aim to effectively prevent and counter terrorist activities. The international instruments provide legitimate measures for the development of national laws and a basis for international legal cooperation.

The 2006 UN Global Counter-Terrorism Strategy and the altered political climate since 2009 may allow internal African realities and priorities to shape counter-terrorism responses, albeit within the global framework. The globalization era provides several opportunities for African states, with the need to re-examine counter-terrorism, and address contemporary issues shaping criminal justice system. Moreover, African narrative on the various UNSC resolutions on terrorism are strategic, particularly resolution 1373 requesting for wider ratification of counter-terrorism instruments. The UNSC in resolutions 1267 (1999), 1373 (2001) and 1624 (2004) prescribe obligations on states to implement its decisions through their national criminal justice systems.

International counter-terrorism legal instruments

International terrorism is not a new phenomenon and from the onset international responses have highlighted the role of national measures. Since 1963, through the UN and its various specialized agencies, the international community has promulgated a comprehensive set of universal legal instruments to provide legal basis for all states, who become parties to them, to act, to prevent and prosecute terrorist acts.

1973 Convention on the Prevention and Punishment of Crimes Against

Internationally Protected Persons (Diplomatic Agents Convention).

This convention provide internationally protection to statesmen (president of a country, representative or official of a State and international organization), special protection in a foreign State, and their family. The convention equally requires parties to criminalise and make punishable to deviant behaviors such as; intentional murder, kidnapping or attack on internationally protected person, and a violent attack upon the official premises.

1979 International Convention Against the Taking of Hostages (Hostages Convention). The 1979 convention provides that, any person "who seizes or detains and menace to kill, and aspire to detain an individual or group of persons, a state, an international or intergovernmental organisation, compel them to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this convention.

1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Airport Protocol).

The 2009 Abdumutallab Farouk's case, is a proper example which validates the 1988 protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation. United States of America policing approach was updated, following the 9/11 attacks and Farouk's December, 2009 fail attack on U.S soil after boarding a flight to the states without being identify by intelligence agency. However, the Montreal Convention and the 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation out pin strategic sanctions, such as; activities carryout with the use of a ship; and transportation of various materials intending to cause death or serious injury or damage.

1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) the fragmentation of states, jihadist tendencies and the emergence of financial dynamics are strategic issues for regional, national and international security. Terrorist financing remains a major menace for the world, whether direct or indirect. The 1999 convention is a major legal tool to parties to combat terrorist financing. The convention provides that, those who finance terrorism are criminally, civilly and administratively liable for such acts. It equally out pins that, when identified, account should be freeze and funds seized, as well as bank must adhere to security protocols of states, to avoid national and regional terrorist financing and threats.

National counter terrorism laws

Nigeria has reconfigured counter terrorism strategy to fit modern challenges, due to different types sophistication of the globalization era. Terrorist attacks are increasingly perpetrated with, guns, bombs, knives, with the use of airplanes, and now the use of improvised Explosive Devices (IEDS). The will for massive casualties and media couvrage has made terrorists to incorporate the use of Internet and high digital technology in coordinating attacks. With focus on Nigeria, is necessary to point out that, the impact of terrorists attacks usually expose untold stories. In the case of KARUMI v. FRN33, the Court of Appeal in relation to the gravity of the offence of terrorism pose that:

"The gravity of the offence of terrorism which involves the use of violence or force to achieve something, be it political or religious, is a grave affront to the peace of society with attendant unsalutary psychological effect on innocent and peaceful members of the society who may be forced to live in perpetual fear. It is an offence that may even threaten the stability of the state. The sophisticated planning and execution of the acts of terrorism show it is an offence that requires premeditated cold-blooded organisation. The circumstances under which such a crime is organised calls for appropriate sentencing to deter its recurrence by

potential or prospective offenders".

A person may be considered a terrorist or jihadist to state, but seen as defender of the right and cultural heritage of a given community. Though no standard definition for defining terrorism exist, in as much as there are several, the legislations, codes and laws regulating to the issue, it's easier to identify what constitute terrorist acts. It goes to state that terrorism could be defined by drawing inferences from the acts that have been said to be terrorist acts.

The 1999 Nigerian Constitution guarantees the right of defendants to adequate time and facilities to prepare for defense in relation to Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. It was in the case of FRN v. Osahon (2006) 5 NWLR (Pt. 973) 361 at p. 406, that the Supreme Court held that "Police authority can, by virtue of the aforementioned provisions of Section 174 (1) of the Constitution prosecute any criminal suit either through his legally qualified officers or through any counsel they may engage for the purpose".

Nigeria legal system is well structured, as any legal authority can institute criminal prosecution. Thereby limiting the power of the Attorney-General of the Federation, to be the only prosecutor. However, the Attorney General can take over, as well as discontinue by way of nolle prosequi the prosecution from any such legal authority. For example, in 2007 in FRN v. Adewunmi (2007) 10 NWLR (Pt 1042) 399 at, the legal bench focused on constitutional provisions, Section 174 and 211 of the current Constitution: "There is no doubt at all that the power to institute criminal proceedings against any person in the 1999 Constitution lies on the Attorney-General of the State of the Federation as the case may be, but such power may be exercised by the Attorney General himself or through any officers in his department". Attorney General's legal stance is not required for the officer to initiate criminal proceedings, but presumed that already working in the department of the Attorney General's office, officer trained for such duty and unless proven otherwise. However, controversy may emerge in relation to a decision, in the case of AG Kaduna State v. Hassan (1985) 2 NWLR (Pt. 8) 483, there was no incumbent Attorney General who could have donated the power to discontinue criminal prosecution. The Terrorism (Prevention) (Amendment) Act, 2013 in Section 2 (1) simply provides that "All acts of terrorism and financing of terrorism are hereby prohibited".

Section 2 (2) of the Terrorism (Prevention) (Amendment) Act, 2013 in creating offences provides that a person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly

(a) does, attempts or threatens any act of terrorism,

(b) commits an act preparatory to or in furtherance of an act of terrorism,

(c) omits to do anything that is reasonably necessary to prevent an act of terrorism,

(d) assists or facilitates the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act,

(e) participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this Act,

(j) assists, facilitates, organizes or directs the activities of persons or organizations engaged in any act of terrorism,

(g) is an accessory to any act of terrorism, or

(h) incites, promises or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences referred to in this Act, commits an offence under this Act and is liable on conviction to maximum of death sentence.

It is pertinent to know what constitute "act of terrorism" considering its feature in Section 2 (2). The Principal Act – Terrorism (Prevention) Act, 2011, had defined acts which, constitute "act of terrorism in Section 1 (2). According to the Section, "act of terrorism" means an act which is deliberately done with malice, aforethought and which:

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(a) may seriously harm or damage a country or an international organization;

(b) is intended or can reasonably be regarded as having been intended to (i) unduly compel a government or international organization to perform or abstain from performing any act; (ii) seriously intimidate a population; (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or (iv) otherwise influence such government or international organization by intimidation or coercion; and

(c) involves or causes, as the case may be: (i) an attack upon a person's life which may cause serious bodily harm or death; (ii) kidnapping of a person; (iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss; (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b) (iv) of this subsection;

(d) an act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.

Offences against internationally protected persons

Section 3 of the TPAA, 2013 provides for offences against internationally protected persons. Any person who intentionally murders, kidnaps or commits other attacks on the person or liberty of an internationally protected person; carries out a violent attack on the official premises, private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty, or; threatens to commit any such attack, commits an offence and is liable to conviction to life imprisonment.

Prohibition of terrorist meetings

Terrorist meetings is prohibited as section 4 of the TPAA, 2013 provides that any person who:

(a) arranges, manages, assists in arranging or managing, participates in a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group,

(b) collects, or provides logistics, equipment, information, articles or facilities for a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group, or

(c) attends a meeting, which in his knowledge is to support a proscribed organisation or to further the objectives of a proscribed organization, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

Prohibition of soliciting and giving support to terrorist group

Section 5 of the TPAA, 2013 prohibits soliciting and giving support to terrorist groups. Any person who knowingly, in any manner, directly or indirectly, solicits or renders support

(a) for the commission or an act of terrorism, or

(b) to a terrorist group, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

Support has been defined in Section 5 (2) of the Act, to include:

(a) incitement to commit a terrorist act through the internet, or any electronic means or through the use of printed materials or through the dissemination of terrorist information;

(b) receipt or provision of material assistance, weapons including biological, chemical or nuclear weapons, explosives, training, transportation, false documentation or identification to terrorists or terrorist groups;

(c) receipt or provision of information or moral assistance, including invitation to adhere to a terrorist or terrorist group;

(d) entering or remaining in a country for the benefit of, or at the direction of

or in association with a terrorist group; or

(e) the provision of, or making available, such financial or other related services prohibited under this Act or as may be prescribed by Regulations made pursuant to this Act.

Notwithstanding the provision of the Terrorism (Prevention) (Amendment) Act (TPAA), 2013 that expanded the institutions charged with the responsibility of investigating terrorism, the Police stands as the traditional driver of ensuring internal security of Nigeria. Section 4 of the Police Act 5 provides thus:

"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act".

The Court of Appeal held in IKPE & ANOR v. MR. EFFIONG (I.P.O.) Nigeria Police Force, Onna division Ndon Eyo, Onna LGA & ORS6 (2014) LPELR-23036(CA) that the police are employed to investigate any criminal allegation and may take any action they deem fit to take upon investigation. They may arrest, detain, and prosecute an alleged offender by virtue of Section 4 of the Police Act, Section 35 (1) (c) of the 1999 Constitution of the Federal Republic of Nigeria (As amended); various substantive and procedural laws regulating criminal prosecution in Nigeria: Penal Code of various States in the northern part of Nigeria, Criminal Code of the various States of the Southern part of Nigeria, Administration of Criminal Justice Act, and Administration of Criminal Justice Law of various States.

The role of law enforcement agencies under the Terrorism (Prevention) (Amendment) Act, 2013.

As earlier stated in the introductory part of this work, Section 40 of the Terrorism (Prevention) Act, 2011, defines "law enforcement agencies" with the Terrorism (Prevention) (Amendment) Act, 2013 adding to the list. Section 1 A(3) of the Terrorism (Prevention) (Amendment) Act, 2013 provides that the law enforcement and security agencies is responsible for the gathering of intelligence and investigation of the offences provided under the Act. The Act in subsection 4, further provides that the law enforcement agencies shall have the powers to:

(a) enforce all laws and regulations on counter-terrorism in Nigeria;

(b) adopt measures to prevent and combat acts of terrorism in Nigeria;

(c) facilitate the detection and investigation of acts of terrorism in Nigeria;

(d) establish, maintain and secure communications, both domestic and international, to facilitate the rapid exchange of information concerning acts that constitute terrorism;

(e) conduct research with the aim of improving preventive measures to efficiently and effectively combat terrorism in Nigeria;

(f) partner with Civil Society Organizations and the Nigerian public to provide necessary education, support, information, awareness and sensitization towards the prevention and elimination of acts of terrorism.

The TPAA, 2013 in Section 29 has provided a wide range of powers to an investigator of the crime of terrorism. A relevant law enforcement agency with the approval of the Attorney-General of the Federation may, with the approval of the Coordinator on National Security for the purpose of the prevention of terrorist acts or to enhance the detection of offences related to the preparation of a terrorist act or the prosecution of offenders under the Act, apply ex-parte to a judge for an interception of communication order. The Judge in approving the application may make an order to:

(a) require a communication service provider to intercept and retain a specified communication or communications of a specified description received or transmitted or about to be received or transmitted by that communications service provider;

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(b) authorize the relevant law enforcement agency to enter any premises and to install in such premises, any device for the interception and retention of a communication or communications or specified description and to remove and retain such a device tor the purpose of intelligence gathering; and

(c) authorize the relevant law enforcement agency to execute covert operations in relation to an identified or suspected terrorist group or persons for the purpose of gathering intelligence.

Such an order by the Judge shall specify the maximum period for which a communications service provider may be required to retain communications data. Subsection 4 of Section 29 of the TPAA, 2013 provides that, any information contained in a communication intercepted and retained pursuant to an order, or intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a judge or that foreign state to have been so intercepted and retained, shall be admissible in a proceeding for an offence under the Act, as evidence of the truth of its content.

It is important to note that a "communications service provider" has been defined in subsection 5 of same Section 29, to mean a person who provides postal, information or communication services, including telecommunications services; and "data" means information generated, sent, received or stored that can be retrieved by electronic, magnetic, optical or any similar means.

Terrorism is a crime that has globally preoccupied the 21st Century. Nations must continue to enact laws, shape policies and adequately build the capacity of investigators and prosecutors in the fight against the rising scourge. With the extant legislations in Nigeria – the Terrorism (Prevention) (Amendment) Act, 2013, Administration of Criminal Justice Act, 2015, Administration of Criminal Justice Law of various State, various Penal Code and Criminal Code laws of States, international protocols Nigeria has acceded to, etc., terrorism can be contained with where the spirit of the laws are given effect. The enforcement and security agencies must be well equipped and trained towards ensuring efficient investigation and effective prosecution of terrorism offences. Equally, the office of the National Security Adviser and that of the Attorney-General of the Federation must position itself in coordinating and ensuring the effective investigation and prosecution of terrorism offences.

