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IN THE CONTEXT OF GLOBALIZATION: REALITIES AND PROSPECTS

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CONTENTS

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TRADITIONS AND INNOVATIONS IN LEGAL DISCOURSE ON THE CATEGORIES "JURISDICTION" AND "SOVEREIGN RIGHTS"

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INTRODUCTION

The current state of the development of Ukrainian legislation and legal science testifies to the rapid updating and introduction of progressive world practices and long-standing positive experience of foreign countries. In these circumstances, the importance of studying not only domestic but also foreign experience, as well as the practices used in the development and adoption of universal agreements during world and regional international forums, is actualized. In this connection, some of the legal categories that have been long drawn up and studied in Ukrainian legal science are objectively acquiring new, broader content. In particular, this applies to the current and projected legislation in the field of maritime activities, as well as to maritime law as a complex branch of law, covering the regulation of private and public law aspects of navigation. Moreover, maritime activity is one of those human activities that are most commonly subject to international legal standards, and for which such standards take effect in a simplified and sufficiently rapid manner.

In 1999 Ukraine ratified a leading international instrument governing the regime and legal status of all maritime territories – the United Nations Convention on the Law of the Sea 1982[1] (UNCLOS'82). The fact of accession to this document defined all further steps of the state in the direction of development and updating of the national maritime legislation. At the same time, in UNCLOS'82 a slightly new for the national legal science view on some legal categories (in particular, the category "jurisdiction") was reflected, as well as there were used categories that are new or very briefly developed in national legal science (in particular, the "sovereign rights"). In this connection, there is a need for a scientific study of the traditions and innovations in the legal discourse on the categories of "jurisdiction" and "sovereign rights" in order to determine the directions and possibilities of updating the scientific views on them, and, as a result, to change the current legislation.

[1] Convention on the Law of the Sea, 1982. *The official website of UN*. URL: http://www.un.org/depts/los/convention_agreements/texts/unclos/ unclose.pdf.

1. The genesis of the legal category "jurisdiction" in legal science and legislation

It is considered that the word "jurisdiction" ("jurisdictio") is derived from the Latin words "jus" – "right" and "dicere" – "say", "proclaim"[2], which literally means "establishing a right" or "proclaiming a right". In ancient Rome, the word "jurisdiction" meant justice, litigation (although more closely related to this type of legal activity is the word "justitio"[3]), it was also interpreted as "resolving a conflict" or "applying established rules by a proper authority"[4]. The sources of Roman law, which use the word "jurisdiction", indicate that indeed the point was about a right backed by a power to make a judgment that was recognized as legitimate[5]. The echoy of the birth of jurisdiction could be found in the most ancient monuments of law: in the Hammurabi Laws and the Manu Laws – about punishment for contempt: the father and the priest, the judge and the representative of the ruling castes; in the Laws of the Dragon – about the power of the creditor; in the Book of Judges – about the power of judges; in the Laws of Swarga – about the power of kin and veche, etc. Ye. V. Vaskovskyy noted that "the jurisdictional way of protecting public and private interests should be regarded as the antithesis of self-government and revenge, to these wild types of justice" [6].

In Modern times, there was a gradual separation of the judiciary from the public administration and an isolation of the law-enforcement function from the general administration first, and then, a division of the law-enforcement and the human rights functions of the state. Administrative procedures for the implementation of the human rights function in all their accessibility, coordination and efficiency, could not be applied due to the existence of hierarchical subordination of the supervised bodies to the supervisors. Therefore, for example, in France, where special administrative tribunals (the courts with special jurisdiction) were established for the first time in Europe, the terms "juridictionnel" ((jurisdictional) and "judiciair" ("that refers to court cases") differed. The former was used in relation to the

[2] Кураков Л. Экономика и право: словарь-справочник. URL: http://vocable.ru/dictionary/80/word/%DE%D0%C8%D1%C4%C8%CA%D6%C8%DF.

[3] Денисенко В.В., Позднышов А.Н., Михайлов А.А. Административная юрисдикция органов внутренних дел: учебник. Москва: ИМЦ ГУК МВД России, 2002. 176 с. С. 5.

[4] Административная юрисдикция налоговых органов: учебник / Е.А. Алехин, Л.М. Ведерников, А.М. Воронов и др.; под ред. М.А. Лапиной. Москва: ВГНА Минфина России, 2012. 346 с. С. 25.

[5] Реальный словарь классических древностей / под редакцией Й. Геффкена, Э. Цибарта. Тойбнер. Ф. Любкер. 1914. URL: http://dic.academic.ru/dic.nsf/ lubker/3776/%D0%AE%D0%A0%D0%98%D0%A1%D0%94%D0%98%D0%9A%D0%A6%D0%98%D0%AF.

[6] Васьковский Е.В. Учебник гражданского процесса. Москва: Изд. бр. Башкамовых, 1914. 372 с. С. 2.

activity of public law courts, the second was used concerning general courts that dealt with civil and criminal cases[7].

In Ukrainian legal literature, the question of the nature of jurisdiction has been debated since the late 1960s, when there was a lively debate among domestic scholars about the nature of the phenomenon of jurisdiction in public administration. In particular, M.G. Alexandrov identified jurisdiction with the commission of law-enforcement activities[8]; S.S. Alekseev and V.M. Gorshenov considered it a kind of law-application activity[9]. N.G. Salishcheva proposed to distinguish between the jurisdiction of state and some public bodies in a narrow (law-permission activities) and in a broad (operational-executive activities) sense[10].

In modern domestic law, in domestic and foreign doctrine and lawmaking, the category "jurisdiction" usually means "the right to exercise court", "cognizance", "the scope of the court", "the power to judge compulsory for the parties"[11] or the area to which such right applies. In this sense, jurisdiction is divided into two types: territorial, which is carried out within a specific territory – on land or in water spaces; personal, to which natural or legal persons are subject as a result of their citizenship or establishment[12]. With regard to maritime spaces (exclusive economic zone and continental shelf), "limited destination jurisdiction" is also distinguished[13].

In the researches of the administrative-legal direction, "jurisdiction" is also considered as the activity of state-authorized bodies for the consideration of legal disputes arising in the state, which is conducted in strict accordance with the requirements of the law, as well as the possibility of applying to offenders measures of a compulsory nature[14]; a competent decision by

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[7] Зеленцов А.Б. Контроль за деятельностью исполнительной власти в зарубежных странах: учеб. пособ. Москва: Изд-во РУДН, 2002. 190 с. С. 67.

[8] Теория государства и права: учебник / Н.Г. Александров, Ф.И. Калинычев, А.В. Мицкевич, А.Л. Недавний и др.; отв. ред.: Н.Г. Александров. Москва: Юрид. лит., 1968. 640 с.

[9] Алексеев С.С. Общая теория социалистического права: Применение права. Наука права. Курс лекций: учеб. пособ. / ред.: Ю.К. Осипов, В.Е. Чиркин. Вып. 4. Свердловск: Сред.-Урал. кн. изд-во, 1966. 203 с.

[10] Салищева Н.Г. Гражданин и административная юрисдикция в СССР / отв. ред.: А.Е. Лунев. Москва: Наука, 1970. 164 с. С. 19-20.

[11] Административное право зарубежных стран: учебник / И.Ю. Богдановская, С.Ю. Данилов, А.Б. Зеленцов, А.Н. Козырин и др.; под ред.: А.Н. Козырин, М.А. Штатина. Москва: Спарк, 2003. 464 с. С. 182.

[12] Спивакова Т.И. Проблема предела «национальной юрисдикции» на дне мирового океана в современном международном праве: автореф. дис. ... канд. юрид. наук. Москва, 1973. 20 с. С. 8.

[13] Мілаш В.С. Питання законодавчої юрисдикції держави в контексті регулювання договірних відносин у сфері електронної комерції. Право та інновації. 2015. № 1. С. 42–49. С. 43.

[14] Чернобай О.І. Теоретичні узагальнення щодо розуміння сутності поняття «адміністративна юрисдикція». *Адміністративне право і процес.* 2013. № 2. С. 61–67. С. 63.

the competent authorities on various legal issues arising in the field of law[15]; the totality of the powers of the relevant state bodies to resolve legal disputes and offence cases [490, p. 26]; administration of justice or cognizance, as well as territorial boundaries of the competence of certain state or local self-government bodies[16].

In foreign jurisprudence and legislation, the term "jurisdiction" usually refers to cognizance, the right to administer justice, to resolve legal issues, and the scope of authority (including the territorial boundaries of such authority), the authority and competence of that authority[17]. In the English law system, "jurisdiction" is considered as "the practical power officially granted to a legally existing authority or political leader to make and publish decisions on legal issues, including to manage within its competence". The term is also used to refer to the geographical area or area to which these powers extend[18], or to a church territory under the authority of a clergyman[19]. It also covers recognized rights as "the ability, right or authority to interpret and apply the law", "the power to administer or create laws", "the authority or right to exercise authority, exercise control", "the boundaries or territory over which those powers may be exercised" [20].

In foreign countries of the continental legal family (Germany, France, Spain, Italy, Greece, Brazil), the jurisdiction is usually understood as: the implementation of the legal order; the power to apply the law in the particular case (as power, right and duty) arising from the sovereignty of the State, and the territory, geographical area (state, province, municipality, region, country) in which these powers are exercised or to which it extends sovereignty of the state, the limit of administrative competence of a state body.

Therefore, the foreign practice of using the investigated category indicates that it denotes the powers of the judiciary and public administration, as well as the spatial limits of their implementation. Its essence is defined as the right or process of exercising power, disclosed in detail either in the functions of the courts or in the administrative functions of public authorities to apply the rules of law and the interpretation of the rules of law. Thus, jurisdiction is the way of exercising public authority that is inherent in any social institution governed by the rules of law. It consists in the exclusive ability of a competent state or other authority to influence on subordinate

[15] Дружков П.С. О понятии и видах юрисдикции. *Вопросы государства и права.* Томск: Изд-во Том. ун-та, 1974. Т. 234. С. 81–89. С. 87.

[16] Ibid. С. 81–89.

[17] Комлев С.В. Административно-юрисдикционный процесс: автореф. дис. ... канд. юрид. наук. Москва, 2008. 29 с. С. 13.

[18] Jurisdiction. URL: http://en.wikipedia.org/wiki/Jurisdiction.

[19] Definition of jurisdiction in English Turkish dictionary. URL: http://www.seslisozluk.com/search/jurisdiction#jurisdiction.

[20] Jurisdiction. URL: http://www.merriam-webster.com/dictionary/jurisdiction.

persons in a certain territory legitimately and in the procedural forms established by the law[21].

At the same time, given the general use of the category "jurisdiction", its definition has not yet been developed, but based on the views of domestic and foreign scientists, the results of the analysis of legislative practice, jurisdiction should be defined as the state activity carried out through the system of bodies authorized by it within their powers on exercising managerial influence (in its broadest sense as a manifestation of the legislative, executive and judicial power of the state in its entirety, and in some cases beyond) in the relationships that occur in a particular geographical area (for example, in marine areas).

In the legal literature it is stated that the jurisdiction of the state means the limits of the powers of the state and its bodies to issue laws (regulations), ensure compliance with and application of these acts. The state, in this sense, "defines the range of state bodies empowered to enforce the mentioned acts"[22]. O.S. Chernichenko defines jurisdiction as the ability of the state to ascribe or obey the rules of law, and as the right of the state to impose its power, and as the competence of the state to influence the behaviour of other entities, and as a legal authority[23]. It is only necessary to note that such activity is carried out by specially authorized by the state bodies and organizations.

The state exercises full jurisdiction within its territory and within some others, has limited jurisdiction. For example, a coastal state has jurisdiction over the exclusive economic zone for the establishment and use of artificial islands, installations and structures, marine scientific research, the protection and preservation of the marine environment, and also has sovereign rights for the exploration, development and conservation of the natural resources, whether living or non-living, in the waters superjacent to the seabed, the seabed and its subsoil, and for the purpose of managing of these resources, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds (Art. 56 UNCLOS'82). The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources (Art. 77 UNCLOS'82), it also exercises exclusive jurisdiction over the creation and operation of artificial islands, installations and structures in this space (Article 80 of UNCLOS'82). According to J. Brownlee, the exercise

[21] Кузурманова И.В. Административно-юрисдикционная деятельность органов исполнительной власти: содержание и системные характеристики: монография. Москва: ГУУ, 2012. 81 с. С. 17–18.

[22] Зябкин А.И. Несанкционированное вещание из открытого моря и международно-правовые средства его пресечения: дис. … канд. юрид. наук. Ленинград, 1985. 221 с. С. 121.

[23] Черниченко О.С. Международно-правовые аспекты юрисдикции государств: автореф. дис. ... канд. юрид. наук. Москва, 2003. 31 с.

of state jurisdiction is not completely detached from state territory, although it does not have a direct basis in the territorial rule[24]; he also notes that jurisdiction is regarded as one of the manifestations of sovereignty[25].

V. Lowe defines the jurisdiction of the state according to the broad view as follows: "Jurisdiction" is a term that defines the limits of the legal competence of states or other governmental institutions (such as the EU) to create and apply legal rules governing the conduct of persons" [26]. A.R. Kayumova notes that the jurisdiction of the state is expressed in the ability of state bodies to exercise legal regulation of public relations and to ensure its observance through the application of the mechanism of state coercion[27]. Thoroughly examining the genesis of the category "jurisdiction" in the legal literature of the last century, V.K. Kolpakov quite rightly states that after Ukraine gained the independence, this category should be explored in the light of new national legislation, which fills it with deeper content and gives reason to understand the jurisdiction as a legally formulated right of authorized bodies (officials) to exercise their functions concerning some objects[28]. Indeed, Ukraine's legal framework for maritime activities indicates that the content of this legal category is contrast to the conventional points of view, which is exactly the way it is used in UNCLOS'82.

It is worth supporting the opinion of L.V. Terentyeva, who states that the study of jurisdiction in each of the domestic branches of legal science should not come apart from its understanding in international law, which is basic and defines the limits of the powers of the relevant state bodies[29]. And during the study of the jurisdiction of Ukraine in coastal waters, with the exception of inland waters, the UNCLOS'82 norms are the basic ones for understanding and determining the original content of all manifestations of public administration activities in such areas. Although at the time of the adoption of the Merchant Shipping Code of Ukraine[30] and the Law of Ukraine "On the exclusive (maritime) economic zone of Ukraine"[31] UNCLOS'82 had not been ratified by Ukraine, compliance of these acts

[24] Броунли Я. Международное право: в 2 кн. / пер. с англ. Москва: Прогресс, 1977. Кн. 2 / под ред.: Г.И. Тункин; пер. с англ. С.Н. Андрианов. 509 с. С. 369.

[25] Ibid. 535 с. С. 174.

[26] Evans M.D. International Law. Oxford University Press, 2003. 894 p. P. 329.

[27] Каюмова А.Р. К вопросу о месте юрисдикции в системе международного права. *Ученые записки Казанского государственного университета.* Серия «Гуманитарные науки». Казань: Изд-во Каз. гос. ун-та, 2007. Т. 149. Кн. 6. С. 316–323. С. 317.

[28] Колпаков В.К. Адміністративно-деліктний правовий феномен: монографія. Київ: Юрінком Інтер, 2004. 528 с. С. 378–380.

[29] Терентьева Л.В. Соотношение понятий «юрисдикция» и «суверенитет». *Вестник Университета имени О.Е. Кутафина (МГЮА).* 2016. № 12. С. 126–133. С. 137.

[30] Кодекс торговельного мореплавства України, 1995. *Відомості Верховної Ради України*. 1995. № 47. Ст. 349.

[31] Про виключну (морську) економічну зону України: Закон України від 16.05.1995 р. *Відомості Верховної Ради України.* 1995. № 21. Ст. 152.

of Ukrainian legislation with its norms is undeniable. This tendency could be seen in Part 1 of Art. 9 CC of Ukraine[32].

Thus, jurisdiction" means the exercise of powers by the state. This is the broadest understanding of "jurisdiction" – it is most relevant to the relations arising from the exercising of maritime activities, merchant navigation and inland navigation, and is relevant to the subject of this research.

Therefore, the category "jurisdiction" is multidimensional. Being used in various fields of law and legislation, with certain differences it signifies the exercise by the state authorized bodies of the whole complex of their powers in a certain territory and in a certain sphere of public relations. This involves establishing rules of conduct in a particular territory, assessing the state authorities' compliance with these rules of conduct by legal persons in terms of national law-and-order and internationally agreed norms that are binding on that state, applying legal sanction in the event of a negative result of such assessment, and also the application of other coercive measures of influence that are permissible under national law, as well as the implementation of service procedures in the spheres of government and authorized bodies within the designated area and in the waters. However, a final legislative interpretation of this category has not yet been developed.

According to most authors, jurisdiction is an independent type of state, by-law, law-enforcement, law-application activity, which has a competitive procedure for resolving a case, issuing a legal act in the form prescribed by law and the presence of a legal dispute (offense). However, not all researchers agree with the latter sign. Thus, I.V. Panova does not endorse "the views of some authors who believe that jurisdictional intervention by public authorities is not required until legal conflicts arise", and shares the opinion of "those who define jurisdiction as an activity of state, by-law, law-enforcement, law-application nature, which arises when it is necessary to apply measures of state coercion (the latter is not limited only by legal dispute), having a competitive nature, ends with the publication of a jurisdiction act and performs protective, educational and regulatory functions" [33].

The researched scientific approaches to the definition of the essence of the categories "jurisdiction" and "jurisdiction of the state" testify to the present two directions in its understanding: as the reactions of the authorized bodies of the state to misbehaviour ("negative direction") and as the day-to-day activities of the authorized bodies of the authorities concerning administration in public life within the state territory, both land and water ("positive direction"). Here, however, it should be noted that with regard to

[32] Митний кодекс України, 2012. *Офіційний вісник України.* 2012. № 32. Ст. 1175.

[33] Панова И.В. Об административной юрисдикции. *Административная юрисдикция:* материалы Всерос. науч.-практ. конф. / под ред. д-ра юрид. наук, проф. М.А. Лапиной. Москва, 2012. С. 28–32.

the exercise of state jurisdiction in the face of state bodies in maritime spaces, its effect extends beyond the land, inland waters and territorial sea, and is "a manifestation of the state authoritative powers"[34], carried out outside the state border of the country. This is confirmed both by the UNCLOS'82 norms and by the acts of its current and projected legislation of Ukraine, in particular the Law of Ukraine "On the exclusive (maritime) economic zone of Ukraine", the draft Law of Ukraine "On inland waters, territorial sea and contiguous zone of Ukraine". etc. Usually in these acts the category "jurisdiction" is used in the sense of extending the power of the state (represented by its bodies) to a certain space (maritime) or to installations, structures, artificial islands or vessels constructed in this space. Thus, the category of "jurisdiction" in domestic administrative law has a comprehensive character for determining the mechanism of activity in the coastal waters of the state, combines within the application of the relevant legislation a set of regulatory, prescriptive, prohibitive measures, as well as measures of administrative coercion, which in all cases make a legal regime of coastal water.

It should be noted that the greatest number of disputes arises when the category of jurisdiction is used to determine the extent of the rights of states with regard to water, primarily maritime, outside the state territory. If within the state territory the state itself has the right to establish the volume of rights in one or another sphere of activity, and the territory of the state is the sphere of its territorial supremacy, sovereignty exercised within those boundaries formed by a set of land, water and air parcels belonging to the composition of this state as a whole[35], then, in the field of interstate relations, differences in the interpretation of the category "jurisdiction" lead to the fact that it is used both to denote the power of the state in areas where full sovereignty of the state is exercised, and to justify the rights of states to maritime spaces beyond their state borders.

With regards to maritime spaces, the category "jurisdiction" occupies a leading position in Roman law. V.E. Grabar stated: "The establishment of the jurisdiction of individual states at sea is carried out ... at the same time as the establishment of state political unions within the Roman Empire ... the jurisdiction which individual states within their territory have usurped within the empire extends from land to sea ..." [36]. L.A. Ivanaschenko considered that "jurisdiction" in the intelligence of ancient researchers meant the same thing

[34] Мілаш В.С. Питання законодавчої юрисдикції держави в контексті регулювання договірних відносин у сфері електронної комерції. *Право та інновації.* 2015. № 1. С. 42–49. С. 43.

[35] Круглова И.А. Государство как субъект-носитель прав на суверенное воздушное пространство. *Московский журнал международного права.* 2005. № 3. С. 175–186. С. 178.

[36] Грабарь В.Э. Римское право в истории международно-правовых учений. Элементы международного права в трудах легистов XII–XIV вв. Юрьев: Тип. К. Маттисена, 1901. 305 с. С. 218, 223.

defined by the later term "sovereignty" [37]. The American Lawyer R. Young perceives no distinction between the categories of sovereignty and jurisdiction[38]. O'Connell's interpretation is very interesting: "Jurisdiction can be defined as a sovereign power over the rights of individuals by issuing laws, decrees and adjudicating matters"; in his opinion, it has different aspects: in the domestic aspect – it is complete sovereignty, in extraterritorial – sovereignty that extends as widely as international law allows. Therefore, full jurisdiction equates to sovereignty within state territory". Outside the state territory, according to O'Connell, the state also exercises jurisdiction but within the limits established by international law. As a result, O'Connell considers issues related to the modes of the high seas, territorial sea, continental shelf, etc.[39], notably, all spaces where the state exercises only certain powers and rights.

In order to determine the legal scope of the category "jurisdiction", it seems appropriate to determine to which spaces and with what regime it may extend. The first question raised in 1967 by Malta about the need to regulate exploration and use of the bottom of the oceans was essentially a proposal to create a special regime for seabeds and oceans outside the jurisdiction of any state. The definition of jurisdiction given by the Maltese delegation was of a general nature: "National jurisdiction means the legal authority of a coastal State to control and regulate a particular area of the maritime space adjacent to its coast. It is subject to the restrictions provided for in the international law, which are intended to protect the interests of the international community"[40]. In this case, the terminological phrase "national jurisdiction" could refer to both the shelf and the territorial sea. It may also be recalled a provision contained in the 1990 Agreement between the USSR and the United States on the Maritime Space Line[41]: "for the purposes of this Agreement, the term "coastal jurisdiction" means sovereignty, sovereign rights or any other form of jurisdiction over waters or seabed and subsoil that may be carried by a coastal State under international maritime law" (Article 5). Thus, it actually defines the forms of jurisdiction of the coastal state – sovereignty, sovereign rights – and it is stated "any other form of jurisdiction", i.e. it is recognized the

[37] Иванащенко Л.А. Международно-правовой режим прибрежных морских вод: внутренних морских вод, территориальных вод и специальных морских зон: автореф. дис. ... канд. юрид. наук. Москва, 1952. 28 с.

[38] Young R. Resent Development with respect to the Continental Shelf. *American Journal of International Law*. 1948. № 4. P. 849–857.

[39] O'Connell D.P. International Law. Vol. II. London: Stevens, 1970. 714 p. P. 399, 601–602.

[40] Доклад Комитета по мирному использованию дна морей и океанов за пределами действия национальной юрисдикции. Генеральная Ассамблея. *Официальные отчеты.* 26-я сессия. Нью-Йорк, 1971. Доп. № 21. A/8421.

[41] Agreement between the United States of America and the Union of Soviet Socialist Republics on the maritime boundary, 1 June 1990. URL: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/USA-RUS1990MB.PDF.

possibility of expanding its manifestations. The latter further testifies to the "openness" of the category "jurisdiction of the state" and the possibility of its very broad interpretation.

States' competence over their territory is usually defined as sovereignty and jurisdiction; however, the categories used by legal sources are not uniform. The situation with the use of these categories is also not straightforward in legal science, since the numerous rights, duties, competences, privileges and immunities of states are often referred to "sovereignty and jurisdiction". The customary complex of state rights, the typical case of legal competence is generally referred to "sovereignty"; specific rights or a certain set of rights are quantitatively smaller than this complex, and are called "jurisdiction"[42]. Thus, "sovereignty" is a brief legal designation of the legal personality of a certain kind, namely the status of the state; "jurisdiction" also refers to specific aspects of such legal personality, especially with regard to rights (or claims), privileges and competence[43]. According to O'Connell's right expression, jurisdiction in the maritime expanses may "extend" beyond the territory of the State[44]. It is also noted that the jurisdiction of the state – the power of its legislative and judicial power can extend, and often enough extends beyond its borders[45]. According to Art. 24 of the Convention on the Territorial Sea and Contiguous Zone 1958[46], the state recognizes the right to establish in the open sea a contiguous zone up to 12 nautical miles in which that state may exercise its jurisdiction in order to combat violations of its customs, fiscal, immigration or sanitary regulations, and has been extended to 24 nautical miles in accordance with UNCLOS'82 (Art. 33). In addition, in exclusive economic zones, coastal states have sovereign rights and exclusive jurisdiction over certain activities (Article 56 of UNCLOS'82, Article 11 of the Law of Ukraine "On the Exclusive (Maritime) Economic Zone of Ukraine"). The list of rules that establish the jurisdiction of the state outside the land territory can be continued.

It is necessary to maintain the view of S.O. Kuznetsov, who notes that the main issue in the study of the jurisdiction of the state in water, including coastal areas, is the question of the relationship between the categories of "jurisdiction" and "sovereignty". He notes that some authors attempt to combine the categories "territory" and "jurisdiction": "Territorial jurisdiction delineates the legal limits of the rule of law and the sphere of non-interference

[42] Verzijl J.H.W. International Law in Historical Perspective. Springer; 1 edition. P. 256.

[43] McNair A.D. International Law Opinions. Vol. I: Peace. Cambridge: Cambridge University press, 1956. 380 p. P. 69–74

[44] O'Connell D.P. International Law. Vol. II. London: Stevens, 1970. 714 p. P. 45.

[45] Международное право: учебник / отв. ред. Ю.М. Колосов, Э.С. Кривчикова. Москва: Междунар. отнош., 2000. 720 с. С. 115.

[46] Конвенция о территориальном море и прилежащей зоне, 1958. *Работа комиссии международного права.* Изд. IV. Нью-Йорк: ООН, 1988. С. 174–183.

in sovereign affairs by other states and international institutions"[47]. The scientist draws attention to certain remarks about the above thesis: first, "the limits of the supremacy of state authorities' acts" defines the state border (this so-called "territorial rule")[48], second, the terminological phrase "territorial jurisdiction" defines a specific principle of jurisdiction (territorial or quasi-territorial) in view of the nationality of the territory withinwhich it (jurisdiction) is exercised[49]; third, the category of "jurisdiction" should be understood as "intervention" rather than "non-intervention". By establishing a defined law order in a particular part of the sea (zone, territory), UNCLOS'82 recognizes the right of coastal states to determine the special legal order for the stay and operation of vessels in so-called "Areas of National Jurisdiction": EEZ and surrounding areas (subject to their installation). No state has the right to subordinate any part of the high seas to its sovereignty, but the coastal state has the right to subordinate to its jurisdiction certain parts of the high seas[50].

Indeed, in the surrounding area, the EEZ, on the continental shelf, the basis for exercising the jurisdiction of a coastal state is no longer the sovereignty of that state [as in inland waters and territorial sea (with respect to the latter, sovereignty is exercised in accordance with UNCLOS'82 and other international law (art. 2 UNCLOS'82) and can therefore be characterized as "maritime sovereignty"] but its international sovereign rights (EEZ, continental shelf, Art. 56, 77 UNCLOS'82) or international control rights in clearly defined areas – customs, fiscal immigration, sanitary (adjoining area, UNCLOS'82 Art. 33). S.V. Molodtsov confirms that, stating the jurisdiction is a warrant (authority) or a sum of warrants (powers) that have a purpose and do not necessarily have sovereignty, that is, jurisdiction is not always grounded or based directly on sovereignty[51]. V.L. Tolstykh also explicitly states that the coastal state in the EEZ has some sovereign rights, which are not based on territorial sovereignty and have a functional character[52].

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[47] Вихрист С.М. Імунітет та застосування юрисдикції в міжнародному кримінальному праві. *Держава і право.* 2001. Вип. 11. С. 500–503.

[48] Про державний кордон України. Закон України від 04.11.1991 р. *Відомості Верховної Ради України.* 1991. № 2. Ст. 5.

[49] Ключников Ю.В. Принципы осуществления предписывающей юрисдикции. *Международное публичное и частное право.* 2002. № 1. С. 11–17.

[50] Кузнецов С.О. Адміністративно-юрисдикційна компетенція України поза межами державного кордону. *Актуальні проблеми держави і права.* 2004. Вип. 22: Матеріали 7-ї (59-ї) звіт. наук. конф. проф.-виклад. і аспірант. складу ОНЮА. Одеса, 2004. С. 505–510. С. 507.

[51] Молодцов С.В. Правовой режим морских вод. Москва: Междунар. отнош., 1982. 231 с. С. 28.

[52] Толстых В.Л. Курс международного права: учебник. Москва: Волтерс Клувер, 2009. 1056 с. С. 894.

2. The concept of sovereign rights of states in maritime spaces

The sovereign rights of states, first recognized and enshrined in UNCLOS'82, are currently one of the most relevant and under-researched aspects of the jurisdiction of states beyond their borders. The concept of the sovereign rights of a coastal state, which was particularly broadly supported during the 3rd United Nations Conference on the Maritime Law in determining the legal basis for the activity of States in maritime spaces beyond their national borders, is now embodied in UNCLOS'82. Its norms have become an alternative to the considerable claims of states to extend their sovereignty to offshore expanses of the sea, expressed in the mid-twentieth century. Indeed, the concept of sovereign rights has become a compromise solution to many of the problems faced by states that, thanks to the coastal waters, have been able to support their development and economic formation. In legal studies, sovereign rights of the state include those that ensure the economic independence of the state (to collect taxes and fees, energy resources, to develop natural resources and manage them), as well as to determine their competence, to enforce and pursue an independent foreign policy[53].

Sovereign rights are the rights that a state has within its territory, bounded by national borders, and beyond, and that allow it to act in its interests to the extent it deems necessary, but within the limits of international law. Sovereign rights are determined by the basic principles of international law, international treaties of the state and its legislation. Such rights include the sovereign rights recognized and established in each coastal state in the EEZ and the continental shelf. The exclusive character of these rights is that no other state has the right without the consent of the coastal state to carry out such activities in these spaces.

There are certain restrictions on mentioned above sovereign rights, since the coastal state, in exercising its rights in the EEZ, takes into account the rights and obligations of other states and acts in accordance with the provisions of UNCLOS'82. In addition to maritime spaces, states have sovereign rights to exercise jurisdiction over ships, spacecraft and aircraft, if operated under its national flag. States have sovereign rights to explore and exploit outer space, the moon, the oceans, the Antarctic and other territories governed by the international community.

Sovereign rights cannot be identified with sovereignty, which is defined as the rule, autonomy, completeness and indivisibility of state power within its territory and as independence and equality in external relations. At the same time, the EMEZ of Ukraine and the continental shelf beyond the territorial sea, as well as the contiguous zone, are, in their essence, the open sea, where the coastal state has only internationally recognized agreements

[53] Хаустова М.Г. Тенденції розвитку права в умовах глобалізації. *Проблеми законності*. 2013. Вип. 124. С. 3–15. С. 12.

(which have become part of its national legislation in due course). These spaces are not the territory of Ukraine, so it is impossible to identify sovereignty and sovereign rights exercised outside the state territory. The jurisdiction of a coastal state in these territories is based not on sovereignty (as in inland waters and territorial sea), but rather on recognized and enshrined UNCLOS'82 sovereign rights. In legal literature, jurisdiction is defined as the realization (or possibility of realization) of sovereign rights of the state in relation to other subjects of law, it is designated as a manifestation of sovereignty and actions of state power within a certain territory. Its understanding as a manifestation of sovereignty cannot be considered fair for maritime spaces outside the territory of the state, since sovereignty is not exercised outside the territory of the state. Many definitions of sovereignty emphasize the overriding rule and independence of the state within its territory and with respect to other states[54]. S.V. Chernichenko notes that the sovereignty of the state is always "territorial", i.e. it exists within the territory of the state, and only its manifestations can go beyond its territory[55]. Indeed, its manifestations in the form of jurisdiction definitely go beyond the territory of the state in the exercise of extraterritorial or universal jurisdiction, but with respect to certain types of coastal maritime spaces, the jurisdiction of the state in them is not based on sovereignty, but on sovereign rights enshrined in international agreements, that cannot be identified with sovereignty because of it is much more general and inclusive, but only within the territory of the state. The spatial boundaries within which the sovereign rights and obligations of the modern state are exercised are wider than the geographical area within national borders, wider than the territories of the states.

I.A. Khavanova notes that, given the static and dynamic characteristics of the jurisdiction, it must be said that the completeness of its implementation may be limited beyond the territorial rule[56]. And this is quite fair, because, for example, in the contiguous zone, exclusive economic zone, on the continental shelf, the jurisdiction of the state is restricted by the rules of international agreements, in particular UNCLOS'82, which determine in what areas a coastal state may exercise its jurisdiction.

As Yu.G. Barsegov rightly points out, the jurisdiction of a coastal state is a set of limited functional rights of a coastal state in different regimes of the oceans. The category "jurisdiction" underpinning this concept is not strictly defined. If within the territorial rule, the national jurisdiction is a consequence and a manifestation of sovereignty, then outside the territorial sea it can be

[54] Кокошин А.А. Реальный суверенитет в современной микрополитической системе. Москва: Европа, 2006. 140 с. С. 47–57.

[55] Черниченко С.В. Делим ли государственный суверенитет? *Евразийский юридический журнал*. 2010. № 12. С. 25–31.

[56] Хаванова И.А. Налоговая юрисдикция: грани возможного и отсроченные риски. *Журнал российского права*. 2017. № 12. С. 81–91. С. 83.

only limited functional jurisdiction of the coastal state in the form of clearly defined rights and prerogatives of resource and non-resource nature, established on the basis of international law and special international conventions of a universal nature. The scope of functional rights (jurisdictions) and the territorial boundaries of the coastal state's jurisdiction are determined, in particular, by UNCLOS'82[57].

Functional jurisdiction refers to the areas where international law allows states to exercise certain functional powers by exercising rights in areas such as the continental shelf and the EEZ; researchers note the following feature of this principle: if the sovereignty of the state requires the presence of power, subjects and territory, then the jurisdiction underpinning the functional principle takes place in the absence of state territory.