Conclusions. President Trump's phone call to President Buhari in 2017 was his first to any sub-Saharan African leader, due to intense security issues in Nigeria. In April 2018, Buhari was received by President Trump at the White House, for the Assistant Secretary of State for African Affairs Tibor Nagy expressed interest in seeing Nigeria play active role in peacekeeping and democracy promotion in Africa, and as well extend U.S. interest in the region. A country engulfed with religious militancy, and historical conflicts, tackling terrorism requires force rather than dialogue. The sovereignty of Nigeria cannot be negotiated with any individual, nor religious extremist group, not even Boko Haram. Mark Gabriel's out pin that "a religiously motivated terrorist is not going to negotiate, and he's not going to be satisfied with partial concessions". Thus, national and regional counter terrorism strategy against Boko Haram is suitable for lasting peace to be restored. However, Boko Haram is a symptom of the increasing failure of the global leadership to address fundamental conflict that had remained potent since the 20th century. Thus, the Boko Haram is a challenge not only to Nigeria but a global menace, following its allegiance to other terrorist groups like ISIS.

Conflict of Interest and other Ethics Statements

The author declare no conflict of interest.

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Сарон Мессембе Обіа

МІЖНАРОДНІ ТА НАЦІОНАЛЬНІ ПРАВОВІ ЗАХОДИ ПРОТИДІЇ ТЕРОРИЗМУ В НІГЕРІЇ

Анотація. Одним із головних аспектів епохи глобалізації є поява релігійного фундаменталізму та тероризму. Іслам – це спосіб життя, натхненний священним Кораном, який схильний до миру. Необхідно пояснити, що не всі мусульмани є терористами, але деякі зазвичай вводяться в оману радикальними вченнями або релігійними наказами (фетвами) радикальних лідерів без совісті. У своєму обов'язку

створити самопроголошений халіфат під прапором ісламу, такі групи та окремі особи заявляють, що релігійні переконання є джерелом легітимності тенденцій джихадистів. За словами Сунь Цзи, "Не треба боятися результатів ста битв". Це правило стосується стратегії боротьби з тероризмом, оскільки в цій статті досліджуються національні та міжнародні правові інструменти, які впроваджує уряд Нігерії для боротьби з тероризмом, але спочатку вказується на походження Боко Харам. По суті, ця стаття оцінює стійкість та виклики, з якими стикаються зміни терористичної діяльності щодо національної безпеки з правової точки зору.

Телефонний дзвінок президента Трампа до президента Бухарі у 2017 році був його першою розмовою з лідером країн Африки через серйозні проблеми безпеки в Нігерії. У квітні 2018 року Бухарі був прийнятий президентом Трампом у Білому домі, оскільки помічник держсекретаря США з питань Африки Тібор Надь висловив зацікавленість у тому, щоб Нігерія відігравала активну роль у підтриманні миру та просуванні демократії в Африці.

Країна, охоплена релігійною войовничістю та історичними конфліктами, боротьба з тероризмом вимагає сили, а не діалогу. Про суверенітет Нігерії не можна домовитися ні з якою особою, ні з релігійною екстремістською групою, навіть з Боко Харам. Марк Габріель зазначає, що "релігійно мотивований терорист не збирається вести переговори, і він не буде задоволений частковими поступками". Таким чином, національна та регіональна стратегія боротьби з тероризмом проти Боко Харам підходить для відновлення міцного миру. Однак "Боко Харам" є симптомом зростаючої неспроможності світового керівництва вирішити фундаментальний конфлікт, який залишається потужним з 20-го століття. Таким чином, "Боко Харам" є викликом не тільки Нігерії, але й глобальною загрозою, оскільки вона віддана іншим терористичним групам, наприклад, таким, як ІДІЛ.

Ключові слова: *тероризм, Боко Харам, боротьба з тероризмом, закон, Нігерія*

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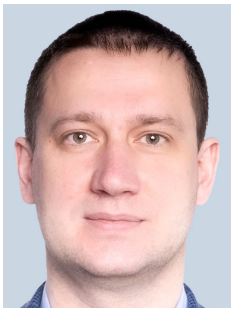

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HISTORY OF THE DEATH PENALTY IN UKRAINE: CAUSES, STAGES AND INFLUENCE ON PUBLIC AWARENESS

Abstract. The purpose of the study is to reveal the historical reasons for the emergence and distribution of death penalty as well as the attitude of Ukrainians to this type of punishment. Particular attention is paid to the attitude of contemporary traditional ideological currents to the death penalty in Ukraine. The research methodology is based on the principles of historicism, continuity and objectivity. The interdisciplinary nature of the study led to the use of a range of general scientific, philosophical and special historical methods, among which we distinguish the following: historical method, comparative method, document analysis, and others.

The scientific novelty of the study lies in the social challenges Ukraine is currently facing, based on which we discuss the need to restore the death penalty. The historical retrospective and evolution of the assertion of the death penalty from ancient times to the present day has shown that the death penalty is not traditional. As a rule, its establishment on the territory of Ukraine is associated with the presence of the territory of our country within other states in a particular historical period, as well as subjective and objective conditions for the development of national liberation movements in the early and mid-twentieth century. Although not an inherent punishment for Ukrainians, the death penalty has a significant impact on the public awareness, as well as the processes of state formation. The formal and declarative nature of this type of punishment in the Old Rus state was replaced by active application in the Polish-Lithuanian era. This in turn influenced the adoption of the death penalty for war crimes among the Cossacks. The most ambiguous period in Ukrainian history and the use of the death penalty is the twentieth century, when the amnesty and renunciation of executions proclaimed by the Third Universal of the Central Rada changed to the use of the death penalty for war crimes during the Hetmanate, Directory and Western Ukraine. For Soviet totalitarianism, the death penalty was not so much a method of punishment as an instrument

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of asserting power.

Under conditions of independence, Ukraine has evolved from a country with one of the highest rates of the death penalty to its abolition. In our opinion, the debates in society and politics evidence the poor legal culture and historical memory, which actually need to be corrected, e.g. through scientific research.

If we try to define the role of the death penalty in historical retrospect, it was not just the factor of realization of a specific legal or ideological worldview, but also a measure of the spread of democratic and humanistic ideals and values. Attitude to the death penalty is a measure of "maturity of society". As an object of repressive policy of the Soviet government, Ukrainians should become the main opponents of the death penalty as a punishment for crime in the 21st century, as Ukraine has always sought European standards of humanity and treatment of convicts.

Keywords: *death penalty, Old Rus State, Polish-Lithuanian era, Cossacks, Ukrainian National and Democratic Revolution, historical culture, historical memory*

Introduction. Punishment as an act of responsibility for an illegal act has always been present in our life. Initially, people were responsible for their actions to nature, gods, family and tribe leaders, princes, kings, emperors, and ultimately, to society represented by the authorities for violating the rules that ensure its functioning. The degree and severity of punishment also evolved and were determined by the specifics of the social and political system, religious beliefs or even mentality. Lex talionis, which remained in force for several millennia, still exists today, since the search for the optimal degree of responsibility for an illegal act recognized as a crime continues. Even in the 21st century, there are no unified rules for punishing people for the same illegal acts. Moreover, in the modern world there is a measure of punishment like the death penalty, which is fully consistent with the original understanding of punishment as "an eye for an eye, a tooth for a tooth".

Ukrainian history is characterized by numerous military and political conflicts as well as a long period of totalitarianism, which provides many opportunities for the study of the death penalty. First, the study of the practice of the application of capital punishment allows establishing the degree of development of democratic institutions, the introduction of the idea of humanism, justice and various virtues. Second, the practice of application of the death penalty as well as the attitude of the general public to this type of punishment demonstrate the level of historical and legal culture and memory, the level of civilizational development and mentality.

In view of the above, the logical question is whether the increase in the percentage of people who support the restoration of the death penalty indicates that it is a method of punishment, which is traditional and inherent in Ukrainian historical and legal culture. Is it possible that the death penalty took root in the minds of Ukrainians under the influence of Soviet totalitarianism, for which this type of punishment was legitimate?

Analysis of recent research and publications. Statistics from the first decade of Ukrainian independence prove the validity of these arguments. Until 1995, Ukraine was a country with the highest number of death sentences and the impositions of the death penalty in the world. Thus, 143 people were sentenced to death in 1994 and 74 people in 1995 respectively (A. Didenko). On the positive side, not all sentences were carried out. In 1999, Ukraine renounced the capotal punishment, but Ukrainian society has repeatedly called for its restoration. An analysis of the historical past gibes reasons to assert that the use of the death penalty is not inherent in the Ukrainian state tradition as well as ethical and moral standards. This type of punishment was used only under conditions of military conflict or in extreme cases.

In the 21st century, the issue of reinstatement of the death penalty in Ukraine remains relevant, primarily due to war events in the East (when it is proposed to restore the death penalty for treason or torture of prisoners) as well as due to long-term failure to fight corruption (when referring to the experience of China, people suggest punishment by death penalty for corruption). In addition, the media report in detail on high-profile homicides, often forgetting to inform about investigation

findings and trial. In addition, Ukrainian society is not deprived of a significant number of people who commit extremely serious crimes (murderers, rapists, pedophiles, etc.). The recidivism of people committing serious and extremely serious crimes and doing criminal activities for a living are of particular concern for society. In general, the list of categories of people whose actions violate established norms of morality, law and public relations is quite wide.

In the first decade of the 21st century, many Ukrainians advocated the restoration of the death penalty (Figure 1), with the highest percentage of supporters at about 80 % in 2010 (80 % of Ukrainians support the death penalty).

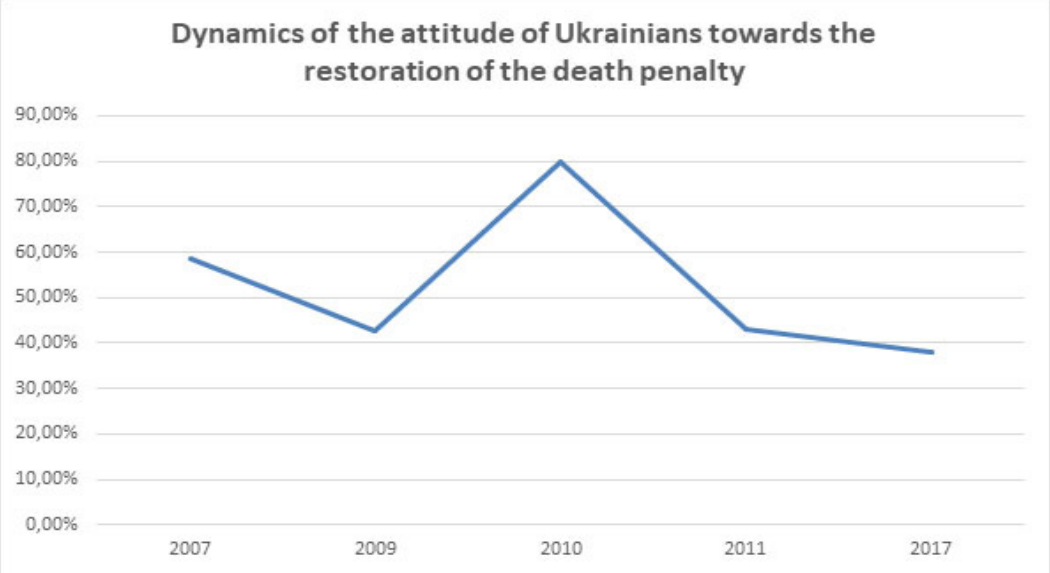

Figure 1 – Dynamics of the attitude of Ukrainians towards the restoration of the death penalty.
Source: (Less than 40 % of Ukrainians are in favor of restoring the death penalty, 45 % of Ukrainians want to return the death penalty, almost half of Ukrainians want to return the death penalty)

Based on public sentiment, it seems appropriate to clarify the historical nature of the distribution of the death penalty in Ukraine as the capital punishment.

Over the past few years, there has been renewed interest in the possibility of reinstating the death penalty as a possible means of combating certain types of crime. At the same time, issues related to the study of historical and legal aspects of the existence of this phenomenon require more attention.

The purpose of this work is: 1) to establish the genesis of the death penalty in the Ukrainian practice of combating crime; 2) to identify the main stages and factors that contributed to the approval of the death penalty; 3) to study the attitude to the death penalty of traditional ideological currents in Ukraine.

Formulation of the main material. This topic is of particular interest to historians and lawyers. If the latter deal with the issue of legal regulation of capital punishment, the task of historians is to study the traditions and evolution of capital punishment in a particular state as well as the reflection of the desire to apply capital punishment in the worldview of ordinary people.

Given that human life is considered as the highest value, the use of the death penalty is the subject of much debate among scholars. At the same time, it is foreign scholars who are actively studying the genesis of the highest degree of punishment and how it affects the legal awareness of the population, forms a set of legal values and attitudes to punishment. In this context, the scientific work of Kevin M. Barry

is of particular interest, since he not only traced the evolution of the death penalty as the ultimate punishment, but also determined how the understanding of the right to life has become a fundamental value (K. Barry, 2019). Characteristically, foreign scholars, primarily American ones, are studying the "policy" of the death penalty, which actually evolves in correlation with the legal maturity of society, the growth of civic consciousness. In this regard, there are some interersting conclusions of the 2008 collective monograph of American scientists, which provides statistics on the application of the death penalty to people who did not commit crimes, were innocently convicted, and executed respectively (F. Baumgartner et al.).

The study of the historical component of the development of the death penalty is also relevant among foreign scholars. Thus, V. Bailey analyzed the tradition in detail, including the legal development of capital punishment in Britain (2000).

The relationship between the death penalty and the development of criminal law has been studied by scholars like D. Johnson (2019) and D. Ordway (2019). The general conclusion from these studies is the need to reform criminal law and abolish the death penalty as a form of capital punishment.

As for the works of Ukrainian scholars, the study of the death penalty, its historical and legal content is similar to the European approach in several areas, namely as an element of the history of punishment and as a part of criminal law separately. Among the Ukrainian scientists, the studies of N. Khudoba, T. Kolomiiets, B. Kukhta, V. Nikolskyi, I. Panionko, R. Podkur, Y. Shapoval, S. Slyvka, V. Strus, M. Taranenko, I. Terletska, M. Yatsyshyn and others are of scientific interest.

While researching the problem we are studying, we should pay attention to several methodological principles. First, the chronological bottom line of the study will be the time of Kyivan Rus. Second, the periodization is based on the civilization and state approach that is classical for Ukrainian historical science. Third, the study regards the concept of the death penalty as an exceptional, most severe type of punishment, which consists in the forcible deprivation of life of a convict on behalf of the state and by court or (historically) by decision of other state or military bodies (Great Ukrainian legal encyclopedia, 2016, p. 886).

The first period of the death penalty in Ukraine is the Old Rus period. Information about the frequency of such punishment is extremely scarce, however, the first mentions date back to the reign of Volodymyr Sviatoslavovych, and the initiator of such punishment was the clergy (M. Taranenko, & T. Kolomiets, 2018, p. 89). Interestingly, Pravda Yaroslava contains a principle of lex talionis, or blood revenge, which was carried out in case of murder: "If a man kills a man, brother avenges his brother, or son avenges his father, or father his son…" (True Russian, p. 24). Thus the legislator offers a material alternative in case of absence of the blood relative who can and has the right to carry out blood revenge. The amount of compensation depended on the social status of the victim. The fact that Ruska Pravda (Academic List) begins with the article regulating the use of the death penalty testifies to the fact that this was the most severe type of punishment (for murder). No documents contain detailed information on the number of death sentences in the 11th century, but it is known that the Yaroslavychi, concluding their own edition of Ruska Pravda, withdrew the norm of blood revenge altogether, replacing it with monetary compensation. The latter approach was advantageous primarily from a material point of view, and thus was a consequence of the establishment of Christian ethical norms (although Christianity was the state religion in the time of Yaroslav Volodymyrovych, its norms and rules were not inherent in the majority of the population). Confirmation of the latter are the words of Volodymyr Monomakh that "kill neither the righteous nor the guilty... do not harm any Christian" (B. Kukhta, 1994, p. 49).

The lack or popularity of the death penalty in Kyivan Rus is one of the key factors denying the Norman theory, because the death penalty (the so-called blood eagle) was a popular and traditional form of punishment for the Scandinavians. In

fact, the death penalty was extremely popular in the medieval Europe, including the practice of the Catholic Church, which proves the lack of influence of Christian ethics on the culture of responsibility for the executions. However, it cannot be said that the Rus people, realizing the importance of the material component in the process of responsibility for the offense, rather, the norms declared in Ruska Pravda were a reflection of the existing mentality and traditional structure of the tribes that formed the Old Rus state.

The period of assertion of the death penalty in Ukraine was the Polish-Lithuanian era. At this time, both the types of crimes punishable by death and approaches to the execution of the defendant expanded. Wheeling, quartering, hanging, impalement, and drowning turned into mass public events, the purpose of which was both to prevent the commission of similar crimes in the futurea and to demonstrate the power of law and the state over ordinary citizens. M. Yatsyshyn has studied the Lithuanian statutes and calculated that the death penalty is mentioned 20 times in the first Statute of 1529, 60 times in the Statute of 1566, and more than 10 in 1588 (M. Yatsyshyn, 2015, p. 81). Such cruelty of the legislation of the 16th century can be explained by the traditional for that time way of social relations and the existence of serfdom, in which peasants were deprived of any rights, and their lives and freedom were controlled by landowners. Without going into the legal assessment of the status of a person and a citizen of the Polish-Lithuanian era, we note that such punishments arrived from Europe, because material and corporal punishments which did not include the death of the offender always prevailed in Ukraine. It can be proved by the so-called Cossack Law. Having no written form, it was customary in nature, and therefore represented the traditional Ukrainian ways of taking responsibility for the crimes committed. Professor S. Slyvka rightly considers Cossack Law as conservative and social (S. Slyvka, 1996, p. 165). All death sentences applied exclusively to crimes of a political or military nature and were carried out on the spot, without trial or investigation. This extraordinary nature of the legislation was dictated by the traditional way of life of the Cossacks, which was later transformed into civilian life.

However, it is difficult to say unequivocally whether the death penalty can be considered traditional for the Cossack era. On the one hand, it was semantic in nature and associated with military and spiritual loyalty and ethics. From a mundane point of view, it was better for a Cossack to die in battle with the enemy than to be executed for desertion or betrayal.

In view of this, punishments involving property recovery or infliction of non-pecuniary damage due to disparagement of the convicts honor like public beatings were common. (I. Panonko, & V. Strus, 2010, p. 162). This method proves the connection between the customary norms of the Cossacks and Kyivan Rus, where the death penalty was abnormal and was often replaced by material compensation. Accordingly, it can be argued that the traditional Ukrainian mentality is characterized by the preservation of human life, its value. On the territory of modern Ukraine, the death penalty was stipulated by the Lithuanian statutes, Polish legislation, as well as the legal norms of the Russian Empire. For the latter, the death penalty became a classic from of punisment in the 18th century and transformed from a means of punishment into a form of social and moral pressure on people. Thus, at the beginning of the 18th century, royal laws included 123 crimes, for which the death penalty was provided (M. Taranenko, & T. Kolomiets, 2018, p. 90). By the end of the century, the Russian Empire attempted to unify legislation providing for the death penalty, as well as measures to limit and even ban it.

The next stage during which the death penalty was approved was the 19th century, when the Ukrainian lands were divided between the Habsburg and Romanov empires. At this time, it is difficult to say that the application of capital punishment was traditionally Ukrainian, as the force of Austrian or Russian law did not provide for the possibility of

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applying customary law. Thus, Austrian law stipulated about ten types of crimes for which the death penalty was imposed by hanging or execution (N. Khudoba, 2009, p. 421). In the Russian Empire, the Charter to the Gentry abolished the death penalty for the upper strata of society as early as 1785. In practice, such sentences were still handed down, but they ceased to be public.

The 20th century seems interesting in terms of studying the scale of the death penalty in Ukraine, when Ukrainians restored the nation state three times (1917, 1941 and 1991). Our lands were part of foreign states with different approaches to the death penalty. In the end, our ancestors felt all the cruelty of the Soviet totalitarian system in which the death penalty was almost the main tool in the fight against opponents of the government.

The period of the Ukrainian national and democratic revolution of 1917–1921 became a time of some world outlook and legal metamorphoses in terms of the application of the death penalty. Formally and legally, the death penalty existed in all Ukrainian forms of statehood at that time: the Ukrainian People's Republic during the Central Rada and the Directorate, the Ukrainian State of P. Skoropadskyi and the Western Ukrainian People's Republic. It should be noted that the death penalty was abolished in the Third Universal of the Central Council (III Universal of the Ukrainian Central Council). In the Hetmanate of P. Skoropadsky, the Directorate of the Ukrainian People's Republic and the Western Ukrainian People's Republic, the death penalty was used primarily in relation to war crimes. Unfortunately, there is no information about the number of death sentences in 1917–1921. There are several reasons why the death penalty did not become widespread during the revolutionary period. First, Ukrainian national governments did not have the time and objective conditions to draft their own legislation. Second, in the conditions of war with the Bolsheviks or the Poles, the use of the death penalty was justified only in the case of crimes among the military. The abolition of the death penalty in the Third Universal of the Central Rada testified to the lack of historical experience in the application of such a punishment. In addition, Ukrainian political leaders were well aware of the demoralizing nature of such punishment even at the time.

If we characterize the Soviet period, the use of the death penalty that became widespread under "military communism" has become a tool of terror against civilians rather than punishment.There were more death sentences handed down in the 1930s than in other decades of Soviet rule. We completely agree with the opinion of A. Muzyka (Great Ukrainian legal encyclopedia: in 20 volumes, 2016, p. 887), that during the Stalinist terror, the death penalty as an extreme measure of punishment lost its legal properties, legal significance and expediency. Its objective properties in the field of prevention of especially serious crimes have been significantly weakened. It served Stalin's political interests, namely the destruction of his political opposition, the strengthening of personal power in the state, the unleashing of terror on us. According to the verdicts of the ODPU boards (United State Political Administration), the NKVD troikas (People's Commissariat of Internal Affairs), the Special Meeting, military tribunals, and courts, about 1 million citizens were executed by a firing squad in the period from 1930 to 1953. A special peak in the use of the death penalty occurred in 1937–1938, when more than 646 thousand people were executed (D. Lyskov, 2017).

In the Ukrainian context, D. Vedieneiev states that about a million people were arrested in the USSR in the period from 1927 to 1990; 545 thousand of them were sentenced to various prison terms, and 140 thousand were executed (Political repressions of the 1920s and 1980s and problems of forming national memory) (statistics reflect the number of victims with official death sentences, and the number of victims of Soviet repression is ten times higher). According to the historian, this information is conditional, as it is based on materials from Ukrainian archives, while Russian ones are not available.

The most inhumane was the Criminal Code of 1935, which effectively legalized

the use of all punishments, including the death penalty, for persons over 12 years old.

The decree of the Presidium of the Verkhovna Rada of the USSR as May 26, 1947 abolished the death penalty in peacetime, but three years later, the Decree of the Presidium of the Verkhovna Rada of the USSR as January 12, 1950 reinstated the death penalty for traitors, spies and saboteurs. Moreover, this list was only expanded later (1954, 1958, 1961, 1962, 1965, 1973).

The Soviet totalitarian system has been studied in detail by Ukrainian historians: V. Nikolskyi (2003, 624 p.), R. Podkur (2012), I. Terletska (2010, 2011), Yu. Shapoval (2013,), V. Vasyliev (2007), and others. The common conclusion of all researchers is that terror and repression are key elements of Soviet public policy, which was aimed not at establishing law and order, but at establishing a closed society with limited rights. In this case, the death penalty was not a mechanism of punishment, but the cheapest tool to eliminate those who were officially recognized as opponents of the Soviet system. In fact, during the preparation of the Criminal Code of 1922, Lenin personally recommended expanding the use of execution and proposed to supplement six articles, which provided for the application of capital punishment, with six more articles on unauthorized return from abroad, on responsibility for actions against the revolutionary movement during the autocracy, on agitation and propaganda, etc. (L. Misinkevych, 2013, p. 7). Soviet law reflected the atrophied consciousness of the contemporary leaders of the state, who regarded terror as the only possible way to establish and operate the Bolshevik government.

For the sake of objectivity, it should be emphasized that the methods of terror against the population carried out by the OUN (B) Security Service (Organization of Ukrainian Nationalists, Bandera members) were also unjustified. In fact, the activities of the OUN and its attempts to restore Ukrainian statehood are one of the most controversial and politicized topics in modern history. The whole phase of the OUN's active struggle from 1941 to the early 1950s was a wartime event that did not abate even after the end of World War II. It is clear that the underground status, as well as the constant confrontation with the Bolshevik authorities led to the use of the death penalty as the highest and main punishment. At the same time, the methods and grounds for the death penalty were clearly regulated. Thus, Art. 22 of the OUN Judicial Regulations stated that if a member of the nationalist underground expressed a desire to side with the enemy in a combat situation, he should be executed (death punishment) on the spot, without prior trial or investigation (Rules of the judiciary in the OUN). All these remarks concerned only the military, so it can be said that the OUN's judicial system was analogous to the drumhead court-martial, and the OUN Security Service, which was engaged in intelligence, counterintelligence and investigative activities, also carried out legal proceedings because it handled an operational situation as well reasons and the consequences of the offense.