Yu. G. Barsegov also reasonably defines the zone of national jurisdiction as the spatial sphere of action of functional rights and the prerogatives or limited functional jurisdiction of both resource and non-resource content recognized by international law under the coastal state. Recognition of such rights and prerogatives of the coastal state is not considered as a basis for establishing any special status other than the status of the high seas (the expanses of which are the contiguous zone, EEZ, continental shelf). The decisive criterion for this approach is the fact that the sovereignty of a coastal state does not extend to areas of limited national jurisdiction[58]. These prerogatives are a kind of "compensation" to the coastal states for the restrictions they are subject to under UNCLOS'82 rule on the exercise of sovereignty in the territorial sea only in accordance with the provisions of this Convention and other rules of international law (Article 2), and form the settled principle of securing the rights of coastal states to certain prerogatives in the zones of national jurisdiction.

CONCLUSIONS

To summarize, it should be noted that the category "jurisdiction" is much narrower than the category of "sovereignty" and contains a limited range of rights, with an exact indication of the purpose for which the jurisdiction of this state extends to a given water area. In scientific research it is considered as follows: 1) the right to exercise the court, the sphere to which such right extends, 2) any powers exercised by the state within its territory, 3) the manifestation of sovereignty or sovereignty itself; 4) a category narrower than sovereignty, meaning certain conditioned rights, is a manifestation of sovereign rights. It is only necessary to emphasize that jurisdiction as a manifestation of the sovereignty of the state and the spatial boundary of the exercise of state power

[57] Словарь международного морского права / отв. ред. Ю.Г. Барсегов. Москва: Междунар. отнош., 1985. 251 с. С. 250.

[58] Ibid. С. 66.

should not be equated with it. It represents the exercise of power by the state, i.e. it can in fact be identified with the state power. In this regard, the actual recognition of jurisdiction as an element of sovereignty makes it possible to conclude that state authority is also an element of sovereignty. Meanwhile, state authority, being a derivative of "its" state, does not have sovereignty in itself, but is only conferred with certain powers in the person of the bodies exercising it. Sovereignty can be practically exercised through state authority, but it should not be identified with it[59].

Thus, at present, the category "jurisdiction" is cross-sectoral and interdisciplinary and is used in the public and private branches of law and legal science. In each of them, its definition has its own specificity, but it always implements the idea laid down in Roman law of applying the rules established by the authorities, as well as the possibility of their establishment and implementation enshrined in the law (or custom). This has manifestation in defining the rules of conduct in a certain territory or in a certain water area, in the assessment and control by state bodies of their compliance by legal persons in respect to the national law and internationally agreed norms, the application of legal sanction and other coercive measures of influence in case of negative assessment result, as well as the implementation of service procedures in the spheres of administration by the state and its authorized bodies.

SUMMARY

In this article, the approaches to the definition and content of the legal categories "jurisdiction" and "sovereign rights" are discussed in the projection of relations emerging in the field of maritime activities. The development of the category "jurisdiction" since the first codified collections of legal norms was investigated. The classical positions of scientists concerning the content of this category are characterized. The norms of Ukrainian and foreign legislation, which define the content of the category "jurisdiction", are considered. The reasons and consequences of changing the content of this legal category for legal science and rulemaking practice are determined. It is summarized that today the category "jurisdiction" is cross-sectoral and interdisciplinary, it implements the idea laid down in Roman law of the application of the rules established by the authorities, as well as the possibility of their establishment and implementation enshrined in the law (or custom). In maritime areas under the sovereignty of a coastal state, jurisdiction is a manifestation of sovereignty, and in those where a coastal state has only sovereign rights, jurisdiction is a manifestation of these clearly defined and limited sovereign rights.

[59] Терентьева Л.В. Соотношение понятий «юрисдикция» и «суверенитет». *Вестник Университета имени О.Е. Кутафина (МГЮА).* 2016. № 12. С. 126–133. С. 132.

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LEGAL RELATIONSHIPS ON THE LOCAL BUDGETS REVENUE

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INTRODUCTION

Modern Ukrainian society is going through a difficult phase of political, economic and social transformation. The development of market relations and the sustainable functioning of the market system at the present stage require a unified approach to address many issues and necessitate the development of new approaches in financial and legal theory and practice to the formation of relations between the state and local budgets.

At present, the formation of the revenue part of local budgets is under quite difficult conditions. Despite a number of effective financial policy steps taken recently to improve local budgets, budgets remain incapable of responding to the pressing challenges of regional development.

The lack of financial autonomy of local self-government and instability of revenue sources have become a problem of national importance. The problems of legal regulation of the implementation of local budgets on revenues require research in the light of the signing and ratification by the Verkhovna Rada of Ukraine of the European Charter of Local Self-Government on November 6, 1996. In this respect, the issues of financing by local authorities of their own and delegated powers remain uncoordinated, the delineation of the powers of the subjects of implementation of local budgets by revenues and the Budget Code of Ukraine adopted on July 8, 2010 are not defined.

Finance is a rather complex multifaceted social phenomenon characterized by different features and manifestations. Local finance is a complex and ambiguous phenomenon. In Ukraine, the process of local finance formation, which began in the 1990s, causes significant institutional changes in the entire financial system of the country.

A particularly important role in the local finance hierarchy belongs to the Institute of Local Budgets. Local budgets themselves are the funds that mobilize the bulk of the financial resources needed to provide public services.

Therefore, ensuring the independence of local authorities in the formation of these funds is an extremely important task that must be solved in the process of establishing the local finance system and defining its structure.

The totality of legal relations for the implementation of local budgets is a whole system that consists in the formation, distribution and use of financial resources to provide local authorities with the functions and tasks assigned to them by local authorities (transferred to local authorities within the limits

of local interests), and delegated (entrusted to local authorities by central government).

The following institutions are formed in their structure: independent local budgets, extra-budgetary, currency and trust funds of local self-government bodies, communal ownership, local taxes and fees, municipal credit, utility payments, finances of public utilities.

Local budget execution is the activity of entities authorized by law to ensure full and timely mobilization of local budget revenues, both in general and at each source, as well as timely, complete, continuous and targeted funding for the programs and activities envisaged by them.

Activities aimed at ensuring the efficient implementation of local budgets focus on all other stages of the budget process, including drafting, reviewing and approving local budgets, and drafting and approving budget reports on budget execution.

It should be noted that the process of implementation of local budgets is the most important, complex and long-lasting stage of the budget process, which depends on ensuring the financing of priority sectors of the economy, social sphere, implementation of programs and activities of socio-economic development of the region and the country as a whole.

Relationships to replenish local budget revenues are a specific type of budgetary relationships that have their own, inherent features and characteristics. By their nature, they are managerial relationships and aim at matching the actual local budget revenues to the indicators planned in the local budget.

1. The genesis of scientific views on legal relationships for the formation of local budgets revenue

Legal relationships on the local budgets revenue have always aroused increased public interest and have been the subject of scientific research in legal and economic science.

Works of domestic scientists – representatives of financial law science of the second half of the nineteenth – early twentieth centuries indicates significant interest in the problem of revenue mobilization in local budgets.

The revitalization of such theoretical developments was conditioned by the development of market relations in the state and local economies, the growing role of administrative-territorial communities in meeting local and state needs, reforming the fiscal legislation, which required appropriate scientific substantiation.

The study of the implementation of local budget revenue part was carried out in the context of political, economic and financial analysis of the financial activity of the state and local governments under the influence of the rejection of economic liberalism and the gradual adoption of the ideals of the welfare state.

Analysis of scientific works of the XIX century. gives grounds to state the existence of different approaches to determining the nature of local budget revenues. The use of historical, comparative and evolutionary methods in the study of the development of the economy led to their interpretation as a collection of all material income, not just money.

This approach was the rationale for public policy, which involved the active use of natural resources to cover part of state and local expenditures.

With the development of market relations, a new vision of the legal nature of local budget revenues has emerged as a way of forming decentralized funds to meet local collective interests.

Representatives of finance-law science of the second half of the nineteenth century saw a relic past in non-monetary income. They believed that as a result of the evolutionary development of the economy, "a new long time exists alongside the remnants of the old" to "full maturity of the state's production capacity"[1], as a result, the outdated loses its significance and dies.

Supporters of such a vision of the development of economic forms of financial economy were I. Tarasov, V. Lebedev, D. Lviv.

However, the sustainability and preservation of such legal vestiges in the public practice has forced scientists to "not ignore the imperfect beginnings of tax" in the form of natural debt and to consider primarily their monetary equivalent as part of local budget revenues or as a peculiar addition to them.

The Ukrainian scientist K. Wobly, who considered income to be primarily part of local economy, and not just the financial policy of local self-government, held a similar position[2].

Such an interpretation gives reason to consider them as part of a complex economic mechanism that influenced the level of production, the peculiarities of distribution and consumption of a public product in a certain territory.

I. Gorlov, G. Tiktin, G. Sidorenko, V. Totomianz also saw similar views on this issue: workforce recovery through satisfaction of collective interests, accumulation of capital through the creation of public utilities, efficient use of public property through long-term rental property through a tender, etc.

It should be noted that the majority of representatives of financial law science focused on the formal nature of local budget revenues, which included only resources legally allocated by the state for the benefit of a particular

[1] Львов Д. Курс финансового права. Казань : Тип. Император. ун-та, 1887. – 521 с. – С. 93.

[2] Воблый К.Г. Начальный курс политической экономии : (История, теория, финансы) : пособ. для коммерч., технич. училищ и для самообразов. с 6 диаграммами в тексте / К.Г. Воблый ; Киев. юрид. ин-т. Киев : Т-во печ. и изд. дела авт.-изд. «Голос», 1918. 252 с. С. 249.

territorial community. According to scientists, their legal nature reduced the misuse of the financial administration and made it easier to pay taxpayer[3].

The right to form an income base was defined by law and was considered as a concession by the state as part of its own right in the form of fixed income in favor of a lower-level budget.

In this regard, scientists were noted for the negative impact of the absence of local taxes due to the inability to predict the tax policy of the state in the long term, and consequently the availability of such tax sources in local budgets and non-economic methods of managing them.

This was due to the fact that local governments did not try to preserve their tax and production potential.

It should be noted that the theoretical vision of revenue assignment changed. In the previous historical period, attention was paid to their fiscal value and satisfaction of the state's political interests above all.

In the theory of local finance in the second half of the nineteenth century dominated the idea about primacy of individual and collective needs, which should be directed by public activity, not vice versa.

In the financial law literature of the late nineteenth century was the opinion that the formation of the revenue part of local budgets should be made on the basis of the same sources that form the revenue part of the state budget.

Positively assessing the reforms of the 60's of the XIX century. in the budget and tax legislation and local governments, scientists – representatives of financial law science in the second half of the nineteenth – early twentieth centuries pointed to a number of measures necessary for the functioning of local finance as a holistic systems. Such urgent measures included, first of all, the need to create their own system of local income.

Analyzing the scientific perspectives on the concept and nature of local budget execution, we can conclude that the vast majority of scientists understand this activity as the implementation of two related procedures, namely the transfer of revenues to the budget and finance budgeted expenditures.

In particular, the financial vocabulary budget execution is understood as the realization of receiving, storing and issuing budget, accounting and reporting in the implementation of the budget [4].

According to professor L.K. Voronova perform budget is to collect revenue, which is the minimum amount set by law on the state budget or the local budget decision, and finance charges[5].

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[3] Иловайский С.И. Краткий учебник финансового права Одесса : Типография шт. войск Одесского военного округа, 1893. 297 с. С. 116.

[4] Загородній А.Г. Фінансовий словник. / Загородній А.Г., Вознюк Г.Л., Смовженко Т.С. Львів : Центр Європи, 1997. 576 с. С. 76.

[5] Фінансове право : підручник / Л.К. Воронова. – Х. : Консум, 1999. – 496 с. – С. 180.

Budget implementation is the stage of the budget process that is ensured by the activities of the legislative and executive bodies, which have drafted and approved many regulations on revenue and expenditure planning. With the beginning of the new fiscal year, you must implement the plan for revenue and expenditure that became law[6].

The purpose of implementing the budget is to achieve consistency between actual budget revenues, expenditures and the legal rules governing the sources and amounts of these revenues, as well as the directions and amounts of expenditures. Based on the stated purpose of the budget execution, it is possible to identify a correspondence between the actual results of the actions of the obliged entities with the budget funds and the set of budget-legal norms of the indicators of the budget act regarding the enrollment and use of funds for certain areas of financing in the prescribed amount.

The use of these budgetary rules implies the restraint from other actions, including the spending of budgetary funds for purposes not provided for in the budget act or provided for, but to a different extent. Recent actions are a budget offense for which responsibility is provided in accordance with Chapter 18 of the Budget Code of Ukraine[7].

Investigating the organization of budget execution, O.D. Vasylik and K.V. Pavlyuk noted that "the budget execution system is intended to carry out operational management and control over the formation of budget revenues and their intended use, in accordance with the revenues and expenditures of the approved budget"[8].

Definitions of budget execution, which characterize the narrow interpretation of this stage, are given by Romanenko O. and Oparin V. "... mobilize financing planned revenues and expenditures foreseen"[9].

Narrower definitions of budget execution, as opposed to expanded ones, characterize this stage of the budget process more precisely, since they focus on its most important aspects. Budget implementation is an organized process of mobilizing budget revenues and making expenditures in accordance with the state budget law and local government decisions on local budgets[10].

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[6] Воронова Л.К. Фінансове право : підручник / Л.К. Воронова. К. : Прецедент; Моя книга, 2006. 448 с. С. 168.

[7] Чернадчук В.Д. Стан та перспективи розвитку бюджетних правовідносин в Україні : монографія / В.Д. Чернадчук. Суми : ВТД «Університетська книга», 2008. 456 с. С. 240–241.

[8] Василик О.Д. Бюджетна система України : підручник / О.Д. Василик, К.В. Павлюк. – К. : Центр навч. л-ри, 2004. 544 с. С. 476.

[9] Романенко О.Р. Фінанси : підручник / О.Р. Романенко К. : Центр навч. літератури, 2006. 312 с. С. 156.

[10] Економічна енциклопедія : у 3 т. / відп. ред. С.В. Мочерний та ін. К. : Вид-во центр «Академія». Т. 1. 2000. 864 с. С. 188.

Describing the peculiarities of budgetary and procedural norms of budget execution, A.G. Paul notes that the rules not only define the procedure itself, but also provide for financial control[11].

The author of the study supports the position of V.D. Chernadchuk, that it is advisable to speak about the dual nature of these legal relationships in the context of the combination of substantive and procedural, the relationship between which is manifested in the legal relations of budget execution[12]. The essence of these relationships lies in the implementation of substantive rules of budgetary law contained in the law or decision on the budget, by performing procedural actions determined by the procedural rules of budgetary law. Substantive legal rules are enforced and budgetary procedural ones are implemented within a combination of substantive and procedural budgetary relationships, which together constitute the only comprehensive legal relationship of budget execution, where the unity of substantive and procedural is manifested.

2. Legal relationships on the local budgets revenue as a kind of budgetary relationship

Budget implementation relations exist at the state and local level and therefore it is possible to distinguish legal relations of state budget execution and legal relations of execution of local budgets. These relationships are not isolated from each other and do not exist independently of each other.

The legal implementation of state and local budgets is regulated by different chapters of the Budget Code, although some provisions of the code are general, for example, regarding the legal status of spending units.

Despite the presence of paragraph 3 of Art. 7 of the Budget Code of Ukraine of the principle of independence, we can speak of the dependence of the relationship of execution of local budgets on the relationship of execution of the state budget, which is the presence of the so-called "binding" relationship, which are called in the budget legislation and the legal literature of intergovernmental relations.

A characteristic feature of the legal relations of budget execution is, first of all, their functional purpose – budget financing of the provision of tasks and functions, which are carried out by state authorities and local self-government bodies.

Therefore, the budget execution relationship has a managerial nature and is a form of budget execution management.

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[11] Пауль А.Г. Процессуальные нормы бюджетного права / А.Г. Пауль. СПб : Питер, 2003. 208 с. С. 107.

[12] Чернадчук В.Д. Стан та перспективи розвитку бюджетних правовідносин в Україні : монографія / В.Д. Чернадчук. Суми : ВТД «Університетська книга», 2008. 456 с. С. 241.

The overall organization and management of the implementation of the State Budget of Ukraine is carried out by the Ministry of Finance of Ukraine, which also coordinates the activities of budget process participants, and at the local level the organization, management and coordination are carried out by local financial authorities[13].

The implementation of local budgets by revenue is part of the budgetary activity and is also a procedure of the third stage of the budgetary process. The legal connection of the participants arises and exists regarding the performance of the indicators of the revenue part of the local budget, that is, about the crediting of revenues to this budget (cash receipts), and not about the actual relations, the purpose of which is to secure cash receipts in the amount established by the budget act[14].

A consistent set of actions of participants in the procedure of execution of the budget for income is aimed at achieving a specific result – the implementation of the local budget for income, that is, ensuring the cash flow to the budget, which is the result of the actions of participants in a materialized form[15].

Thus, the relations of execution of local budgets by revenues are the relationships that are formed between subjects of budgetary law regarding the timely and complete receipt of money in the local budget revenue of a certain level for the budgetary financing of the provision of tasks and functions performed by public authorities and local authorities municipality.

Relationships to the revenue side of local budgets are a type of budgetary relations, and their characteristics are common.

In order to properly identify the relationship between local budget performance on revenue and other elements of the budgetary relationship, they must be characterized by their own characteristics, which are:

the process and grounds for their occurrence, development, change and termination are determined by the norms of the Budget Code of Ukraine, which are directly implemented in these relations;

represent the connection of clearly defined entities;

the organizational function in the legal relations concerning local budget revenues consists in a clear sequence of actions performed by all subjects of the specified legal relations in the development of the draft budget, determining its revenues, the procedure for their receipt and entry into the treasury account;

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[13] Гнатовська А.І. Загальна характеристика об'єктів бюджетних правовідносин. *Європейські перспективи*. 2011. № 1. С. 111

[14] Правовий статус суб'єктів виконання місцевих бюджетів за доходами : монографія / Т.А. Латковська, А.І. Гнатовська. – Одеса : Фенікс, 2014. – 228 с.

[15] Latkovska T., Kasianenko L.M. Procedural norms in the financially-legal regulation *Public finance: legal aspects: Collective monograph* Riga : Izdevnieciba «Baltija Publishing». 2019. P. 88.

revenues to local budgets come from taxes, fees, payments, duties, this is the property feature of the relationship, all of the above are payments paid by individuals and legal entities;

the imperative nature of the relationship on the local budgets revenue it is manifested in the fact that the subjects entering into these legal relationships do not have a choice of behaviors, they are obliged to act in accordance with the rules of the legislation that regulates it;

state power feature of the relationship on the local budgets revenue is that the central executive body that provides for the formation of the state budget policy, proves to the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, executive bodies of the respective local councils the peculiarities of calculating budget projects for the next budget period.

Imperative relationship of execution of local budgets on income arises from the fact that budgetary relations are regulated by the imperative method[16], which is objectively necessary because it really promotes and ensures timely and full flow of funds into the state funds, their proper distribution and redistribution, as well as their strictly targeted and expedient use in accordance with the rules of law[17].

Using this method, public authorities require unconditional subordination and unconditional execution of their prescriptions from other bodies subordinate to them.

Participants in the budget process are required not to subordinate, but to comply with and not violate the requirements of budgetary rules[18]. Budget relations are characterized by the fact that they have no equality of parties, because the state has to submit to the will of other subjects of these social ties in order to achieve the common, public interest, that is, they are characterized by a state-power character.

Relations on the revenue side of local budgets, as budgetary relations in general, are governed solely by the norms of legislative acts, that is, the state gives the budgetary legal relations the highest level of legal protection, because no body, except the Verkhovna Rada of Ukraine, is able to regulate budgetary relations. The law on the budget or the decision on the local budget for each current year is made exclusively by the deputies of Ukraine.

In this connection, characterizing the place of legal relations concerning the execution of local budgets by revenues in the system of budgetary relations, it should first of all proceed from the fact that budgetary

[16] Алисов Е.А. Финансовое право Украины : учеб. пособ. Х. : Эспада, 2000. 288 с. С. 26.

[17] Дмитрик О.А. Содержание и классификация финансовых правоотношений : монография / О.А. Дмитрик ; под ред. Н. П. Кучерявенко. Х. : Легас, 2004. 160 с. С. 30.

[18] Музика-Стефанчук О.А. Органи публічної влади як суб'єкти бюджетних правовідносин / О.А. Музика-Стефанчук. Хмельницький : Вид-во Хмельн. ун-ту управл. та права, 2011. 384 с. – С. 43-44.

relations are realized in the process of budgetary activity of authorities of state and local self-government, which are regulated by the rules of budgetary law and are drawn up on budget revenue generation, distribution and spending.

The system of budgetary relationships consists of relationships that are aimed at budgeting, approval, subsequent implementation, monitoring of implementation, reporting on the fact of implementation.

V.D. Chernadchuk offers a three-tier system of budgetary legal relations. At the first level, it identifies the main and ancillary budgetary relationships; at the second level, the main ones are divided into the legal relations between the implementation of the state and local budgets.

Ancillary budgetary relationships are divided into rulemaking, budgetary and security. At the third level, the budgetary relations of the second level are divided into: legal relations of budget execution (budget forming, budgetary allocations and budget transfers); rulemaking budget relations are divided into planning relationships and legal rulings of budget rulemaking; control budgetary relationships are divided into preventive, current and final; budgetary protective relations are divided into budgetary torts, legal relations of proceedings in the case of budgetary offenses and legal relations of budgetary responsibility[19].

At the legislative level, not only the list of subjects of the legal relationship, but also their powers and the procedure for exercising these powers, should be clearly stated.

At present, Art. 50 and 78 of the Budget Code[20] of Ukraine only enumerates the subjects of the execution of the state budget on revenues: the Ministry of Finance of Ukraine and the State Treasury of Ukraine, and in the legal relations of the implementation of local budgets on revenues – local self-government bodies, local executive bodies and territorial bodies of the State Treasury of Ukraine.

It should also be maintained that, despite the fact that the Budget Code of Ukraine stipulates that the collection authorities ensure timely and full receipt of taxes and levies (compulsory payments) and other revenues in accordance with the legislation in accordance with the law, their subjects of these relationships are inappropriate.

Today, in the science of financial law, there is a need to differentiate between tax and budget relationships, so the relationship to ensure the receipt of mandatory payments to the budget is tax, and the reason for their termination and the emergence of legal relations on the implementation of local budgets for income is the fact of receipt of funds in budget accounts for crediting receipts (receipts accounts).

[19] Чернадчук В.Д. Стан та перспективи розвитку бюджетних правовідносин в Україні : монографія / В.Д. Чернадчук. Суми : ВТД «Університетська книга», 2008. 456 с. С. 96.

[20] Бюджетний кодекс України від 08.07.2010 р. *Відомості Верховної Ради України*. 2010. № 50–51. Ст. 572.

3. Control as a way of ensuring local budget revenues

The result of the execution of the revenue budget is the complete and timely receipt of all planned revenues to the local budget, which makes it possible to report on its full implementation.

When revenues are received by local budgets, taxes and fees planned for the year are collected in accordance with the procedure approved by the budget and tax legislation, so the authorities are obliged to control these activities.

Financial control is a means of ensuring compliance with financial and planning discipline, as well as ensuring the effective implementation of local budgets. Financial control has always been a very important function of public administration.

And it is quite clear that it is through financial control that budgeting is effected both in terms of revenue and expenditure, since financial control is an effective tool in combating financial crime, a means of preserving state and communal property and funds, which is of particular importance for stage of formation of market relations in Ukraine.

The system of financial control over the implementation of budgets in Ukraine has been substantially reformed lately, but studies in this area are insufficient and are conducted only in the context of general problems of financial law, management theory and administrative law. And when it comes to real devolution and extension of financial autonomy of local self-government, it is necessary to introduce special procedures for financial control over the implementation of local budget revenues, as well as audit of financial transactions and settlements[21].

In legal relations on the local budgets revenue have internal and external financial control.

Internal control is exercised by elected representative bodies of local authorities by special commissions or committees. According to V. Kravchenko, the external financial control of the activity of local authorities is exercised by the state authorities on the line of both executive, legislative and judicial power. External financial control aims to comply with the law in the decisions of local authorities in the financial sphere[22].

In our view, the establishment of broad financial and administrative autonomy of local authorities at the legislative level in the execution of local budgets on revenues should be accompanied by parallel tight financial control by the state. It is the financial control over the formation of the revenue part of local budgets and the use of local funds that ensures the efficient functioning

[21] Олексій У.О. Парламентський контроль за дотриманням місцевих бюджетів *Вісник асоціації фінансового права* С. 75, 70–78.

[22] Кравченко В.І. Місцеві фінанси України : навч. посіб. / В.І. Кравченко. – К. : Т-во «Знання», КОО, 1999. – 487 с. – С. 48.

of local finances, and also ensures that the financial activities of local governments and their officials are observed.

This can be confirmed by the positive experience of foreign countries in implementing effective financial control in the implementation of local budgets for revenues. For example, in Sweden, the external financial control of a commune's activity is exercised only by the legislature and the judiciary.

As for the delegation of powers of state power to local authorities in the area of implementation of local budgets, external financial control also concerns the expediency of actions of local authorities[23].

In France, special bodies of financial control over the activities of local authorities on filling local budgets – regional accounts chambers – have been set up. These are judicial bodies. Some authority in this area has been given to the prefect – a representative of the government in the regions and departments. It is he who submits to the Regional Chamber of Accounts materials on the financial activities of communes and other local authorities. The Regional Audit Office may oblige a local authority to overturn a contravention of the law. A special procedure for controlling the local budget has also been established. If the budget of the commune is not adopted by March 31 of the current year, or by April 15 of the year of the municipal councils renewal, the prefect of the department immediately appeals to the regional accounting chamber, which makes a public decision within a month. During this period, the commune's budget is governed by the prefect. The municipal council is now losing the right to manage the budget.

In Ireland, all expenditure and revenue items of local governments are controlled within the accounting and auditing system under the guidance of the Minister for the Environment. Local government accounts are audited annually by the central government.

In Austria, financial documents for the implementation of local budgets for the income of any community with a population of more than 20,000 people are to be provided annually to the government of the land and to the tax administration. In Spain, the financial activity of local authorities is controlled by a special court of auditors. In the Netherlands, the government exercises prior control over tax regulations and the municipal budget, the creation of funds, associations, joint ventures, cooperatives and other bodies provided for by civil law.

In Norway, financial transactions such as loans and transfers of fixed assets are subject to prior control. In Portugal, municipal budget

[23] Марущак А. В. Правові основи контролю за виконанням місцевих бюджетів в Україні International scientific and practical conference “Legal practice in EU countries and Ukraine at the modern stage”. Conference proceedings, Arad 2019, p. 394, 393–395.

implementation reports are first submitted to the Audit Board, which checks them for compliance, and then submits them to the municipal council[24].

Therefore, we believe that improving the system of state internal control and strengthening the accountability of participants in the budget process in respect of the implementation of local budgets for revenues is a very important task of public authorities today. To do this, the rules on the powers and responsibilities of the bodies empowered to monitor compliance with budget legislation, determine the types of budget offenses, measures of influence and procedures for their application in case of committing budget offenses by the subjects of execution of local budgets by revenues should be carried out.

CONCLUSIONS

Thus, the relationship of filling the local budgets by income is a specific type of budgetary relationship, which has its own, inherent features and characteristics.

By their nature, they are managerial relationships and aim at matching the actual local budget revenues to the indicators planned in the local budget, these relationships have the meaning of providing budget financing for the implementation of tasks and functions of state and local authorities in a specific administrative and territorial unit.

The main negative tendencies of providing local budgets with incomes in the current conditions are the implementation of this activity in violation of budgetary procedures and "in manual mode".

Among the factors that have a negative impact on the implementation of local budgets are the following:

lack of clear delineation of powers to control the implementation of local budgets, as well as responsibility for budget execution between budget spending units and state authorities on the ground;

insufficient timely, reliable and detailed information on the state of implementation of the budget, which is necessary for making decisions on managing the budget process and bringing the amounts of actual budget expenditures into line with the available resources;

partial discrepancy between local budget performance indicators and territorial socio-economic development indicators.

Local government executive bodies and local self-government bodies are involved in legal relations to replenish local budget revenues as subjects of such legal relations. They are endowed with budgetary competence. The competence of state and local self-government bodies in the area of revenue

[24] Місцеві фінанси : [навч.-метод. посіб. для самост. вивч. дисципліни] / М.А. Гапонюк, В.П. Яцюта, А.Є. Буряченко, А.А. Славкова К. : Київ. націон. економ. ун-т, 2002. 184 с. С. 55–56.

generation by local budgets is established by legal acts, and its implementation is provided by means of state coercion.

All of the above implies the need to improve the legal regulation of the process of obtaining revenues by local budgets. This should be done in order to identify ways to optimize this stage of the budget process in order to effectively influence the socio-economic development of individual territories.

SUMMARY

The article determines that the legal relations of obtaining revenues of local budgets are governed by the legal norms of relations that are formed between subjects of budgetary law regarding timely and full receipt of money resources in local budget revenue of a certain level for budgetary financing of ensuring tasks and functions that are performed by public authorities and local self-government in the territory of a certain administrative-territorial unit of Ukraine.

It is established that the result of these relationships is the complete and timely receipt of all planned budgetary revenues, which allows to report on its full implementation. When executing the local budget, revenues and taxes are collected in accordance with the procedure approved by the budget and tax legislation, therefore the authorities are obliged to control these activities.

Financial control is a means of ensuring compliance with financial and planning discipline, as well as ensuring the effective implementation of local budgets. Due to the financial control, the budget and the effective execution of the budget are achieved both in terms of revenues and expenditures, as it is an effective instrument for combating crimes in the sphere of financial relations, a means of preserving state and communal property and funds, which is of particular importance at the stage of establishing market relations in Ukraine.

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DEVELOPMENT OF THE EDUCATION PHENOMENA IN THE INTERNATIONAL LAW

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INTRODUCTION

Defining the content of international standards for the right to higher education has become a very important issue of domestic legal doctrine. At the same time, the relevant scientific analysis cannot be complete without the development of modern mechanisms in the field of education, beginning with ancient times and up to the international law of the classical period, which is a relevant objective of this research.

To achieve the objective, the reflection of educational issues in treaty acts and interstate interaction mechanisms of the Antiquity period, in the supranational legal regulators of the Middle Ages should be researched with particular attention to sources applicable to the territory of modern Ukraine. Among contemporary authors, B.V. Babin, M.V. Boromensky, V.G. Butkevich, A.I. Dmitriev, V.V. Mytsyk, etc. gave attention to the aspects of pre-classic international law. At the same time, educational matters were hardly raised.

The issue of the realization and protection of educational rights has become a significant issue in interstate dialogue a long time ago. At the same time, general archaicism and the irregularity of the system of international relations of the Ancient World and the Middle Ages could not but affect the format of reflection of relevant problems in the primary sources, many of which have not reached the present. However, it should be noted that education and enlightenment issues have already been raised in the activities between the polis unions of Ancient Greece, such as the symmachy and the amphictyony.

According to T.P. Yevseyenko, symmachies as political unions of Greek poleis generally led to the hegemony of one of them in this interstate union. Such hegemonic symmachies facilitated the creation of conditions for the development of various forms of cooperation between different poleis and led to the gradual introduction of standards of a hegemon polis in all spheres of public life. For instance, within the scope of the activities of the First Athens Maritime Union (Delos symmachy), more than 20,000 Athenian citizens were sustained by the contributions of union poleis and general duties[1]. Of course, this has facilitated the spread of the standards of youth treatment, public education introduced by Athens to other symmachy poleis.

[1] Евсеенко Т П. От общины к сложной государственности в античном Средиземноморье / Тимур П. Евсеенко. – СПб. : Юрид. центр Пресс, 2005. – С. 127.

Amphictyonies were also important for the formation of political contacts in the fields of education, youth, sports, and culture as religious-political unions of the states of Ancient Greece. Karl J. Beloch concluded that the amphictyonies formed to coordinate religious issues subsequently extended their competence to a wide range of social relations. Specifically, within the Delphi-Thermopolis amphictyony, which was key to Ellada poleis, the issues of the arrangement of sacred sites and events, games, etc. were discussed; this approach is also endorsed by contemporary authors[2,3].

Similar issues were reflected in the peace treaties; so in the Peace of Nicias agreed in 421 B.C. between Athens and Sparta, a separate solution to the issue on the rights of the Delphi Temple, which at that time played the part of a key educational institution, was specifically envisaged. Impact on the humanitarian powers of the symmachies and the amphictyonies was also foreseen by the Peace of Antalcidas, agreed in 387 or 386 B.C. between Sparta and a coalition of Greek poleis with Athens and Thebes in the forefront[4].

In the international treaties of Ancient Rome, humanitarian issues were extremely limited. However, in the Treaty of Cassius between the Roman Republic and the Latin League (493 B.C.), mentioned by Dionysius of Halicarnassus, the private rights of Latins and Romans were envisaged, which certainly encompassed both cultural and educational rights[5]. Aspects of the status of Athens as a key educational center of international importance were also raised in the Treaty of Dardanos (85 B.C.) between Rome (Lucius Cornelius Sulla) and Pontus (Mithridates VI)[6].

Subsequently, the right to preserve one's cultural identity, particularly religious, which encompassed the right for an appropriate educational and enlightenment activities, was reflected in the treaties between the Muslim and Christian countries in the period of Arab conquest. In particular, it is the Baqt treaty, which was agreed by the King of the Nubian State of Makuria and the Governor of the Umayyads in Egypt, Abdullah ibn Said ibn Abi Sar, in 637 A.D.; this act, among other, regulated the educational rights of the Arabs

[2] Белох К. Ю. Греческая история в 2 томах / Карл Ю. Белох ; пер. с нем. М. О. Горшензона ; под ред. Ю. И. Семенова. – М., 2009. – Т. 1: Кончая софистическим движением и Пелопоннесской войной. – С. 242.

[3] Щокін Ю. В. Міжполісні й міжплемінні союзи Стародавньої Греції VI–IV століть до н. е. / Ю. В. Щокін // Теорія і практика правознавства. – 2016. – Вип. 2 (10). – С. 5.