If we discuss the statistics of death sentences, then according to source studies of Ukrainian scientists, 889 people out of 938 who were under investigation were executed in the period from January to October, 1945 in Volhynia only (D. Viedienieiev, & H. Bystrukhin, 2006, p. 220). In this case, it is difficult to talk about the objectivity of the investigation, respect for human rights, but the only objective condition for such "cruelty" is the armed struggle against the NKVD-KGB (People's Commissariat of Internal Affairs – People's Commissariat of State Security). On the other hand, the ideology of the OUN was a symbiosis of liberalism and totalitarianism. The execution of spies for the enemy, including the NKVD-KGB, was an element of intimidation and warning of all OUN members from such actions. Confirmation of the ideological orientation of the judicial system is evidenced by the demonstrative executions of people accused of espionage. At the same time, the military was executed by firing squad, and civilians were publicly hanged. The latter intended to demonstrate the inadmissibility of acts of cooperation with the Soviet administration.

In the first decade after gaining independence, Ukraine has become a country

where death sentences were handed down increasingly often. The moratorium on the death penalty in 1999 (there were previous attempts in 1995 and 1997) demonstrated the desire of our statesmen to establish democratic freedoms, when human life is considered the greatest value, even if it is the life of a person who committed a serious crime. The abolition of the death penalty is partly linked to the state's presence in the Council of Europe, (D. Viedienieiev, & H. Bystrukhin, 2006, 408 p.) but as we see, this type of punishment is not historically typical for Ukraine.

Finally, the death penalty disappeared from the legal field of Ukraine on April 5, 2001 with the adoption of the Criminal Code of Ukraine, where this inhumane punishment was replaced by life imprisonment (as a remark, such changes were made in 2000 to the previous Criminal Code, but the Code of 2001 was the Code of Independent Ukraine, not the "reformed" code of the Ukrainian Soviet Socialist Republic).

However, the data in Figure 1 show that there is a strong belief about the effectiveness of the death penalty in Ukrainian society. It is noteworthy that among the contemporary political parties and ideological currents advocating the restoration of the capital punishment, there are Communists and the All-Ukrainian Union Freedom (V. Burlakova) (they consider themselves the successors of the OUN and S. Bandera), as well as the leader of Radical Party) (Recommendation no. 1246, 1994 of the Parliamentary Assembly of the Council of Europe "On the abolition of the death penalty"). In our opinion, this situation can be explained by both political manipulation and the search for support from voters, as well as by the historical memory of the death penalty of the Soviet era (the Union of Soviet Socialist Republics) and the struggle of the nationalist underground.

Conclusions. Determining the impact of the death penalty on historical processes, as well as the development of public sentiment, we would like to note that as a form of punishment, the death penalty is not a traditional form of punishment for Ukrainian lands. The formal and declarative nature of this type of punishment in the Old Rus state was replaced by active application in the Polish-Lithuanian era. This in turn influenced the adoption of the death penalty for war crimes among the Cossacks. The most ambiguous period of Ukrainian history in regard to the use of the death penalty is the twentieth century, when the proclaimation of the Third Universal of the Central Rada changed its status to the use in case of war crimes during the Hetmanate, Directory and Western Ukraine (Western Ukrainian People's Republic), and it also became part of state policy in the Soviet era. For Soviet totalitarianism, the death penalty was not so much a method of punishment as an instrument of asserting its own power.

The use of the death penalty by members of the nationalist underground, including the OUN, is ambiguous. The objective factor of confrontation with the Soviet secret services did not always justify excessive cruelty to the civilian population, but the legal assessment of the activities of the OUN and UPA (Ukrainian Insurgent Army) is the subject of a separate study.

Under conditions of independence, Ukraine has evolved from a country with one of the highest rates of the death penalty to its abolition. In our opinion, the debates in society and politics are evidence of poor legal culture and historical memory, which actually need to be corrected, e.g. through scientific research.

Considering the role of the death penalty in historical retrospect, it is, in addition to the factor of realization of a specific legal or ideological worldview, a measure of the spread of democratic and humanistic ideals and values. Attitude to the death penalty is a measure of "maturity of society". As an object of repressive policy of the Soviet government, Ukrainians should become the main opponents of the death penalty as a punishment for crimes in the 21st century.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ІСТОРІЯ СМЕРТНОЇ КАРИ В УКРАЇНІ: ПРИЧИНИ, ЕТАПИ ТА ВПЛИВ НА ГРОМАДСЬКУ СВІДОМІСТЬ

Анотація. Мета дослідження – розкрити історичні причини виникнення та поширення смертної кари, а також ставлення українців до цього виду покарання. Особливу увагу приділено ставленню сучасних традиційних ідеологічних течій до смертної кари в Україні. Методологія дослідження базується на принципах історизму, наступності та об'єктивності. Міждисциплінарний характер дослідження зумовив використання цілого ряду загальнонаукових, філософських та спеціально-історичних методів, серед яких виділяємо: історичний метод, порівняльний метод, аналіз документів та ін. Наукова новизна дослідження полягає в суспільних викликах, які стоять перед Україною, виходячи з яких ми обговорюємо необхідність відновлення смертної кари. Історична ретроспектива та еволюція утвердження смертної кари від найдавніших часів до наших днів показали, що смертна кара не є традиційною.

Як правило, її встановлення на території України пов'язане з наявністю території нашої країни в складі інших держав у певний історичний період, а також суб'єктивними та об'єктивними умовами розвитку національно-визвольних рухів на початку та в середині двадцятого століття. Хоча смертна кара не є притаманним українцям покаранням, вона має значний вплив на свідомість суспільства, а також на процеси державотворення. Формально-декларативний характер цього виду покарань у Давньоруській державі змінився активним застосуванням у польсько-литовський період. Це, в свою чергу, вплинуло на прийняття серед козаків смертної кари за воєнні злочини.

Найнеоднозначнішим періодом в історії України та застосування смертної кари є XX століття, коли проголошена III Універсалом Центральної Ради амністія та відмова від розстрілів змінилася на застосування смертної кари за воєнні злочини часів Гетьманщини. Для радянського тоталітаризму смертна кара була не стільки методом покарання, скільки інструментом утвердження влади. За умов незалежності Україна пройшла шлях від країни з одним із найвищих показників смертної кари до її скасування. На нашу думку, суперечки в суспільстві та політиці свідчать про погану правову культуру та історичну пам'ять, які насправді потребують виправлення, наприклад, шляхом наукових досліджень. Якщо спробувати визначити роль смертної кари в історичній ретроспективі, то вона була не лише чинником реалізації конкретного правового чи ідеологічного світогляду, а й мірилом поширення демократичних та гуманістичних ідеалів та цінностей. Ставлення до смертної кари є мірилом "зрілості суспільства". Як об'єкт репресивної політики радянської влади, українці мають стати головними противниками смертної кари як покарання за злочин у XXI столітті, оскільки Україна завжди прагнула до європейських стандартів гуманності та поводження із засудженими.

Ключові слова: *смертна кара, Давньоруська держава, польсько-литовський період, козацтво, Українська національно-демократична революція, історична культура, історична пам'ять*

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ESTABLISHMENT OF STATE AUTHORITIES AND GOVERNANCE OF SOVIET UKRAINE AND THEIR FUNCTIONING IN 1920th – THE FIRST HALF OF THE 1930th: HISTORICAL AND LEGAL ASPECT

Abstract. The methodology of the research is based on the principles of historicism, authorial objectivity, systematics, comprehensiveness, continuity, as well as the use of general scientific (analysis, synthesis, generalization, classification, typology, idealization (abstraction) and special-historical (historical-genetic), problem-chronological, comparative-historical) methods.

The novelty of the research is that for the first time in the historiography of public authorities it comprehensively analyzes the state and trends of more than a century of research on the history of state authorities and management of Soviet Ukraine, their functioning in the 1920th – first half of the 1930th; it is established that the available scientific achievements only fragmentarily cover the study of its individual aspects, a narrower period or one of its components, and therefore do not give a holistic view of the historiographical process, changes and trends in methodology and research topics representatives of Soviet, modern Ukrainian and foreign historiographical generations; the latest scientific works of historians on the problem of research are considered and from this point of view the objective estimation of the Soviet historiography is carried out: the maintenance of concrete-historical works of the western historiography is analyzed. In addition to historical ones, the historical context of the works of representatives of various branches of legal, political science and management science is partially involved in historiographical analysis, which significantly expanded the cognitive possibilities of the relevant direction of historiographical research.

The research of the creation and functioning of the bodies of state power and administration of Soviet Ukraine in the 1920th and the first half of the 1930th lasted for a century in a row thanks to the efforts of representatives of different historiographical generations. In the period from the 1920th to the present, a consistent change of Soviet, modern Ukrainian and foreign historiographical generations can be traced, the contours of three conditional stages of the first of them, the Soviet one, are outlined: Inclusion of construction and functional purpose of the three-level system of higher legislative bodies, namely: The All-Ukrainian Congress of Soviets of Workers', Peasants' and Red Army Deputies, the All-Ukrainian Central Executive Committee of Soviets elected by the All-Ukrainian Congress of Soviets, and the Presidium of the All-Ukrainian CEC elected by the All-Ukrainian Central Executive Committee, other state and administrative bodies, to the subject field of scientific and historical activity of this and subsequent historiographical generations results in the appearance of assessments and original guidelines for understanding the history of public authorities and management of the Soviet era

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in the context of scientific support for the establishment of state sovereignty and independence of Ukraine.

Keywords: *state, law, Soviet Ukraine, national-state tradition*

Introduction. Modern world trends of globalization and informatization, radical changes in public life associated with state-building, clearly confirm the destruction of Soviet stereotypes and the urgency of obtaining a significant amount of factual information, their generalization, rethinking and formation on this basis of new research.

Separation of a set of historical studios with the problem of the nature of public authorities and management of Soviet Ukraine, individual stages of their formation and development, focused on modern methodological approaches, expanding the scope of research and involvement of legal and administrative science encourages acquaintance with the state of scientific development power and administration of Soviet Ukraine as a specific subject area.

Addressing the historiography of the creation and functioning of state authorities and administration of Soviet Ukraine in the 1920th – first half of the 1930th is the beginning of existing approaches, concepts of content of this process, the starting point for many scientific periodizations, which, in turn, ensure the integrity of the reproduction of the national-state tradition. It continued to take shape with the emergence of new requirements for the actualization of national and international, state and public, established and new to legitimize certain ideas or political and legal models of statehood.

The relevance of the research of the historiography of the creation and functioning of public authorities and administration of Soviet Ukraine in the 1920th – first half of the 1930th is due to the need for scientific understanding of this experience, identifying opportunities for its creative use in modern conditions.

Analysis of recent research and publications. Many scholars have paid attention to the development of theoretical principles for the reproduction of various aspects of the formation and functioning of public authorities and administration of Soviet Ukraine. In the context of consistent change of their generations, inclusion in the subject field of scientific and historical activity of the latest construction and functional purpose of the three-level system of higher legislative bodies, namely: All-Ukrainian Congress of Workers', Peasants' and Red Army Deputies, All-Ukrainian Central Soviet, modern Ukrainian, and foreign historiography can be distinguished by the Congress of Soviets and the Presidium of the All-Ukrainian CEC, elected by the All-Ukrainian Central Executive Committee, and other bodies of state power and administration. It is advisable to refer to the generalizations of Soviet research on the history of Ukraine in an additional volume of the multivolume Russian-language version of "History of the Ukrainian SSR" – "Historiography of the History of the Ukrainian SSR" (Hops, 1986, 555 p.), which serve as an intermediate result methodological changes, partial reassessment of established historiographical positions. Hence the formulation of a range of questions relating to the ideological and organizational conditions for the study of the history of Soviet society and the state, and their specific historical elaboration. (Hrynevych, 1998, Parfinenko, 2008, Smoliy, 2015, 212 p., Dmytryk, 2019, Okipniuk, 2019) in the context of the transition to civilizational knowledge of history (Aleksievets, Kalakura, Udod, 2012, 696 p., Kalakura, 2014, p. 25). It should be noted that in Soviet times B. Babiy, V. Goncharenko, P. Zakharchenko, A. Rogozhin, V. Rum joined the study of certain issues of organization and activity of public authorities and administration. Yantsev, Taranov, Usenko, Yakovenko and other representatives of the older generation of historians of law with Ukrainian values and self-consciousness, who did not remain captive to methodological schemes and

Marxist dogmas.

The purpose of our research is to conduct a comprehensive analysis of the state, completeness and reliability of the study of the history of state authorities and management of Soviet Ukraine, their functioning in the 1920th – first half of the 1930th, taking into account the consistent change of historiographical generations.

Formulation of the main material. Historiography of the research of the creation and functioning of state authorities and administration of Soviet Ukraine in the 1920th – first half of the 1930th, the development of which continues to this day, covers Soviet, modern Ukrainian and foreign historiography. The genesis of the research of public authorities and management of the representatives of the Soviet historiographical generation, in turn, involves the identification of a number of conditional stages. In particular, the first stage: the beginning of the 1920th – the middle of the 1930th – the works of contemporaries of this period; Stage II: the second half of the 1930th – early 1950th, associated with the strengthening of the totalitarian regime and the cult of personality of J. Stalin and his entourage; Stage III: mid-1950th – 1980th – the work of Soviet researchers, characterized by a reflection of the easing of ideological pressure and interest in state and legal issues of the Soviet Union in general and Soviet Ukraine in particular. It is noteworthy that the Soviet historiography of the research topic, despite its volume, is characterized by the use of party decisions and lack of source (regulatory) base in terms of the spread of official Soviet doctrine and the secrecy of much of the archival material.

The first stage of Soviet historiography (early 1920th – mid 1930th) is represented by the works of contemporaries of political change and is associated with the formation of Bolshevik power, the formation of the Soviet Union and the formation of Soviet government. These are, in particular, the works of O. Butsenko (1927), A. Ginzburg, O. Yevtikhiev (1928, 296 p.), I. Falkevich, V. Hitev (Ginzburg, 1931, 712 p.) and other researchers.

The study of the constitutional and legal principles of the creation and functioning of state authorities and administration of Soviet Ukraine is facilitated by the works of S. Dranitsyn (1924, 231 p.), E. Engel (1923, 248 p.), G. Kulakova (1929, 95 p., 1925, 58 p.), O. Malitsky (1924, 208 p., 1928, 479 p., 1928, 416 p., 1926, 319 p.) and other scholars who studied the constitutional acts of the USSR and RSFSR.

The second stage of Soviet historiography (the second half of the 1930th – early 1950th) is associated with the strengthening of the totalitarian regime and the cult of personality of J. Stalin, the struggle against dissent and mass repression. At this stage, there were isolated studies of the legal basis for the creation and functioning of public authorities and administration of the USSR, which is associated with the general decline of historical science (Sagittarius, 2014, 200 p.).

The main emphasis in historiography focused on increasing the role of workers in the activities of councils, the growth of the leading role of the party in the socio-political and spiritual spheres (Kotsur, 1999, p. 384). Among such researches it is necessary to name conjunctural work of P. Stuchka "Doctrine of the Soviet state and its Constitution" (1931, 288 p.), Collections of I. Diomidov in the field of the state law (1930, 520 p.), as well as the work "History of the Soviet Constitution in decrees and resolutions of the Soviet government: 1917-1936" (History, 1937) and studies that outline the structure and powers of the state authorities of the USSR.

The third stage of Soviet historiography (1950th – 1980th) is characterized by the easing of ideological pressure, the debunking of the cult of personality of J. Stalin, interest in the study of state and legal issues and the largest number of works on the subject of our research.

In Soviet times, a number of scholars studied the legal status of All-Union and Union-Republican bodies of state power and administration, who developed questions of the general principles of functioning and structure of

public administration bodies of the USSR. In particular, V. Manokhin approached the issue of formation and organization of executive and administrative bodies, distinguishing two groups of collegial bodies. The researcher referred to the first group of public administration bodies those bodies in which the management was carried out directly by the board (for example, Councils of Ministers, Soviet economies, executive committees of local councils). The second group of public administration bodies included bodies headed by a head and a board with an advisory vote (for example, a board of a ministry). He argued that the organizational structure of public administration should be such that it best ensures the implementation of its tasks and functions (Manokhin, 1963, p. 66).

In the works of the Soviet scientist B. Lazarev, the system of public administration bodies, their competence, forms and methods of work were analyzed (1978, p. 48, 1972, p. 280). The author explored the principles of formation of public administration, focusing on the general principles of functioning of the central executive bodies of the USSR (1978, p. 88).

The work of Ts. Yampolskaya "Bodies of Soviet Public Administration in the Modern Period" (p. 227) is devoted to the study of theoretical problems of the organization and activity of public administration bodies in Soviet times.

Soviet scientists I. Ananov and I. Davitnidze studied the activities of the People's Commissariats and Ministries of the USSR, their powers and structure. A significant contribution to the study of the legal status of the Union and Republican ministries and their boards made the Soviet scientist I. Davitnidze. In his work on the analysis of the status of colleges of ministries, the researcher revealed the general principles of the emergence of boards in the People's Commissariats of the USSR and the Union Republics, the legal status, powers and organization of ministries, in the first half of the 1920th (Davytnidze, 1972, 152 p.).

The Soviet scientist I. Ananov studied the tendencies of the development of the principle of single-headedness in the People's Commissariats, and later in the ministries, the forms of its combination with collegiality, analyzed the rights and responsibilities of the minister, his deputies, and the peculiarities of the minister's relations with the board (1960, 287 p). In his works, written with the concept of federalism in mind, he divided the Soviet apparatus of public administration into the administrative apparatus of the USSR and the union republics. The first included the People's Commissariats of the All-Union and United Groups; Republican People's Commissariats, in turn, were divided into a joint autonomous. The researcher referred to the All-Union People's Commissariats those People's Commissariats that did not have eponymous commissariats in the Union republics. A characteristic feature of the scientist was that in the 1920th the USSR was in charge not only of the so-called "force" People's Commissariats, but also of the governing bodies in the field of foreign policy, communications, post and telegraph. Among the characteristic features of the united People's Commissariats was their dual subordination to the All-Union central governing body and the republican body of the same name. Whereas the autonomous People's Commissariats of the Union Republics functioned outside the sphere of federal Soviet administration and were exclusively subordinated to the relevant republican central executive committees, but not to the All-Union bodies (Ananov, 1925, p. 37). Despite the fact that I. Ananov was one of the first researchers to analyze the activities of the Soviet executive and administrative bodies, his works are mostly descriptive in nature and partly contain excerpts from regulations. For example, in the monograph "Essays on Federal Administration in the USSR (People's Commissariats of the USSR)" in 1925, the author, exploring the functions and powers of the People's Commissariats, provides texts of regulations about them (Ananov, 1925).

The most thorough and complete research of public authorities and administration of Soviet Ukraine in the 1920th – the first half of the 1930th. the works of B. Babiy (1961, p. 382), V. Kulchytsky (1956, p. 29), A. Rohozhyn (1950,

p. 20, 1963), D. Yakovenko (1975, p. 118) and other scientists. B. Babiy's work "Ukrainian Soviet State in the Period of Reconstruction of the National Economy (1921–1925)" considers the system of public authorities and administration of Soviet Ukraine, their organizational structure and powers, as well as traces the changes that have taken place in the system of bodies state power in connection with the administrative-territorial reform of 1923–1925 (1961, p. 382).

The following monographic study by B. Babiy "Local bodies of state power of the Ukrainian SSR in 1917–1920" devoted to the characteristics of the system of local Soviet authorities of this period, the structure and competence of the Revolutionary Committees of Ukraine, the stages and features of the formation of local councils, their structure and powers (1956, 268 p).

The constitutional principles of creation and activity of the central bodies of state power and administration of the USSR in 1917–1937 are considered in the work of D. Yakovenko, which analyzes the structure and powers of the All-Ukrainian Congress of Soviets, VUTSVK USSR, SNC USSR and People's Commissariats USSR (Yakovenko, 1975, 118 p).

It should be noted that in the 1970th and 1980th, interest in the study of various aspects of Soviet construction was revived, and in-depth periodicals appeared in periodicals revealing the peculiarities of the functioning of certain organs of state power and administration in Soviet Ukraine in the 1920th – the first half of the 1930th (Belan, 1972, Belan, 1973, Bulakh, 1982, Lychkaty, 1972, Chernichenko, 1987, Sharapa, 1968).

Thus, Soviet scholars were actively engaged in the study of the general principles of creation and functioning of public authorities and administration of Soviet Ukraine. Despite the maximum bias and predominance of historical and party publications, their works were an echo of the general state of Soviet historical science and historiography of specific issues of the then history of the All-Ukrainian Congress of Soviets, VUTSVK USSR, SNC USSR and People's Commissariats of the USSR.

The modern historiography of the establishment of the bodies of state power and administration of Soviet Ukraine and their functioning in the 1920th and the first half of the 1930th means the period of its development that began at the turn of the 1980th and 1990th and is connected with effective coverage of relevant phenomena and processes, mainly on the basis of archival materials. Well-known Ukrainian scientist, academician, doctor of law, professor V. Goncharenko studied the activities of the All-Ukrainian Congress of Soviets of Workers', Peasants' and Red Army Deputies (1976, 187 p., 1991, 575 p., 1990, 64 p). Analyzed the norms of the Constitutions of the USSR of 1919 (1983) and 1929, the Constitution of the USSR of 1924, as well as the structure, powers and system of state power and administration of the USSR, in particular, characterized the formation of All-Ukrainian Councils (2014), the right of the legislative bodies of the USSR to constitutional protests and its implementation in the 1920th (2007), regulations governing the activities of higher authorities of Ukraine in the period of the new economic policy (1921–1929) (2014), the law of the USSR in the period of the new economic policy (1921–1929) (2013), constitutional construction in Ukraine during the new economic period politicians (1921–1929) (2015), the status of the Ukrainian SSR under the first Constitution of the USSR (2013), the organization and activities of the Presidium of the All-Ukrainian CEC (1917–1938) (2006), organization and activity of the Verkhovna Rada of the Ukrainian SSR according to the Constitution of the Ukrainian SSR of 1937 (2007). An important role in eliminating the so-called "white spots", the transformation of Soviet historiography was played by the publication of collections of documents, textbooks and manuals edited by Academician V. Goncharenko (2007, 256 p).

Among the significant number of specific historical works of modern domestic scholars are, first of all, monographs on the peculiarities of the functioning of public authorities of independent Ukraine, which analyze the historical aspects of the establishment and functioning of public authorities, including in Soviet times.

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D. Zhuravlyov's monographic study "Organizational and legal support of the central executive bodies of Ukraine: theoretical and legal aspect" reveals the theoretical and practical problems of principles and forms of organizational and legal support of the central executive bodies of Ukraine, and also characterizes the stages of their formation. The scholar notes that the process of formation and development of central executive bodies should be considered starting from the times of the Ukrainian People's Republic, the Hetmanate and the Directory. Referring to the Soviet period of formation of state authorities, he notes that the omnipotence of the Soviets completely absorbed the executive branch as an independent form of state power (2013, p. 8).

The monograph of the Ukrainian researcher V. Goshovsky examines the features of legal regulation of the executive system in Ukraine, theoretical, methodological and organizational and legal principles of its reform, as well as historical and legal aspects of the organization of the executive branch in Ukraine (2012, 320 p). Monographic study on the problems of modernization of the system of power and public administration reforms carried out in the USSR in the second half of the twentieth century analyzes the historical preconditions of these processes, including those that developed in the 1920th and the first half 1930th (Timtsunik, 2003, 400 p).

In the work "Judiciary in Ukraine: historical origins, patterns, features of development", prepared by the team of authors of the Institute of State and Law. V. Koretsky National Academy of Sciences of Ukraine and the International Association of Historians of Law, edited by I. Usenko, one of the sections is devoted to the analysis of the legal status of the judicial authorities of Soviet Ukraine in the 1920th – first half of the 1930th (2014, 503 p).

The dissertation works of V. Goncharenko are devoted to the study of the formation and activity of the All-Ukrainian Congress of Soviets of Workers', Peasants' and Red Army Deputies. (1976, 187 p., 1991, 575 p.), In which, among other things, historiographical reviews are considered a mandatory component. A number of dissertations, the authors of which share the position of enriching the historiographical aspect, are devoted to the formation and activities of individual bodies of state power and administration of the USSR.

O. Oliynyk's dissertation research analyzes the peculiarities of the legal status, organizational and legal bases of the People's Commissariat of Internal Affairs of Soviet Ukraine in 1917–1941 (Oliynyk, 2000, 205 p).

The system of state education authorities in Soviet Ukraine, including the People's Commissariat of Education of the USSR, was analyzed in the dissertation research of S. Maiboroda (2002, 411 p.) and N. Samandas (2001, 215 p). In L. Ryaboshapka's candidate's dissertation and articles the legal bases of functioning of this commissariat are investigated (1991, 16 p., 2010).

In the dissertation research V. Strilets analyzes the legal framework for the formation of the system of revolutionary committees at the turn of 1919–1920, reveals the features of the provincial, county, township and village revolutionary committees of Poltava province and characterizes the structure and competence of revolutionary committees at all levels (2014, 200 p).

During the coverage of the history of formation and development of local executive power from the times of Russia to the present in the work "Regional executive power of Ukraine: history and modernity" one of its sections is devoted to the analysis of the formation of Soviet local authorities (Rybak, Tolstoukhov, Yatsuba, 2007, 409 p). In the dissertation research of the status of local councils in the system of public authorities is analyzed, the transformation of their powers is characterized, and changes in the social composition of the deputy corps are traced (Burda, 2016, 246 p).

In V. Sokyrska's dissertation research, as a political-economic and administrative-territorial discourse devoted to the principles of formation of relations between the RSFSR and the USSR in 1919–1929, the factors influencing the formation and activity of the RSFSR and USSR authorities point to activity and

role of the institute of authorized, authorized and permanent representations as a formalized feature of Russian-Ukrainian relations (2018, 648 p).