[4] Сергеев В. С. История Древней Греции ; изд. третье, перераб. и доп. / В. С. Сергеев ; под ред. В. В. Струве, Д. П. Каллистова. – М. : Изд-во восточной лит-ры, 1963. – С. 218.

[5] Dionysius of Halicarnassus. The Roman antiquities of Dionysius of Halicarnassus ; transl. by Earnest Cary, red. Edward Spelman.– London : William Heinemann Ltd., 1937. – Vol. V. – P. 156.

[6] Сергеев В. С. История Древней Греции ; изд. третье, перераб. и доп. / В. С. Сергеев ; под ред. В. В. Струве, Д. П. Каллистова. – М. : Изд-во восточной лит-ры, 1963. – С. 310.

in Nubia[7]. The Treaty of Orihuela (Theodemir Treaty) (713 A.D.) had a similar meaning. It was agreed between the Ruler of North Africa Abd al-Aziz and Prince of Murcia Theodemir on the surrender of a number of Christian cities in Spain and their transfer to the control of the Arabs, which was of great importance as a precedent for the further cultural development of the population concerned[8].

In Medieval Europe, under the conditions of popes` and emperors` claims for world domination, education issues were for a long period determined by their unilateral acts, which were objectively supranational, especially in the conditions of the development of the feudal system. In this context the Encyclica de litteris colendis, provided by Emperor Charlemagne in 787 to the monasteries of Europe is notable.

The Capitulary states that in episcopalities and monasteries, "except for the observance of rules, monastic life, and religious exercises, the reflections on the sciences were approached, according to one`s own ability to learn", because "everyone must first study what he wants to give an effect to". The document was credited with "not neglecting scientific pursuits, but to endeavor diligently to study them with all humility and good intentions before God," and "to choose people for such a purpose who would have the ability and desire to learn, and the desire to teach the others"[9].

In this context, the Charlemagne Capitulary (802) is also of great interest. Henderson defined it as a founding act of the Holy Roman Empire, that is, as a document that had the features of a supranational regulator, as well as a general program for the development of state entities that are part of a single European civilization. Article 10 of the Capitulary states a requirement for bishops and priests to "teach others" the ecclesiastical canons[10].

Researchers in the history of the Middle Age underline the fact that the system of organized education, emerged spontaneously, through pilgrimages to "some educational centers" such as Bologna, Paris, and others. Thus, the main impetus for self-organization of teachers and students was the issue of lack of security and minimum social standards, hostile attitude of local secular and ecclesiastical authorities.

Such self-organization in the association (Universitas, that is, universities) has led to the aspirations of the newly formed schools to obtain

[7] Spaulding J. Medieval Christian Nubia and the Islamic World: A Reconsideration of the Baqt Treaty / Jay Spaulding // The International Journal of African Historical Studies. – 1995. – Vol. 28. – № 3. – P. 589.

[8] Rosenwein B. H. Reading the Middle Ages: Sources from Europe, Byzantium, and the Islamic World / Barbara H. Rosenwein ; 3d ed. – Toronto, University of Toronto Press, 2018. – P. 94.

[9] Стасюлевич М. М. История средних веков в ее писателях и исследованиях новейших ученых. – СПб. : Тип. М.М. Стасюлевича, 1864. – Т. II. – С. 52.

[10] Henderson E. F. Select Historical Documents of the Middle Ages / Ernest F. Henderson. – London : George Bell and Sons, 1903. – P. 193–194.

confirmation of their own corporate identity from the highest (and often supranational) power while maintaining internal autonomy and self-government in all matters. The authors of the XX century acknowledged that the objective importance of schools (universities) led them to be recognized by the highest political forces with the desire to use them in their own interests[11].

G.I. Lipatnikova cited the Acts of Pope Honorius III concerning the fostering of the "friendships" of the University of Bologna in 1217–1224 and on the contrary, the prohibition of the "nations" of the University of Paris in 1222 and 1225. The facts of this Pope`s direct intervention in the affairs of the high school of the states of Europe "through the head" of local authorities more than 80 times in 10 years of his own pontificate are provided. His successor, Gregory IX in 1227–1241, issued more than forty acts on university affairs, and Pope Alexander IV approved almost 90 acts on these issues during 1254–1261[12].

At the same time, the highest secular authorities tried to regulate the issues of university education, as evidenced by acts of the power of kings and emperors. For example, the letter of Emperor Frederick Barbarossa addressing the students and teachers of Bologna schools in 1158 provides for the protection of students and professors who "travel for the sake of knowledge" so that "they and their envoys can safely travel to the places where they are being improved in science, and quietly live there." It was especially forbidden to apply to students the reprisals for the "debts" of other persons of the locality from where the students came to study; Jurisdiction over court cases involving students and professors was referred to the bishops of the respective cities or to another court by the choice of university representatives.

Similar privileges at the national level were granted to the students of the University of Paris by the privilege of King Philip II of France in 1200. At the same time, third-country kings appealed to self-organized schools with a call for cooperation. In this context, a letter from King Henry III of England to the "masters and university students of Paris" (1229) inviting the university to move to England with the provision of "freedom and tranquility that would satisfy your needs completely" is of great interest. The reason for the invitation was the fact that the University in Paris was "under the rule of unjust law"[13].

However, in this situation, it was the acts of the popes regarding the universities that had a greater international dimension than the secular power, which at that time often opposed the church. The popes, on the one hand, used to treat their own education workers with the supranational authority, on the

[11] Документы по истории университетов Европы XII-XV вв. : Учеб. пособие / под ред. и с предисл. А. Е. Москаленко ; вступ. статья, пер. и примеч. Г. И. Липатниковой. – Воронеж : Воронежский пед. ин-т, 1973. – С. 15–17.

[12] Ibid. – С. 18.

[13] Ibid. – С. 109–113.

other – used their own exclusive prerogative of the organization of teaching religious disciplines in the universities. In addition, the popes as feudal lords often considered the nobility of universities, including the clergy as their own vassals and provided them with appropriate guarantees.

For example, a letter from Pope Innocent III to masters and students of Paris schools (1205) mentions a request by the Emperor of the Baldwin Empire to involve Western scholars to the "reform of Scripture teaching" in captured Byzantium. In his letter, Innocent III called for masters and students to travel to Greece to meet the emperor's appropriate needs[14].

It should also be mentioned that the confirmation by the papal authority, as a supranational, of the legal status of the university, often occurred within a relatively short period of time after the granting the rights to higher education by the state authorities. Thus, the status of the University of Salamanca was granted by the King of Castile and Leon Alfonso X in 1252 and was confirmed by Pope Alexander IV in 1254. The Royal Charter on the establishment of the University of Coimbra in Lisbon was granted on March 1, 1288, and the Papal Bull of Nicholas IV on the status of this university was granted on August 9, 1288. For other universities, the time for interstate and papal recognition could take longer; for example, the University of Florence was founded as a Studium Generale by the authorities of the republic in 1321, and Pope Clement VI confirmed the rights of this institution in 1349[15].

The University of Santiago de Compostela was opened in 1495, in 1504 its opening was confirmed by Pope Julius II, and the privilege bull of this university was granted by Pope Clement VII in 1526. The first Asian University of Saint Thomas was established in Manila by the Charter of Philip III of Spain in 1611 with the granting a bull of Pope Innocent X to a school, as a papal university, on November 20, 1645. Other high schools had a very significant gap between state and papal recognition; for example, the University of Alcala was founded by King of Castile Sancho IV in 1293, and the papal bull with the recognition of status and privileges was received by the institution only in 1499.

At the same time, many universities were founded by popes on their own initiative, pending the approval of relevant decisions by public authorities. For example, the University of Glasgow was founded by the papal bull in 1451, and the University of Uppsala was established by the bull of Pope Sixtus IV in 1477, granting the privileges similar to the University of Bologna to the newly established school. The Pope's Bull on the foundation of

[14] Документы по истории университетов Европы XII-XV вв. : Учеб. пособие / под ред. и с предисл. А. Е. Москаленко ; вступ. статья, пер. и примеч. Г. И. Липатниковой. – Воронеж : Воронежский пед. ин-т, 1973. – С. 116.

[15] List of oldest universities in continuous operation / Wikipedia, the free encyclopedia [Electronic source]. – Available at: https://en.wikipedia.org/wiki/List_of_oldest_universities_in_continuous_operation.

the Royal College of Scotland, which preceded the University of Aberdeen, was granted in 1495[16].

The internal conditions of the universities gradually became regulated by the papal authority in a quite thorough manner. For instance, the decree of the papal legate of Robert de Curson on students and masters of Paris schools in 1215 established mandatory requirements for lecturers in liberal arts. These are the minimum age, good faith, educational experience, minimum teaching term, passing the exam, and the order of holding lectures.

It was stated that the examination of teachers should be taken by special judges appointed by the pope according to the form approved by the bishop of Paris. The following procedure for such examinations was clarified by Pope Gregory IX's bull for the University of Paris on April 13, 1231. According to this bull, the Chancellor of Paris was entrusted with the function of checking the integrity of the candidate for teaching, with providing the university with guarantees of arbitrariness in this process (special oath of the Chancellor, involvement of all masters of theology of the university in the examination)[17].

The Bull of Gregory IX from April 13, 1231, is also noteworthy. It confirmed not only the autonomy of the University of Paris but also the right to strike against the city government, as well as the decision of Pope Boniface VIII in 1301, that supported the position of students of the University of Bologna in a dispute with the city authorities, that required the rector to pledge allegiance[18].

It is also necessary to point out the privilege that was granted on September 22, 1255, by Pope Alexander IV to “the University of the Masters and Students in Salamanca”. In this act, persons who "passed the examination and were approved at the University of Salamanca" at a certain faculty were subsequently given the right to teach, without taking new exams and " anyone`s resisting" at a similar faculty at any other university except the Paris and Bologna. According to G.I. Lipatnikova, such a right to teach (ius ubique docendi) for the masters of a number of universities were granted by the popes "using the universal character of their own power", with universities often being discriminated[19].

Thus, the masters of the University of Cambridge were one of the last to be granted such a right, in 1318, and the University of Oxford did not receive such a right at all. Such privilege of Pope Nicholas IV for "University

[16] List of oldest universities in continuous operation / Wikipedia, the free encyclopedia [Electronic source]. – Available at: https://en.wikipedia.org/wiki/List_of_oldest_universities_in_continuous_operation.

[17] Документы по истории университетов Европы XII-XV вв. : Учеб. пособие / под ред. и с предисл. А. Е. Москаленко ; вступ. статья, пер. и примеч. Г. И. Липатниковой. – Воронеж : Воронежский пед. ин-т, 1973. – С. 116.

[18] Ibid. – С. 122.

[19] Ibid. – С. 17.

of Masters and Students of Paris" was granted on March 23, 1292, confirmed the papal "power to give the right to teach" and defined the universal nature of the examination of the University of Paris teachers (masters) of the faculties of theology, canon law, medicine, and liberal arts that could lecture anywhere "beyond this city and the faculty" after its passing. The customs and statutes that prevented this privilege were defined in it as invalid[20].

At the same time, it is worth mentioning such key legal acts of secular power of the XIII century that reflected rights, including educational ones, such as the Magna Carta (1215)[21], as well as the Golden Charter of Bern (1218) and the Privileges of Vienna (1237), granted by Emperor Frederick II Hohenstaufen. In the Golden Charter, the Emperor guaranteed the eternal refusal from the appointment of a teacher of the church school; the imperial authorities undertook to approve the candidate proposed by the city authorities with the common consent (communi consilio) of the candidate. In the Privilege (1237) "going towards the common desire to teach children from a young age" the right of a master's imperial authority, the head of a school in Vienna, "to appoint, with the consent of the most conscious men of this city, other doctors in the faculties, worthy and respected in the field of their sciences" was stated[22].

It is interesting that the apparent increase in the common desire of European societies for education at that time was also reflected in trade agreements. Thus, in the draft trade agreement of the Novgorod Republic with the free cities of Lubeck and Gotland, which was handled by the parties in 1268-1269 years in XIII century, the right of merchants of these German cities to "freely send their children to learn the language of the land they want" during their stay in Novgorod was envisaged[23].

A striking example of the further regulation of educational relations in European states is the establishment of the University of Prague by the Bull of Pope Clement VI on January 26, 1347. The document referred to a previous proposal (request) on this issue by Emperor Charles I (IV) stating the absence of "a higher school, while there is a great need for it " in the Czech Kingdom "as well as in many neighboring countries". The Bull indicated the universal competence of the popes in "helping", " those faithful who show interest in the pursuit of the teachings glorifying God, strengthening the Catholic faith

[20] Документы по истории университетов Европы XII-XV вв. : Учеб. пособие / под ред. и с предисл. А. Е. Москаленко ; вступ. статья, пер. и примеч. Г. И. Липатниковой. – Воронеж : Воронежский пед. ин-т, 1973. – С. 17, 120.

[21] Ясинский А. История Великой Хартии в XIII столетии / А. Ясинский // Киевские университетские известия. – К. : Унив. тип-я, 1888. – № 7. – С. 34.

[22] Средневековое городское право XII-XIII веков : сборник текстов / под ред. С. М. Стама. – Саратов : Изд-во Сарат. ун-та, 1989. – С. 45, 47.

[23] Рыдзевская Е. А. Новый список проекта договора Новгорода с Любеком и Готландом 1269 г. // Проблемы истории докапиталистических обществ. – Л. : 1935. – № 5-6. – С. 121.

and ensuring justice and success in public and private affairs and the prosperity of the whole human race" under appropriate circumstances[24].

Clement VI noted that since Prague is "rich in necessities for life", this city "is a fairly suitable place for higher education, although there are only private schools." The Bull of 1347 indicated the will of the pope for "the cause of science for the wealthy population endowed with all kinds of goods" and noted that "along with gold and silver mines scientific mine should be established" in the Czech Kingdom. The Bull emphasized the need for "men from this kingdom who were taught by the maturity of thought, adorned with virtues and scholars in various fields trained in the understanding of the tenets of faith", the need to establish a "source from which all who seek knowledge of the essence of written education could draw"[25].

In the Bull of 1347, Clement VI stated that " the university in Prague and all permitted faculties is to prosper" forever, drawing on his own "apostolic law". At the same time, the Bull was to provide the teachers and students of the newly formed university with "rights, privileges, and expulsions from the general jurisdiction following the suit of doctors, masters, and students of other universities", that is, apparently, based on the established supranational custom at that time. The Bull stated that in order to obtain the status of master or doctor, the applicant had to be represented by the masters of the respective faculty in front of the Archbishop of Prague. Thereafter, the archbishop had to convene doctors and masters of this faculty and instruct them to carry out "a thorough examination in the sciences that are necessary for doctoral or master's honor degree"[26].

The Bull of 1347 stated that "if the answers of the subjects of examination are considered as sufficient, the archbishop gives them the right of teaching and recognizes their the honor and degree of master". The exam was also given the status of a universal, providing the graduate with the right to teach at any other university. However, the royal charter of Charles I (IV) on the foundation of the University of Prague, which mentioned the precedents of higher educational establishments in Paris and Bologna, was granted only on April 7, 1348[27].

At the same time, the state authorities and popes sometimes negotiated the establishment of the university and the extent of its privileges to issue acts on its establishment. For instance, the University of Heidelberg was established by an act of the Duke of Bavaria and Prince of the Holy Roman Empire Rupert I in October 1386, under the conditions of a preliminary

[24] Документы по истории университетов Европы XII-XV вв. : Учеб. пособие / под ред. и с предисл. А. Е. Москаленко ; вступ. статья, пер. и примеч. Г. И. Липатниковой. – Воронеж : Воронежский пед. ин-т, 1973. – С. 131.

[25] Ibid. – С. 132.

[26] Ibid. – С. 133.

[27] Ibid. – С. 131.

positive decision on the subject by the pope, approved in 1386 without the publication of the Bull. Under the agreement of the Duke and Pope, the university was to receive privileges similar to the University in Paris.

In the act on establishment, the Duke determined the number and the names of four faculties – "the first one, of theology; the second one, of canon and civil law, which are appropriate to be formed into a single faculty because of their similarity; the third one, the faculty of medicine, and the fourth one, of liberal arts", and declared the work of the institution of "four nations", granting all privileges, "even with more generosity", to all university staff, including "overseers, librarians, servants, parchment makers, scribes and illustrators" etc.[28].

It is important to cite the provisions of the Concordat (treaty) agreed between Pope Leo X and the King of France Francis I in Bologna in December 1515 and in Rome on 16 August 1516. This Bologna Concordat governed the appointment of higher church posts in France, abolished previous acts and established a compromise according to which the pope had the authority to appoint bishops and abbots but solely from candidates proposed by the king. In Concordat, it was specifically required that a candidate proposed for approval by a king to the pope had to be a "Master or Licentiate of Theology or a Doctor or Licentiate of all or one of the universities, which is famous for its rigorous examinations"[29]. However, the Concordat did not list such universities, by its definition it included graduates of the University of Paris, the University of Bologna, and other universities.

As it was already noted, a similar approach to the formation of universities prevailed in the colonies of the European states. It is noteworthy that the first university of the New World in Santo Domingo (the Dominican Republic now) was founded by the Bull of Pope Paul III in Apostolatus Culmine from October 28, 1538, granting it the authority similar to the Spanish University of Alcala, and the establishment of four universities that were traditional for then higher schools.

The Royal Decree (Charter) confirming the rights of this institution was given twenty years later, in 1558, with the naming of the institution as the University of St. Thomas Aquinas. The process of the establishment of the institution may be explained by the formation of a university on the seminary basis (Studium Generate) of the Dominicans, which has operated on the island since 1518, as a structure from the outset oriented on the church rather than on the secular power[30].

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[28] Henderson E. F. Select Historical Documents of the Middle Ages / Ernest F. Henderson. – London : George Bell and Sons, 1903. – P. 262–267.

[29] Хрестоматия по истории средних веков ; пособие под. ред. Н.П. Грацианского, С.Д. Сказкина в 3 томах. – Т. 3. – М. : Учпедгиз, 1950. – С. 35.

[30] Universidad Santo Tomás de Aquino / Wikipedia, the free encyclopedia [Electronic source]. – Available at: https://en.wikipedia.org/wiki/Universidad_Santo_Tomás_de_Aquino.

The next University of the American continent was founded in Lima (now Peru) by decree of the Spanish King (Emperor) Charles I from May 12, 1551, as the "General School and Real University of the Royal City", granting an institution the privileges similar to the status of University of Salamanca; this decree was confirmed by the Bull of Pope Pius V from July 25, 1571, which confirmed the conditions under which the emperor founded the university "under the rules of royal patronage"[31].

Later, in Sucre (Bolivia), the Royal and Pontifical Major University of St. Francis Xavier de Chuquisac was established, which was due to the proclamation of the Royal Act (Charter) by Philip III on 2 February 1622 and by the Bull of Pope Gregory XV on August 8, 1623; the university has been operating since 1624[32].

Subsequently, in the context of the Reformation, the role of popes in regulating aspects of education declined; at the same time, in supranational legal acts, the regulation of education was implemented through the measure of ensuring the protection of religious freedoms. Thus, the Ausburg religious agreement from September 25, 1555, between Catholic and Lutheran entities of the Holy Roman Empire on behalf of the emperor Roman King Ferdinand I established a balance between the territories of Catholicism and Protestantism, guaranteeing the appropriate educational rights.

Thus in Article 19 of the agreement from 1555 guaranteed the preservation of the new status of the individual abbeys, monasteries and other church estates seized during the religious wars and converted, “into schools and charitable institutions”[33]. The provisions of the agreement in this paragraph were confirmed, inter alia, by the Peace of Prague (May 30, 1635) between Emperor Ferdinand II and the representative of the Protestant states of the empire, Johann George I[34].

It is necessary to add that in Article 8 of the Treaty of Vienna, agreed on June 23, 1606, between the Prince of Transylvania and the Archbishop of Austria, prohibited the activities of the Jesuits in Hungary[35]. At the same time, the Madrid Treaty (1621), agreed on the guarantees of the King of France and the Swiss Confederation, provided for freedom of religion and related

[31] Universidad Nacional Mayor de San Marcos / Historia [Electronic source]. – Available at: http://www.unmsm.edu.pe/home/inicio/historia.

[32] Universidad San Francisco Xavier de Chuquisaca 1624 – 2018 / Historia [Electronic source]. – Available at: https://www.usfx.bo/principal/historia/.

[33] European treaties bearing on the history of the United States and its dependencies to 1648 ; ed by Frances G. Davenport, Charles O/ Paullin,. – Washington, D.C. : Carnegie Institution of Washington, 1917. – P. 44.

[34] The Low Countries in Early Modern Times: A Documentary History ; ed by Herbert H. Rowen. – New York : Palgrave Macmillan, 1972. – P. 16.

[35] Sugar P. F. A History of Hungary / Peter F. Sugar, Peter Hanák, Tibor Frank. – L. : Indiana University Press, 1990. – P. 97.

enlightenment and educational activities in the disputed Alpine valley of Valtellina[36].

It is important to mention the consequences of the French authorities' approval of the Edict of Nantes (April 13, 1598) in Article 13 of which the manifestation of Protestantism in various spheres of public life, in particular as regards "public education" is prohibited. Also, Article 22 of this edict imposes a prohibition of discrimination against Protestants in the field of "admission of students to the universities, colleges, and schools." The following provisions of the Edict of Nantes were confirmed in the Treaty of Montpellier (18 October 1622) between King of France Louis XIII and Duke Henry II of Rohan, as well as in the Treaty of Alaska agreed on June 28, 1629, between King of France Louis XIII and Huguenots leaders[37].

It would also be appropriate to add that in the series of treaties which together formed the system of the Peace of Westphalia (the Treaty of Münster of 15 May 1648, the Treaty of Osnabrück of 24 October 1648), the issue of education was not specifically mentioned; these acts only indirectly affected the relationship within the framework of guaranteeing freedom of confession for Catholics, Lutherans, and Calvinists[38, 39, 40]. In general, one can say about a system of international peace treaties of the XVII-XVIII centuries that reflected the conditions of the Treaty of Westphalia with regard to education, as it follows, for example, from the Treaty of Versailles of September 3, 1783[41].

The institute of preserving and returning the archives of various institutions after the end of the inter-state armed conflict was important in this contractual practice. This institute, which, of course, extended to universities, was introduced in Article 22 of the Peace and Friendship Treaty between the Kings of Britain, France, Spain and Portugal of February 10, 1763[42].

Special attention should be paid to the development of international treaty support for educational relations in Ukrainian territory, a reference to which can be found in the documents of the liberation contest period in XVII century. Until that period, the educational aspects of the states, which

[36] European treaties bearing on the history of the United States and its dependencies to 1648 ; ed by Frances G. Davenport, Charles O / Paullin,. – Washington, D.C. : Carnegie Institution of Washington, 1917. – P. 116.

[37] Ibid. – P. 259.

[38] Ibid. – P. 12.

[39] The Low Countries in Early Modern Times: A Documentary History ; ed by Herbert H. Rowen. – New York : Palgrave Macmillan, 1972. – P. 181.

[40] Дмитрієв А.І. Вестфальський мир 1648 року і сучасне міжнародне право : монографія / Анатолій І. Дмитрієв. – К. : Київський університет права, 2001. – С. 210.

[41] Treaties of Versailles, 3 September 1783 [Electronic source]. – Available at: https://www.heraldica.org/topics/france/utrecht.htm.

[42] The definitive Treaty of Peace and Friendship between his Britannick Majesty, the Most Christian King, and the King of Spain. Concluded at Paris the 10th day of February, 1763. To which the King of Portugal acceded on the same day [Electronic source]. – Available at: http://avalon.law.yale.edu/18th_century/paris763.asp.

included the territory of Ukraine, were not regulated separately in foreign acts. For example, in the text of the Union of Lublin, agreed on 1 July 1569, namely in its Article 7 can be found only a general mention of the preservation of the privileges granted in the newly formed state, which should obviously include the princely and royal acts concerning the establishment of universities and colleges[43].

At the same time, virtually all the key acts concluded by the Ukrainian side with the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania contained provisions on education issues. Thus, the Article 10 of the Treaty of Zboriv, agreed on August 1649, contained injunctions prohibiting the activities of Jesuits, including educational "in Kyiv, where privileged schools of Rus are based ... and in other Ukrainian cities", while at the same time all "other schools" that had been there "since the dawn of time" were to be preserved[44,45]. In Article 6 of the Treaty of Bila Tserkva (September 28, 1651) the preservation of the rights of the Orthodox religion "according to ancient rights", which included "cathedrals, churches, monasteries, and the Kyiv Collegium" was stated[46].

In the Hadiach Treaty of September 16, 1658, the issues of education were regulated in a more thorough manner. According to this act, the "Academy of Kyiv" was granted the "prerogatives and liberties" equal to the "Academy of Krakow" prerogatives and liberties (i.e. Krakow University) by royal authorities, but only under the condition that it did not present "Arian, Calvinist, Lutheran professors, teachers, and students". The treaty also agreed on the transfer of all other schools "that had been in Kyiv before" (apparently referring to Jesuit schools) to another place by the decision of the royal authority[47].

The Hadyach Treaty provided for the establishment of a second academy in Ukraine, which should have had the same rights as the Kyiv one, where the royal authorities and the Sejm would "see a suitable place for it", and also under the condition that the Protestants were not admitted and the were no other schools in its place. In contrast to the aforementioned academies, the treaty allowed to freely open "high schools, collegiums,

[43] Из постановления Люблинского сейма об унии Великого княжества Литовского с Короной Польской 1 июля 1569 г. // Белоруссия в эпоху феодализма. Сборник документов и материалов ; под ред. А.И. Азарова и др. – Т. I. – Минск : Изд-во АН БССР, 1959. – С. 153.

[44] Акты, относящиеся к истории Южной и Западной России, собранные и изданные Археографической комиссией. – Т. 3 : 1638–1657. – СПб. : Тип. П. А. Кулиша, 1861. – С. 125.

[45] Яковлів А. Українсько-московські договори XVII – XVIII ст. / Андрій Яковлів. – Варшава : Наук. т-во ім. Шевченка, 1934. – С. 46.

[46] Горобець В. М. Білоцерківський договір 1651 р. / В. М. Горобець // Енциклопедія історії України : у 10 т. / редкол. В. А. Смолій та ін. – К. : Наукова думка, 2003. – Т. 1. А-В. – С. 292.

[47] Горобець В. М. Гадяцький договір 1658 р. / В. М. Горобець // Енциклопедія історії України : у 10 т. / редкол.: В. А. Смолій та ін. – К. : Наукова думка, 2004. – Т. 2. Г-Д. – С. 14.

schools and printing houses" in Ukraine and "to print books of any kind with religious conversion", but without criticism of the royal authorities[48,49].

It is interesting that the agreements of the Ukrainian authorities of that period with the Tsardom of Muscovy did not regulate educational issues at all, despite the incorporation of these aspects into the proposals to such agreements by the Ukrainian side. Thus, in the draft of the new interstate agreement proposed by representatives of the Cossack officers to the Tsardom of Muscovy in October 1659 (Zherdivsky articles), "free existence of schools with any language of teaching on both banks of the Dnipro river" was envisaged, which was not taken into account by the royal authorities[50].

In general, the issue of higher education was repeatedly mentioned in the then interstate treaties on the change of territory or status of the country, in particular, the country could be given certain guarantees. For example, the Acts (Treaty) of Union with Scotland, ratified by the parliaments of England and Scotland in 1706, contained a special prescription on the regulation stated in Article 25 on the termination of legal sources that are contrary to the Act, after the merger of two states; under this prescription, "the universities and colleges of St. Andrew, Glasgow, Aberdeen, and Edinburgh continue to operate"[51].

However, such treaty regulations were not always respected by the states; in particular, in Article 10 of the Treaty of Nyshtad between Russia and Sweden (August 30, 1721), Russia undertook, inter alia, to keep schools that remained in the territory of Baltic States, transmitted by Sweden, and in Article 4 – archives of the respective lands (archives and documents evacuated to Sweden should be returned to the institutions).

At the same time, the second university of Sweden, established in Dörpt (now Tartu, Estonia) by King Gustav II Adolf in 1632 as Academia Gustaviana (later – Universitas Gustaviana), was located on the lands given to Russia. The regulations of the Treaty of Nyshtad were not respected in this institution; it has ceased to exist under the conditions of Russian occupation in 1710 and was not re-established in peacetime; the university in this city has started its operation only since 1802, and the university archives of the Swedish period were not preserved[52,53].

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[48] Акты, относящиеся к истории Южной и Западной России, собранные и изданные Археографической комиссией. – Т. 3 : 1638-1657. – СПб. : Тип. П. А. Кулиша, 1861. – 604 с.

[49] Горобець В. М. Гадяцький договір 1658 р. / В. М. Горобець // Енциклопедія історії України : у 10 т. / редкол.: В. А. Смолій та ін. – К. : Наукова думка, 2004. – Т. 2. Г-Д. – С. 14.

[50] Яковлів А. Українсько-московські договори XVII-XVIII ст. / Андрій Яковлів. – Варшава : Наук. т-во ім. Шевченка, 1934. – С. 77.

[51] Union with Scotland Act 1706 [Treaty of Union, took effect on 1 May 1707] [Electronic source]. – Available at: http://www.legislation.gov.uk/aep/Ann/6/11/contents.

[52] List of oldest universities in continuous operation / Wikipedia, the free encyclopedia [Electronic source]. – Available at: https://en.wikipedia.org/wiki/List_of_oldest_universities_in_continuous_operation.

The regulations of Article 23 of The Treaty of Amity and Commerce between the United States of America and Kingdom of Prussia (September 10, 1785), which reflected progressive for that time understanding of the law of war and provided a list of non-combatants who had received warranties from both states in the event of war between them are also of a great interest; this list also included "scholars of every faculty".

According to this regulation, such scholars (students) should be allowed to study and they cannot be molested personally if they are unarmed and live in a non-fortified city, settlement or another place during the war. Their homes and property cannot be burned out and destroyed, their fields cannot be devastated with the enemy forces. If due to the war, such scholars (students) have something withdrawn for military needs, they should receive monetary compensation at a reasonable cost[54].

CONCLUSIONS

Accordingly, the following conclusions are reached. In antiquity, international legal acts paid indirect attention to the aspects of the exercise of the right for education and the organization of education systems. In the Middle Ages, the emergence and development of the university education system became the subject of legal support of supranational regulators, primarily the acts of Popes of a universal nature.

The establishment or recognition of the universities that had been formed on the initiatives, the establishment of guarantees of their autonomy, ensuring mutual recognition of the results of the master's and doctoral examinations, the requirements of having such titles for religious positions were the main issues of supranational security.

The recognition of education in international acts as one of the key guarantees of the exercise of religious rights emerged in the Middle Ages and was formed during the Reformation. The agreements of the Ukrainian authorities during the period of national liberation competitions of the 17th century, which consistently uphold the need to develop the national secondary and higher education system are of particular importance. The issues mentioned must form the basis for new scientific research.

[53] Ништадтский мирный договор между Россией и Швецией 30 августа 1721 г. [Electronic source]. – Available at: http://www.hrono.ru/dokum/1700dok/1721nishtadt.php.

[54] Treaties of Versailles, 3 September 1783 [Electronic source]. – Available at: https://www.heraldica.org/topics/france/utrecht.htm.

SUMMARY

The article reflects the evolution of the international promotion of the regulation of the educational issues in the Ancient and Middle Ages. Special attention was devoted to the issues of the international legal framework of the first European universities` activities, of the treaties fixing of the educational components of interreligious relations, of the treaties guaranteeing the development of the Ukrainian educational system at the times of liberating struggle during XVII century.

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E-DEMOCRACY AND ENHANCING PUBLIC ADMINISTRATION IN UKRAINE: THE ISSUES OF TRANSITION

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INTRODUCTION

The current Ukrainian political agenda includes a strong discourse of development of e-democracy and e-government that are viewed as one of the goals and at the same time as powerful tools of successful political and public administration reforms. However, the apparent lack of critical approach to the excising theories and practical models may influence both the efficiency of implementation and expectances of consequences of introduction of e-government and e-democracy tools.

Hence, the overview of transformation of Ukrainian public administration on its declared pass to e-democracy includes evaluating the effectiveness of models and technologies for managing social relationships and processes, as well as analyzing the main directions and forms of their regulation. In this aspect, particular importance is given to the issues of the e-democracy and e-government correlations that characterize governance in today's information society. Besides, there is important to explore the dynamics of concepts, to look at existing models from the perspective of advantages and limitations. Quality of functioning of the management system, prompt response to changing needs, tools of prospective planning, expansion of participation in management and range of methods of communication interaction – all this is a substantial filling of the process of optimization of management mechanisms.

Concerning the overload of the issue with acts based on declarative norms the focus is made on distinguishing practical changes in the regulation environment of e-governance and e-democracy in Ukraine. The approach possesses the potential to reveal actual dynamics of political will and government intentions towards development of e-government solutions and encouraging the society’s e-participation. Besides it helps to disclose obstacles and national peculiarities in the field.

1. E-Democracy and E-Governance: Developments and Correlations

Various definitions of e-democracy “tend to stress the potential of information and communication technologies in a broader democratic process at local, regional, national and increasingly at global levels, in which people

interact, deliberate, make decisions and conduct elections"[1]. Hence, in the narrow understanding e-democracy is viewed as a mere application of ICT to a political process to facilitate, enhance and faster its different aspects.

At the same time, the broader views on e-democracy stipulate it as "the use of information and communication technologies to enhance and in some accounts replace representative democracy"[2]. The concept is predominantly based on the views on the Internet and social networks as the primary mediums for communicating and debating a political discourse. In latter case e-democracy is a result of combination of technological and social changes within developments of information society that not mere facilitate political process, but also change the content of political process itself.

However, there are approaches that traces the history of generic ideas of e-government back to 1950s, determining three basic stages of its development:

- 1950–1960 – "The governing machine", which was based on the computer capabilities to process big amount of data for improving public administration; thus the State was viewed as the central actor and coordinator of societies;

- 1970–1980 – "Teledemocracy" created by the cable TV networks to grant better relationships between citizen and elected officials with the emphasis on local communities as a laboratory of strong democracy;

- 1990–2000 – "Cyber-democracy" established on computers networking that provide cyberspace and virtual communities as tools for political self-organization; so that a citizen becomes an autonomous agent in global public sphere[3].