In general, there are quite different in content, deeper publications, some of which are devoted to the creation and functioning of public authorities and administration in the Soviet era as a whole or in certain periods, others – to individual public authorities and administration in the USSR.

The third group of historiography consists of works by foreign scholars devoted to certain aspects of the creation and functioning of public authorities and administration of the USSR and the RSFSR. This, in particular, the study of A. Bondarenko (2010, 156 p.), V. Vedeneeva (2002, 236 p.), F. Ditynko (2006, 187 p.), O. Maksimova (2015, 484 p.), O. Nenina (1999, 159 p.), O. Filonova (2016, 222 p.), O. Chistyakova (2003, 224 p.), O. Shishov, 1985, 32 p.) and other scientists. In particular, O. Maksymova's dissertation research analyzes the legislative activity of congresses of Soviets, the CEC, the Presidium of the CEC and the RSFSR SNC in 1917–1936, and characterizes the process of interaction between these bodies in the field of lawmaking. The author emphasizes that one of the features of the Soviet codification was that it was carried out under the influence of Marxist-Leninist ideology (2015, p. 430).

In the monograph of the Canadian scholar Peter Solomon "Soviet Justice under Stalin", devoted to the analysis of the judiciary, as well as the peculiarities of the judicial process in the Soviet state in the late 1920th – early 1930th (Solomon, 1998, 464 p.), the activity of state authorities of the Soviet Ukraine of the specified period is considered. In the dissertation research of O. Filonova, devoted to the analysis of the peculiarities of the judicial system of the RSFSR in 1921–1929, it is noted that the judicial system and the judicial process of the RSFSR were dominated by ideological bases. It states that the judiciary did not occupy an independent place in the mechanism of the state, its development was determined by the Soviets, NKVD of the RSFSR, RCP (b) – CP (b), its modernization was subject to party decisions, which provided common guidelines for judicial bodies (2016, p. 166).

Specific thematic works of foreign experts show interest in certain aspects of the creation and functioning of public authorities and management of the USSR by the latter, which reflects the need for changes in party-state vision of the history of this process, related events and phenomena.

Conclusions and prospects for further exploration. Historiographical elaboration of the problem of creation of bodies of state power and administration of Soviet Ukraine, their functioning in the 1920th – first half of the 1930th took place from this period, with varying degrees of intensity and delineation of the content. It reflected the general tendencies in the formation of historiography within the framework of Soviet doctrine, which were accompanied by the displacement of the national-state tradition of covering this complex and contradictory process. Instead, his class-formation understanding from the standpoint of directive guidelines and obligatory ideological postulates became dominant.

The first, and later quite significant results of the development of the theme of the emergence and functioning of the All-Ukrainian Congress of Soviets, the All-Ukrainian Central Executive Committee of the USSR, the SNC of the USSR and the People's Commissariats of the USSR testify to the works of the 1950s and 1980s. Through the efforts of B. Babiy, V. Kulchytsky, A. Rogozhin, D. Yakovenko and other scholars cover the constitutional principles of creation and operation of central bodies of state power and administration of the USSR, various aspects of the functioning of the system of bodies of state power and administration of Soviet Ukraine in general, their organizational structure and powers. However, this is happening, as in each of the previous stages of Soviet historiography, under the influence and at the level of requirements, clearly placed emphasis on the interpretation of the principles of creation of public administration of the USSR, methods and forms of their activities. The state in line with the slogan about the

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mechanism of the dictatorship of the proletariat, which consisted of the CP (B) U as the core of power and a number of state and non-state organizations through which the party pursued its political course (Tymchenko, 2007, p. 141).

The representativeness of the works of modern Ukrainian researchers is closely connected with the objective coverage of V. Goncharenko, in particular, the order of formation of the All-Ukrainian Congresses of Soviets, the right of legislative bodies of the USSR to constitutional protests and its implementation in the 1920th, the status of the Ukrainian SSR According to the first Constitution of the USSR, the organization and activities of the Presidium of the All-Ukrainian CEC (1917–1938), the organization and activities of the Verkhovna Rada of the USSR under the Constitution of the USSR in 1937, the focus of V. Zhuravleva, B. Goshovsky, V. Tymtsunyk and a number of other researchers on various processes of formation and functioning of certain bodies of state power and administration of Soviet Ukraine. Once again, there is an understanding of the true meaning and motives for the spread of slogans about the "triumphant march of Soviet power" in this day in the USSR.

Acquisitions of foreign scientific environment differ from Soviet scientific achievements and scientific achievements of modern domestic scientists by reviving interest in certain aspects of creation and functioning of state authorities and administration of the USSR, which reflects the need for successive changes in party-state vision of this process and relevant processes in RSFRR and the USSR.

Clarification of the state, completeness and reliability of the study of the history of the creation of public authorities and management of Soviet Ukraine and their functioning in the 1920th – first half of the 1930th, taking into account the successive change of historiographical generations, outlining a number of conditional stages within these generations analysis of their theoretical and methodological tools, terminological and conceptual apparatus allows us to approach the development of estimates of many events and phenomena of this process. They should become a kind of guidelines for understanding the history of public authorities and administration in the context of scientific support for the establishment of state sovereignty and independence of Ukraine.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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СТВОРЕННЯ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ ТА УПРАВЛІННЯ РАДЯНСЬКОЇ УКРАЇНИ ТА ЇХ ФУНКЦІОНУВАННЯ В 1920-х – ПЕРШІЙ ПОЛОВИНІ 1930-х РОКІВ: ІСТОРИКО-ПРАВОВИЙ АСПЕКТ

Анотація. Метою дослідження є проведення комплексного аналізу стану, повноти і достовірності вивчення історії створення органів державної влади та управління радянської України, їх функціонування в 1920-х – першій половині 1930-х років з урахуванням послідовної зміни радянської, сучасної української та зарубіжної історіографічних генерацій. Методологія дослідження ґрунтується на принципах історизму, авторської об'єктивності, системності, всебічності, наступності (спадкоємності), а також на використанні загальнонаукових (аналіз, синтез, узагальнення, класифікація, типологізація, ідеалізація (абстрагування)) та спеціальних (історико-генетичний, проблемно-хронологічний, порівняльно-правовий) методів. Новизна дослідження полягає в тому, що в ньому вперше в історіографії органів публічної влади комплексно проаналізовано стан і тенденції більш ніж столітнього процесу дослідження історії створення органів державної влади та управління радянської України, їх функціонування в 1920-х – першій половині 1930-х рр.; встановлено, що наявні наукові надбання лише фрагментарно охоплюють дослідження її окремих аспектів, більш вузький період або одну зі складових, а тому не дають цілісного уявлення про історіографічний процес, зміни й тенденції в методології і

тематиці досліджень представників радянської, сучасної української та зарубіжної історіографічних генерацій; розглянуто новітні наукові праці з проблеми дослідження і під цим кутом зору здійснено об'єктивну оцінку радянської історіографії; проаналізовано зміст конкретно-історичних праць західної історіографії; до історіографічного аналізу залучено історичний контекст праць представників різних галузей правової, політологічної й управлінської науки, що значно розширило пізнавальні можливості відповідного напряму історіографічного дослідження.

Ключові слова: *історіографія, радянська Україна, національно-державницька традиція*

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THE MODERN METHODS OF FIRST AID (PREMEDICAL CARE) TEACHING IN THE POLICE INSTITUTIONS

Abstract. The article discusses the possibilities and practical importance of using interactive forms of training, and the main attention is paid to the study of the positive impact of situational role-playing games on the provision of pre-medic training in the context of their practical implementation during police training in appropriate institutions with specific training conditions.

The authors believe that is very important to grant future police officers (cadets) with conditions for gaining stable skills of automatic manipulation when giving premedical care and ensure their understanding of the processes that will occur in the victim's body. However, this knowledge and skills must be based on awareness of the risk of being in extreme conditions.

To assess the efficiency of different pedagogical approaches to teaching premedical training

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to future police officers, the authors identify 3 models of practical training: using situational tasks without approaching the real conditions of professional activity, situational tasks with the elements of role-playing games and cases under stressful conditions, only students' demonstration of their practical skills with the elements of practice. The success of the cadets in the exam was evaluated.

The authors consider it appropriate that in premedical training of cadets for the development of basic practical skills, which are required for future professional activity, as well as for the creation of prerequisites for psychological readiness to implement in practice these skills and abilities, teachers should purposefully use active and interactive forms and technologies.

Keywords: *interactive methods of training, active methods of training, case-study method, situational role-playing games, game methods of training, participants of interaction, instructor, teacher*

Introduction. The realities of life are such that anyone can become the victim of a crime or another event (emergency of natural or artificial origin) that results in personal injury or death, which can be prevented if immediate first aid (premedical care) is provided. Most often, the danger to human life and health is not caused by the injury itself, but by their early complications, such as bleeding, traumatic shock, pain, loss of consciousness, and other disorders of vital functions of the human body. According to statistics, first aid provided during the first 4 minutes increases the chances of survival by 30 % (Government portal, 2018). This is especially true for people, who are exposed to high risk in their professional duty, where they often find themselves in an extreme situation or next to those, who happened to be in danger. More than 80 % of respondents working abroad as police officers, fire and rescue personnel and dispatchers of ambulance report the presence of the stress factors and traumatic events at their work. 10-15 % of them were diagnosed with post-traumatic stress disorder (PTSD) (Klimley et al., 2018). In these cases, their lives and health depend on the people around them, because the emergency medical team may not reach the scene in time to help them.

Worldwide, the first person to arrive at a scene is a police officer who is required to perform certain standard operating procedures to save the victim's life, given the lack of accurate knowledge of his or her danger (victim or offender), the danger to the environment (location, crowd). Adoption of a single emergency first aid course is a worldwide practice, and its aim is to teach "speaking the same language" to all emergency services. In Europe and the United States, the basic course for rescue and police services is called the "First Response" (Government portal, 2018).

According to the national legislation, police officers on duty have a number of tasks for the provision of services of assistance to persons who, from personal, economic, social reasons or due to emergencies, require such help. This includes an emergency care, premedical and medical assistance to crime or accident victims, as well as persons, who are in a helpless state that can create a danger to their life and health. Not only the life of the victim, but also the successful performance of official duties – the cessation of the offense – depends on the timely and proper provided premedical help.

That is why the effectiveness of police officers training to provide first aid before the arrival of the ambulance crew is a relevant issue within the framework of special professional tactical training.

In light of recent global events associated with the spread of the corona-virus injection (COVID-19), which has forced schools to move to distance learning, the need to develop and implement new forms of police training, including programs for the acquisition of theoretical and practical skills in performing their functions in conditions of unknown risk and emergencies.

The objectives of this paper are the analysis of the effectivity of the modern methods and interactive tools in premedical training of police officers in the specialized institutes/educational organizations and the evaluation of the possibilities and expediency of the application such in Ukraine

The purpose of our research is to analyze the effectiveness of the latest methods and interactive tools in premedical training of police officers in special

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educational institutions/schools and to clarify the possibility and feasibility of applying in Ukraine similar experiences from foreign countries.

Analysis of recent research and publications. The current research in this field helps to solve the mention above problem. Thus, several foreign studies are dedicated to the problems of the interactive education, forms and methods of the educational process, such as: M. Yarmohammadian, E. Khorsani, R. Norouzinia "Institutional Accreditation in Medical Education: The Experience of The Survey Visit Teams" (2020), A. Givati, C. Markham, K. Street "The bargaining of professionalism in emergency care practice: NHS paramedics and higher education" (2018), T. Ngo, K. Belli, M. Shah "EMSC program manager survey on education of prehospital providers. Prehosp Emerg Care" (2014), T. Pelaccia, R. Viau "Motivation in medical education" (2017), S. Scott, M. Carman, M. Zychowicz, M. Shapiro, N. True "Implementation and Evaluation of Tactical Combat Casualty Care for Army" (2020), Hong Tao "A simulative training system in providing pre-hospital trauma care" (2011), Fabian O. Kooij, Anouk P. van Alem, Rudolph W. Koster, & Rien de Vos "Training of police officers as first responders with an automated external defibrillator" (2004), K. Klimley, V. Van Hasselt, A. Stripling "Posttraumatic stress disorder in police, firefighters, and emergency dispatchers" (2018) etc.

Formulation of the main material. The main international legal document, which contains provisions on human rights in the field of health, is the Universal Declaration of Human Rights, adopted at the third session of the UN General Assembly by Resolution 217 A (III), December 10, 1948 p. Article 25 of this document declares that everyone has the right to medical care and the necessary social care and that the special assistance and help should be given to motherhood and childhood (1950).

"Fundamentals of the legislation of Ukraine on health care" contains general principles for the provision of (pre) medical care and protection of public health, and defines the concept of "premedical care" as urgent actions and organizational measures aimed at saving and preserving human life in an emergency condition and minimization of the consequences of such conditions on the health of people. These actions are carried out at the scene by persons, who do not have medical education, but in their official duties must have basic practical skills to save the life of a person in an emergency, and in accordance with the law are obliged to carry out such actions and measures (1992).