In any case 1990s were the period when the contemporary understanding of e-democracy was drawn up both at the scientific and practical levels. Indeed, the online participation as a vehicle for effective, manageable dialogue between representatives and represented has been examining since 1997[4].

Indicatively, the non-state actors were the ones, who started the practical transition to e-democracy. For example, the World's first election information website was created in 1994 by the civil society organization Minnesota E-Democracy. It was also held the first online candidate debate;

[1] Anheier H., Glasius M., Kaldor M. Global Civil Society 2004/5. London. SAGE. 2005. P. 110.

[2] Chadwick A. E-democracy. Encyclopedia Britannica. 2018. URL: https://www.britannica.com/topic/e-democracy.

[3] Vedel T. The Idea of Electronic Democracy: Origins, Visions and Questions: Origins, Visions and Questions. Parliamentary Affairs. 2006. No. 59 (2). P. 226–235. URL: https://hal.archives-ouvertes.fr/hal-01475858v2/document.

[4] Politics, Democracy and E-Government: Participation and Service Delivery: Participation and Service Delivery. Ed. by Christopher G. Reddick. Hershey. IGI Global. 2010. P. 169.

and MN-Politics online forum launched creating longest lasting statewide online citizen-to-citizen discussion[5].

As for the state's initiatives that fall within frameworks of e-democracy concept, the first examples include:

- developing online petitioning by Scottish Parliament in 1998 to provide a better support of electronic participation agenda of the Parliament;

- developing a secure Internet voting system, using national ID cards in 2003 in Austria to increase in voter participation among the key segments of population, including professional bodies and chambers of commerce and Austrian living abroad[6].

What was important, both types of actors, non-State and State ones, were primary focused on the increasing participation of citizens by giving the latter specific ICT tools to communicate and to act within general current of political process. The main difference however is influence of those tools upon results of political process. The tools provided by non-State actors have indirect effect upon results of political process; i.e. a citizen has to transfer their online participation in voting by themselves. At the same time State-provided tools have a potential of direct effect through signing an online petition or voting online. This, actually, does not manifest that State actors do not extensively use indirect tools, but the number of authors point that the chronology of such usage is reversed. While blogs and social networking tools are relatively new innovations in political realm, other ITC tools have been around much longer: discussion forums, e-consultations, e-petitions and the like[7].

It is notable, that e-democracy tools are most effective in cases where State actors are included into respective communications. The issue is basically represented within theoretical discussions on the correlation between e-democracy and e-government. Furthermore, both categories are widely used together in a great number of various governmental programs related to introduction of ICT in public administration.

In aggregate all outlooks are based on recognizing of crucial role of e-governance and its tools, procedures and technologies for development and functioning of e-democracy. A weaker version of this outlook sees a tight link between e-governance and e-democracy, that is, that the two are compatible (the complementary model). A somewhat stronger version sees

[5] Clift S. History of E-Democracy. E-Democracy.org – Project Blog. 2015. URL: http://blog.e-democracy.org/posts/2647.

[6] Anheier H., Glasius M., Kaldor M. Global Civil Society 2004/5. London. SAGE. 2005. P. 110.

[7] Politics, Democracy and E-Government: Participation and Service Delivery: Participation and Service Delivery. Ed. by Christopher G. Reddick. Hershey. IGI Global. 2010. P. 169.

e-governance as a preliminary step, leading toward e-democracy (the evolutionary model)[8].

The rather comprehensive approach to the issue has been established in the Report of Committee on Constitutional Affairs of European Parliament on e-democracy in the European Union: potential and challenges. In particular, this Report reviewed thee concepts, that was determined as ones had principal distinguishes, but in the same time obviously overlapped:

- E-Government: refers to the use of ICT in the workings of the public sector, particularly to provide individuals with information and services from public authorities electronically (for example, payment of a speeding ticket).

- E-Governance: refers to the use of ICT to establish communication channels that enable the inclusion of the various stakeholders with something to say about the policy-making process (for example, through electronic public consultations on whether a particular speed limit should be changed, or local budget consultations).

- E-Democracy: refers to the use of ICT to create channels for public consultation and participation (for example, an e-parliament, e-initiatives, e-voting, e-petitions, e-consultations)[9].

In this example different concepts constitute a kind of hierarchy with respect to the level of inclusion of private actors into relations with public administration, where the lowest level is e-government – obtaining services; the medium level is represented by e-governance – inclusion in policy-making; and the highest one – e-democracy that provides participation in policy-making.

By using the ideas of overlapping and hierarchy between concepts in question it is possible to define an e-democracy as an enhanced model of e-government, which provides two-way political communication and participation of non-state actors in decision-making process. The ultimate stage of e-governance, then, combines efficiency with democracy, allowing cheaper, more efficient channels of transactions between government and citizens/businesses, and enhancing democratic participation[10].

However, the above-mentioned definitions provide timid distinctions between e-governance and e-democracy, so fare it is difficult to draw a clear line between inclusion and participation in policy making i.e. in cases

[8] Fisher E. E-Governance and E-Democracy: Questioning technology-centered categories. The Oxford Handbook of Governance. Ed. By David Levi-Faur. New York. Oxford University Press. 2012. P. 570–571.

[9] Report on e-democracy in the European Union: potential and challenges (2016/2008(INI)). European Parliament. Committee on Constitutional Affairs. 16.2.2017. A8-0041/2017. URL: http://www.europarl.europa.eu/doceo/document/A-8-2017-0041_EN.html.

[10] Fisher E. E-Governance and E-Democracy: Questioning technology-centered categories. The Oxford Handbook of Governance. Ed. By David Levi-Faur. New York. Oxford University Press. 2012. P. 572.

of petitions or consultations. Furthermore, in some cases such tools of e-democracy like public hearings or referenda may not bear decisive importance for policy making not exceeding the consulting role.

In fact, the best possible distinction between e-governance and e-democracy may be provided through defining the main stakeholder of transformations brought by the application of ITC. The example of such differentiation may be voting technology. "To the extent that improved voting technology reduces government's cost of conducting a reliable vote, it is e-government. But to the extent it systematically influences who votes, whose votes are actually counted or any other variable that affects the translation of voter preferences into public policy, it is e-democracy"[11]. Thus, so far digitalization of public administration influences its own workflow, it remains the mere issue of e-government. But from the point where transformations invariably include the ways and means of civil control of administration this is instantly becoming the ample scope of e-democracy.

2. E-government functionality as the cornerstone of e-democracy: advantages and limitations

Every particular State urging the development of e-government faces a need to proceed through the certain sequence of steps, that primary include the implementation of ICT, providing respective legal frameworks and implementing new ICT-based administrative procedures. Eventually, such process is built upon the principles of transaction from less comprehensive to more enhanced models of e-government to be introduced. A number of models exist next to each other, but all agree that the… steps consist of:

(1) presence of government or governmental institutions on the web,

(2) followed by the possibility of transactions with government by citizens and businesses;

(3) whereas the third (and further) step(s) involve(s) interactive government[12].

Basically, when the e-government development reaches the above-mentioned third and extra steps, it is possible to speak of the introduction of e-democracy features into political process and public administration workflow. Grounding on the fact that e-government is closely related to democracy and social inclusion... the following framework can be depicted, which emphasizes the four major dimensions of e-government:

- service provision;

[11] Snider J.H. E-Government vs. E-Democracy. Government Technology. August 2, 2001. URL: https://www.govtech.com/magazines/gt/E-Government-vs-E-Democracy.html.

[12] Kampen J., Snijkers K. E-Democracy. A Critical Evaluation of the Ultimate E-Dream. Social Science Computer Review. 2003. Vol. 21 No. 4. Winter pp. 491–496. DOI: 10.1177/0894439303256095.

- government performance;
- democracy (political side of e-government);
- and the social contribution of technology[13].

The compaction of above-mentioned e-government "dimensions" with the fundamental features of e-democracy may highlight interconnections between the development e-government tools and creation proper conditions for growing of e-democracy. The key distinguish here is the extension of e-democracy's functions and tools to the communications within civil society between solely private actors. In brief basic features of e-democracy may be presented in this way (Table 1):

Table 1

What is E-democracy? After Simic D. Necessary steps for implementation of e-Democracy solutions[14]

What is E-Democracy?	
Use of ICTs for communication between Government and the citizen	**Citizens providing online support to each other**
• *Information provision* (eTransparency – web sites)	• *Web 2.0 services like* – online discussion groups, chat-rooms, wikis, blogs, etc.
• *Public consultation* (eParticipation – on-line polling, discussions, fora, petitions, Web 2.0 etc.)	
• *Decision-making and elections* (eVoting)	
• *Providing services* (eGovernment)	

At this point the major differences in a State's strategies for development e-government and e-democracy become prominent. Steps toward e-government are primary based upon certain positive obligations of public administration (i.e. to provide administrative services online). But the transition to e-democracy requires States also to follow variety of important negative obligations (i.e. respect to freedom of speech online or online privacy, limitation of controls over provision of online-services by private actors, etc.).

Also, it was widely discussed that in many cases elected politicians might be rather anxious about implementing tools that have potential to dramatically increase civil control over public administration and to change

[13] Abu-Shahab E. E-democracy: The fruit of e-government. International Journal of Technology and Globalization. January 2015. DOI: 10.1504/IJTG.2015.077873.

[14] Simic D. Necessary steps for implementation of e-democracy solutions. E-Democracy. ICT-A Driver for Improving Democracy. Ohrid. 2010. URL: https://bib.irb.hr/datoteka/579044.2010-09-12_Ohrid_Diana_Simic_e-Democracy2010.pdf.

traditional current of political process. When encouraging of e-government is a win-win strategy due to popularity of improving services and cutting expenses, encouraging e-democracy with its easily accessible public records may increase risks of not-reelection because political opponents may exploit such records[15].

Besides, the very important for many States is the recognized potential of e-Governance to counteract corruption in a public administration. Inherently, this potential may be viewed as a side effect of general increase of transparency and remoteness of online interactions between citizens and officials provided by the e-government tools. In particular, the counteracting corruption within the e-government ITC instruments can be explained in four principal ways.

1) Increasing the volume of opened information – e-government provides the opportunity to prevent abuse of power and corruption in addition to satisfying people's right to know and improving trust between government and citizens.

2) Control of discretionary work – e-government reduces the possibility of public officials to interpret laws through free discretion by attracting the attention of information disclosure and public scrutiny.

3) Reduction of face-to-face opportunities – therefore, the possibility of unfair treatment by public officials and citizens through direct meeting, that is to say, the possibility of corruption, can be reduced.

4) Expansion of competition – e-government technologically implements an environment in which all private operators can participate in open competition in government procurement contracts[16].

The anticorruption component of e-governance provides the entire concept with additional attraction for post-Soviet States and developing countries, where corruption causes much more financial loss than redundant and unnecessary paperwork or difficulties in communications and obtaining information.

However, recent empirical researches frequently enough are questioning such theoretical ICT anticorruption concepts at least in terms of self-sufficiency of an ICT implementation to counteract corruption in public administration. For example, the study of the relationship between E-government and corruption using global panel data from 176 countries covering the period from 2003 to 2014 demonstrate that E-government is less

[15] Snider J.H. E-Government vs. E-Democracy. Government Technology. August 2, 2001. URL: https://www.govtech.com/magazines/gt/E-Government-vs-E-Democracy.html.

[16] Lee E. The Impact of E-government on Corruption Control. Martin School of Public Policy & Administration. Lexington, 2017. p. 10 – 12. URL: https://www.martin.uky.edu/sites/martin.uky.edu/files/Capstone_Projects/Capstones_2017/Lee.pdf.

significant for reducing corruption compared to the positive impact of a country's government effectiveness, political stability and economic status[17].

This particularly erects the question for what extent are e-government and e-democracy independent from national peculiarities of the "conventional" public administration and democracy? Or, maybe, they should be viewed as a kind of superstructure over existing national governmental and political substructure, which not mere enhances the effectiveness of latter, but also absorbs all existing peculiarities and fundamental flaws.

Finally, it may be fruitful to recall a criticism that is addressed to a practical realization of e-democracy initiatives. Such criticism in aggregate can be sort out to three basic points:

- a very demanding conception of citizenship that presumes a "good citizen", which is hyperactive in cyberspace;
- a democracy reduced to discussion, while decision-making processes are disregarded;
- an abolishment of intermediary bodies (i.e. political parties and large-scale media) in public affairs[18].

These concerns naturally draw certain limitations to the efficiency of full-scale application of major tools of e-governance and e-democracy without keeping strong back-ups in forms of conventional procedures and institutions. Furthermore it shows the importance of reaching the proper levels of "e-readiness" for a State and society.

3. The Development of E-Government Legal Framework in Ukraine: Wandering to e-Democracy

Concerning the development of e-government as a sequence of steps from a basic to an enhanced model, it is usually emphasized that there are no legal pre-requisites for starting the process of introduction of e-governance. Eventually, for starting a simple web-presence of public administration bodies the question is rather lies in a plain of a proper infrastructure and ITC availability. When every further step requests specific regulations, starting from recognition of electronic transactions equally to paper ones and up to limit some functions of public administrations to be done exclusively in electronic forms.

To that end major of recommended standards and good practices in the field distinguish three levels of e-governance legal framework:

[17] Basyal, D., Poudyal, N. and Seo, J. Does E-government reduce corruption? Evidence from a heterogeneous panel data model. Transforming Government: People, Process and Policy. 2018. Vol. 12. No. 2, pp. 134–154. https://doi.org/10.1108/TG-12-2017-0073.

[18] Vedel T. The Idea of Electronic Democracy: Origins, Visions and Questions: Origins, Visions and Questions. Parliamentary Affairs. 2006. No. 59(2). Pp. 226–235. URL: https://hal.archives-ouvertes.fr/hal-01475858v2/document.

- Basic level, that is associated rather with elimination obstacles to the implementation of e-governance (any legislation incompatible with e-governance is mapped; analysis of the legal system is conducted);

- Useful level, which provides regulations for key features of e-governance and e-readiness in general (a minimum level of legislation of relevance for e- governance is adopted; specific regulation for data protection, electronic identity and signature, civil registers and for protection of national cyberspace is adopted);

- Sustainable level, when e-governance becomes en essential element of public administration and in some cases for trans-border cooperation (all legal acts are consistent with details of e-governance; legal environment at regional level is harmonized)[19].

Pretty vivid characteristics of Ukrainian developments in the field of e-governance are UN global rankings in provided in UN E-Government Surveys. Such rankings were based on two different indexes: the UN E-Government Readiness Index for the period of 2003 – 2008 and UN E-government Development Index (EGDI) for 2010 – 2018, however, the rankings itself are useful for illustration of dynamics of respective processes (Table 2, 3).

Table 2

Ukraine's ranking in UN E-Government Readiness Index based on UN E-Government Surveys 2003[20] – 2008[21]

Ukraine in UN E-Government Readiness Index			
Year	**Rank**	**Index**	**Average Europe**
2003	54	0.462	0.558
2005	48	0.5456	0.5556
2008	41	0.5728	0.5689

The figures above show, in particular, a comparative lack of sustainability of development of e-government and what is important – of its online services components. One can accurately identify the distinct peaks of ranking in 2008 and 2016 that were instantly followed by the noticeable regressing in 2010–2014 and 2018.

[19] Guidelines and Roadmap for full deployment of e-governance systems in Africa. Final Report. January 2019. European Commission. DG for International Cooperation and Development. 2019. P. 48. (148) URL: https://ega.ee/wp-content/uploads/2019/04/eGA_Final-Report-Research-analysis-guidelines-and-roadmap-for-full-deployment-of-e-governance-systems-in-Af.pdf.

[20] UN Global E-Government Survey 2003. New York, UN. 2004. https://doi.org/10.18356/f8a93d8f-en.

[21] United Nations E-Government Survey 2008: From E-Government to Connected Governance. New York. UN. 2008. https://doi.org/10.18356/047afd3a-en.

Table 3

Ukraine's ranking in UN EGDI based on UN E-Government Surveys of 2010[22], 2012[23], 2014[24], 2016[25] and 2018[26]

Ukraine in UN E-government Development Index						
Year	**Rank**	**EGDI**	**Online Service Component**	**Telecom. Infrastructure Component**	**Human Capital Component**	**Average Europe EGDI**
2010	54	0.5181	0.1117	0.0821	0.3184	0.6227
2012	68	0.5653	0.4248	0.3535	0.9176	0.7188
2014	87	0.5032	0.2677	0.3802	0.8616	0.6936
2016	62	0.6076	0.5870	0.3968	0.8390	0.7241
2018	82	0.6165	0.5694	0.4364	0.8436	0.7727

In addition, this reveals the apparent inconsistency of the State policy in the field whereas proper programs and ambitious plans rather often appear too declarative.

Besides, the above mentioned rankings for a noticeable extend reflect the dynamics of the political will on introduction of e-government solutions into public administration routine and therefore the same dynamics of administration's readiness for transformations required for transition from simple application of ICT to implementing certain e-democracy features.

It should be also noted, that accelerations in e-government developments in Ukraine perfectly correlate with the periods just after enormous political protests – "The Orange Revolution" (winter of 2003–2004) and "The Revolution of Dignity" (winter of 2013–2014) that have revealed demands of society for the democratic transformations, transparency and service orientation of public administration, counteracting corruption, etc. And the e-government tools have been always viewed as one of the proper solution for these objectives. Thus the governments that came to power after that political protests were deeply concerned with e-transformations, at least at the beginning.

Eventually, on the grounds of the above mentioned rankings we suggest classifying two distinct periods in development of e-governmental

[22] United Nations E-Government Survey 2010: Leveraging E-Government at a Time of Financial and Economic Crisis. New York. UN. 2010. https://doi.org/10.18356/0e749d15-en.

[23] United Nations E-Government Survey 2012: E-Government for the People, New York. UN. 2012. https://doi.org/10.18356/b1052762-en.

[24] United Nations e-government survey 2014: E-Government for the future we want. New York. UN. 2014. https://doi.org/10.18356/73688f37-en.

[25] United Nations E-Government Survey 2016: E-Government in Support of Sustainable Development. New York. UN. 2017. https://doi.org/10.18356/d719b252-en.

[26] United Nations E-Government Survey 2018: Gearing E-Government to Support Transformation Towards Sustainable and Resilient Societies. New York. UN. 2018. https://doi.org/10.18356/d54b9179-en.

legal framework in Ukrainian legislation, which basically reflects the State policy towards role and place of e-government services in Ukrainian public administration and political process.

The first period of development of Ukrainian e-government legislation should be dated from the beginning of 2000s up to 2014. It was stated with the Order of the President of Ukraine On Additional Measures to Ensure Transparency in the Activity of Government Bodies" (2002)[27], which was followed by Regulations of Cabinet if Ministers of Ukraine "On Procedure for Publishing Information about the Executive Bodies' Activity on the Internet" (2002)[28] and "On Measures for Creation of Electronic Government Information System" (2003)[29]. These acts obligated State and local authorities to have own web sites and to systematically publish prescribed set of information including laws and regulations. Besides all governmental web sites was integrated under single web portal. In the same period Ukrainian parliament passed the laws on electronic documents and electronic signature that was supplemented by the secondary governmental legislation.

The ambitions to develop an enhanced e-government system were also reflected in the Law of Ukraine "On the Basic Principles for the Development of an Information-Oriented Society in Ukraine for 2007–2015" (2007)[30]. That act included, in particular, provisions on the development of electronic services of state and local authorities and the "single point of contact" to access public administration, etc.

From the practical point of view the great importance had two Directives of Cabinet of Ministers "Issues of Implementation of the Pilot Project for Adoption of Electronic Governance"No. 360-r. (2010) and "On Approving the Concept of Development of e-governance in Ukraine" No. 2250-r. (2010). Those Directives basically launched the full-scale development of paperless workflow, electronic systems and electronic registers of public administration bodies.

The main feature of the period discussed was the focus on building up intra-administration solutions and processes, whereas citizen-oriented e-government tools were given much less attention. The major part of services

[27] Указ Президента України «Про додаткові заходи щодо забезпечення відкритості у діяльності органів державної влади» від 1 серпня 2002 р. № 683/2002. Офіційний вісник України. 2002. № 31. Ст. 1463.

[28] Постанова Кабінету Міністрів України "Про Порядок оприлюднення у мережі Інтернет інформації про діяльність органів виконавчої влади" від 4 січня 2002 р. № 3. Офіційний вісник України. 2002. № 2. Ст. 57.

[29] Постанова Кабінету Міністрів України «Про заходи щодо створення електронної інформаційної системи «Електронний уряд» від 24 лютого 2003 р. № 208. Офіційний вісник України. 2003. №. 9. Ст. 378.

[30] Закон України «Про Основні засади розвитку інформаційного суспільства в Україні на 2007–2015 роки» від 9 січня 2007 р. № 537-V. Офіційний вісник України. 2007. № 8. Ст. 273.

provided were basically concerned an authorities efficiency or certain fields that were sensitive to international cooperation.

For example, the most advanced e-government solutions had been adopted in customs service even earlier, than the national-wide e-government programs were announced. The first fully operable intra-agency electronic information system had been created by Ukrainian customs service in 1996, which was followed by launching a trial electronic declaration in 2004[31]. However, for that period very tiny share of citizens contacted customs (only 1,9% due to surveys of 2011) and did not provide any significant reduction of corruption (36,1% have faced the requesting of bribes)[32].

Overall, the introduction of e-government solutions in a period of 2000 – 2014 with respect to providing general conditions for e-democracy had been on a low track. Researches made in 2015 by the eGovernance for Accountability and Participation (EGAP) Program showed pretty concise results both in terms of usage of e-Democracy services, and in terms of evaluation of the influence of implementation of ITC upon communications between public administration and citizens. For example, due to the national public opinion surveys conducted in Ukraine in February and December 2015 the citizens' usage of e-Democracy features included:

- Seek general government information – 24%;
- Respond to online polls – 9%;
- Interact with civic organizations online – 6%;
- Communicate directly with local authorities – 5%;
- Access eServices – 4%;
- File complaints – 4%[33].

It was rather pronounced that major but at the same time pretty low share of communications within e-Democracy frameworks did not went above simple Internet queries. Contrary, the usages of features that provide electronic "access to the State" in aggregate shared only 11% of respondents' answers.

As for influence of ICT upon different aspects of communication between government and citizens the respective surveys showed remarkably greater "e-democracy skepticism among respondents that qualified themselves as "non-users of Internet". Thus, affirmative answer was given about influence of ICT on:

[31] E-Governance in Ukraine: Effective Governance for Citizens. Kyiv. UNDP/MGSDP. 2011. 56 p. URL: https://www.undp.org/content/dam/ukraine/docs/JIK/e-governance_publication_en.pdf.

[32] Corruption in Ukraine. Comparative Analysis Of National Surveys: 2007, 2009, 2011, and 2015. Kiev International Institute of Sociology. 2015. URL: https://kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20ENG.pdf.

[33] eDemocracy in Ukraine: Citizens' & Key Stakeholders' Perspectives. Kyiv. EGAP Program. 2016. p. 5. URL: http://egap.in.ua/wp-content/uploads/2016/01/07.07.pdf.

- Improving government-citizen communication and accountability – 76% (Internet Users) and 37% (Non-Users);

- Increase transparency and citizens' trust in public authorities – 44% and 19%;

- Better informed citizens about government – 35% and 15%;

- Increase effectives of eServices – 29% and 13%, respectively[34].

The second period, which started after 2014, has had a distinct emphasis on digital transformations and usage of e-government applications as the backbone of public administration reforms. From the very beginning the policy-making towards e-governance was integrated by Ukrainian State Agency for eGovernance, launched in 2014 (in 2019 that body was reorganized into Ministry of Digital Transformation of Ukraine).

In 2015 Ukrainian parliament issued an important act eliminating obstacles for government transparency and reuse of public information. The Law of Ukraine "On Amendments to Some Laws of Ukraine on Access to Public Information in The Form of Open Data" (2015)[35] created frameworks for creation of "The Single web-portal of Open Data" (https://data.gov.ua), which for a moment have integrated 24,533 databases of state and local authorities.

The most important motion to counteract corruption thought application of e-government tools was made in the field of state procurement. The Law on Public Procurement (2016)[36] provided that the contracting authority shall carry out the procurement procedures through the use of an electronic procurement system (Art 12:2) and the electronic procurement system itself must be accessible to the public and guarantee non-discrimination (Art 12:3). Hence, the procedure of government procurements was completely and obligatory transferred on-line and provided full transparency of tenders held and contracts concluded.

The respective system of electronic public procurement named ProZorro is comprised of the portal database and the module of electronic auction. Besides, the ProZorro system has been extended with Prozorro Sale, which is a system designed for the transparent, fast and effective sales of state and communal property, as well as fighting against corruption through equal access to data, public control and increasing the number of the potential buyers[37].

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[34] eDemocracy in Ukraine: Citizens' & Key Stakeholders' Perspectives. Kyiv. EGAP Program. 2016. p. 5. URL: http://egap.in.ua/wp-content/uploads/2016/01/07.07.pdf.

[35] Закон України «Про внесення змін до деяких законів України щодо доступу до публічної інформації у формі відкритих даних» від 9 квітня 2015 р. № 319-VIII. Офіційний вісник України. 2015. № 35. Ст. 1033.

[36] Закон України «Про публічні закупівлі» 25 грудня 2015 р. № 922-VIII. Офіційний вісник України. 2016. № 15. Ст. 582.

[37] Digital Government Factsheet 2019: Ukraine. European Commission. 2019. URL: https://www.ospi.es/export/sites/ospi/documents/documentos/Administracion-Digital/Digital_Government_Factsheets_Ukraine_2019.pdf.

The e-services segment was provided with the new Law of Ukraine On Trust Electronic Services (2017)[38] and amended Law of Ukraine "On Administrative Services", that was also supplemented by relevant secondary legislation. Information of administrative services available online is integrated though the Single State Portal of Administrative Services (https://my.gov.ua). At the end of 2018 about 119 e-services were available to citizens and businesses and also more than 50 were planned for moving online in 2019. The most popular services already accessible online include such categories, as:

- welfare services (e-Maliatko – childbirth registration, utility subsidies, services of the Pension Fund of Ukraine);
- services for businesses (business registration, issuance of licenses and authorizations, receipt of extracts and certificates online);
- construction-related services (start and commission of construction projects);
- services related to security and courts (certificates on lack of criminal conviction, lack of corruption offenses, file a sue with a court online);
- Driver's E-Cabinet (information online of a vehicle, driver's license, fines, register online for service centers);
- Carrier's E-Cabinet (obtaining or revoking passenger and freight transportation licenses, lodging companies' details)[39].

The important segment of current e-government legislation is providing the rule that individual data elements should only be submitted to authorities just once, which demands operable data exchange between different state agencies, local authorities and other relevant bodies. To this end in 2018 the "Trembita" system was launched, which was defined as "the system of electronic interaction of state electronic information resources and also the system of interoperability in Ukraine". "Trembita" operates in accordance with the provisions of Regulation of Cabinet of Ministers of Ukraine "Some issues of electronic interaction of state electronic information resources" (2016)[40]. The system is based on the Estonian X-ROAD data exchange platform, created by Estonian government as its own e-governance solution and integrates 20 state registers including confidential information that are used by authorities to provide administrative services and other powers.

The most recent development in the field of e-governance is the project "Diia" (Action), which is supported by the same named state enterprise.

[38] Закон України «Про електронні довірчі послуги» від 5 жовтня 2017 р. № 2155-VIII. Офіційний вісник України. 2017. № 91. Ст. 2764.

[39] E-Services Development. Government Portal. ULR: https://www.kmu.gov.ua/en/reformi/efektivne-vryaduvannya/rozvitok-elektronnih-poslug.

[40] Постанова Кабінету Міністрів «Деякі питання електронної взаємодії державних електронних інформаційних ресурсів» від 8 вересня 2016 р. № 606. Офіційний вісник України. 2016. № 73. Ст. 2455.

"Diia" is the planned online portal of public services, the online portal of public services and dedicated smartphone application that goes through testing now (so far it only provides using a virtual driver's license and vehicle registration documents in smartphone)[41].

CONCLUSIONS

Enhancing of public administration capabilities through application of ICT is a crucial factor of e-democracy development. The sustainability of e-government development is one of key factors for any State to stay on track of fast changes of ITC applications, e-services and e-procedures. On top of that the very important factors are overall level of public administration and society's involvement, since the e-government tools so far have not proved their self-sufficiency for providing positive transformations in a state administration and political process.

Summarizing the review of main segments of Ukrainian e-governance development in period "after 2014" it is possible to define strong vectors of state policy in the field towards increasing transparency and service oriented workflow of State and local authorities and counteracting corruption through conducting most corruption sensitive procedures solely in electronic form with very high level of openness to public. This combination of e-governance functions affirmatively moves the whole process close to introduction of e-democracy.

However, it is possible to detect a number of flaws that prevents full-scale transformations both of the public administration and the society's participation. General overlook shows two major aspect of the issue.

The first aspect is the discussed in paper threat of reducing e-democracy to discussion without real influence upon decision-making. For example, even the most successful Ukrainian e-government project ProZorro have certain issues with conversion of transparency into real actions against possible signs of corruption detected. Owing to high level of transparency of procurement through ProZorro, the community was enabled to detect the procurement procedures that may entail violation of law, as provided for by Article 9 of the Law of Ukraine "On Public Procurement" that concerns civic oversight. However, the e-procurement system currently does not enable notifying the controlling and law enforcement agencies on such cases. It also lacks consolidated information on how controlling and law enforcement agencies respond to the respective requests by the community[42].

The second aspect is that the current Ukrainian e-governance system is rather consumer-oriented than citizens-oriented in terms of New Public

[41] Diia. Online Public Services. URL: https://plan.diia.gov.ua/en.

[42] Transparency in Public Procurement (Prozorro) (UA0073). Open Government Parnership. URL: https://www.opengovpartnership.org/members/ukraine/commitments/UA0073/.

Service concept, that demands "that administrators should see citizens as citizens (rather than merely as voters, clients, or customers)"[43]. However, the current system lacks platforms for citizens, for example, to realize their rights for administrative appeal of public administrative decisions or to have really effective system of e-petitions. On top of that the new services are pretty often reported for not-sufficient level of privacy and personal data protection, which is the issue that tends to scale with further development of services if not paid proper attention.

SUMMARY

An E-democracy is an enhanced model of e-government, which provides two-way political communication and participation of non-state actors in decision-making process. The best possible distinction between e-governance and e-democracy may be provided through defining the main stakeholder of transformations. If digitalization influences public administration it remains the issue of e-government, when transformations include the civil control of administration this becoming the scope of e-democracy. There are certain limitations to the efficiency of full-scale application of major tools of e-governance and e-democracy without reaching the proper levels of "e-readiness" for a State and society. We suggest classifying two distinct periods in development of e-governmental legal framework in Ukrainian legislation. The main feature of the period was the focus on building up intra-administration solutions and processes, whereas citizen-oriented e-government tools were given much less attention. The second period, which started after 2014, has had a distinct emphasis on digital transformations and usage of e-government applications as the backbone of public administration reforms.

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LEGAL STATUS OF THE CHILD IN UKRAINE

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INTRODUCTION

The category of the legal status of the child is a relatively new issue of national jurisprudence, notwithstanding the fact that legal rules regarding the upbringing and socialization of children has been existed since the ancient era. During the civilization progress of mankind, the status of the child has undergone a dramatic transformation: from the legal regime of belongings of the family, more precisely, belongings of the head of the family – the father – to the status of a legal personality. At the same time, the child as a member of the human community and childhood as a socio-cultural phenomenon have evolved from a purely domestic level to a global problem. Ensuring the proper conditions for the survival, development and socialization of the younger generation has become one of the priorities of the international community, provided by a number of binding universal and regional European humanitarian legal standards. Protection of childhood is seen as a factor of sustainable development that would ensure equal rights of present and future generations in access to all the benefits of nature and civilization.

Obviously, at the national level, the legal status of the child deserves a thorough study, which, in addition to an academic discourse, must be critical, predictive and practically oriented, given the deficiencies of national Juvenile Law noted by scholars and practitioners.

Issues of constitutional legal status of the child has been disclosed in the series of studies[1], mainly devoted to the rights of the child – the core of the legal status of the child, to legal guarantees of rights of the child, in particular, to protection of the rights of the child. The study of the legal status of the child has been amended by S.P. Kotaleichuk, N.M. Onishchenko, O.M. Opolska and

[1] Кадегроб Л.О. Конституційно-правовий статус дитини в Україні: поняття та особливості. *Вісник ОНУ імені І. І. Мечникова. Правознавство*. 2018. Т. 23. Вип. 1(32). С. 15-21; Китайка О.В. Гарантії прав і свобод дитини в Україні: поняття та зміст. *Науковий вісник Міжнародного гуманітарного університету : зб. наук. пр. Сер. : «Юриспруденція».* 2015. Вип. 13 (1). С. 50-52; Кудрявцева О. М. Конституційно-правові основи захисту прав дитини в Україні : [монографія]. Київ : Арт Економі, 2015. 265 с.; Оржаховська А.А. Конституційно-правовий статус дитини, яка перебуває в спеціальному навчальному закладі соціальної реабілітації : автореф. дис. ….канд.юрид.наук : спец. 12.00.02. Київ, 2013. 20 с.; Швець І.В. Конституційно-правовий статус дитини : поняття, елементи, види. *Бюлетень Міністерства юстиції України*. 2012. № 3. С. 116-123; Шульц О.А. «Права дитини» як категорія сучасного конституційного права. *Часопис Київського університету права*. 2009. № 3. С. 91-96.

others from the standpoint of the general theory of law[2], but the focus of their research remains the same – the rights of the child protected by the state. One cannot deny the importance of such an approach. On the other hand, we can observe that these studies show the dominance of the paternalistic doctrine in the field of the children's rights. The child in the doctrinal, vocational and everyday legal awareness is regarded as a subject of protection by the state, society, family, without acquiring the qualities of the legal personality. Moreover, scholars still have paid insufficient attention to issues of other components of the legal status of the child, particularly to the duties and responsibility of the child, as well as the attention to the procedural rights of the child still is quite modest. The issue of the correlation between international and national legal norms that shape the legal status of the child remains unexplored. The conventionality of the scholars in determining the constitutional status of the child has not gained yet. Finally, the issues of the structure and substantive content of the legal status of the child, that obviously must include not only the rights of the child and the guarantees of its realization, remain under-researched or debated.

The methodology of the presented research is based, firstly, on an existential and humanistic approach, to be precise, on the understanding of the child as the person who is undergoing the development and formation of a legal personality. The child needs different levels and means of protection, support and partnership at different stages of growing up. The protection must prevail on the stage of early childhood; becoming a youngster, the child is becoming a legal partner of adult members of his/her family and a member of the community. Secondly, the author affirms the difference of the concepts of law and legislation. Therefore, the structure of the legal status of the child includes the rules of positive law as well as the values of natural (social) law. Thirdly, admitting the idea of the autonomy of the child as a subject of law and as a holder of constitutional status, we note the dialectical relationship between the rights of the child and the duties and responsibility of the child. Insufficient attention to this aspect of the legal status of the child increases the number of opponents of the juvenile law and juvenile justice, since the former one is seen as a formalization of child permissiveness and the latter one as a system of forgiveness and even encouragement of juvenile offenders.

[2] Коталейчук С.П. Теоретико-правові проблеми правового статусу неповнолітніх в Україні та забезпечення його реалізації як один із основних напрямків діяльності міліції : автореф. дис. … канд. юрид. наук: спец. 12.00.01. К., 2004. 20 с.; Костенко Я.В. Правовий статус дитини в національному законодавстві. *Актуальні проблем вітчизняної юриспруденції.* 2018. № 1. С. 55-60; Оніщенко Н.М., Львова О. Л., Сунєгін С.О. Права і свободи дитини: вступ до проблеми. *Часопис Київського університету права*. 2013. № 2. С. 13–17; Опольська Н.М. Види прав і свобод дитини. *Науковий часопис НПУ імені М.П. Драгоманова. Серія 18 : Економіка і право*. 2010. Вип. 8. С. 151–157.

The sources of the research are the constitutional and sectoral legislation of Ukraine, international and regional European legal acts on the rights of the child.

1. International scope of the legal status of the child

Ukraine is a party of the main treaties in the international juvenile law, to be specific:

the Convention on the Rights of the Child (hereinafter – the CRC), ratified by the parliamentary law 27.02.1990;

the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (hereinafter – the OPSC), ratified by the parliamentary law 03.04.2003;

the Optional Protocol on the involvement of children in armed conflict (hereinafter – the OPAC), ratified by the parliamentary law 23.06.2004;

the Optional Protocol on a Communications Procedure, ratified by the parliamentary law 16.03.2016.

The CRC is the most comprehensive international human rights treaty relating to children. Article 1 of the CRC defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". This notion is implemented in the national juvenile law as well as the main principles of the CRC.

Ukraine is a party of the main European treaties in the branch of juvenile law, to be specific:

The European Convention on the Legal Status of Children Born out of Wedlock (ETS № 85), ratified by the parliamentary law 14.01.2009;

The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (ETS № 105), ratified by the parliamentary law 06.03.2008;

The European Convention on the Exercise of Children's Rights (ETS № 160), ratified by the parliamentary law 03.08.2006;

The European Convention on Contact concerning Children (ETS № 192), ratified by the parliamentary law 20.09.2006

The European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS № 201), ratified by the parliamentary law 20.09.2006;

The European Convention on the Adoption of Children (Revised) (CETS 202), ratified by the parliamentary law 04.05.2011.

It should be noted that national law recognises the priority of the international law in the field of the rights of the child. Mostly of the abovementioned conventions are implemented into the acts of national legislation. Thus, the provisions of the European Convention on the Exercise of the Children's Rights amend the Family Code of Ukraine and therefore provide

the procedural rights of a minor, such as: to express his/her opinion directly or through a representative or legal representative; to receive information about the trial through a representative or legal representative; exercise other procedural rights and perform procedural obligations under the international treaties, that have been ratified by the Verkhovna Rada of Ukraine.

The provisions of the European Convention on Contact concerning Children are implemented into the Law of Ukraine "On Protection of Childhood" (hereinafter – Child Protection Law) and guarantee the realization of the right of the child to contact parents, other family members and relatives who live separately, including those persons in different states.

2. The general legal status of the child

The domestic constitutional doctrine traces the tendency to equate the constitutional and general legal status of the child. The example of this position is presented by O.V. Sinegubov who defines the general status of a child "as a citizen of a state enshrined in the Constitution. It is universal, generalized and uniform for all children, regardless of nationality, religious beliefs, or social status. It is characterized by stability and certainty, implies equality of rights and obligations of citizens, equality before the law, and also demonstrates the social value of a person"[3]. In our opinion, such an identification of the general and constitutional status of the child leaves the international legal status of the child "overboard", as well as the values of childhood and the child reflected in natural (social) law.

In our opinion the categories of the child's general legal status and the child's constitutional status are not identical, and the relationship between them can be described as a complex relation between the whole and the part where the part acts as a centre, in turn derived from the internationally recognized concept of the rights of the child, above all, the four fundamental principles of the CRC: non-discrimination and equal rights for children; ensuring the best interests of the child; ensuring the right to survival and development; respecting the views of the child.

The general legal status of the child in Ukraine is defined in numerous, unfortunately, not always substantively agreed sources of both national, international and European regional law. In their hierarchy, the CRC, the Constitution of Ukraine, and the Law of Ukraine "On Childhood Protection" come first. In addition, the legal status of the child has its value dimension: humanity recognizes not only children but also childhood as a legal value, conditioned by the unique attributes of the child, which are: innocence, vulnerability, energy, hope, questioning stated by the World Declaration on

[3] Синєгубов *О.В.* Правовий статус дитини**,** як учасника особистих немайнових відносин. *Форум права***.** 2013. № 1. **С.** 903

the Survival, Protection and Development of Children, agreed at the World Summit for Children on 29-30 September 1990 (point 2)[4].

Given the abovementioned, we define the general legal status of the child (general juvenile status) as a system of human rights, freedoms and interests, duties and responsibilities of the special subject of law – the child expressed in the values of natural law and the positive legal norms, and guaranteed by society and the state.

The general legal status of the child is the basis of the sectoral and special statuses of the child. The sectoral (family, civil, etc.) status of the child, normatively expressed in the relevant sectoral legal acts.

The special status of the child arises in a social context that is atypical, special and exceptional and, as a consequence, modifies the child's general legal status. As to the current juvenile legislation of Ukraine, these are the statuses of 1) orphans and children deprived of parental care; 2) homeless children; 3) disabled children and children with intellectual or physical disabilities; 4) children affected by natural disasters, technogenic accidents, and catastrophes; 5) children affected by HIV infection and children with other incurable and serious illness; 6) refugee children; 7) children – victims of violence; 8) juvenile offenders.

As to the recent changes of juvenile law implemented by the Law of 26 January 2016[5], the system of special juvenile statuses has been expanded and has become more complicated. The law introduced new concepts: "a child who is in difficult circumstances" and "children who need special protection of the state". The first one is a child who is in a condition that adversely affects his/her life, health and development: disability, serious illness; homelessness; conflict with the law; involvement in the worst forms of child labour; addiction to psychotropic substances and other types of addiction; domestic violence and abuse; evasion of parents or custodians from the performance of their parental duties; natural disasters, technogenic accidents, catastrophes; circumstances of hostilities or armed conflict (article 1). As we can see, the number of special statuses of the child has increased, but at the same time, the same Child Protection Law has used different terminology to refer clearly to the same phenomena.

The system of special juvenile statuses appears to be the following: 1) the status of children with special needs in health care and access to education; 2) status of homeless children; 3) the status of children in conflict with the law; 4) the status of children involved in the worst forms of child

[4] World Declaration on the Survival, Protection and Development of Children, 1990. URL: https://www.unicef.org/wsc/declare.htm.

[5] Про внесення змін до деяких законодавчих актів України щодо посилення соціального захисту дітей та підтримки сімей з дітьми: Закон України від 26.01.2016 № 936-VIII. *Відомості Верховної Ради України*. 2016. № 10. Ст. 99.

labour; 5) the status of children addicted to alcohol, psychotropic substances, etc .; 6) the status of children who are victims of violence and abuse (at home, at school, boarding school, etc.); 7) the status of orphans; 8) the status of children deprived of parental care; 9) the status of children suffering from natural disasters, man-made accidents, catastrophes; 10) the status of children affected by war or armed conflict; 11) the status of refugee children.

Despite the large number of researches in the field of rights of the child, the structure of legal status of the child is still a matter of discussion. S.P. Kotaleychuk defines it as a set of: a) the rights and freedoms of the child; b) the duties and responsibility for their failure or breach; c) guarantees of the rights and freedoms[6]. Joining this view, A.A. Orzhakhovska formulates legal status of the child is as a system of rights and freedoms, given to the child from birth, duties and accountabilities, and its scope is increasing while the child is growing up[7]. O.V.Kytaika includes the system of rights, freedoms and duties of the child to the general (constitutional) status of the child[8]. And the restrictive vision of the structure of the legal status of the child (the rights and duties of the child) is offered by O.M.Kudryavtseva[9].

In our opinion, the structure of the general legal status of the child should be analysed in the light of the legal capacity of the child.

A peculiarity of a child's legal capacity is its developing dynamic character, with a general tendency to “fill” its scope as the child is growing up. A new-born baby is just a passive bearer of the rights to life, name, parental care and upbringing. Passing the socialization, the child is learning to perform legal actions, to make legal decisions, and to enter legal relations.

The contemporary psychology has abandoned the idea of the child as a “blank slate”, as well as the pedagogy refutes the idea of the child as a potential, not actual, person. Even the youngest children have the consciousness, the will and the ability to carry out actions that often are legal. In this regard, the ability of the child to be a bearer of rights should obviously be interpreted as an emerging opportunity. Children, unlike adults, are not able to enjoy some rights (such as suffrage). In other words, their legal capacity and the legal capacity of the adult differ. However, a child's legal capacity is not limited, since restriction of the legal capacity may be set only by a court decision. And vice versa, the child is a bearer of legal qualities, that are not immanent to adults.

It is proposed to consider the relationship between the child's capacity and the capacity of the adult as a complex phenomenon that combines similar

[6] Коталейчук С.П. Вказ. праця. С. 25–26.
[7] Оржаховська А.А. Вказ. праця.
[8] Китайка О. Генезис конституційно-правового статусу дитини. С. 138.
[9] Кудрявцева О. Конституційні засади захисту прав і свобод дитини в Україні: досвід, проблеми, перспективи. *Історико-правовий часопис*. 2014. № 1. С. 49–53.

and different features. The structure of the legal capacity of the child and the adult is similar, the difference consists in its scope.

The rights and duties of the children are the core of their legal status, and they determine all other components. The legal capacity and guarantees of the child's legal status matter only in case the child's rights and duties have been formally defined.

In our opinion, the natural and positive rights and freedoms of the child should be distinguished. Rights of the child are, first of all, human rights that are applied to everyone, irrespective of age, gender, nationality or other characteristics. Therefore, the child has mostly the same natural rights that adults have. The natural rights of the child should are enshrined in the Declaration of the Rights of the Child, such as the following rights: the right to the parental love, the right to play and recreation (Principles 6 and 7) [10]. It is an indisputable fact that we can not formalize every natural right, at least, today. In that sense, the constitutional provision on the non-exhaustive characteristic of the human rights category should be understood.

In the formalization of the child's natural rights, in our opinion, the category of interests of the child must be helpful. The juvenile legislation of Ukraine uses the terms "best interests of the child", "interests of the child", "legitimate interests of the child". The first of these terms appears to be teleological and applicable mainly to the interpretation and evaluation of legal and policy acts concerning children. It is in this sense that it is one of The fundamental principle of the CRC, which states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (part 1, article 3).

The term "legitimate interest of the child", according to the official interpretation of the Constitutional Court of Ukraine, is similar to the term "protected by law" and means "the desire to use specific tangible and/or intangible goods determined by the general content of the objective law and not directly mediated in the individual right that is a simple legitimate permission and a separate object of judicial protection and other legal remedies in order to meet individual and collective needs, which are not contrary to the Constitution and laws of Ukraine such as the public interest, fairness, honesty, reasonableness and other law principles"[11]. Among such

[10] Declaration of the Rights of the Child. Adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959. URL: http://www.un.org/cyberschoolbus/humanrights/resources/child.asp.

[11] Рішення Конституційного Суду України у справі за конституційним поданням 50 народних депутатів України щодо офіційного тлумачення окремих положень частини першої статті 4 Цивільного процесуального кодексу України (справа про охоронюваний законом інтерес) 1 грудня 2004 р. № 18–рп/2004. Офіційний вісник України. 2004. № 50. Ст. 3288.

legitimate interests of the child should be mentioned the interest in health care, physical and spiritual development, education. Violation of the legitimate interests of the child is the basis for the child's appeal to the authorities and services in matters of children, the legal responsibility of parents and so on.

And finally, the term “child's interest” is used in the sense of the child's welfare conditions that provided largely without the involvement of the state, usually by parents / adoptive parents / guardians / custodians, at their discretion, taking into account the presumption of parental love and care for the children. In this regard the child’s interests are an individualized legal reflection of the natural law values.

Thus, as to the juvenile law of Ukraine, the general legal term “interest” defines the various facets of the child’s legal capacity and the responsibilities of the parents, the state, and public institutions.

As for the legal duties and accountabilities of the child, according to the general legal principle enshrined in the Constitution of Ukraine, “The legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation” (article 19). Therefore, the duties and accountabilities of the child can only be positive.

It looks correct to regard legal liability as a component of the legal status of the child, considering that the legal liability is a special kind of legal duty.

In our opinion, the structure of the child’s legal status, given his/her physical and intellectual immaturity, should include guarantees of the fulfilment of the child’s duties as well as guarantees of respect for the rights of the child. Thus, in particular, legal education of the child, that is, forming his/her knowledge of the rights and duties, skills and abilities to implement the rules of law and a stable attitude to lawful behaviour should become the general guarantee of the exercise of rights and duties of the child. For example, the secondary education is mandatory for everyone in Ukraine. Thus free of charge and accessible education at state and municipal educational institutions is a guarantee for children who exercise this constitutional duty.

3. The Constitutional status of the child in Ukraine

First of all, we note several approaches to resolving the issue of the constitutional status of the child in the domestic constitutional doctrine: they should be called narrow and broad. Thus, according to the first approach A.A. Orzhakhivska define constitutional status of the child as a set of rights, freedoms and duties stipulated by the Basic Law of Ukraine and exercised by persons under the age of maturity.

Instead, I.V. Shwetz defines the constitutional status of the child as a legally enshrined position of the child in society determined by the system of principles and norms contained in the Constitution of Ukraine, international

acts and other legal acts, and, therefore, protecting the rights, freedoms and duties of the child, as well as guaranteeing its implementation and responsibility. It should be noted that the last definition covers not only the constitutional rules but also all other, particularly international legal norms. Such a definition, in terms of its regulatory scope, approximates the general legal status of the child. Therewith the definition is characterized by severe paternalism, because, according to the author, the constitutional status of the child is made up exclusively of norms of a protective nature.

Finally, it should be stated the refusal to determine the constitutional status of the child and focus on the analysis of its elements, as it was demonstrated by the author of a recent comparative legal study of the status of children under the constitutional legislation of Ukraine and Hungary[12].

In our opinion, the constitutional status of a child in Ukraine is a system of formally defined rights, duties and responsibility of the child as a regular member of Ukrainian civil society that are enshrined in the Basic State Law. In this regard, it is worth agreeing with those researchers who regard that a child has all the rights and freedoms that every person has under the Constitution of Ukraine. In particular, O.F.Skakun submits a classification of the rights of the child, noting that they are largely related to human rights[13]. O.A. Schulz notes that constitutional provisions governing the rights and freedoms of the person and citizen, without defining a specific subject (the legislator uses the term “everyone”), determine the legal status of the child in Ukraine[14], and M.A. Manina points out that almost all human rights apply to the child, but with certain characteristics in mind[15].

O.V. Kytaika use the following dichotomy of the constitutional rights of the child:

a) constitutional rights that provide decent physical existence of the child;

b) the constitutional rights that provide proper intellectual and moral development of the child[16].

Adaptation of constitutional norms that are common to all people living or residing in Ukraine in relation to the child, is usually proceeded by juvenile and other sectoral legislation in the following forms:

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[12] Губаль Ю.В. Конституційно-правовий статус дитини в Україні та Угорщині: порівняльно-правове дослідження : автореф. дис. ... канд. юрид. наук : 12.00.02. Ужгород, 2015. 14 с.

[13] Скакун О.Ф. Теорія держави і права (Енциклопедичний курс) : підручник. Харків : Еспада, 2006. С. 225.

[14] Оржаховська А.А. Вказ. праця.

[15] Маніна М. А. Особисті права дитини. *Актуальні проблеми вітчизняної юриспруденції*. 2013. Вип. 4. С. 50 (С. 49–56).

[16] Китайка О.В. Конституційно-правовий статус дитини в Україні та міжнародні ювенально-правові стандарти: автореферат дис. …канд. юрид. наук. 12.00.02. Одеса, 2018. С. 16.

expanding the content of the legal provision for the benefit of the child. For example, the right to an adequate standard of living for the adult means adequate nutrition, clothing and shelter, and for the child means not only the tangible but also the intangible benefits that are required for his/her physical, intellectual, moral, cultural, spiritual and social development. The concept of child abuse is also widespread;

limitation of the content of the legal provision for the protection of the child (for example, the right of children to association is restricted only by NGOs – children are not allowed to join political parties);

setting additional age limits (only children who are sixteen years of age enjoy the right to business);

establishing specific guarantees for the exercise of rights and freedoms (for example, state bodies monitor the observance of the rights of the child in the sale of housing);

establishing special regimes for the exercise of the rights and freedoms of children who are in an unfavourable or extreme situation. Thus, the state is obliged to provide children with intellectual or physical disabilities the necessary conditions for a fulfilling life, in particular – for education, and creates special procedural guarantees for the rights of children in conflict with the law.

Inasmuch as the constitutional human rights and the rights of the child coincide, S.P. Kotaleychuk distinguishes the following groups of children's rights:

personal rights: the right to life; the right to protection against all forms of violence; the right to respect for honour and dignity; the right to freedom of expression, ideology and religion; the right to name and citizenship;

economic rights: the right to property; the right to business; the right to labour; the right to use the objects of public property; the right to social security;

cultural rights: the right to free development of the individual; the right to freedom of association in public organizations (participation in cultural and creative life); the right to education[17].

However, S.P. Kotaleychuk denies political rights of the children, and this conclusion should be considered as discursive. As to the content of Article 40, the Constitution of Ukraine implies, children have the right to apply to state authorities and local self-government bodies, enterprises, institutions, organizations, mass media on an equal basis with all other individuals. It should be noted that this right is one of the child's poorly adapted human rights characteristics. Only the order of petitions in case of ill-treatment, negligence or abuse is specified for the child. In this regard, the recent accession of Ukraine to the Optional Protocol to the CRC on a Communi-

[17] Коталейчук С.П. Вказ. праця. С. 49–70.

cations Procedure under which the child or his/her representative has the right to file an individual complain to the Committee on the Rights of the Child about violation of the children's' rights that are protected by the CRC or its optional protocols.

The right of children to association in public organizations (which the abovementioned author attributes to cultural rights) is defined, along with other citizens, with Article 36 of the Constitution of Ukraine and specified by the Law of Ukraine "On Youth and Children's NGOs"[18]. The content of this right of the child is: the right to establish a child or youth organization; membership in a child or youth organization; participation in drafting and discussing decisions on the public policy on children and youth.

To differentiate such a component of the general and constitutional status of the child as the rights and freedoms of the child, it is helpful to use the dichotomy of human rights and freedoms adapted to the child and juvenile rights and freedoms that are defined by objective law (international and national) as specific to the children only, namely:

the right to live in the family;

the right to have a child communicate with parents who live separately from the child, including those who live in another country;

the right to receive information about absent parents, if it does not harm his/her mental and physical health;

the right to state maintenance and placement in case of deprivation of parental care.

The Constitutional Law guarantees the juvenile rights and freedoms without detailing its content. Thus, the Constitution of Ukraine guarantees the state protection of the family, childhood, motherhood, and paternity (Part 3, Article 51). In our opinion, the economy and the conciseness of the relevant provisions of the Constitution are justified and understood from the standpoint of a historical and political interpretation of the constitutional provisions. It should be noted, that the Constitution of Ukraine was adopted at a time when the main humanitarian standard – the CRC – had already been ratified by Ukraine and it had been implemented. The inclusion of provisions of the CRC to the Constitution would only lead to its duplication.

Unlike the rights and freedoms, the provisions that set the duties of children are not systematic in Ukraine, sometimes vaguely defined and poorly adapted to the child. As for juvenile duties, they have not been adequately expressed. Some authors affirms that including constitutional duties to the constitutional status of the child is inappropriate[19].

[18] Про молодіжні та дитячі громадські організації: Закон України від 1 грудня 1998 р. *Відомості Верховної Ради України.* 1999. № 1. Ст. 2.

[19] Китайка О.В. Конституційно-правовий статус дитини в Україні та міжнародні ювенально-правові стандарти. С. 11–12.

Author of one of the few works on the duties of the child, M.A. Manina classifies constitutional duties of the child into four groups:

duties that are directly related to the exercise of the rights of the child and are performed by others (for example, duty to maintain a child);

duties that children carry out, but their implementation depends on the actions of others (e.g., secondary education);

duties that are directly fulfilled by children and their implementation is independent of the child's age;

duties that are directly implemented by children and their implementation depends on the child's age[20].

It seems that the first abovementioned group of the duties cannot be included in the legal status of the child as the duties, rather, it is a guarantee of respect for the rights of the child. As for the third and fourth groups of duties, the distinction emphasizes the existential nature of the child's status, that is, his/her mobility: as the child is growing up, it is filling with new components.

The constitutional duties of the child as a person and a citizen, include:

protection of the Motherland, independence and territorial integrity of Ukraine (this duty rests solely on male juveniles and means preparatory training and enrolment in conscript precincts). In particular, Ukraine's accession to the OPAC guarantees that children are not called up for military service or any other involvement in carrying weapons;

respect for state symbols of Ukraine;

protection of nature and cultural heritage;

payment of taxes and fees;

observance of the legislation of Ukraine;

completing general secondary education. Mainly, this constitutional requirement applies to children, although the Constitution of Ukraine does not contain a special reservation.

The concept of the specific duties of the child seems like a gap in Ukrainian Juvenile law comparing the issue with the foreign legal experience. The duty of the to honor their parents always and to aid, support and protect them when they need it is enshrined in the American Declaration of Human Rights (Article XXX). The the Law of the Republic of Azerbaijan on the Rights of the Child establishes the following system of duties of the child: “The child is obliged to observe the rules of behaviour in the society, to know the state attributes of the Republic of Azerbaijan, to acquire knowledge, to prepare him/herself for useful activities, to honor his/her parents, to respect rights and interests of other citizens, to preserve the monuments of history and culture, to protect the environment, to perform other duties stipulated by the legislation of the Republic of Azerbaijan. In order to make children aware of their duties and to fulfil them, parents, as well

[20] Маніна М. До питання про конституційні обов’язки дітей. *Право України*. 2007. № 11. С. 43.

as representatives of the relevant authorities and educational institutions, conduct outreach and advocacy work for children"[21].

The Constitution of Ukraine imposes on parents the duty to maintain children until their maturity (article 51). This constitutional duty seems to be also applied to minor parents, and it should be noted that sectoral legislation demands assisting underage parents in exercising parental rights and duties. If the mother, the father of the child is a minor, the grandmother, grandfather of the child of the parent who is a minor are obliged to assist him/her in the exercise of his/her parental rights and the fulfilment of parental duties (Article 16, the Family Code of Ukraine)[22]. The liability of the underage parents is also actual[23].

In general, the constitutional regulation of the child's duties must be considered as sufficiently complete, with a clause: the fulfilment of the child's duties should be guaranteed by the state as well as the respect for the rights and freedoms of the child, taking into account the peculiarities of the child's legal personality. This clause is especially important for the such a kind of duty as the legal liability of the child. As for adults, the Constitution of Ukraine contains only general principles of legal liability of the child, namely: the principle *non bis in idem*; the individual nature of legal liability; the right not to testify against himself; the presumption of innocence; the presumption of knowledge of the law. Specific regulation of legal liability of children is concentrated in sectoral legislation. Along with the typical types of legal liability (criminal, administrative, civil, labour) today it is possible to speak about the separation in the general legal status of a child of a special, peculiar only to its type – juvenile liability[24].

Such a component of the constitutional status of the child as its guarantees is evaluated by domestic researchers in different ways: from "filing" to it all public and state methods, means, forms of securing the rights of the child, and even regarding guarantees as the basis of the constitutional legal status of the child[25] to the limitation of their system by provisions of the Constitutional Law only. O.V. Kytaika defines them as a system of constitutional means of the realization, and protection of the rights and freedoms of a minor that partially coincide with the guarantees of the rights and freedoms of the individual, and differentiates legal and organizational guarantees of respect for the rights of the child[26].

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[21] О правах ребенка: Закон Республики Азербайджан от 19 мая 1998 г.

[22] Сімейний кодекс України. *Відомості Верховної Ради України*. 2002. № 21–22. Ст. 135.

[23] Дутко А.О., Куліш Г.О. Сімейно-правовий статус батьків, які не досягли повноліття. *Юридичний науковий електронний журнал*. 2019. № 1. С. 69.

[24] Грігорова Г.Л. Ювеналістична концепція реалізації негативної юридичної відповідальності неповнолітнім в Україні. *Науковий вісник МГУ. Сер. : Юриспруденція.* 2014. Вип. 10-1. С. 39–41.

[25] Кудрявцева О. Конституційні засади захисту прав і свобод дитини в Україні: досвід, проблеми, перспективи. *Історико-правовий часопис*. 2014. № 1. С. 53.

[26] Китайка О.В. Гарантії прав і свобод дитини в Україні. С. 52.

From our viewpoint, the security of the child's legal status, firstly, must not be a duty of the state only, but also a duty of the society and its institutions, in particular, the family, as required by the principle of the best interests of the child enshrined in the CRC. Meanwhile, the Constitution of Ukraine "reserves" it for the state: "Family, childhood, motherhood and paternity are protected by the state" (part 3, article 51). Secondly, as it was mentioned above, guarantees should extend not only to the rights and freedoms, but also to the duties and liabilities of the child, which are provided by the Constitution of Ukraine generally, and in our view require a regulatory definition. The constitutional status of the child must balance between ideas of protecting the rights and interests of the child and independence of the child's personality in legal relations.

4. The sectoral legal statuses of the child

There are several sectoral statuses of the child under the provisions of Ukrainian law, and the most important ones are the following: the family status, the educational status, the procedural status of the child.

The status of the child under Chapter 13 of the Family code includes the following rights of the child: the right to name and patronymic; the right to change surname; the right to live in the family and to be raised in the family; the right to know his/her parents; the right to parental support and care; to contact parents and other relatives they if live separately; the right to choose residence, the right to his/her opinion. Every right corresponds to the certain duty of the parent or the substitute parent.

In case of deprivation of parental care, the child is entitled to maintenance and placement by the state. The forms of placement of deprived children under the Family law are the following:

family forms – adoption, guardianship and care;

quasi-family forms – patronage; foster family; family-type orphanage;

extra-family forms – child custody in the state orphanage.

The issue of the family duties of the child is discursive to the certain extent[27]. The idea of their absence in the family looks attractive inasmuch they are not defined in the Family code.

In our opinion, the respect to the child and integrity of the status of the child as a member of the family and the member of the society requires supplementing the Family code with the duties of the child. L.P. Korotkova suggests the following notion of the child's duties in the family: "Children are obliged to respect their parents, to care of them and to help them as far as possible". In addition, she proposes to supplement the Family legislation with

[27] Найман Н. Сімейно-правовий статус дитини. *Підприємництво, господарство і право*. 2016. № 6. С. 42.

a duty of a minor who lives with the family and has an independent income, to participate in the family budget[28].

The core of the educational status of the child is the right to education. In Ukraine, the education of children is carried out in the forms of school, pre-school and extra-curricular education. The specific feature of the school education is its mandatory nature, therefore the right to education is regarded as a duty of the child as well. This duty of the child is specified by the duties of the pupil:

to fulfil the requirements of the educational program (individual curriculum if available), in accordance with the principle of academic integrity, and to achieve the results of training provided by the standard of education for the appropriate level of education;

respect the dignity, rights, freedoms and legitimate interests of all participants of the educational process, observe ethical standards;

responsibly and carefully treat his/her health, the health of others, the environment;

adhere to the constituent documents, the internal regulations of the educational institution, as well as the terms of the agreement on the provision of educational services (if any);

to inform the management of the educational institution about the facts of bullying (harassment) in relation to the recipients of education, pedagogical, scientific-pedagogical, scientific workers, other persons involved in the educational process, witnessed by them personally, or persons who received reliable information from other persons (article 53)[29].

The issue of the liability of the pupils who evade attending school is discursive. The current legislation does not have any ideas about that. Liability for the child's truancy lays on the parents. According to the provision of the Code on administrative offences (article 184) the parents may be fined in case they do not provide the conditions for the child's education. Recently, educational and administrative legislation was amended with provisions of liability for school bullying. Bullying, committed by a child, is punished by a fine in case the offender is over 16 years old (Article 173-4). In other cases, the parents of the bully are fined. All the participants of the bulling case may receive psychological and pedagogical aid to overcome the negative consequences of the bulling.

Procedural status of the child varies according to the type of court procedure – criminal or civil.

[28] Короткова Л. П. Правовые вопросы приобщения подростка к труду. *Правоведение*. 1991. № 5. С. 86–89.

[29] Про освіту: Закон України від 05 вересня 2017 р. 2745-VIII. Відомості Верховної Ради України. 2017. № 38-39. Ст. 38.

In criminal proceeding, the child may act as a suspect or defendant (a child in conflict with the law), a victim, a witness (a child in contact with the law). The procedure for criminal proceedings against juvenile suspect or defendant is determined by the general rules of criminal proceedings, taking into account the provisions of Chapter 38 "Criminal proceedings against minors", the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine). Minors during criminal proceedings enjoy additional guarantees of respect and protection of their rights and legitimate interests (Article 10, paragraph 2 of the CPC). It should be noted that juvenile suspects or defendants are the target group for the system of procedural guarantees, while the rights of children in contact with the law (witnesses and victims) are to some extent overlooked by the legislator. The peculiarities of the legal status of the child in conflict with the law and the child in contact with the law require the establishment of special, child-friendly justice system.

In civil procedure, the child is entitled the same rights as the adult participant of the trial and the additional procedural rights, particularly (article 45, the Civil procedure code):

1) to express, directly or through a representative or legal representative, his/her opinion and to obtain assistance in expressing such an opinion;

2) to receive information about the trial through a representative or legal representative;

3) to exercise other procedural rights and perform the procedural duties stipulated by an international treaty, the consent of which is provided by the Verkhovna Rada of Ukraine.

The abovementioned rights are amended by the European Convention on the Exercise of Children's Rights, as the following: to apply for the appointment of a special representative (article 4). In proceedings affecting a child, the judicial authority, before taking a decision, shall:

a) consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;

b) in a case where the child is considered by internal law as having sufficient understanding:

– ensure that the child has received all relevant information;

– consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;

– allow the child to express his or her views;

c) give due weight to the views expressed by the child (article 6).

However, the implementation of these provisions in actual proceedings is not sufficient. The courts and judges rarely hear the child's opinion in cases involving the child.

However, the whole system of guarantees of the child's legal status is not ideal and requires approximation to the international juvenile standards.

CONCLUSIONS

The legal status of the child in Ukraine is a system of rights, freedoms and interests, as well as the duties and responsibilities of the special subject of law – the child, expressed in the values of natural law and the rules of positive law, guaranteed by the society and the state and in turn reflects international humanitarian standards for the rights of the child. Improvement of the normative basis of the general legal status of the child, legal and non-legal guarantees of realization of the rights, duties and responsibilities of the child, requires legislative-making activity of the state in order to fill the existing gaps, first of all – in the field of children who have a special juvenile status.

SUMMARY

In this paper the author defines general legal statuses of the child, outlines its scope and relationship with other legal statuses of a person, clarifies the structure of the legal status of the child and identifies gaps in legal regulation concerning children.

General legal status of a child and the constitutional and general legal status of a child are not identical, and the correlation between them can be described as a complex of general and particulate, where the part serves as a centre of the general phenomenon. In its turn, constitutional status of a child derives from the internationally recognized concept of the rights of a child, to be specific, from the four fundamental principles of the Convention on the rights of the child: non-discrimination and equality of rights of children; the best interests of the child; the right to survival and development; ensuring child participation in matters that concern he/her.

The general legal status of the child (juvenile status) is defined as a system of values expressed in the natural law and positive law norms guaranteed by the society and the state, and it contains human rights, freedoms and interests, as well as duties and responsibilities of a special entity – the child.

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PUBLIC FINANCIAL CONTROL AS ONE OF THE MECHANISMS STATE MANAGEMENT SYSTEMS

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INTRODUCTION

In the process of financial activity of the state, a special role is given to public financial control, through which both prevention and termination of offenses in the financial sphere are carried out. The absence of this public-law instrument can lead to destabilization of the whole sphere of financial and legal regulation.

However, public (state and local) control quite often is seen as a public financial control, without taking into account local and regional aspects of public financial control. Even in many translated publications there is a substitution of "public" for "state". Thus, in 2007, at the initiative of the European Commission to build new structures for public financial control was published a fundamental work, created by Robert de Koning named "Public Internal Financial Control (PIFC)", which is a member of the European Commission and the head of the PIFC Group[1]. There was a change of the named terms in translation of the work into other languages.

Today, in the process of new modernization, our country is experiencing in its development along with the global economic crisis, which causes a difficult transition period on the way of becoming a rule of law and becoming a full participant in the processes taking place in the modern civilized world.

Formation of the state system, which is unstable in crisis, stimulates both the increase of social tension and aggravation of the criminogenic situation, as well as slowing down the updating of the current legislation in the field of public financial control to improve its quality and efficiency both at the state and local level. Public financial control is one of the most important mechanisms of the government system.

1. Public nature of social economic relations, related to finance

In recent years the term "public" is often used to characterize various social phenomena and processes. In financial law the concepts of public finance, public funds are used: in civil law – public partnerships, public contract, public law entities, public law entity, public offering, public order, public auction, public offering; in administrative – public authority.