Among the main responsibilities of the police the Law of Ukraine "On the National Police" considers also the obligation to provide immediate (premedical) assistance to the victims of crime, accidents, as well as persons who are helpless or in a life-threatening condition or health or persons affected by coercive measures (2015).

An element of ensuring the mechanism of inevitability of police liability for leaving the victim in danger – criminal liability for failure to provide without good reason at the place of home care or unreasonable refusal to provide it (Criminal Code of Ukraine, 2001).

In this regard, it is very important to grant future police officers (cadets) with conditions for gaining stable skills of automatic manipulation when giving premedical care and ensure their understanding of the processes that will occur in the victim's body in order to predict his future condition and provide sufficient support for his life before the arrival of a qualified emergency medical team. However, this knowledge and skills must be based on awareness of the risk of being in extreme conditions, in particular, the so-called "fire" contact with the offender.

Beginning in 2017, elements of pre-medical training based on the TECC (Tactical Emergency Care) clinical protocols, i.e. "Tactical Emergency Medical Care", were gradually introduced into tactical training programs in police schools of Ukraine. These protocols were developed by the researchers from Scientific and Practical Center for Emergency Care and Disaster Medicine of the Ministry of Health of Ukraine in 2016. Their popularization was triggered by the the political course of Ukraine towards the partnership with NATO and the implementation of

its best standards in the security space, as defined in the Sustainable Development Strategy "Ukraine-2020" (2015).

The fact is that TECC is recognized worldwide as the best experience in providing premedical care (first aid) on the battlefield of the TCCC, developed by NATO, which has adapted to civilian conditions, taking into account the tactical situation in which a police officer always finds himself. Stephen M. Scott, Margaret J. Carman, Michael E. Zychowicz, Mark L. Shapiro, Nicholas A. True (2020) in their study "Implementation and Evaluation of Tactical Combat Casualty Care for Army Aviators" note that the importance of developing military strategies to reduce preventive mortality by reducing blood loss and reduction of time between injury and surgery on the battlefield, and the successful introduction of TCCC in all parts of the United States and Allied countries is beginning to meet this need, but the number of such courses is still not satisfactory. On the example of TCCC training for military pilots, they demonstrate a significant increase in knowledge and confidence in providing prehospital care, as well as effective training of the necessary psychomotor skills needed to reduce precautionary mortality on the battlefield through the use of scenarios (simulation tasks). They note that their project demonstrates on a small scale how the TCCC can be adapted to specific military tasks in order to successfully accomplish the future TCCC course for all servicemen. In addition to military aviation, this program is easily modified for aviators in the military and civil sectors (2020).

Experts from the EU Advisory Mission, the Red Cross Society and its regional offices, NAEMT (National Ambulance Association), the European Resuscitation Council have become active drivers and motivators in the development of the training system, the use of new forms and methods of premedical care in the police work at the scene of crime or accidents performed within the project "Operational support in providing strategic advice on reforming the civil security sector of Ukraine".

The reason for such close attention to the implementation of TECC in Ukraine was the constant increase in the number of man-made disasters and terrorist acts, as a result of which the civilian population suffers, and the need to revise outdated emergency premedical protocols to meet emergency requirements.

The TECC training program took into account the possibility of providing pre medical care to injured police officers in three essentially different situations according to the levels of threat to life and health, as well as the priority of professional performance of the task: assistance in a direct threat (red zone); assistance in the conditions of indirect threat, but in tactical conditions (yellow zone); assistance in the absence of threat and evacuation (green zone).

Because of the professional responsibilities of a police officer are related to the possibility of providing home care at the scene, a program of training and retraining of police officers has been developed, which provides standards and algorithms for acquiring theoretical knowledge and practical skills to provide first aid, taking into account the basic requirements of international programs, such as: "Fundamentals of life support", "First on the scene", "Professional life support", taking into account the possibility of mastering the skills of first aid at three levels. These training programs were approved by the Order of the Ministry of Health of Ukraine dated March 29, 2017, no. 346 "On improving the training in providing home care to persons without medical education" (2017).

These programs provide qualifications of I, II, III levels and take 8, 48, 120 hours, respectively. Mandatory for police officers under Article 18 of the Law of Ukraine "On the National Police" is the preparation and acquisition of a certificate under the program "First on the scene", i.e. the qualification of premedical care at least level II. The course lasts 48 hours and is based on the clinical protocols of medical care unified by international standards and on the experience of teaching Emergency Medical Responder, BLS, ITLS, PhTLS courses by international organizations in the field of health care.

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The practical part of the considered Course takes place in groups which should consist of one teacher and no more than eight cadets. The main idea of this program is the acquisition by cadets of basic skills to save the life of the victim with the use of a minimum set of equipment or in its complete absence. The first 300 Ukrainian police officers underwent 48-hour NATO-standard home care courses between December, 2017 and March, 2018 (Government portal, 2018).

It is worth noting that the legal act, which approved the national protocols and training program for police officers to provide premedical training provides the necessary minimum of key components of training. At the same time, educational institutions in which training is conducted have the right to choose the method of teaching at their own discretion, taking into account the specialization of students, to use additional material.

The normative part of the course makes the instructor (teacher) responsible for the acquisition and assessment of practical skills in accordance with the protocols for premedical care. It is he who during the practical classes should take into account the specifics of the professional responsibilities of students and accordingly form practical tasks. The curriculum for police training in premedical care should be comprehensive and comply with both the protocols for premedical care and departmental principles of policing, and in addition be based on the most optimal modern teaching methods. According to Yarmohammadian M., Khorsani E. and Norouzinia R. the study of the problem and possibilities of institutional accreditation in Iranian medical universities: "Institutional Accreditation in Medical Education: The Experience of The Survey Visit Teams", best learning practices should be the basis for implementation and future accreditation educational institution (2020).

Standard operating procedures for police officers at the scene include the most likely medical problems in typical situations and algorithms for correct follow-up to eliminate or stabilize them. Therefore, how effectively a police officer will behave in a given situation, how timely he or she will orient himself in the current situation, a significant role is played not only by the content of the relevant training program, but also by the methods and means of training.

Also, Ukrainian researchers have found a significant impact of critical incidents on the psychological state and emotional burnout of domestic police officers: their awareness of their own qualifications in providing premedical care to some extent offset the impact of stressors on the scene of a crime, event or other critical incident (R. Valieiev et al., 2020).

The domestic program "First on the scene", as stated in paragraph 5 of the order of the Ministry of Health of Ukraine from 29.03.2017, no. 346, has a block diagram, which involves the acquisition of a number of specific theoretical and practical skills by police and should be implemented through lectures, practical classes, solving situational problems, training.

The study of foreign experience convinces that such traditional forms of education can be used on the basis of computer (information) technologies and online platforms. The most effective of them are modern interactive technologies and teaching methods. According to researcher Hong Tao, the results of training of nursing students at the Second Military Medical University of China (Second Military Medical University, China) indicate a significant efficiency and high effectiveness of a simulated system of training in injury care based on computer technology. This is the so-called computer-based STS (simulative training system) in providing pre-hospital trauma care. Thus, among the 92 members of the group, which was divided in half, some participants underwent simulation training on computers, and others from the "control" group were assigned classroom work for the same amount of time (18 hours). The control of knowledge after training took place in the form of testing with multiple-choice-answers options. It turned out that the first group worked better than the "control" with a much higher average score for the group scenario based on the test task (Hong Tao, 2011).

The results of our observations in focus groups of cadets during the teaching of tactical special training convince that the specifics of the future police officers training under the program "First on the scene" involves mandatory practical face-to-face training of the instructor specific manipulations to stop bleeding, bandaging, and especially – cardiopulmonary resuscitation (hereinafter – CPR), work with basic medical equipment (primarily, automatic external defibrillator).

Thus, in fact, the domestic training program for the preparation of premedical care provides for the acquisition of basic components for professional action at the scene and assessment of the situation. But, based on our own teaching experience, we faced the problem of implementing the acquired skills under the influence of real stressors: visual signs of severe blood loss, cries for help, psychological pressure from others and more. In this case, the cadets showed a sufficient level of theoretical knowledge, which was indicated by 70 % of the correct answers during the theoretical testing and practical training, according to the list of practical skills.

One should can agree with Hong Tao that the future of realistic computer simulation tasks, especially in distance learning become inevitable and necessary, e.g. as they already became now in a state of emergency in Ukraine and the world. Teaching experience shows that police schools do not pay enough attention to the "gamification" of training, including the possibility of digital research, i.e. the use of game practices and mechanisms in the non-game context for involvement of end users in solving the problem ("quest", "challenges"). For the development and organization of web-quests for future police officers, for example, the Google Classroom service is more suitable, while the Moodle platform of our educational institution has become optimal for distance learning of police officers during quarantine.

In particular, the practice of combining information technology with training should be positively assessed, as in the initial stages of training they allow to adapt to the inevitable stress (appearance of blood or torn limb), and later in the service to focus on work and care algorithms rather than horrible portrayal of the victim. The use of interactive simulators (multimedia shootings, virtual tactical camps) has become traditional in the world for the training of the military and police, the feasibility and effectiveness of which is beyond doubt.

Indeed, from an economic point of view, the development of such programs requires the involvement of appropriate logistical resources and specialists for software development. On the other hand, the list of the minimum necessary equipment and materials for carrying out the program for one group of 8 students approved in the training program is not less financially expensive, as it has 25 subjects. And this – without taking into account the objects and means of visualization of theoretical material – a multimedia projector, flipchart, laptop, as well as consumables such as disinfectants, masks, goggles and rubber gloves.

Their list includes 4 human mannequins that must be realistic in appearance and touch, light, equipped with a feedback device to control its manipulation (for example, a clicker to confirm the correct depth and frequency of compression during CPR), the ability to replace parts and match quality and safety standards AHA CPR or ERC CPR Guidelines 2015. For example, a mannequin for training CPR without electronics, for which the school budget must allocate funds at the rate of 1 mannequin for training with a group of 8 police officers, made by a domestic manufacturer, costs in Ukraine about 2 thousand US dollars.

The "effect" of training police officers with such technical means should not be overestimated if they do not meet the technological requirements. According to Nicholas Widmann, Robert Sutton, Newton Buchanan, Dana E. Niles, Godfrey Nazareth, Vinay Nadkarni, Matthew R. Maltese "Simulating blood pressure and end tidal CO2 in a CPR training manikin", modern CPR training systems on traditional mannequins able to provide only feedback on the position of the arms, depth, speed and other indicators of the correctness of chest compression, but for the effectiveness of training equipment should reflect the simulation of the

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mannequin vital signs in the form of signals in real time, including on a clinical monitor, which sees and hears the person performing CPR (2018).

Therefore, it is necessary to agree with Hong Tao (Second Military Medical University, China) on the expediency of using computer STS as an effective model of training in trauma care, as well as to conclude that they should be introduced in police training in Ukraine.

In order to attract financial support for the field of premedical training of police officers, it is advisable to oblige domestic specialists in this field to participate in various international programs and grants. The consortium of the universities of Great Britain, Lithuania and Spain plans to conduct trainings on scenario-oriented learning technologies, simulation medicine, competent psychological support and principles of first aid for Ukrainian and Albanian universities for further training of police officers, teachers and doctors. In particular, such cooperation in the Erasmus+KA2 Project can improve the quality of emergency care in Ukraine and communication of universities in general, exchange of experience, receiving humanitarian aid for the necessary equipment, etc.

At the same time, foreign colleagues F. Kooij, P. Anouk van Alem, W. Rudolph Koster and Riende Vos in their study of the use of automated external defibrillators (AEDs) by Amsterdam (Netherlands) police believe that the training program can be effective and important in providing the first aid care, albeit short-term (3 hours) (2004). Most police officers were trained in the safe and effective use of AEDs within 3 hours to update and improve their BLS skills. The trained police officers even improved their self-confidence and motivation during the course from 12 and 73 % to 99 and 94 %, respectively.

As noted by T. Ngo, K. Belli, M. Shah in the work "EMSC program manager survey on education of prehospital providers. Prehosp Emerg Care" policy of public officials on pre-medical education should be aimed at increasing the time for practical training, with the development of a standard plan of hours required for continuing education (both initial certification and advanced training), regardless of its specifics (2014).

The learning process should aim to bring theoretical training closer to practical. Practice plays a priority role in the inseparable unity of theory and practice. Theory and practice in learning are two organically connected aspects of a single process of cognition. During the practical classes, the teacher must take into account the specifics of the professional responsibilities of cadets and accordingly form practical tasks. In addition, it should be remembered that the successful completion of the course depends in part on the characteristics of the student.

To assess the effectiveness of different pedagogical approaches to the teaching of premedical training for one focus group of future police officers in the number of 6 groups of 24 cadets, we identified 3 models of practical training. Each group included 2 groups. The theoretical block was the same for everyone.

The first model included practical training to acquire practical skills on a specific topic of the curriculum.

The second model included elements of situational tasks according to the same program.

The third model was based on learning through the use of case methods in the form of situational tasks and role-playing games on the principle of "simple to complex".