[1] Public Internal Financial Control : http://pifc.eu/wp-content/uploads/2017/11/Pifc-Russian.pdf.

The Law of Ukraine "On Open Use of Public Funds"[2] adopted by the Verkhovna Rada of Ukraine also contains rules on public funds, stating that these are funds from the state budget, the budget of the Autonomous Republic of Crimea and local budgets, credit resources provided under state and local guarantees, funds of the National Bank of Ukraine, state banks, state trust funds, the Pension Fund of Ukraine, funds of compulsory state social insurance, as well as funds of economic entities of state and communal property received by them from their business activity.

Business entities of state and communal property – enterprises formed in due course by public authorities, authorities of the Autonomous Republic of Crimea or bodies of local self-government and are empowered to receive state funds, to take over their obligations and to make payments, including state, state-owned enterprises, communal enterprises, as well as commercial companies in which the authorized capital of the state or communal share of shares (shares, units) exceeds 50 percent, their subsidiaries, as well as enterprises, economic entities in which the authorized capital of which more than 50 percent is owned by state, including state-owned enterprises, public utilities and economic entities, in the authorized capital of which the state or communal share of shares (shares, units) exceeds 50 percent, mergers such enterprises.

Therefore, the provisions of the Law apply to relations related to the preparation and disclosure of information about the planned and actual use of public funds again.

The combination of these words and phrases, combined by the concept of "public interest", determines in modern society and the state of static and dynamics of most economic, social and political processes.

It is worth noting that only in the concept of "public interest" can the grounds be found for the expression "public law"[3] to which financial law applies. It is the public nature of public economic relations related to the sphere of finance, money and credit that largely determines their financial and legal content, that is, the regulation of financial law as a public right.

2. Public financial control as a complex legal system

Public financial activity in the form of control is carried out by all state bodies irrespective of the tasks that are carried out by them. However, since control does not act in isolation but is implemented in relation to a specific subject matter, the scope of control activity, forms and methods of its manifestation differ depending on the sphere or branch of state activity, as well as on the special place of the authority exercising control powers in the

[2] Про відкритість використання публічних коштів : Закон України від 11 лютого 2015 року № 183-VIII : Відомості Верховної Ради України. 2015. № 16. Ст.109.

[3] Рождественский А. Теория субъективных публичных прав. Критико-систематическое исследование. М., 1913. С. 228.

general system. state mechanism. According to researchers, financial control is a whole set of measures aimed at creating an effective system for combating misuse of state and municipal monetary resources. Financial control can only be ensured if a system of controlling entities is well organized[4].

Control involves two groups of relationships:

1) assessment of the compliance or non-compliance of a particular condition of a controlled object with the required indicators;

2) identification of errors in management activities and preparation of proposals for their correction.

Scientists distinguish the following types of control: departmental control, which is a function, part of the most inter-sectoral administrative activity of state bodies; super-agency control as a cross-sectoral inspection or state oversight of the execution of part of the functions of ministries with a complex of law enforcement powers; internal control as part of the activities of the system management body[5].

In the scientific literature, financial control is distinguished depending on the time of conducting: previous, current (operational), subsequent (next); depending on the entity that exercises financial control: state[6], municipal, control of financial institutions, audit; by the forms of holding: initiative and obligatory; on the focus of control actions of financial bodies: strategic and tactical.

There are also views that, depending on the relationship between the entity – the public financial activity and the entity – the controlling authority, public financial control is divided into two main types: internal and external.

In internal control, the public financial activity of each entity is controlled by the entity through special units – control departments, departments, etc. Such control takes the form of an internal audit, the purpose of which is to check the appropriateness and soundness of individual financial transactions, their compliance with the financial strategy and tactics of the entity.

External control is the audit of the public financial activity of a particular entity by the appropriate authorized inspection bodies. The purpose of this control is to verify compliance of public financial activity with the applicable financial legislation[7].

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[4] Олексій У.О. Парламентський контроль за публічними фінансами як вид фінансового контролю. Lex Portus. 2019. 3. С. 59–68.

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[7] https://pidruchniki.com/1415082352601/finansi/vidi_finansovogo_kontrolyu.

Public financial control is a complex legal system that includes many interrelated elements. One such element is the system of bodies that exercise control at the state level. It is through the analysis of the legal regulation of their financial control activities that we can conclude on the quality of legal regulation of public financial control.

3. Approximation of activities of public financial control bodies to European standards

Nowadays, there are a large number of supervisory authorities in Ukraine that are empowered to audit the activities of different entities. Prior to the adoption of the Tax Code, the concept of "controlling authority" could be seen in many legal acts.

Thus, in accordance with the Instruction on the Procedure for the Application of Penalty (Financial) Sanctions, the controlling body was regarded as a body of the state tax service, which, within the limits of its competence, determined by the law, controls the timeliness, reliability, completeness of accrual of taxes, fees, other obligatory payments and repayment of tax liabilities or tax debt, compliance with the Law of Ukraine "On the application of registrars of settlement transactions in the sphere of settlement of public catering and services", laws on foreign economic activity and other normative legal acts, the control of which is vested in the bodies of the state tax service[8]. With the adoption of the Tax Code, the said Instruction ceased to be valid on the basis of the Order of the State Tax Administration of Ukraine dated December 22, 2010 №. 982. It was considered a controlling body and as a state body which, within the limits of its competence determined by the legislation, controls the timeliness, reliability, completeness and accrual fees (mandatory payments) and repayment of tax liabilities or tax debt (STA of Ukraine Order "On Approval of the Procedure of Submission by the State Tax Service of Ukraine tax requirements to taxpayers"[9]).

A similar definition was provided in the STA Order "On Approval of the Procedure for Application of Administrative Arrest of Taxpayer Assets" [10].

The resolution of the National Bank of Ukraine considered this body somewhat differently, namely: the controlling body is the body in which the license holder is registered[11].

[8] Інструкція про порядок застосування штрафних (фінансових) санкцій органами державної податкової служби: Наказ ДПА України від 17.03.2001 № 110.

[9] Порядок направлення органами державної податкової служби України податкових вимог платникам податків: Наказ ДПА України від 03.07.2001 № 266.

[10] Порядок застосування адміністративного арешту активів платників податків: Наказ ДПА від 25.09.2001 № 386.

[11] Положення про порядок видачі Національним банком України індивідуальних ліцензій на використання іноземної валюти на території України як засобу платежу: Постанова Національного банку України від 14.10.2004 № 483.

The Law of Ukraine "On the procedure for repayment of taxpayers' obligations to budgets and state trust funds" [12] referred to controlling bodies: customs authorities, bodies of the Pension Fund, bodies of compulsory state social insurance funds, tax authorities.

With the adoption of the Tax Code, the powers and functions of the controlling bodies have changed and are now defined by the Tax Code, the Customs Code and the laws of Ukraine, and Article 41 of the Tax Code "Controlling and Recovery Bodies" establishes that the controlling body is the central body of executive power, which implements state tax, state customs policy, state policy on administration of the single contribution, state policy in the field of anti-law enforcement. and customs, single payment and other legislation, the control of which is vested in the controlling body, its territorial bodies[13]. Moreover, the collection authorities are the sole supervisory authorities, authorized to take measures to ensure the repayment of tax debt and arrears of payment of a single contribution within the powers, as well as state executors within the limits of their powers.

The differentiation of powers and functional responsibilities of the controlling bodies is determined by the legislation of Ukraine. Moreover, other state bodies have no right to check the timeliness, accuracy, completeness of accrual and payment of taxes and fees, including at the request of law enforcement agencies.

The Law of Ukraine "On Amendments to the Tax Code of Ukraine on Improving the Investment Climate in Ukraine" [14] introduced an electronic payer cabinet that will give taxpayers the opportunity to work remotely in a real-time manner, such as:

- file declarations using an electronic digital signature and review the filed and / or generated tax reports;
- to be reminded about deadlines for reporting and payment of taxes, fees (mandatory payments);
- to receive information about personal registration data (taxpayer's tax number, name of the taxpayer, main activity; P.I.B. Accountant and Director, etc.);
- to file and receive in electronic form a certificate on the absence of arrears of taxes, fees, payments controlled by the bodies of the fiscal service;
- to keep an electronic account of the Book of accounting of income and expenses;

[12] Про порядок погашення зобов'язань платників податків перед бюджетами та державними цільовими фондами : Закон України від 21 грудня 2000 року № 2181-III.

[13] Податковий кодекс від 2 грудня 2010 року № 2755-VI. *Відомості Верховної Ради України.* 2011 № 13-14 № 15-16. № 17. Ст. 112.

[14] Про внесення змін до Податкового кодексу України щодо покращення інвестиційного клімату в Україні. Закон України від 21 грудня 2016 р. № 1797-VIII. *Відомості Верховної Ради України.* 2017. № 5-6. Ст. 48.

- to review information about the state of their payments with the budget, in particular, about tax arrears, fees, a single contribution to compulsory state social insurance[15].

E-cabinet is an electronic system of relations between taxpayers and state, including controllers, bodies for the exercise of their rights and obligations, envisaged by the Tax Code, consisting of:

hardware and software complex;

a portal solution for taxpayer users who work online (via the Internet in real time) and do not require the specialized use of a specialized client application;

portal solution for users – state, including supervisory, bodies;

software interface (API), which allows to realize the full functionality of e-cabinet;

other means of information, telecommunication, information and telecommunication systems.

That is, the payer's e-cabinet is a personal, automated workplace for a taxpayer who accesses work from any computer connected to the Internet by authenticating with an electronic digital signature and authorizing such a payer.

The order of functioning of the electronic cabinet is determined by the central body of executive power, which ensures the formation and implementation of the state financial policy.

The provisions of the Tax Code stipulate that the e-cabinet is created and operates according to the following principles:

transparency – the mandatory publication of a methodology for implementing the provisions of this Code in the work of the electronic cabinet;

controllability – ensuring the ability to independently verify the correctness of the electronic cabinet through a test payer (s) on an emulator created on the website of the electronic cabinet methodology for the absence of software errors, prevent unauthorized interference with the work of electronic cabinet software, which means these the authenticity of the source code;

integrations with systems used by taxpayers – open, freely available APIs for Electronic Data Interchange (EDI);

timeliness of technical and / or methodological errors elimination – ensuring that the registry of technical and / or methodological errors detected by taxpayers, technical administrators and / or methodologists of the electronic cabinet is published on the official website of the electronic cabinet, determining the level of criticality of such errors and setting deadlines for such errors their elimination, informing all users of e-cabinet about the fact of detection of technical and / or methodological error, as well as about the fact of its elimination and restoration spare electronic office work in full;

[15] http://ch.sfs.gov.ua/media-ark/local-news/print-168670.html.

automation – maximum automation of the processes of creation, acceptance, processing, storage of documents, processing and display of data (indicators) of documents and other taxpayer credentials;

completeness of functionality – the availability of such an electronic service interface that enables the exercise of the rights and obligations of the taxpayer, the receipt of documents provided for by law, and information concerning such taxpayer, online (via the Internet in real time) or through the program interface (ARI), by other means of information, telecommunication, information and telecommunication systems;

simplification of the procedure of interaction between taxpayers and the controlling body and acceleration of electronic document flow between them;

automatic logging of all activities (events) occurring in the e-cabinet, including, inter alia, fixing the date and time of departure, receipt of documents through the e-cabinet and any modification of the data available in the e-cabinet by electronic timestamp. Information on the date and time of sending and receiving documents, other correspondence with the identification of the sender and the recipient is stored indefinitely and can be obtained through the electronic office in the form of an electronic document, including in the form of a receipt in text format;

prohibition of interference, creation of restrictions on functioning and / or possibilities for use by taxpayers of e-cabinet taxes stipulated by the Tax Code;

priority of documents coming from state, including controlling, bodies, getting started in the electronic cabinet with automatic opening of messages coming from state bodies, and / or blocking the possibility of sending documents by the taxpayer until the taxpayer received documents his e-cabinet from government agencies.

Legislation empowers control bodies to carry out chamber, documentary (planned or unplanned; on-site or off-site) and factual inspections. At the same time, chamber and documentary checks are carried out by the control bodies within the limits of their powers only in cases and in the order established by the Tax Code, and actual checks – by both the Tax Code and other laws of Ukraine, the control of which is vested in the control bodies.

Commercial under the law is considered to be a check, which is carried out at the premises of the controlling body solely on the basis of the data specified in the taxpayer's tax returns (calculations) and data of the electronic system of value added tax administration (data of the central executive body implementing state policy in the field of treasury servicing of budgetary funds, which open the accounts of payers in the electronic system of value added tax administration, data of the Unified register of tax invoices and data of customs declarations), as well as data from the Unified Register of Excise Invoices and data from the electronic administration of fuel sales.

The subject of a camera check may also be the timeliness of filing tax returns (calculations) and / or the timely registration of tax invoices and / or adjustments to tax invoices in the Unified Register of tax invoices, excise invoices and / or excise tax adjustments, correction of errors in tax invoices and / or timely payment of the agreed amount of tax (monetary) liability solely on the basis of stored data (processing The relevant information bases.

A documentary check is a check, the subject of which is timeliness, reliability, completeness of calculation and payment of all taxes and fees stipulated by the Tax Code, as well as compliance with currency and other legislation, the control of which is vested in the supervisory authorities, the employer compliance with the law on the conclusion of an employment contract, registration of labor relations with employees (employees) and conducted on the basis of tax declarations (calculations), financial reporting, tax and accounting registers required by law, primary documents used in accounting and tax accounting and related to the accrual and payment of taxes and fees, compliance with the requirements of other legislation, the control of compliance with which is vested in the controlling bodies, and received in accordance with the procedure by the controlling body of documents and tax information, including the results of audits of other taxpayers.

It should be noted that the documentary scheduled audit is carried out in accordance with the audit schedule. With regard to documentary unscheduled verification, such verification is not foreseen in the plan of work of the supervisory authority and is carried out if there is at least one of the grounds specified in the Tax Code.

A documented field visit is a check that is carried out at the location of the taxpayer or the location of the property in respect of which such a check is carried out, and a documentary non-departure check is a check carried out at the premises of the controlling body.

With regard to actual verification, it is an audit carried out at the place where the taxpayer actually conducts business, the location of economic or other objects of ownership of such payer.

Such inspection is carried out by the controlling body on compliance with the rules of the legislation on the regulation of cash circulation, the procedure for payment by taxpayers of settlement transactions, conducting cash transactions, the presence of licenses, certificates, including the production and circulation of excisable goods, compliance with the employer in compliance with the legislation on the registration of labor legislation labor relations with employees (by hired persons).

The camera inspection shall be conducted by the officials of the supervisory body without any special decision of the head (his deputy or authorized person) of such body or its direction. All tax reports are subject to a

full-blown audit. The consent of the taxpayer to be audited and to be present during the on-the-spot check is optional.

All tax reports are subject to a full-blown audit. The consent of the taxpayer to be audited and to be present during the on-the-spot check is optional.

It should be noted that since January 2018, there has been a moratorium on inspections. It was forbidden to carry out routine inspections by control bodies for two months, and was carried out only in exceptional cases. This prohibition was contained in the Law of Ukraine "On Temporary Features of Implementing State Supervision (Control) Measures in the Field of Economic Activity"[16].

The Cabinet of Ministers Resolution "On Approving the List of State Supervision (Control) Bodies Not Applicable to the Law of Ukraine "On Temporary Specific Features of Implementing State Supervision (Control) Measures in the Field of Economic Activity" approved the list of state supervisory bodies (control) that are not covered by the Law[17]. The moratorium was extended, in fact three groups of bodies with different levels of inspection rights were actually allocated.

The first group includes bodies to which the rules of the above law did not apply, and thus the moratorium on inspections had nothing to do with them: National Bank of Ukraine, Customs of the State Fiscal Service, State Service of Export Control of Ukraine, State Audit Service of Ukraine, Antimonopoly Committee of Ukraine, National Council of Ukraine for Television and Radio Broadcasting, Market Oversight Bodies.

The second group includes bodies authorized by the Cabinet of Ministers of Ukraine to carry out inspections.

The Cabinet of Ministers Resolution "On Approving the List of State Supervision (Control) Bodies Not Applicable to the Law of Ukraine". On Temporal Features of Implementing State Supervision (Control) Measures in the Field of Economic Activity" determined the list of bodies not subject to the moratorium. those bodies that are completely removed from the moratorium on inspections. This is, for example, the State Geocadastre, which controls in the agro-industrial complex compliance with land legislation, use and protection of land of all categories and forms of ownership, compliance with the requirements for soil fertility.

[16] Про тимчасові особливості здійснення заходів державного нагляду (контролю) у сфері господарської діяльності : Закон України від 3 листопада 2016 року № 1728-VIII : *Відомості Верховної Ради.* 2017. № 4. Ст. 37.

[17] Про затвердження переліку органів державного нагляду (контролю), на які не поширюється дія Закону України «Про тимчасові особливості здійснення заходів державного нагляду (контролю) у сфері господарської діяльності» : Постанова Кабінету Міністрів України від 18.12.2017 р. № 1104.

There are also bodies in this Ordinance which have been removed from the moratorium only in part of their powers. Thus, the State Inspectorate allowed to monitor only compliance with the requirements of the legislation on environmental and radiation safety.

The list of bodies withdrawn from the moratorium includes bodies that carry out unscheduled inspections only on the grounds specified by Law № 877, and there are those who are guided by their respective profile laws.

And the third group is under the moratorium, that is, all other inspections that remained under the moratorium until the end of 2018.

Therefore, a moratorium on these bodies meant that the law prohibited in 2018 from carrying out routine inspections of all businesses and individuals. Instead, the legislation provided for six grounds for unscheduled inspections, including: a complaint by an individual (if the State Regulatory Service of Ukraine approves such inspection); desires of the enterprise; judgment; accident, death of the victim as a result of an accident (if related to the activity of the enterprise); an event that has a significant adverse effect on the person, environment and security of the state.

So far no one knows what these events are, because the criteria for determining negative impact were set by the Cabinet of Ministers of Ukraine; Verification of the fulfillment of the prescription made on the results of the preliminary verification.

The Explanatory Note to the Draft Law of Ukraine "On the Fundamental Principles of Public Financial Control Bodies" states that in the current context, the issues of effectiveness of the instruments of the Cabinet of Ministers of Ukraine, which it uses to create the basis and incentives for carrying out reforms and developing a strong and effective system, are of particular relevance. management of public finances, in particular public financial control as an indispensable condition for sustainable socio-economic growth[18].

Considering that the current state of socio-economic development of the Ukrainian state is characterized, on the one hand, by the dynamism and multi-vectority of development processes and reforms in all spheres of public life in general and public administration in particular, which are conditioned primarily by its European integration aspirations, and secondly, the complexity of the implementation of national goals and objectives in different spheres of public life due to a number of factors, including the limited amount of necessary financial resources in the state, the imperfection and inconsistency of the legislative framework, the low level of interaction of state bodies between themselves and society, it is necessary to build an effective

[18] Пояснювальна записка до проекту Закону України «Про основні засади діяльності органів державного фінансового контролю» від 17.09.2018 № 9086: http://search.ligazakon.ua/l_doc2.nsf/link1/GH70E00A.html.

mechanism for managing to increase the level of internal control and audit in public authorities, to increase the extremely low level of financial and budgetary discipline.

The State Audit Office is a special body of financial control in Ukraine, which within the limits of the existing right-hand field on behalf of the Cabinet of Ministers of Ukraine forms and implements state policy in the sphere of financial control[19].

The quality of the public financial control function through the implementation of state financial audits, audit and monitoring of procurement and inspection (audits) depends on the quality of the legal, organizational and methodological, information support of the State Audit Service and its interregional territorial bodies.

Part 2 of Article 19 of the Constitution of Ukraine[20] stipulates that state authorities and local self-government bodies, their officials are obliged to act only on the basis, within the powers and in the manner provided by the Constitution and laws of Ukraine. It should be noted that control over the implementation of local budgets is also a type of public financial control[21].

At the same time, paragraph 12 of part one of Article 92 of the Constitution of Ukraine stipulates, in particular, that the organization and activities of executive bodies are determined solely by the laws of Ukraine.

In addition, part two of Article 120 of the Constitution of Ukraine stipulates that the organization, powers and procedure of activity of the Cabinet of Ministers of Ukraine, other central and local bodies of executive power are determined by the Constitution and laws of Ukraine.

According to the second part of Article 3 of the Law of Ukraine "On Central Bodies of Executive Power" [22], the organization, powers and order of activity of ministries, other central executive bodies are determined by the Constitution of Ukraine, this and other laws of Ukraine.

In turn, pursuant to Article 116, paragraphs 5, 6, 9 and 91, of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine, in particular, ensures equal conditions for the development of all forms of ownership; manages state property objects in accordance with the law; ensures implementation of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine; directs and coordinates the work of ministries, other

[19] Положення про Державну аудиторську службу України: Постанова Кабінету Міністрів України від 3 лютого 2016 р. № 43 : http://zakon.rada.gov.ua/laws/show/43-2016-п.

[20] Конституція України, прийнятана пятій сесії Верховної Ради України 28 червня 1996 року : *Відомості Верховної Ради України.* 1996. № 30. Ст. 141.

[21] Марущак А.В. Правові основи контролю за виконанням місцевих бюджетів. Legal practice in EU and Ukraine at the modern stage. Arad, Romania, 25-26 January, 2019. P. 393–395.

[22] Про центральні органи виконавчої влади : Закон України від 17 березня 2011 року № 3166-VI : *Відомості Верховної Ради України.* 2011. № 38. Ст. 385.

executive bodies, and creates, reorganizes and liquidates ministries and other central executive bodies in accordance with the law, acting within the limits of the funds provided for the maintenance of executive bodies.

Also, in accordance with part eight of Article 21 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" [23], the peculiarities of the relations of the Cabinet of Ministers of Ukraine with individual central executive bodies may be determined by the laws of Ukraine.

According to part four of Article 24 of the Law of Ukraine "On Central Executive Bodies", the provisions of this Law shall be extended to the Antimonopoly Committee of Ukraine, the State Property Fund of Ukraine, the State Committee for Television and Radio Broadcasting of Ukraine, and other central executive bodies with the special status of the Cabinet of Ministers with special status cases where the Constitution and laws of Ukraine define other features of the organization and the order of their activity.

Therefore, for the creation and development of consolidated and harmonized legislation with effective mechanisms for its implementation in the field of public financial control, which is the focus of strategic reforms of the state development in the medium term, a draft Law of Ukraine "On the Fundamental Principles of Public Financial Control Bodies" was drafted. development of modern and effective legislation in the field of public financial control. We believe that this bill should be called the Law of Ukraine "On the Fundamental Principles of Public Financial Control Bodies".

The need to develop the project is based on such strategic documents as the Government's Mid-Term Priority Action Plan for 2020 and the Government's Priority Action Plan for 2017, approved by the Decree of the Cabinet of Ministers of Ukraine of April 3, 2017 No. 275; Strategy for reform of the public finance management system for 2017-2020, approved by the Decree of the Cabinet of Ministers of Ukraine dated February 08, 2017 № 142; Ukraine 2020 Strategy for Sustainable Development, approved by Presidential Decree # 5 of January 12, 2015, reflects the ways of resolving problematic and unresolved issues in the area of public financial control, implementation of the European Union's aspirations of the Cabinet of Ministers and the country, as well as approximation to the European principles of functioning of the bodies of financial control. We believe that the introduction of new reforms in the field of public financial control requires the need to introduce new forms of interaction between the subjects of financial legal relations, reforming both the financial and its component – the tax

[23] Про Кабінет Міністрів України : Закон України від 27 лютого 2014 року № 794-VII : Відомості Верховної Ради України. 2014. № 13. Ст. 222.

system as a whole, changes in the relationship between business and regulatory bodies[24].

It is especially important to pay attention today to the weaknesses of public administration, both in general in the economy and directly in the financial sphere, which is reflected in the inconsistency and inefficiency of public policy regarding the systematic organization of public financial control. The low efficiency of such control is explained by the lack of a generalized legal model and a unified approach to understanding the directions of its further development, which does not allow to fully improve the current legislation in this field.

CONCLUSIONS

Thus, to summarize, it can be concluded that public financial control is one of the constituent forms and parts of a single integrated control system, which is to regulate and verify the legality and effectiveness of actions (actions and omissions) associated with the creation, distribution and the use of material resources to disclose deviations from established standards, principles, and legal requirements at an earlier stage.

Therefore, it is important to qualitatively enhance functions and build a coherent, effective and efficient system of public financial control; create an effective institutional framework for the activities of public financial control bodies; to provide the conceptual framework for the development of the legal and methodological framework for the operation of public financial control and the activities of public financial control bodies, in line with the best practices of the European Union, to promote fiscal discipline and minimize abuse in public finance. It is important to create a transparent system of public administration and use of financial resources that will enhance public confidence in government bodies.

Today particular attention needs to be given to defining the main purpose and role in the implementation of the public financial policy of public financial control bodies.

Public financial control is an important component of a democratic state's financial system, as it ensures that public financial management processes are appropriate to the needs of society. The independence and comprehensiveness of such controls are prerequisites for its effective implementation. Public financial control should be considered as a purposeful activity of authorized state bodies, local self-government bodies, enterprises,

[24] Латковська Т.А. Перспективи перетворення Державної фіскальної служби з контролюючого органу на сервісну службу. Правові та інституційні механізми забезпечення розвитку держави та права в умовах євроінтеграції : матеріали Міжнар. наук.-практ. конф. (20 травня 2016 р., м. Одеса) у 2 т. Т. 2 / відп. ред. М.В. Афанасьєва. Одеса : Юридична література, 2016. С. 64–66.

institutions, organizations, public associations regulated by legal norms irrespective of forms of ownership and other entities that exercise public interest in the process of public compliance with the law financial activities.

The underestimation of the role of public financial control is one of the causes of the crisis in our country in recent years, the existence of an objective need to create an effective, efficient and viable financial system and, as a consequence, improve the level of financial discipline that will reduce the number of budget- financial violations, gives rise to the need to pay attention to the resolution of problematic issues in the sphere of functioning of the system of state financial control in Ukraine.

Today, based on world experience, Ukraine is moving from retrospective forms of state control, such as audits and audits, to its new form, the state financial audit.

SUMMARY

In the process of financial activity of the state a special role is assigned to public financial control, through which both the prevention and the termination of offenses in the financial sphere are carried out. The absence of this public-law instrument can lead to destabilization of the whole sphere of financial and legal regulation. Public financial control is a fairly complex legal system, which includes numerous interconnected elements. One such element is the system of bodies that exercise control at the state level. It is through the analysis of legal regulation of their financial and control activities that we can conclude that the quality of legal regulation of public financial control. It is especially important today to draw attention to the fact that there are weaknesses in public administration both in general in the economy and directly in the financial sphere, which is expressed in the inconsistency and ineffectiveness of the state policy regarding the systemic organization of public financial control, whose low effectiveness is explained by the lack of a generalized legal model and the only approach to understanding the directions of its further development, which does not allow to perfectly improve the current legislation in this area.

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FEATURES OF SECURING PERSONAL NON-PROPRIETARY RIGHTS TO LIFE AND HEALTH IN THE DIGITAL ENVIRONMENT

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INTRODUCTION

The process of development of a modern information society requires changes in scientific views and established doctrinal provisions in different areas of law. Public relations in the digital environment cannot be fully regulated. This requires a new comprehensive scientific exploration, analysis of new ideas and the development of legal concepts. In our opinion, the specificity of the manifestation of personal non-property rights in the digital environment, in particular the rights to personal security, deserves special attention. The right to personal security in the science of civil law is regarded as a kind of personal non-property right of an individual having the highest social value. The right to personal security is closely linked to fundamental human rights to liberty and security of person.

The current legislation of Ukraine, in particular the Civil Code, contains separate provisions on the regulation and protection of the individual's right to personal safety. The personal safety of an individual is, by its legal nature, a non-material benefit. Among the features of such a non-proprietary right, one should note the higher social value. The right to personal security is a variant of general human security and is aimed at protecting the private interest of an individual. The right to personal security is a state of protection of a particular individual from danger and is the antithesis of such legal category as risk [1] Given the significant number of threats to the rights of the individual in today's information society, it is necessary to intensify scientific research in a particular field.

1. The right to information security in the system of personal non-property rights of an individual

The analysis of the concept of personal security as a legal category should start with a general concept of security. Security is characterized as a state of protection of a person from external and internal threats. Thus, in particular, V.P. Vaskovskaya believes that the concept of "human security" in a generalized form means a degree of protection of a person, which ensures its sustainable development and is based on the activities of society,

[1] Стефанчук Р. Сучасні тенденції та перспективи розвитку права фізичної особи на особисту безпеку. *Вісник Національної академії прокуратури України*. № 4. 2008 р. С. 53–58.

guaranteed by the state, its bodies and officials to identify, prevent and eliminate the consequences of threats to human interests. On the other hand, in the narrow sense, human security is a stable state of reliable protection of vital (human life and health), legitimate and private human interests. Protection of her rights, freedoms and ideals, values against unlawful encroachments, threats and any harmful effects (physical, spiritual, property, informational, social, economic, political, environmental, military, etc.)[2].

O.A. Kolotkina notes that the concept of a person's right to security has a dual legal nature. On the one hand, it is a subjective right that characterizes the element of content of the general regulatory legal relationships that arise in connection with and about the security of each individual as a subject of law. From this perspective, the right of the individual to security as a legal category is natural and has its own meaning. On the other hand, the right of the individual to security is organically linked to such universally recognized fundamental rights and freedoms as the right to life, the right to liberty and security of person, other absolute and relative rights and freedoms. The right to security is in fact "embedded" in each of these rights. At the same time, the main focus is on the possibility of the realization of one's own rights and freedoms. Thus, there is every reason to argue that the right of the person to security is one of the basic elements of the whole modern system of human rights and freedoms, and therefore the legal system as a whole[3].

The purpose of the right to the personal safety of the individual must first and foremost guarantee the safety of the most fundamental, primary and non-renewable rights – the right to life and health[4].

Security is a system-forming category and may have a structural division depending on the area of interest it serves. By this criterion, we can distinguish such types of security as: national, political, economic, informational, legal, demographic, military, technical, environmental, nuclear, radiation, fire, sanitary-epidemiological, food, etc. Although the literature holds that all these varieties of security are included in the general concept of "personal security". However, according to R. Stefanchuk, this is a false statement and does not correspond to the content of the concept of security, where "personal security" is only one of its varieties[5].

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[3] Колоткин О. А. Право особистості на безпеку: поняття і механізми забезпечення в РФ: теоретико-правове дослідження: автореферат дисертації ... кандидата юридичних наук. Єкатеринбург. 2009. 21 с.

[4] Стефанчук Р. Сучасні тенденції та перспективи розвитку права фізичної особи на особисту безпеку. *Вісник Національної академії прокуратури України*. №4. 2008р. С. 53–58.

[5] Стефанчук Р.О. Особисті немайнові права фізичних осіб (поняття, зміст, система, особливості здійснення та захисту) : монографія. К. : КНТ, 2008. 626 с.

It should be noted that the personal safety of an individual is, by its legal nature, a personal non-material benefit, endowed with such characteristic features. First, it is of higher social value as a kind of general human security (Article 3 of the Constitution of Ukraine) and closest in nature to personal inalienable rights (the right to life, dignity, personal integrity). Without the right to security, it is impossible to think about the reality of the exercise of these rights. Secondly, it arises simultaneously with the appearance of personality; has an individual focus on a specific entity – an individual, and is aimed at protecting his or her private interest. This is the differentiated benefit from, for example, national security, where the subject is not a particular individual, but a collective entity – a nation. However, closely linked to these categories, with the security of the state and society, the collective rights of social communities are exercised. Third, it is a state of protection of a particular individual from danger[6]. Therefore, personal safety goes beyond personal physical security. This right is filled with the need to ensure the safety of the ecological, moral environment, social conditions of the person's realization of his biosocial nature[7].

In particular, in our opinion, it is worth talking about the right to information security of the individual, whose provision of modern conditions of development of information technologies and access to the Internet is relevant.

Today, a large number of scholars from different branch of law are investigating the problems of information security of the individual. It is possible to distinguish O. Zolotar's thorough research "Information security of the person: theory and practice" which among other things defines the right to a secure information environment is not only protection of information, but also protection from negative information influences[8].

The main features of information security are:

1) The existence of certain stable conditions in which society resides;

2) Protection of vital interests of being human, society, state;

3) Aiming to prevent harm to these interests;

4) Acknowledgment of existence of differences of interests of the person, society, the state;

5) Recognition of the mutual connection of the person, society, the state in the prevention of their harm;

[6] Ваганов П.А. Риск смерти и цена жизни. *Правоведение*. 1999. № 3. С. 67–68.; Ардашев А.І. Конституційні основи забезпечення безпеки особистості в Російській Федерації: автореферат дисер. наук. ступеня канд. юрид. наук. Москва, 2008. 21 с.

[7] Ардашев А.І. Конституційні основи забезпечення безпеки особистості в Російській Федерації: автореф. дисер. на здобуття наук. ступеня канд. юрид. наук. Москва, 2008. 21 с.

[8] Золотар О.О. Інформаційна безпека людини: теорія і практика : монографія. Київ : ТОВ «Видавничий дім «АртЕк», 2018. 446 с.

6) Achieving the goal on the basis of recognition of the harmony of interests of the person, society, state without giving preference to any of them;

Information security is a generic concept and covers such varieties as "cybersecurity", "real-time media security", etc.[9] [IT Law, p56]

In a certain aspect, it is not superfluous to note that significant threats to one's personal safety are those directly related to the physical and mental security of a person, which is a prerequisite for his quality of life. For example, it is a threat to the impact of low-quality information (untrue, false, misinformation) on the individual and society[10]. The realization of these threats leads to the violation of the most important absolute human rights and freedoms – for life, for health, for bodily integrity, respect for human dignity, for privacy, and so on[11].

2. Relationship between the right to information security and personal non-property rights to life and health

Some types of information threats in the digital environment can not only have a detrimental effect on the mental health of a social network user, but also cause significant tangible damage to his or her physical health or even life. These include the playback of potentially life-threatening and health-related actions taken by other Internet users (for example, dangerous flash mobs, games, chelens); self-medication based on online counseling or information posted on the Internet, etc.

Health information is increasingly available on the Internet. The number of websites with medical information is constantly growing. The number of Internet users who access such information is also increasing. There are many benefits of such a convenient and fast way to obtain health information, diagnosis and treatment. However, there are also a number of information threats to life and health that need to be identified and eliminated.

To date, there are three main ways to access medical information on the Internet: 1) search for medical information; 2) interaction with medical professionals; 3) participation in support groups (Cline and Haynes, 2001).

As you can see, there are several aspects to the problem of finding medical information on the Internet. First, it is of insufficient quality and reliability. In addition, medical information may be non-differentiated, incomplete, or misleading and may not have a scientific basis. Secondly, even

[9] ІТ-право:теорія та практика : навч.посіб. / авт. кол. ; заг ред Є.О. Харитонова, О.І. Харитонової. – 2-ге видан., виправлене та доповнене. – Одеса : Фенікс, 2019. – 475 с.

[10] Гуцу С. Ф. Правові основи інформаційної діяльності: навч. посібник Х.: Нац. Аерокосм. Ун-т «Харк. авіац. ін-т», 2009. 48 с.; Литвиненко О. Проблема інформаційної безпеки в контексті міграційних процесів. URL: http://www.nbuv.gov.ua/portal/soc_gum/Ukralm/2012_7/lytvynenko.pdf (дата звернення: 04.01.2020).

[11] Золотар О.О. Інформаційна безпека людини: теорія і практика : монографія. Київ : ТОВ «Видавничий дім «АртЕк», 2018 – 446 с.

if it is correct and correct, it is not possible to control the correct interpretation and implementation of it by the Internet user. Improper self-diagnosis, self-selection of methods and treatments based on information posted on online sources can directly harm the health and even the life of a person.

The interactive nature of social media exacerbates these problems because anyone can download content to the site. In so doing, authors of medical information found on social media sites are often unknown or identified by limited information[12].

At present, it is impossible to assess the magnitude of the problem of poor quality medical information, as studies on this issue are not consistent. Although some authors believe that the quality of medical information on the Internet is poor (Doupi and Van der Lei, 1999; Latthe et al., 2000), others believe that it is of equal importance to information provided by other media (Sandvik, 1999 Hellawell et al. 2000). These controversial results are not surprising given the large number and variety of medical information sources on the Internet. Because of this problem, criteria for assessing the quality of health information on the Internet have been developed by several organizations (Eysenbach et al., 2000; Winker et al., 2000). These criteria take into account not only the content of the website (quality, reliability, accuracy, scale, etc.), but also the form (design, aesthetics, interactivity, use of the media, etc.), accessibility (fee for access, navigation, functionality, etc.), source reliability and privacy policies (Kim et al., 1999; Winker et al., 2000). So far, however, the impact of these criteria on the development and use of health information websites has been relatively weak, as they are subject to the good will of website designers and because users are unaware of them. Some research shows that using one of the most popular search engines (Google, AltaVista, Lycos, etc.) to search for information about a particular disease, only one in five links to a website with relevant information. Important information about each of the selected health issues is not available on most of the websites studied. This deficiency can adversely affect users' decisions. For example, lack of information about alternative treatments prevents users from making informed choices (Berland et al., 2001). In addition, although the information available is often valid, in many cases it is incomplete. Moreover, finding accurate health information can also be difficult, due to lack of usability and persistence (sites disappear and change without notice) (Cline and Haynes, 2001). Once the information has been found and assumed to be reliable and complete, users should understand it and bring it to life (D'Alessandro et al., 2001). Currently, most health information

[12] Lee C. Ventola Social Media and Health Care Professionals: Benefits, Risks, and Best Practices URL: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4103576/ (дата звернення: 06.01.2020).

websites provide technical information for people who are unfamiliar with the scientific medical literature[13].

Another problem with medical information posted on the Internet and the potential harm to the health of Internet users is the activity of pharmaceutical companies that can promote their products directly to consumers. Products can be advertised directly on company websites, in partnership with health information websites, or through banner ads on other websites. These new ways of disseminating medical information carry important risks of conflict of interest and drug overdose (Meyers, 2001). It is difficult for Internet users to distinguish between materials that promote drugs, as well as non-public information about health problems and their treatment. In addition, knowledge of different therapeutic alternatives allows patients to be more informed and make informed choices, but it may also make them insist on prescribing unnecessary or ineffective medicines. Finally, it is now possible to make more or less legal purchases online (such as Viagra), which can endanger human health through excessive consumption, dangerous products, drug interactions, etc. (deKieffer, 2000). Therefore, the danger is that the Internet can increase the use of health services and drugs without having a positive impact on the quality of care, disease prevention or health promotion[14].

Another way to access health information on the Internet is to interact with health professionals. Such information may be useful to the Internet user in certain circumstances. The dissemination of medical information on the Internet can facilitate the transfer of knowledge from healthcare professionals to the public and help people maintain and improve their health.

There are many social media tools available for healthcare professionals, including social media platforms, blogs, media sharing sites, and more. These tools can be used to improve or enhance professionalism, education, organizational assistance, patient care, patient education, and health care programs. However, they also present potential risks such as the dissemination of poor quality information, damage to professional image, breach of patient confidentiality, breach of personal and professional boundaries, and other ethical or legal issues.

Today, there are some ways to solve certain problems. This could be the implementation of a mechanism for directing Internet users to peer-reviewed sites with verified and reliable information. Yes, Так, HCPs can guide patients to credible peer-reviewed websites where the information is subject to quality control. The World Health Organization is leading a request to the Internet Corporation for Assigned Names and Numbers to establish a new domain suffix that would be used solely for validated health information.

[13] Benigeri M., Pluye P. Shortcomings of health information on the Internet URL: https://academic.oup.com/heapro/article/18/4/381/631899 (дата звернення: 04.01.2020).

[14] Ibid.

The issuance of this domain suffix would be strictly regulated, and the content of websites with these addresses would be monitored to assure compliance with strict quality criteria. These domain addresses would be prioritized by search engines when providing results in response to health-related inquiries[15].

Another type of information threat to a non-proprietary right of an individual is information that encroaches on the life of an Internet user and may result in death. However, it should be noted that this problem is complex and requires thorough scientific research by representatives of various fields of science. We will carry out preliminary scientific exploration and outline the general outlines of the problem.

To date, the immense amount of information on the topic of suicide is available on the Internet and via social media. Biddle et al.10 conducted a systematic Web search of 12 suicide-associated terms (eg, suicide, suicide methods, how to kill yourself, and best suicide methods) to simulate the results of a typical search conducted by a person seeking information on suicide methods. They analyzed the top 10 sites listed for each search, for a total of 240 different sites. Approximately half were prosuicide Web sites and sites that provided factual information about suicide. Prosuicide sites and chat rooms that discussed general issues associated with suicide most often occurred within the first few hits of a search. We should note that this study focuses primarily on prosuicide search terms and thus likely excludes many suicide prevention and support resource sites. Recupero et al.11 also conducted a study that examined suicide-related sites that could be found using Internet search engines. Of the 373 Web site hits, 31% were suicide neutral, 29% were anti-suicide, and 11% were prosuicide. The remaining sites either did not load or included "suicides" in the title but were not suicidal sites (e.g. movie sites and novels with "suicides" in their title or music bands whose names included "suicides"). Together, these studies have shown that obtaining prosuicide information on the Internet, including detailed information on suicide methods, is very easy[16]. As you can see, there are several factors behind the rise in Internet-induced suicides. These can be Cyberbullying and cyber harassment.

Cyber-billing is a specific concept for a specific category of activity that is covered by the general concept of billing. Cyber-billing is defined as any form of electronic communication, text messaging, instant messaging, websites and e-mail, repeated or extended over time that intimidates, degrades,

[15] Lee C. Ventola Social Media and Health Care Professionals: Benefits, Risks, and Best Practices URL:// https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4103576/(дата звернення 10.01.2020).

[16] David D. Luxton, Jennifer D. June, Jonathan M. Fairall Social Media and Suicide: A Public Health Perspective Am J Public Health. 2012 May; 102 (Suppl 2): S 195–200. URL: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3477910/(дата звернення 05.01.2020).

harms physical or mental health, emotional well-being, honor , the dignity or reputation of another person.

Kowalski, Robin M., Limber, Susan P., Agatston, Patricia W. The following types of cyberbullying are distinguished:

1. Fights, or flaming – the exchange of short inflammatory cues between two or more people, which is usually deployed in public places on the Web;

2. Harassment attacks are repeated offensive messages directed at the victim (for example, hundreds of sms on a mobile phone, constant calls), with overload of personal communication channels. They also occur in chats and forums and online games;

3. Denigration – the dissemination of degrading false information. Text messages, photos, songs that are often sexual in nature;

4. Impersonation, impersonation – the persecutor positions himself as a victim by using his password to access an account on social networks, blogs, mail, instant messaging, or creates his account with a similar nickname and performs on behalf of the victim negative communication. Feedback waves are organized when letters of provocation are sent to friends from the victim's address without their knowledge;

5. Fraud, confidential information hijacking and outing & trickery – receiving personal information and posting it on the Internet or sending it to unauthorized persons;

6. Isolation. Any person has a desire to be a member of a group. Exclusion from the group is perceived as social death. The more a person is excluded from interaction, the worse he / she feels and the more his / her self-esteem falls. In a virtual environment, this can lead to complete emotional destruction of the child. Online alienation is possible in any type of environment where password protection is used, a spam list or friends list is formed. Cyber isolation is also manifested by the lack of response to instant messages or emails;

7. Cyber-harassment – the hidden tracking of a victim for the purpose of organizing an attack, beating, rape, etc.;

8. Hapisling (slap slap) – the name comes from cases in the London subway where bullies beat random passersby for laughing and raising their own status by recording it on a cellphone camera. Now so called any videos with recordings of actual scenes of violence that are subsequently posted on the Internet without the victim's consent[17].

Most often cyberbullying occurs in the environment of minors and minors, this phenomenon is quite typical for adults. Typically, cyberbullying is repeatedly caused by a person or group of individuals who have certain benefits (physical, psychological or administrative.) And is committed for the

[17] Kowalski, Robin M., Limber, Susan P., Agatston, Patricia W. Cyber bulling: bulling in the digital age. Oxford: Blackwell Publishing Ltd, 2008. 218 p.

purpose of intimidating or punishing something. From a psychological point of view, billing is a deliberately cruel, degrading treatment of a person or a long-term rejection of a person from a collective.

Cyberbullying, when directly or indirectly linked to suicide, has been referred to as cyberbullicide.

Suicide videos, suicide descriptions, and suicide practices can all be posted on the Internet in the public domain.

A recent study by Dunlop et al.specifically examined possible contagion effects on suicidal behavior via the Internet and social media. Of 719 individuals aged 14 to 24 years, 79% reported being exposed to suicide-related content through family, friends, and traditional news media such as newspapers, and 59% found such content through Internet sources[18].

Therefore, it can be noted that accessibility and speed of information dissemination on the Internet, lack of control over such information is a negative factor. This can encourage vulnerable people to commit suicide. Foreign experience can be used to solve the problem, including we also found examples of features on Web and social media sites that allowed for proactive prevention capabilities. For example, Google's Internet search engine has a feature that displays a link and a message about the National Suicide Prevention Lifeline at the top of the search page when keyword searches suggest suicidal ideation or intent (eg, "I want to die")[19].

When developing approaches to addressing the situation, the legal issues involved in monitoring and filtering the content of the Internet must be taken into account. Today, there are opposite approaches. There are supporters of the need to intervene and control the content of information. Their opponents believe that t content of information on the Internet will violate the freedom of speech and expression.

3. The problem is balancing the right to freedom of information and the right to life and health

One of the most difficult problems is securing the right to receive "secure" information from the Internet that does not endanger the life, physical and mental health of the individual. This right often conflicts with the right to freedom of expression and expression. Including through digital sources. Of course, it's easiest to talk about removing certain information from the Internet.

[18] Dunlop SM, More E, Romer D. Where do youth learn about suicides on the Internet, and what influence does this have on suicidal ideation? J Child Psychol Psychiatry. 2011;52(10):1073–1080. URL: https://psycnet.apa.org/record/2011-20427-008 (дата звернення 6.01.2020).

[19] David D. Luxton, Jennifer D. June, Jonathan M. Fairall Social Media and Suicide: A Public Health Perspective Am J Public Health. 2012 May; 102 (Suppl 2): S195–S200. URL: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3477910/(дата звернення 10.01.2020).

In 2007, the Committee of Ministers of the Council of Europe adopted a Recommendation on promoting freedom of expression and information in a new information and communication environment, which emphasized the need to empower individual users with access to a new information and communication environment. At the same time, it was stated that "a fair balance must be struck between the right to express views freely and to share information in a new environment and respect for human dignity and the rights of others" (Committee of Ministers (26 September 2007), Recommendation CM / Rec (2007) 11 on promoting freedom of expression and information in new information and communication environments)[20].

However, the restriction rules remain the same according to the principle that "what is used offline should be equally applied online". In July 2012, this principle was endorsed by the Human Rights Council in its innovative Resolution on the Protection, Promotion and Promotion of Human Rights on the Internet (UN Human Rights Council (5 July 2012), Resolution A / HRC / 20/8 on the promotion , protection and enjoyment of human rights on the Internet) affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; recognizes the global and open nature of the Internet as a driving force in accelerating progress toward development in its various forms; calls upon all States to promote and promote access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries; encourages special procedures to take these issues into account within their existing mandates, as applicable; decisions to continue its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, the Internet and other technologies, as well as how the Internet can be an important tool for the development and exercise of human rights, in accordance with its program of work[21].

Guided by the commitments provided for in Article 19 of the International Covenant on Economic, Social and Cultural Rights, Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stated in his important report for 2011 that how to impose any restriction on online content as an exclusive measure, such restriction by analogy to offline content must pass a three-stage, cumulative test:

[20] Бенедек В., Кеттеман М. Свобода вираження поглядів та Інтернет URL: https://rm.coe.int/168059936a. (дата звернення 6.01.2020).

[21] UN Human Rights Council (5 July 2012), Resolution A / HRC / 20/8 on the promotion, protection and enjoyment of human rights on the Internet URL : https://www.right-docs.org/doc/a-hrc-res-20-8/?path=doc/a-hrc-res-20-8 (дата звернення 6.01.2020).

1) it must be prescribed by law, comply with the principles of predictability and transparency. growth;

2) it must pursue one of the objectives set out in Article 19 of the International Covenant on Economic, Social and Cultural Rights, namely: the protection of the rights or reputation of others, the protection of national security or public interest, the protection of health or morals;

3) it must be both necessary and least restrictive in order to achieve the relevant objective (the principle of proportionality). In addition, legislation that establishes appropriate restrictions should be applied by an independent body reasonably and in a non-discriminatory manner, and there should be adequate safeguards against abuse when applying such legislation[22].

Therefore, a person has the right to seek, receive and impart information and ideas of his choice without any interference and regardless of national boundaries. This means that: 1. a person can speak freely on the Internet and have access to other people's information, views and opinions. These include political statements, religious beliefs, attitudes, and expressions that are favorably or offensively considered, and that may offend, shock, or drive others out of balance. In doing so, the individual must give due consideration to the reputation and rights of others, including their right to privacy; 2. Restrictions may be imposed on such statements that call for discrimination, hatred or violence. Such restrictions should be lawful, purposeful and enforceable; 3. A person should be aware that content he or she creates on the Internet, or content about the person created by other Internet users, can be made accessible in any corner of the world and harm your dignity, safety, privacy or otherwise. harm you and your rights at this time or in the next stages of your life. At the request of the individual, such content must be removed or removed within a reasonably short period of time; 4. You can expect to have clear information about what online content and behavior is illegal (eg, harassment on the Internet), and be able to report potentially illegal content. Such information should be tailored to the age of the person and circumstances, and should be provided with advice and support with due respect for confidentiality and anonymity; 5. a person should be given special protection against interference with physical, mental and moral well-being, in particular protection against sexual exploitation and violence on the Internet and other forms of cybercrime[23]

The rules of national law duplicate international provisions. The current Constitution of Ukraine enshrines the right to freedom of information and

[22] La Rue F. Report of the Special Rapporteur on freedom of opinion and expression, § 69. URL : https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-30-Add2_en.doc (дата звернення 9.01.2020).

[23] Рекомендація CM/Rec(2014)6 Комітету міністрів Ради Європи державам-членам щодо посібника з прав людини для Інтернет-користувачів та пояснювальний меморандум) URL : https://rm.coe.int/16802e3e96 (дата звернення 09.01.2020).

details it in the Law of Ukraine "On Information". Thus, Article 2 of this Law establishes the following principles of information relations: guarantee of the right to information; openness, accessibility of information, freedom of information exchange; accuracy and completeness of information; freedom of expression and beliefs; the lawfulness of obtaining, using, disseminating, storing and protecting information; protection of a person from interference with his or her personal and family life. On the same principles, the state information policy is built, the main directions of which are: ensuring access of everyone to information; ensuring equal opportunities for creating, collecting, receiving, storing, using, distributing, protecting, protecting information; creating conditions for the formation of an information society in Ukraine; ensuring the openness and transparency of the activities of the authorities; creation of information systems and networks of information, development of e-government; continuous updating, enrichment and storage of national information resources; ensuring information security of Ukraine; promoting international cooperation in the information field and Ukraine's entry into the world information space (Article 3).

The law guarantees the protection of the right to information by ensuring equal access to information for all subjects of information relations. No one may restrict the rights of a person in the choice of forms and sources of information, except as provided by law. The subject of information relations may require the elimination of any violation of his right to information. At the same time, abuse of the right to information is assumed to be inadmissible. The information cannot be used to call for the overthrow of the constitutional order, violation of the territorial integrity of Ukraine, propaganda of war, violence, cruelty, incitement of interethnic, racial, religious hatred, acts of terrorism, violation of human rights and freedoms[24].

So, how is the balance between a person's right to free access to the Internet and the right to eliminate information threats to his or her life and health? The protection of a person's right to life can be ensured by a series of measures. As you can see, it is impossible to do it by technical means alone.

On the other hand, the formation of a conscious perception of information posted on the Internet is promising for the individual and for society as a whole. This will allow her to be critical of such information. In view of this, it is worth noting that in the scientific literature, for today, the concept of "information hygiene" of a person is being formed as a prevention of information threats.

Information hygiene studies the regularities of the influence of information on the mental, physical and social well-being of a person, his work capacity, life expectancy, public health of society, develops standards

[24] Про інформацію : Закон України від 02.10.1992. *Відомості Верховної Ради України* . 1992. № 48. Ст. 65.

and measures for improving the information environment and optimization of intellectual activity. The main tasks of information hygiene: 1) study the characteristics and patterns of information media, processes and flows, perception, processing, storage and production of new information, the dependence of individual and public health on information; 2) definition of hygienic standards of information, information environment, information networks and processes, scientific substantiation of hygienic information behavior; 3) development of sanitary measures for the organization of information networks and processes, hygienically sound production, distribution, consumption, storage, reproduction of information; 4) development of measures for optimization of information and intellectual activity[25] Adherence to the principles of personal information hygiene can help effectively address the issue of protecting one's personal non-property rights to life and health from information threats.

CONCLUSIONS

Creating a secure information environment and protecting a person from information threats requires a sound approach. It is necessary to develop a comprehensive national strategy on this issue, which will cover all spheres of public life. A separate direction could be an inclusive education company that would increase the level of awareness of individuals about their rights and freedoms in the information society, the possibility of protection against information threats. It is also necessary to formulate in society an understanding of the need to "self-censor" information that a person places openly.

SUMMARY

The article deals with the specifics of securing personal non-property rights in the digital environment, including the right to personal security. The right to personal security is regarded as a kind of personal non-property right of the individual having the highest social value.

The right to information security of the individual is analyzed. The concepts and features of information security are considered. Particular attention is paid to the threats to personal security that encroach on the absolute rights and freedoms of man – life, health, bodily integrity, respect for human dignity, privacy, etc.

The article explores some types of information threats that can have adverse effects on the mental health of an Internet user and cause permanent damage to their physical health and life. These include reproduction of potentially life-threatening and health-related activities by other Internet users (such as dangerous flash mobs, games, challenges); self-medication based on online counseling or information posted on the Internet, etc.

[25] Молодцова И. А., Максимова Е.А., Сливина Л.П. Информационная гигиена: общетеоретическая оценка проблемы инновации в информатике. *НБИ технологии.* Волгоград, 2018. Т. 12. № 2. С. 25–29.

The advantages and disadvantages of free access of the internet users to medical information are outlined. Increasing effectiveness of interaction with skilled healthcare professionals on the Internet was noted.

The problems of balance between the right of a person to free access to the Internet and the right to eliminate information threats to his life and health are analyzed. The necessity of realization of a set of measures for formation in the society of conscious perception of information placed on the Internet is noted.

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CONTROL AND SUPERVISORY AUTHORITIES OF CENTRAL BANKS

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INTRODUCTION

It can be stated that in all countries with a market economy, a system of banking control and supervision operates in one form or another. Some of them have been around for over a century. In the post-socialist countries, the banking sector has been reformed in recent decades, and establishment of its supervision and oversight system has been an integral part this process. At the same time, in some countries with mature banking traditions significant changes can be seen in the concepts of building these systems, especially towards activity expansion , which involves globalization of banking activity and increasing risk of banks mastering new financial instruments and non-traditional operations(such as insurance, real estate, etc.). The institutional structure of the banking supervision system is determined by the peculiarities of historical and economic development of a country, the traditions and, to a large extent, the nature of the banking system itself. Thus, in the UK, due to the absence of antitrust laws and tight controls on the merger of banks, a high degree of bank capital concentration was achieved. Large banking associations were formed with a well-developed network of branches in the country and abroad, which concentrated a considerable share of resources, operations, and non-cash movement. The banking system concentration led to centralization of regulations and supervision functions in a single institution, the Bank of England. The situation turned out different in the USA. Unlike in the United Kingdom, many small, non-affiliated banks have remained in the United States. Therefore, there are different models of institutional patterns in the banking supervision system across the globe, but it is of great importance for all of them that the supervisory authorities have all the necessary powers for the effective fulfillment of their tasks.

In addition, these powers should be provided at the legislative level.

Banking supervision is aimed at maintaining the stability, reliability and efficient operation of certain components of the country's financial and banking system, primarily banks themselves. The purpose of such activity is to ensure the stable, normal functioning of the entire banking system[1]. The experience of many countries shows that under proper management, banks can survive even in adverse economic conditions.

[1] Качан О.О. Банківське право.К. : Юрінком Інтер, 2000. С. 37–38.

At the initial stage of its development, the system of regulating the activities of banking institutions was created in specific countries independently. Each country tried to mantain the above activities separately from the other. The conditions of banking supervision are laid down, as a rule, in legislative acts regulating the status of the central bank. Banking regulations and supervision are part of the state central bank powers[2]. Due to the fact that the function of banking regulation and supervision is to create a safe and sound banking system and to prevent the instability of the financial system as a whole, the central bank, as an institution that administers monetary policy and a last resort lender, is a natural center of banking supervision.

However, the development of global economic ties and the integration of national banking systems have raised new challenges for counties to implement banking regulation and banking supervision. The impact of global trends on national banking markets has forced countries to find a way out of the situation.

1. Control and supervisory authorities of central banks of the countries with romano-german legal system

After World War II, a number of Central European countries disposed to monitor and coordinate the activities of commercial banks on a common basis. This was due to the internationalization of banking industry.

The bankruptcy of West Bankhaus Herstat in 1974 ensuing currency and other losses had devastating effects on the global interbank market and drew attention to the liability of international cooperation expansion in banking control and bringing it to a new level. Later, under the auspices of the Bank of International Settlements this led to the formation of the Committee on Banking Regulation and Supervisory Practices, which was called the Basel Committee at located in the Swiss city of Basel. The committee included representatives of the banking supervisory authorities and central banks of the Big Ten countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom, the United States), as well as Switzerland and Luxembourg.

The most important result of the Basel Committee activity can be considered as the principles of effective banking supervision it developed. According to the Basel Committee, achieving compliance with the basic principles of each country will be an important step towards improving both national and international financial stability[3]. Effective banking supervision,

[2] Костюченко О.А. Банківське право: Банківська система. Національний банк. Комерційні банки. Розрахунки і кредитування. Ринок цінних паперів. Національне валютне законодавство. Банківські системи зарубіжних країн. Інститут банківської таємниці : підручник. 3-тє вид. К. : Видавництво А.С.К., 2003. 928 с.

[3] Поляков В. П., Московкина Л. А. Структура и функции центральных банков (зарубежный опыт) : учеб. пособ.М. : ИНФРА-М,1995. 192 с.

together with sound macroeconomic policies, should be major tools for ensuring financial stability in each country.

The Committee was guided by two main principles:

1) no banking system should remain outside the banking supervision system; 2) supervision must be reliable.

The organization of the banking supervision system is based stands upon the level of the central bank independence , its ownership and national traditions set during the formation of banking system.

According to V.P. Polyakov and L.A. Moscowkina, the functions of the central bank can be classified as primary and secondary. The main functions are those without it is impossible to perform the main task of the central bank – to maintain the stability of the national currency, and additional ones are those that meet the task implementation requirements. The authors divide main functions into regulating, controlling and servicing [4]. Regulatory functions, which are closely related to the conduct of monetary policy, include: 1) managing the aggregate monetary turnover in the country; 2) regulation of the financial ; 3) regulation of supply and demand for credit. The control functions include: a) control over the functioning of the credit and banking system; b) organization of the banking supervision system; c) conducting currency control. The service functions are: 1) organization of payment and settlement relations within the system; 2) the role of the central bank as the government agent. Additional central bank functions are not directly related to monetary policy.for the most part, they include: providing services to a client through establishing correspondent relations with other banks; representation of the state in international relations, where cooperation is carried out between central banks; tracking trends in supply and demand for cash etc. These functional divisions are as well investigated by other authors[5].

Based on the foregoing, all of these functions are inherent in central banks in advanced market economies where a two-tier banking system operates. Moreover, the functions that outline the features of the central bank are the product of the bank operational evolution , based on a long historical process of gradually concentrating the right to issue banknotes, as well as obligations to serve the government in the most reliable banks (for example, this process is traced in one of the oldest central banks in the world – the Bank of England). Nevertheless, despite the fact that in some countries the creation of the central bank was accompanied by the adoption of a relevant legal act

[4] Поляков В. П., Московкина Л. А. Структура и функции центральных банков (зарубежный опыт) : учеб. пособ.М. : ИНФРА-М,1995. 192 с.

[5] Міщенко В. І. Центральні банки: організаційно-правові засади. К. : Тов. «Знання», 2004. 372 с.

(for example, the US Federal Reserve)such a process has undergone a certain historical path of development, as its core[6].

Modern civil law is a statutory right, it is hierarchical. The constitutions and other laws written there have an overriding priority in the national system of law, and jurisprudence in some countries, such as France, is defined by a source of law, but not the same way the jurisprudence in England (although, as noted in certain circumstances, the decisions of the cassation court or the State Council often play a role in the legal life of France no less than the law). In England, the principles of law and legal doctrine are defined as sources of law. An important feature of the legal systems of the countries with Romano-German legal system is the differentiation of the law to public and private. Concurrently, public law, as well as the private, is divided in all countries of this legal family into the samekey branches: constitutional law, administrative law, international public law, criminal law, criminal procedural law, etc.

The German central bank model is fundamental in Central European countries. Former Bundesbank President G. Schlesinger, in 1991, called out all European central banks to be independent, to grant them full autonomy in monetary policy so that they could maintain price stability, regardless of the governmental measures and regulations.

Key features of the Bundesbank: issue of banknotes; operations with gold and foreign exchange devices; cash execution of the budget; government and international lending; accounting policy; bank reserves and money supply regulation etc.

In recent years, banking in Germany has been and is still remains the subject of dramatic regulatory changes. The German banking system consists of three components: private commercial banks, public savings banks and cooperative banks. While commercial banks operate throughout the country, savings and cooperative banks tend to function on a regional basis only. Owing to their regional focus, most of these banks are relatively small, so implementing regulatory requirements is often more difficult for them.

The German banks are under control of the state, namely the Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht-"BaFin") and the German Federal Bank (Bundesbank)[7]. BaFin is responsible for taking any supervisory measures, such as granting or revoking a license. The Bundesbank is responsible for obtaining and analyzing data submitted by banks. Both bodies cooperate closely. However, the final decision on the supervisory measures is taken by BaFin.

[6] Латковська Т. А. Основні функції центрального банку: проблеми визначення та класифікації. *Актуальні проблеми держави і права*. 2011. Вип. 61. С. 218–227.

[7] R. K. "Regulation", «Global Legal Insights» 03/06/2013: http://www.globallegalinsights.com/practice-areas/banking-and-finance/banking-regulation-1st-ed/germany.

The regulatory system in Europe is now likely to be the subject of fundamental changes. They are triggered by a political initiative to create a banking union across the EU. On 12 September 2012, the European Commission presented a proposal for the transfer of key competences of national supervisory authorities to the European Central Bank ("ECB"). This transfer is aimed at centralizing the administrative standards of banking supervision in the European Union through a single control mechanism ("SSM") under the responsibility of the ECB. These proposals were discussed in the so-called "Trialog" between the European Commission, the Council of Ministers and the European Parliament. On March 25, 2013, Trialog approved a project to establish a Governing Council for the prudential policy of credit institutions. The draft resolution was adopted on the basis of Art. 127 paragraph 6 of the Treaty on the Functioning of the European Union ("TFEU")[8]. The legislative procedure requires the consent of all 27 Member Countries of the European Union.

According to the draft regulation, the ECB has the right to entrust the national regulator with certain management decisions. As a result, the supervisory responsibilities of BaFin and the Bundesbank are significantly reduced.

Germany is a Member Country of the European Union and thus takes into account most of the EU financial supervision legislation, namely Directive 2006/48[9], Capital Adequacy Directive[10], Markets in Financial Instruments Directive[11], Directive on the powers of the European Financial Supervisory Authorities, the Payments Directive[12], E-Money[13], and the UCITS Directive[14].

[8] The Lisbon Treaty Treaty on the Functioning of the European Union & comments Part 3 / Union policies and internal actions Title VIII – Economic and monetary policy (Articles 119-144) Chapter 2 – Monetary policy Article 127: http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-viii-economic-and-monetary-policy/chapter-2-monetary-policy/395-article-127.htm.

[9] DIRECTIVE 2006/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0048.

[10] DIRECTIVE 2006/49/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0049.

[11] Directive 2004/39/EC of the European Parliament and of the Council: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0039.

[12] DIRECTIVE 2007/64/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:0036:en:PDF.

[13] DIRECTIVE 2009/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:267:0007:0017:EN:PDF.

[14] DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF.

The basic provisions of German banking supervision are laid down in the Law on German Banking (Kreditwesengesetz – "KWG"[15]). KWG sets out the requirements and responsibilities to be fulfilled by banks and other institutions.Other than that, it sets out capital requirements and liquidity requirements. The law also establishes certain organizational responsibilities for management and internal control systems. This defines the competence and authority of BaFin and the Bundesbank, and contains provisions for dealing with institutions that are insolvent or undergoing the times of financial crisis.

In addition to KWG, there are a number of other laws governing the financial sector of Germany through the Bundesbank. One of those is the supervisory law (Zahlungsdiensteaufsichtsgesetz "ZAG"), which covers the supervision of payment services and implements the European Payment Services Directive. The following is the Investmentgesetz "INVG" law, which covers the provision of investment services and implements the UCITS European Directive. The provision of services related to securities and financial instruments is subjected to the Securities Trading Act (Wertpapier-handelsgesetz, "WpHG") implemented by the Bundesbank. The German "Pfandbriefe" (a special type of covered bond) is liable to the Pfandbrief Law (Pfandbriefgesetz, "PfandBG"). These are followed by ancillary regulations and regulations, most of which detail specific regulatory aspects. For example, information on capital requirements is set out in Solvabilitätsverordnung, SolvVO, and Liquiditätsverordnung, LiqV.

In addition to the laws, the Bundesbank publishes numerous acts, explanatory notes and decisions concerning certain aspects of the regulatory law.

In Bulgaria, which is a typical representative of the Romano-German legal family, the Central Bank (BNB) is one of the oldest banking institutions in Europe, established in 1879. The BNB holds important regulatory and monetary oversight powers (primarily for banks). as credit institutions).

The BNB, unlike the German Bundesbank, is the only supervisory body for banks. Its role is explicitly stated in Law on the Bulgarian National Bank (LoBNB)[16]: "The Bulgarian National Bank regulates and controls activities in its country to ensure the stability of the banking system and to protect depositors of other banks."

The supervision of credit institutions in Bulgaria is one of the main functions of the BNB, which is aimed at maintaining the stability of the banking system and protecting the interests of depositors. Bulgaria's banking system is the subject of a legislative framework for the implementation of

[15] Gesetz über das Kreditwesen (Kreditwesengesetz – KWG): http://www.gesetze-im-internet.de/bundesrecht/kredwg/gesamt.pdf.

[16] Law on the Bulgarian National Bank: http://www.bnb.bg/bnbweb/groups/public/documents/bnb_law/laws_bnb_en.pdf.

Basel III in the European Union. These requirements are outlined in the CRD IV Package, effective January 1, 2014.

Prior to operating in Bulgaria, each bank must obtain a license from the National Bank. To do this, the bank, its shareholders and members of management and boards (or boards of directors) must meet the requirements set out in the LCI.

The National Bank monitors each of the credit institutions on the basis of regulatory reports and audits, covering the financial position and managing the risks inherent in credit and other activities.

At the micro level, supervision is to ensure that each bank operates safely and has sufficient capital, reserves to prevent the risks associated with its operations. At the same time, the BNB conducts research and analysis of developments, trends in the banking sector as a whole (macroeconomic level), aiming to of prevent and reduce the systemic risk, while avoiding adverse effects in the sector, which provides a sustainable economic growth.

Banking supervision also focuses on compliance with other regulatory requirements such as money laundering, terrorist financing and fraud. The BNB monitors the existence of adequate procedures in banks and financial institutions, which requires a series of strict Know Your Customer rules to be applied against criminal activity. A number of EU instructions are also used, such as European Union Regulation (EU) 961/2010 to implement restrictive measures against Iran, the document "Consensus on commitments stemming from European Regulation 1781/2006", which outlines ensuring equals terms and conditions between European payment service providers to verify payer information, uses appropriate customer data, due diligence measures and systems to prevent money laundering risk.