To elaborate situational tasks and to gain their better mastering the material of previous classes was used together with new knowledge. To implement this study, situational tasks were developed with appropriate checklists to unify the process of assessing the level of cadets knowledge. To track the effectiveness of learning it was decided to add elements of premedic care to all cadets (the list of basic skills was the same for all) during

the development of tactical training scenarios 4 weeks after premedic care classes. In order to avoid the transfer of information from group to group, the evaluation was accompanied by the mandatory isolation of those who passed the evaluation from those who still had to pass it. It is under such conditions that we tried to apply an integrated approach during the implementation of our project. The reliability of the results was assessed by the classical method of statistics, i.e. "Student's t-test".

During research, we obtained the following results of success. The theoretical block of test tasks was successfully made by 96.10 % of cadets who studie according to the standard program of premedical training. 95.33 % and 95.46 % of cadets in the second and third experimental models of training, respectively, demonstrated a sufficient level of mastery of theoretical material. The practical unit was assessed by the cadets' demonstration of the necessary skills, which were provided in a specific situation with a mandatory time limit of 10 minutes. For example, the algorithm of actions of police officers in the presence of signs of critical bleeding, conducting an initial examination of the victim, etc. The evaluation results are as follows: 81.81 % successfully managed from the first group of cadets, 84.23 % from the second group, and 87.41 % from the third.

After 4 weeks, during the development of tactical scenarios, we again conducted the certification of basic skills in premedical training in conditions close to the real ones on the territory of the tactical town. The results of the study showed a statistically significant decrease in success rates in the first group by 35.12 %, in the second – by 27.57 %, respectively (at $p < 0.01$).

The most common reasons for mistakes and incorrect actions of cadets of these groups were confusion, lack of compliance with personal safety requirements, communication with teammates and dispatchers, violation of the sequence of protocols for premedical care. As for the cadets of group 3, the success of the task has not changed and amounted to 86.54 % (at $p < 0,01$). They acted more confidently, there were almost no problems with communication, algorithms of actions were performed in the correct sequence and under constant self-control according to the 4-categories method: environment, communication, condition, special tactical breathing.

In our opinion, in premedical training of cadets for the development of basic practical skills, which are required for future professional activity, as well as for the creation of prerequisites for psychological readiness to implement in practice these skills and abilities, teachers should purposefully use active and interactive forms and technologies: trainings, scenarios, creative techniques, etc. (T. Mukhina, 2013).

Despite certain similarities in active and interactive teaching methods there are also differences. Interactive methods are the most modern form of active methods. The cadet in interactive learning is the subject of educational activities to a greater extent than in passive. Entering into a dialogue with the teacher, he takes an active part in the cognitive process, performs creative, exploratory and problem tasks. Interactive methods (interaction, influence on each other) are based on the interaction of students with each other. Interactive learning:

– built on the interaction of the cadet with the learning environment and the appropriate environment, which is the basis for gaining experience;

– based on the psychology of human relationships and interactions;

– is understood as a joint process of cognition, where knowledge is gained during joint activities through communication with a partner and/or with operational dispatchers (S. Bibalova, 2009).

Interactive teaching methods necessarily emphasize the presence of collective learning in collaboration, which is most appropriate for a person-centered approach. Both the cadet and the teacher are subjects of the educational process. Interactive learning is based on students' own experience and their direct

interaction in the field of mastered professional experience. Interactive teaching methods are characterized by the following:

1) activate students' thinking due to the technology of the educational process (I. Masalkov et al., 2011);

2) the activity acquired by the cadet with their help is long and steady;

3) stimulate students to make independent decisions – creative in their content and motivationally justified;

4) the learning process is built on a collective basis and according to a certain algorithm;

5) increase the effectiveness of training due to the depth and speed in uptake of the material (T. Panina et al., 2008).

We have implemented one of the most used method of interactive learning – case technology. Case (from the English "case" – event; comes from the Latin "casus", the form of the Latin verb "cadere" – to fall).

Case technologies include: method of situational analysis; situational tasks and exercises; analysis of specific situations (case study); case method; game design; method of situational role-playing games (B. Paranyuk, 2006).

As a form of learning and activation of the educational process, the case method, forming certain competencies, allows to successfully solve the following tasks:

– development of cadets' ability to think logically, clearly and consistently, to understand the meaning of the initial data and the assumed decisions;

– practice of skills of operative decision-making;

– to implement the ability to request additional information, which allows to clarify the initial situation, i.e. to select the wording of questions that best contributes to "development", "understanding";

– development of skills of visual representation of features of definition of optimum decisions in the conditions of uncertainty and development of the plan of actions with use of the various approaches allowing to reach desirable result;

– acquisition of skills of clear, accurate presentation in oral or written form when compiling a MIST-report;

– developing the ability to make a presentation, i.e. eloquently present, argue and defend their own point of view;

– practice skills of constructive critical assessment of the point of view of others;

– development of the ability to make independent decisions using group analysis of the situation;

– formation of the ability and desire for self-development and professional growth, based on the analysis (reflection) of their own and others' mistakes, on the feedback data (Yu. Zinchenko et al., 2007, S. Stupina, 2009).

Positively regard the use of such interactive methods Linda J. Ross, Paul A. Jennings, Cameron McR. Gosling, Brett Williams in "Experiential education enhancing paramedic perspective and interpersonal communication with older patients: a controlled study" indicating that the skills of interpersonal communication of paramedic students with "real" elderly patients after training were from satisfactory to good at the beginning of the study and improved from good to very good, and there was an overall improvement in "understanding the element of patient perspective" (2018).

Now we consider in detail the method of situational role-playing games in the context of pre-medical training of future police officers. Game is a form of people activity (usually joint), which reproduces various practical situations, as well as the system of relationships and acts as one of the means of activating the educational process in the education system (L. Halitsyna, 2005). Understanding the game as a special type of human activity, closely related to work, professional sphere, led to a scientific approach to its study.

Unlike other teaching methods, the game allows the cadet to feel personal involvement in the functioning and implementation of the topic being studied – he "lives" for some time in "real" living conditions, being "inside" this system. When considering situational role-playing games, it should be noted that they require students to be more spontaneous, individual, creative, and improvised. Role play, as well as group discussion, can act as a "through" training method, included in various exercises, and as an independent technique. Thus, game teaching methods, which were used in the training of future police TECC, allow to solve the following tasks:

– formation of new models of behavior in participants in situations of interpersonal interaction;

– expanding the flexibility of behavior through the acceptance of communication participants of different roles;

– study of behavior patterns that are effective in certain situations of professional interaction (for example, in situations of family quarrels, accidents, etc.);

– visual representation of the conventions of behavior patterns, which are prescribed by the roles, their certainty in the context of communication;

– creating conditions that allow participants to realize and correct their own inadequate behavioral patterns;

– elimination (or reduction) of acute experiences of the problem caused by the failure of the situation (the effect of catharsis, which is the basis of psychotherapeutic effects in many techniques of psychodrama and game psychotherapy). Thus, situational role-playing games are based on the organization of interaction in situations that simulate a certain cycle of professional activity. After the game it is necessary to hold a debriefing to discuss the nature of the participants' actions, to analyze the emotional reactions of the participants and to invite them to try to correct the mistakes that are already clear to cadets in the absence of stressors. The purpose of the discussion is to analyze the relationships of the "heroes" of the game, to determine the motives of their behavior, the attitude in accordance with which the actions were carried out. In other words, during the discussion, both the adequacy of the participants' perception of the interaction situation and the appropriateness of the chosen tactics of participation in it are determined (T. Panina et al., 2008). Thus, the game as a method of interactive learning provides the following opportunities:

– formation of motivation for learning (effectively at the initial stage of learning);

– assessment of the level of preparedness of students (at the initial stage of training can be used for input control, at the final stage – for the final control of the effectiveness of training);

– assessment of the degree of mastery of the material and its translation from the passive state (knowledge) to the active (skill); effective as a method of practical training immediately after discussing the theoretical material.

There are several categories of situational role-playing games: business, role-playing, organizational-active games. Role-playing games are the largest and most important in terms of content group of games used in interactive learning. Their essence is as follows – a person "takes" a certain social role, demonstrating behavioral patterns that, in his opinion, correspond to it. As a rule, several people take part in the game at the same time – each of them plays a role. Participants perform roles that are not typical for them or could be characteristic for them in a completely different environment, which allows to gain new behavioral experiences. A situation is created that provides optimal opportunities for learning new behavioral models (T. Panina et al., 2008).

Role-playing allows you to effectively practice behavioral options in situations, in which they can potentially be educational (for example, an attack by a stranger, emergencies of various origins, conflicts of various etiologies).

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Cadets acquire skills of making responsible and safe decisions in the learning situation. Role-playing games differ from business games by the lack of an evaluation system in their process. Organizational-active games are a form of collective activity, in the process of which learning is carried out, as well as designing new models of activity. The purpose of these games is to introduce a new practice in a particular professional field (V. Traynev, 2002).

Conclusions. Thus, the best standards of emergency care should be implemented in police training and activities, in particular, derived from both: our own research and positive foreign experience.

1. The use of interactive methodological approaches gives a stable result of long-term actions in the training of TECC police officers. Further introduction of interactive forms of TECC police training is an important aspect of modernizing the approach to premedical police training.

2. Interactive methods of TECC police officers training are aimed primarily at increasing the activity and motivation of cadets to educational and professional activities. Interactive methods allow active use of passive learning in model or real situations of professional activity, which improves the quality of training of future professionals.

3. Police training should be not only standardized but also unified to ensure the completeness, integrity and continuity of maintaining the stable condition of the victim until he or she receives qualified medical care in any country in the world; legal and coordinated work of units designed to provide premedical care, based on algorithms of action both in everyday situations and in crisis (extreme / emergency) situations. In particular, A. Givati, C. Markham, K. Street "The bargaining of professionalism" emphasizes the need for professional regulation and standardization of education in high-income countries, as it not only indicates their political stability, but also has a positive effect on the image of the institution and the demand for its specialists. Based on interviews with leading paramedics, paramedic teachers and paramedic students in the south of England, these researchers explore how paramedical education reforms have affected the professionalization of paramedics and its development (A. Givati et al., 2018).

4. The integration of pre-medical care into the discipline "Tactical and special training" is a mandatory and justified requirement for simultaneous performance of professional and combat missions by police officers.

5. Algorithms for first aid provided by the police should be adapted to unforeseen emergencies and describe the protocol of action in situations of unknown risk, as in the recently adopted in March, 2020 protocol "Provision of medical care for the treatment of coronavirus disease (COVID-19)" emphasis is placed on the absence at the time of approval of specific antiviral treatment for coronavirus disease (Law of Ukraine, 2020).

6. Modern interactive methods of TECC police officers training, especially role-playing, are the most effective and appropriate, while more intensively used on various web platforms in the form of quests or other types of gaming practices.

7. Foreign experience of training or updating the knowledge of TECC police officers shows that even very short-term but intensive training on narrowly focused topics has a positive effect. This requires investment in training, much of which can be obtained from partner countries and joint research grants.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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СУЧАСНА МЕТОДИКА ВИКЛАДАННЯ ПЕРШОЇ (ДОМЕДИЧНОЇ) ПІДГОТОВКИ У ПОЛІЦЕЙСЬКИХ ЗАКЛАДАХ ОСВІТИ

Анотація. Важливо забезпечити майбутнім поліцейським (курсантам) умови для отримання стійких навичок автоматичного виконання маніпуляцій з надання домедичної допомоги та розуміння тих процесів, які будуть при цьому відбуватися в організмі постраждалого. При цьому ці знання та навички обов'язково повинні спиратись на усвідомлення ризику опинитись в екстремальних умовах, зокрема, так званого "вогневого" контакту з правопорушником. Авторами обговорюються можливості та практичне значення використання інтерактивних форм навчання, а основна увага приділяється вивченню позитивного впливу ситуативних рольових ігор на забезпечення тренувань з домедичної підготовки в контексті їх практичного впровадження під час навчання поліції у закладах освіти зі специфічними умовами навчання. Для оцінки ефективності різних педагогічних підходів до викладання домедичної підготовки для майбутніх поліцейських автори визначили 3 моделі проведення практичних занять: із застосуванням ситуаційних завдань без наближення до реальних умов професійної діяльності, ситуаційні завдання з елементами рольових ігор та кейсів за умов стресу, лише демонстрація курсантам практичних навичок з елементами їх відпрацювання. При цьому оцінювалась успішність складання іспиту курсантами.

На думку авторів, для розвитку базових практичних навичок з домедичної підготовки курсантів, необхідних для майбутньої професійної діяльності, а також створення передумов психологічної готовності до впровадження в реальну практику освоєних умінь і навичок викладачам слід цілеспрямовано впроваджувати активні та інтерактивні форми і технології проведення занять: ігри, тренінги, сценарії, креативні техніки тощо.

Ключові слова: *інтерактивні методи навчання, активні методи навчання, кейс-метод, ситуативні рольові ігри, ігрові методи навчання, учасники взаємодії, інструктор, викладач*

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