The Central Bank of Switzerland (SNB) does not carry out the direct oversight functions of individual players in the financial market; as an independent institute, SNB, however, is responsible for the overall stability of the system at the financial center. FINMA and SNB work closely together.

Under Article 19 of Law 951.11 on the Swiss National Bank [17], in order to protect the stability of the financial system of thecountry, SNB controls the clearing system and the settlement of payments (payment systems) or agreements with financial instruments, in particular securities (securities management). SNB may also impose minimum requirements for payment systems or securities management to reduce the financial system stability risks(Article 20 of Law 951.11). Such requirements may, in particular, relate to the organizational framework, general conditions, operational safety, participants' admission to the system.

[17] 951.11 Legge federale sulla Banca nazionale svizzera (Legge sulla Banca nazionale, LBN): http://www.admin.ch/opc/it/classified-compilation/20021117/index.html.

The banking system of Japan is headed by the Central Bank – the Bank of Japan (BoJ), with 55% of the public stock. The BA was created in 1882 for 30 years. Later, this term was extended for another 30 years, and in 1942 the bank was granted perpetuity and the monopoly right to issue banknotes[18].

The activities of the Bank of Japan were established by a special Law on the Central Bank of Japan of 1942, which was renewed and agreed in 1979 with the law of 1942. The bank's capital stock was set at 100 million yen. And so far, it has not changed. 55% of the capital belongs to the state, 45% – to private shareholders (individuals, financial institutions, insurance companies, etc.). The shareholders were guaranteed a dividend of 4%, which, with extremely high bank earnings, increased to 5%. The rest of the income went to The Bank's activities include controlling the credit sector and overseeing the smooth operation of the payment and settlement systems by providing short-term loans to credit institutions. The monetary policy of the Bank of Japan for several post-war decades was different from the one appied by the central banks of developed capitalist countries. For example, interest rate adjustments, minimum reserve policies and open market operations had little impact on the monetary market, and the Bank of Japan's primary monetary policy instrument was the direct quantitative limitation of loans under artificially low interest rates. In the mid 70's. The situation in Japan's economy has changed dramatically: a deep and long-term crisis came after high economic growth. With the changing phase of the economic cycle, the value of monetary regulation of the economy has risen very much because strengthening of the country`s positions in the banking system.

The Central Bank of France was established in January 18, 1800 by the first consul at the consulate of Napoleon Bonaparte, modeled on the Bank of England, first to be a regulator of the money-losing market and, second, to support the new currency. In line with the charter, written by Claude Perrier, the Bank of France has legally introduced itself as a limited liability company with a registered capital of 30 million. francs divided by 30 thousand shares, listed in total 1000 francs. 15 Regents and 3 Censors were represented by the shareholders. The governors' meeting forms the General Council, which elects the Central Committee (CC) – three members, including the president of the council. The Central Committee was responsible for all operations of the bank.

ACPR is a French supervisory authority, one of the bodies of the Central Bank of France19. ACPR is an independent administrative body without legal person, which oversees banks and insurance in France. It was established in January 2010 on the basis of Decree No. 2010-76, through the merger of the Banking Commission, Insurance Inspectorate (ACAM),

[18] Мельник П. В., Тарангул Л.Л., Гордей О.Д. Банківські системи зарубіжних країн. К. : Алерта, Центр учбової літератури, 2010. 589 с.

[19] Борисов А.Б. Большой экономический словарь. М. : Книжный мир, 2003. 895 с.

Committee of Insurance Companies (CEA) and Committee on Credit Organizations and Investment Companies (CECEI).

This merger was created in accordance with Art. 152 of the Economy Modernization Act 2008 ACPR's mission is to "maintain the stability of the financial system and protect the clients, insurers, members and beneficiaries under its control" (Art. 612-1[20]).

ACPR conducts a thorough study of accounting and prudential reports, quarterly or annually, as appropriate, internal control reports, solvency and reinsurance assessments. ACPR individually maintains and monitors insurance agencies. This allows for analysis and evaluation of the financial position of organizations.

On-site insurance, that is, ACPR conducts detailed oversight of the insurance agency to monitor the organization's activities. The determination of the on-site inspections depends primarily on the results and the quality of the organization's financial position reports. It may also depend on other parameters such as the number and content of insurers' requirements. On-site inspection conducts wide-range studies of detailed analysis of prudential and accounting reports, and ACPR seeks to provide a critical appraisal of the organizational functioning and the implementation of regulations.

Conducts the supervision and control over: the statute financing and compliance with prudential rules; management quality; management rules; insurance tools and procedures; risk management; the solvency of the organization as a whole.

The "Basic Principles for Effective Banking Supervision" issued by the Basel Committee is the most important standard in the area of banking regulation an supervision France. Therefore, these principles determine the general basis for ACPR, namely: normative and prudential claims; principles of management methods principles of powers among authorized bodies of authority.

The World Bank and the IMF have applied these principles in the framework of the financial sector assessment program (FSAP) or reports on the implementation of international standards and codes.

ACPR oversees: the General and Specialized Institutions Directorate (DCECGS) and the Investment Firm Association (DCEMEI). Within these two areas, three services have been created, which are grouped together: BNPP and SOCIETE GENERALE; CREDIT MUTUEL and CREDIT AGRICOLE; BPCE

[20] Article L612-1 Modifié par ORDONNANCE n 2014-1332 du 6 novembre 2014 – art. 5: http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000029722212&cidTexte=LEGITEXT000006072026&dateTexte=20150415&oldAction=rechCodeArticle&fastReqId=1277425731&nbResultRech=1.

Carried out the division in the areas of service provision: foreign banks; financing individuals and local communities; leasing and factoring; independent schools and private offices (located in France or Monaco); investment firms.

The financial sector is at risk of money laundering and terrorist financing. Therefore, ACPR operates under the Anti-Money Laundering and Terrorist Financing (LCB-FT) regulation. And like the Bulgarian National Bank, it executes, controls and supervises under Article L. 561-36 is responsible for compliance with persons under their obligations against money laundering and terrorist financing. ACPR is also in charge of implementing Regulation (EC) 1781/2006 on persons subject to obligations under European and national restrictive measures in the fight against terrorist financing.

Banking supervision in Italy is very multidimensional. It belongs to a "mixed" banking supervision strategy . Yes, it is implemented by the Central Bank and the Inter-Ministerial Committee on Credit and Savings. The latter is headed by the Minister of Finance, who can decide on his own if necessary. The Committee is mainly liable for compliance with credit law and for the protection of savings banks. The basic principles of banking supervision are formulated in the Law of the Italian Republic "On Banks", which was adopted in 1993. It defines the status of the bodies of banking and financial supervision and the procedure for its implementation, in particular, the National Commission for the Control of Financial Companies and the Stock Exchange, which controls the activity of credit institutions in the securities market[21].

It should be stressed that there are many commonalities and distinctive features in the supervisory powers of the National Bank of Ukraine and the countries listed above. Bodies similar in their authority to the Council of the National Bank exist in many other countries . For instance , Germany has a similar Central Bank Board in charge, Monetary Policy Committee functions in Japan , and in Austria there`s a Board of Directors. There are similar bodies in the central banks of other foreign countries. They differ in structure and order of formation, scope of functions and powers. However, the principles of operation are characteristic of all, according to which only the basic, global issues of the activity of central banks are determined, without interfering in their operational activities.

There are several types of supervisiory organization. First, banking supervision can be carried out within the central bank (Italy, United Kingdom, Greece, Spain, Ukraine, Kazakhstan). The mixed banking supervision system assumes that the powers of banking supervision are shared between the central bank and the competent public authority (Germany, USA, France). The third type of banking supervision system in general excludes the participation of the

[21] Рождественская Т.Э. Теоретико-правовые основы банковского надзора в Российской Федерации : 12.00.14 : дис. … д-ра юрид. наук. МГЮА, Москва, 2012. 432 с.

central bank in this process: the banking supervisors are separated from the central bank (Switzerland, Canada, Sweden, Denmark, Austria).

Each state, at its discretion, organizes and exercises control over the sphere of financial services, taking into account the peculiarities of historical, economic, legal development, etc. What is common is that, to this end, special bodies (institutions, organizations) are usually created to deal with this particular issue, and that these issues are regulated at the highest legislative level. Bodies that exercise state control over financial services can be divided into those that exercise sole control over banking activities [these bodies (institutions) belong to central banks], as well as those that control various areas of financial services, including banking. There are various examples of such bodies. Yes, in the UK – the Financial Services Agency; in the US, the Federal Reserve, the Money Controller, the Federal Deposit Insurance Corporation, the Financial Control Service, 50 state banking departments; Ministry of Finance, Bureau of Financial Institutions Oversight in Canada.

The purpose of supervision and control in the Anglo-Saxon system was to gain a decent minimum capital stock. Moreover, as long as the reserve is sufficient to provide credit, liquidity can always be attained through the acquisition of broad and effective wholesale money markets. Given the availability of such financial liquidity, regulatory / banking authorities have allowed banks in all English-speaking countries to significantly reduce the liquidity of assets that occurred in the 1960s.

With sufficient physical assets and personal property of their own companies, the executives of large banks will never allow their institutions to run bankruptcy risks . Therefore, regulation may be based on general principles rather than obsessive intervention.

2. Control and supervisory authorities of central banks of the countries with anglo-saxon legal system

Anglo-Saxon free market agents emphasize that more direct public sector intervention into the banking sector leads to inefficiencies, generated by the allocation of resources that do not meet the interests of consumers; as well as to higher bad loans and corruption[22]. But it also greatly reduces the pressure on short-term profit maximization.

The closer and longer-lasting involvement of the public sector in banks also meant that external controls on the Anglo-Saxon system, such as transparent financial reporting and external surveillance, were not as well developed as in the Asian system.

[22] Гудхард Чарльз. Банки та керівні органи державного сектора економіки. *Банки та банківські системи країн світу*. Т. 2. № 4. 2009. С. 4–11.

Each country had its own reasons for such an innovation, but the main one reflected in any decision is the need to control financial risks in a "single space". Moreover, these decisions were made not only by countries with traditionally developed financial markets, but also by so-called transition economy. It was in the latter case that not only the problem of controlling the risks differing in the peculiarity of "flowing" from one market segment to another, but also the need for parallel development of all spheres was keenly felt. The existence of significant imbalances (for example, between the development of the banking and insurance sectors) leads to the under-development of the entire market as a whole. Moreover, one of the benefits of operating a mega-regulator is the ability to effectively control financial conglomerates that create "holding risks." Their disclosure and analysis is very complex, as each supervisory authority functions within its mandate and does not have a general picture of the financial crisis elements. Various regulatory and supervisory authorities, through the scope of their relatively narrow powers, also often shift their functions, leaving virtually unattended areas of financial intermediation. A single supervisory authority can provide a fairly flexible regulatory system. An important point is that with the development of a financial market that is subject to different levels of regulation and supervision, authorities, market participants – intermediaries – provide similar financial services, thus falling into inequal competitive conditions. It is common for all countries to establish a system of rules and regulations binding on commercial banks and a system to monitor their compliance.

All current banking systems in the world in the scientific literature are divided into several basic types. Each of the distinguished types is based on one of the main methods of banking supervision[23]: – field inspection; – analysis of external audit materials; – use of both external audit materials and own field audit materials; – stringent requirements for financial statements.

Outbound inspection – this is a feature of the United States banking system. In the United States, there is a mixed banking supervisory system whereby the Central Bank shares oversight responsibilities with other public authorities.

In the USA, several agencies carry out banking supervision within their competence – the Currency Control Office; Federal Deposit Insurance Corporation, Federal Reserve Bank, and State Governments[24]. Their powers include the following: liquidation of closed commercial banks; development of instructions, rules, instructions and regulations; taking preventive measures; advising the management of commercial banks; periodic comprehensive reviews of the status, operations and policies of subordinate commercial banks; generalization of reports and statistics of commercial banks.

[23] Костюченко О. А. Банківське право : підручник. К.: Професіонал, 2004. 544 с.
[24] Поллард А. М. Банковское право США. М. : Прогрес, 2002. 340 с.

The agencies act as working groups, and the Federal agencies coordinate the proccess and develop standards for joint inspections.

In the United States, the current risk-based banking supervision model and it`s as well being in place in Ukraine, combining visa-free supervision, regular meetings with commercial bank management, and inspection. In the beginning, the most risky areas of activity of a commercial bank are identified, then during the on-site inspection the bank's activity in these areas is checked, on the basis of which an overall assessment of the status of a particular commercial bank is presented. The components of such valuation differ depending on the type of financial institution (commercial bank, bank holding company; foreign bank branch, deposit bank).

When evaluating commercial banks, a structured rating system is used. The most well-known system that formalizes the results of such an inspection is CAMEL (Capital. Assets. Manegement. Earnings. Liquidity. – "Capital. Assets. Management. Profitability. Liquidity"), effective since 1979.

Throughout the history of developing and improving its own methodological approaches to the classification of credit institutions by groups of problems, the National Bank of Ukraine as a whole uses elements of the CAMEL model. Examples are the Provisional Procedure for Forming a Commercial Deposit Insurance Fund by Commercial Banks, approved by the National Bank of Ukraine Resolution No. 125 of May 28, 1996. The United States is the country with the largest number of commercial banks in the world (over five thousand). Naturally, the monitoring system of commercial banks decently differs from the supervision systems of countries where several dozen banks operate. Many commercial banks make it impossible to constantly check their operations on site, and supervisors are inevitably forced to rely more on remote inspection and the use of econometric methods. The monitoring of the financial condition of US commercial banks using computer systems is performed at intervals between on-site inspections.

The purpose of monitoring is to identify financial problems in the interval between inspections. The results are used to expedite checks at commercial banks with signs of deteriorating financial position to identify the weakest areas of activity of inspected commercial banks and to send the most experienced inspectors to troubled commercial banks.

The analysis of the bank's external audit material is characteristic of the United Kingdom. There is also the concept of oversight where supervisors are guided by the information of external auditors and carry out on-site inspections only in specific cases on a narrow range of issues. The Banking Supervision Authority of the UK is working closely with private audit firms. With such supervision, the banks are required to audit once every six months or once a year. In some cases, inspectors meet with auditors or bank management. The Central Bank of England receives and

verifies certified annual external auditors as well as monthly or quarterly reports from commercial banks on solvency, liquidity of a commercial bank, open currency position and outstanding overdue loans, as well as concentration of credit risks. This type of supervision requires that the auditors immediately inform the supervisory authorities when identifying serious problems with the bank or banking law violation.

Given the importance of auditing in this type of oversight, supervisors should be able to influence the choice of auditors through a commercial bank. Typically, it is able to select an auditor from a list approved by the supervisory authorities and inform them when changing the auditor. In any case, the supervisory authorities have the option of removing the auditors or canceling the audit results if they consider the work performed by the auditors to be unsatisfactory.

There are no full-time inspectors in the UK, but the Bank of England is required to conduct periodic on-site inspections by commercial banks to assess specific areas of commercial bank activity or issues that have arisen.

It is noted in the scientific literature that another important feature of banking supervision in the UK and Germany is that they conduct on-site inspections also in order to evaluate and approve the internal control and audit system of a banking institution. The main task that is entrusted to the internal banking control of the supervisory body is to calculate the required level of capital depending on the risks that a commercial bank carries out in the course of its activity[25].

SUMMARY

The article examines the supervisory powers of the central banks in the countries of the Romano-Germanic and Anglo-Saxon systems of law. It has been established that, in addition to the central bank, the supervision may be carried out by special agencies established under the auspices of the Treasury or independent institutions accountable to Parliament. The relevance of the study on supervisory powers is determined by European integration processes worldwide. It is substantiated that banking supervisors determine the scope, direction and method of audits, the form and content of audit reports, and provide audit organizations for the licensing. At the same time, the supervisory authorities have the right at any time to check the original documentation of the bank or to carry out certain researches and analysis of the bank's activity on their own.

[25] Латковська Т. А. Юридична категорія «банківська діяльність». «Наука і освіта – 2005»: матеріали VIII Міжнар. наук.-практ. конф. Дніпропетровськ : Наука і освіта, 2005. Т. 45. Право. С. 65–68.

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THEORETICAL AND METHODOLOGICAL PRINCIPLES OF OPERATION OF THE JUSTICE BODIES OF UKRAINE

Predmestnikov O. H.

INTRODUCTION

The development of Ukraine as a modern European law-governed state implies the solution of many organizational and legal problems, in particular those related to the real assertion of the rule of law and ensuring the social orientation of the state, the development of national legislation and its harmonization with the law of the European Union, full and timely enforcement of court decisions, strict observance of citizens' rights in penitentiary institutions, accessibility and reliability of the provision of administrative services for state registration. The leading role in solving these and other relevant tasks is played by the justice authorities of Ukraine – an integral subsystem of executive authorities, which comprehensively provides for the formation and implementation of state legal policy, state policy in the areas of notary, organization of enforcement of decisions, execution of criminal penalties, bankruptcy registration and other similar issues.

Today, the Ukrainian judiciary authorities continue to be at a transitional stage of their institutionalization and implementation of the European experience of management in the field of justice and other related industries, in particular the positive tendencies towards elimination of unnecessary administrative units in the system of justice bodies of Ukraine, reduction of the number of employees, introduction of up-to-date electronic services, as well as the liberalization, decentralization and demonopolization of the relevant areas of activity of the Ukrainian justice authorities. At the same time, the effective activity and successful improvement of the status of the Ministry of Justice of Ukraine and its territorial bodies are significantly hampered by the imperfection, disorderliness and fragmentation of their administrative and legal bases, the absence of comprehensive and detailed legislative regulation of organizational, functional, personnel and financial institutions.

Adoption of the Law of Ukraine "On the Bodies of Justice of Ukraine", ensuring the coherence of legislative, subordinate and departmental regulation, its compliance with the urgent needs and tasks of the bodies of justice, as well as the real implementation of administrative legislation will contribute to the systematic nature of the bodies of Justice of Ukraine, their organization, purposefulness and liability to control.

The analysis of the results of the previous scientific researches of the problems of the administrative and legal principles of operation of the bodies of justice of Ukraine reveals the lack of a single agreed and holistic understanding of the essence, significance and prospects of the development of regulation of the administrative and legal relations in the sphere of organization and operation of the bodies of justice of Ukraine for the effective implementation of state legal policy and other tasks of the justice authorities of Ukraine.

The need to improve the organization and operation of the Ukrainian justice authorities, the uncertainty of the concept and place of justice in the state mechanism of Ukraine, the nature and features of the administrative and legal regulation of the activity of the Ukrainian justice bodies determine the urgency of a thorough and comprehensive study of the administrative and legal foundations of the activity of the Ukrainian justice bodies.

1. The concept and place of justice in the state mechanism of Ukraine

Successful fulfillment of the tasks and functions of the state first and foremost requires the formation and functioning within the state mechanism of the relevant professional competent bodies of state power, responsible and specially empowered to carry out public administration in certain areas. One of such state bodies is the Ukrainian justice authorities, which are responsible for a number of important areas of governmental activity, in particular for the formation and implementation of state legal policy.

At the same time, in the process of their formation, the judicial authorities have repeatedly changed the status, powers, forms and methods of their implementation, which in the conditions of building a democratic rule of law in Ukraine today also require further substantial changes. At the same time, the experience of somewhat inconsistent institutionalization of justice bodies and fragmented administrative and legal regulation of their status reveal a lack of a comprehensive understanding of the nature and place of justice bodies in the state mechanism of Ukraine, which in general may adversely affect the performance of the tasks and functions assigned to them.

It should be noted that some issues of understanding the nature and importance of justice bodies have already been discussed in the works of such scientists as M.V. Gorbachev, O.S. Gusareva and O.D. Tikhomirov, N.A. Zheleznyak, S.O. Kozulin, I.I. Mikulets, O.V. Fedkovich and others. At the same time, such studies mainly reflect some aspects of the nature and legal status of justice bodies, without comprehensively revealing a coherent and consistent understanding of justice authorities as specific bodies of state power, especially taking into account the organization of the current system of justice bodies of Ukraine. Therefore, in the context of improving the status and

increasing the efficiency of the functioning of the justice bodies of Ukraine, the issues of their concept and place in the state mechanism of Ukraine are seen as topical.

First of all, it should be noted that a comprehensive characterization of the nature and place of the bodies of justice of Ukraine requires consistent establishment of the content of the concepts "body", "justice" and "state body", disclosure of the structure of the state mechanism, definition of the legal nature, system and role of justice bodies as bodies of state (executive) authorities. Here, first of all, it should be noted that, in the general lexical sense, "authority" can often be identified with "institution" and "organization" and is generally defined as "an institution that performs certain functions in the field of public administration, control, supervision, etc. »[1]. In other words, the main features of the "body" (state, international organization, party, commercial structure, etc.) are its organizational integrity and isolation (autonomy), as well as its own competence (powers, united by common goals).

The concept of justice, based on its name, is closely linked to justice, which is a complex multidimensional phenomenon that is not understood at the regulatory level and differs not only in scientific sources but also in countries with different legal systems. In particular, justice is seen as justice; the totality of the judiciary and their activities; procedure for dispute resolution and resolution; a legal institute whose activities are aimed at securing the rule of law and the law. Obviously, identifying justice only with justice and/or the judiciary can be justified except in a historical and legal context. At present, this is a very narrow and limited approach to understanding this phenomenon, which leaves open the question of the relation with the Justice of the Ministry of Justice of Ukraine and its bodies, which according to the Constitution of Ukraine of 28.06.1996 do not belong to the judicial system of Ukraine and do not administer justice.

More constructive is the broad understanding of justice as a system of courts and other institutions connected with their activity, which are intended to serve the rule of justice, law and justice, and the protection of citizens' rights. The definition of I.Yu. Onnopchuk justice as a sphere of activity of the state aimed at prevention, detection and elimination of violations of law in order to ensure the realization of citizens' rights, affirmation of justice and lawfulness (which actually equates justice and law enforcement activity). On the one hand, these definitions, unlike the above definitions, justifiably emphasize the organizational affiliation with the justice of other (except courts) bodies and the functional focus of justice not only on the administration of justice, but also on the general protection of the rights and interests of citizens and the state, the organization of the courts' activities, legal policy, etc.

But on the other hand, such a definition of justice appears too abstract and indeterminate, which implies, on a somewhat artificial basis, a number of institutions that are distinctive in nature at the same time. Thus, in addition to judicial institutions, the notion of justice also includes the Ministry of Justice and its bodies, bodies of the prosecutor's office, investigators, notaries, attorneys, the execution of sentences and other bodies engaged in various law enforcement, law enforcement and law enforcement activities. Attribution of these bodies to justice O.S. Gusareva, first of all, explains the focus of their joint activity on "ensuring the real implementation of the ideal of justice." However, in today's democratic rule of law, by this criterion, the vast majority of state bodies can be classified as justice, which will undoubtedly be incorrect and will only complicate the understanding of justice as a legal phenomenon. It should be noted that the activities of the prosecution, investigation and advocacy bodies are indeed closely related to the administration of justice, but substantially different from it and generally have a law enforcement character, which actualizes the definition of these bodies not only as bodies of justice, but as law enforcement agencies.

Today, in our opinion, the Ministry of Justice of Ukraine and its bodies should be regarded not as subjects of direct justice and fairness, which consider and resolve disputes (such as courts and other quasi-judicial bodies), but as subjects (bodies) of public administration in the field of justice. A similar position is taken by I.Yu. Onopchuk and Yu.S. Shemshuchenko, designated by the Ministry of Justice as the governing body in the field of justice, which organizes the work of relevant institutions in the administration of justice and law and order in the country; In turn, V.K. Kolpakov reveals the essence of public administration in this area as the executive activity of authorized entities in the organizational support of the functioning of courts, public notaries, bodies of record of civil acts, judicial expert institutions and organizations of lawyers. In general, while agreeing with the above, we should make it clear that the content of public administration in the field of justice is not limited to ensuring the activities of relevant human rights and law enforcement agencies and institutions, but also includes other independent activities, such as the formation and implementation of state legal policy. However, in a democratic rule of law, the Ministry of Justice and its bodies are not "justice" management bodies, but "in the field of justice", which emphasizes the rather broad subject matter of the Ministry of Justice and its bodies and their non-interference with the practical work of courts and other review bodies and dispute resolution.

The bodies of justice, represented by the Ministry of Justice of Ukraine and its territorial bodies, are formed and maintained by the state, and their activity is directed to fulfill the tasks of the state to ensure the rule of law, justice and rights of citizens. The above points to the state nature of the

Ministry of Justice of Ukraine and its bodies, which first of all updates the definition of the place of justice bodies in the state mechanism and their essence as respective institutions (bodies) of the state.

It should be noted that at present, there is no unified established understanding of the concept and composition of the state mechanism, and therefore of its constituting state institutions. Yes, O.V. Rakul outlines three approaches to defining the state mechanism: as a way of functioning of state bodies; sequence of actions of state bodies, the process of implementation of state power by them; as a system of state bodies, institutions and organizations united to fulfill the functions of the state. In turn, L.R. Nalyvayko distinguishes the legal (legal foundations), structural (set of state organizations), functional (functions) and instrumental (powers, methods and methods of their implementation) components of the category "mechanism of the state". The identification of VF is quite interesting. Burning mechanism of the state with the structure of state power, which consists of state authorities and other state organizations, as well as regulatory, information, budgetary and territorial bases of state power. In our opinion, all these approaches complement each other, revealing a certain aspect of the state mechanism. The concept of the mechanism of the state comprehensively covers the relevant state institutions, the legal regulation of their status, as well as the competence, forms and methods of activity and practical fulfillment of their duties.

The activity of justice bodies is carried out on behalf of the state and in its interests, directly focusing on the implementation of political, law enforcement and other functions of the state, namely the implementation of state legal policy, public policy in the field of notary and organization of enforcement of decisions, on issues of state registration of civil status acts. etc. The state-power nature of the powers of the Ministry of Justice of Ukraine and its bodies is confirmed not only by their focus on the performance of the tasks and functions of the state, but also by the use of their legal and organizational forms and methods of activity, the obligation to execute orders (legal orders) of the bodies of justice provided different forms and means of state coercion. However, we have to disagree with the definition of a state body by M.Yu. Volyanskyy – the perception of their acts by members of society as state, since such a definition is too abstract, is purely subjective and does not reveal the objective nature and real organization of the activity of the respective state institution.

A feature of state bodies means a well-defined territorial basis of their activity. The Ministry of Justice of Ukraine, as the central executive authority, operates throughout Ukraine, the territorial offices of justice operate within the Autonomous Republic of Crimea, a specific region, Kyiv and Sevastopol, and interregional departments on criminal penalties and probation across several

areas. Establishing the territorial scope of the activities of the justice authorities is an important component of the organization of their activities, connected with the rational distribution of powers and resources between the justice authorities, ensuring their interaction and subordination to the higher authorities.

It should be noted that the status of the Ministry of Justice of Ukraine and its territorial bodies as state bodies (state authorities) and their place in the state mechanism of Ukraine are directly related to the principle of division of the state system, which according to Article 6 of the Constitution of Ukraine of 28.06. 1996 manifests in the separation of legislative, executive and judicial branches of state power.

Within the division of state power, the affiliation of the bodies of justice to the legislative (represented only by the Verkhovna Rada of Ukraine) and judicial (represented by the courts) branches of state power is excluded. In addition to the legislative, executive, and judicial bodies, some scientists also distinguish other subsystems of state bodies, in particular O.V. Rakul and N.P. Kharchenko also single out the Head of State and the supervisory bodies. Based on the normatively defined competence of the justice bodies of Ukraine, control and supervision do not constitute the leading direction of their activity, which does not allow to attribute the bodies of justice to the number of control and supervisory bodies.

Based on the general understanding of the state body (state authority) and summarizing the main essential features of the executive body, it can be defined as a state body with administrative (executive-administrative) powers in economic, socio-cultural and administrative-political area.

The organization and activity of the bodies of justice of Ukraine is governed by the norms of various branches of law, but mainly by administrative and legal norms, which is conditioned by their status of bodies of executive power and implementation of administrative (executive-administrative) activity, its specific forms and methods.

The signs of the executive authorities should also include the certainty of their organization and activity solely by the laws of Ukraine, which is expressly provided for in paragraph 12 of Part 1 of Art. 92 of the Constitution of Ukraine of 28.06.1996. Today, the status of executive bodies, in particular the bodies of justice of Ukraine, is regulated mainly by by-laws (for example, the Regulation on the Ministry of Justice of Ukraine, approved by the Cabinet of Ministers of Ukraine dated 02.07.2014, No. 228) . In this regard, we believe that the feature of the executive authorities should be not the exclusivity, but the complexity and detail of the legislative consolidation of their status with its further specification at the by-law level, which will ensure real orderliness and stability of the organization of the justice bodies of Ukraine, coherence and efficiency of their functioning.

As a sign of executive bodies I.I. Mykulets stipulates "the ability of executive authorities to take only those actions that are either expressly stated in the law or related to the need for its implementation." First of all, the statement does not fully correspond to the provisions of Part 2 of Art. 6, Part 2 of Art. 19 of the Constitution of Ukraine of 28.06.1996, which obliges the bodies of state (and not only executive) power to act only on the basis, within the powers and in the manner provided by the Constitution and laws of Ukraine. Therefore, contrary to current practice, these constitutional norms do not allow subordinate regulation of the powers of the judicial bodies, even in connection with such an abstract circumstance as "the need to comply with the law." Although, stating the need to eliminate such contradictions in constitutional norms and the practice of regulating the status of justice bodies, their activities are now subject not only to the law but also to the relevant by-laws.

It is possible to agree with a certain degree of conditionality on such a definition of executive bodies as "a special order of formation of these bodies and the appointment of their heads, scope and content of competence", since the formulation of this feature is too abstract and does not reveal the nature and specificity of the executive authorities. The competence of the justice bodies of Ukraine consists of by-laws of executive and administrative powers (normalization and enforcement), the volume and content of which is determined by the status and tasks of these state bodies. In particular, the justice authorities are endowed with the possibility of applying coercive measures, with broad and exclusive managerial powers in the field of justice and in other related fields, for the implementation of which they are directly responsible. The procedure for establishing justice bodies and appointing their heads also has a number of peculiarities, for example, the appointment of the Minister of Justice of Ukraine by Parliament upon the submission of the Prime Minister of Ukraine, the appointment of heads of the main territorial departments of justice by the State Secretary of the Ministry of Justice of Ukraine, etc. This specificity of the formation of justice bodies and the appointment of their leadership is, first of all, connected with the increased importance of the productive and lawful fulfillment of the tasks of the justice bodies, the need to ensure the coordinated functioning of all verticals of the executive bodies at the national and local levels.

Organizational and functional separation, as noted above, is one of the basic features of state bodies in general. The bodies of justice, as bodies of state executive power, are also characterized by organizational and functional independence from other state bodies, which is expressed in the presence of not only specific administrative powers and subjects of authority, but also their own structural organization, permanent staffs and guaranteed financial support.

The judiciary of Ukraine is one of the leading actors in securing the development of Ukraine as a modern democratic, rule of law, social state and its integration into the European Union. Therefore, the modern organization of the progressive principles and principles of lawful, professional, transparent and responsible provision of the formation and implementation of the state's legal and other policy should be the basis for the organization and activity of the Ukrainian justice bodies. At the same time, the administrative and legal foundations of the status of the bodies of justice of Ukraine leave the initial baselines and standards of their functioning completely unregulated, which causes insufficient coherence, stability and rationality of organization and activity of the bodies of justice of Ukraine.

It should be noted that the purpose of the activity of the bodies of justice and their place in the state mechanism in the legal regulation are not specifically stated. At the same time, the tasks and powers of the justice authorities of Ukraine are in many ways similar, though somewhat broader than the appointment of law enforcement agencies. In particular, as noted above, the administrative (executive-administrative) activity of the bodies of justice, first of all, is aimed at accomplishing the tasks of the state in strengthening the rule of law and justice, ensuring the realization of citizens' rights. In turn, O.I. Bakirova defines the mission of the Ministry of Justice of Ukraine as ensuring the democratic development of society "with the aim of strengthening human rights and freedoms through the implementation of the rule of law in the justice system." However, the given understanding of the mission (purpose) of the justice authorities appears to be not sufficiently well-defined and meaningful. Thus, instead of referring to the "democratic development of society", it would be more appropriate to speak about the focus of the activities of the bodies of justice on building a European democratic, social, rule of law, as well as ensuring the rule of law and citizens not only "in the justice system" (justice), but in other areas, for example, through the implementation of state legal policy.

The notion and place of justice in the state mechanism of Ukraine are closely related to understanding the purpose of their activity. Given the responsibility, size and complexity of the powers of the justice authorities, it is appropriate to identify the immediate and ultimate purpose of their activities. Therefore, the immediate purpose of the activity of the justice bodies of Ukraine is the formation and implementation of state legal policy, state policy in the field of notary, organization of enforcement of decisions, execution of criminal penalties, bankruptcy and state registration and other similar issues; and the ultimate goal is to promote the rule of law and justice, to ensure the realization and protection of the rights and legitimate interests of citizens and legal persons, public and state interests, the formation of the rule of law and civil society.

In addition to the above said purpose of activity, the special importance of justice bodies in the state mechanism is primarily determined by their status and traits as state bodies (bodies of state power) and bodies of executive power exercising public administration (executive and administrative powers) in the field of justice and in other related fields. The place of justice bodies in the state mechanism is determined by the fact that they are the subjects of public administration in the administrative and political sphere, constitute a coherent and separate subsystem of executive bodies responsible for the implementation and ensuring the formation of the legal and other policies of the state. The system of justice bodies in Ukraine and in other countries, at level with the systems of law-enforcement and foreign-affairs bodies, constitute an indispensable basis for the executive power and the state mechanism as a whole.

The main distinguishing feature of the Ministry of Justice of Ukraine is also the variety of objects of its state administration, which include the territorial departments of justice, courts, notary offices, advocacy, associations of citizens, other central executive bodies. The objects of the administrative activity of the justice bodies are quite a large number of state institutions, institutions, public formations and citizens themselves, which is mainly determined by the above-mentioned broad nature of the executive and administrative powers of the justice bodies to implement the legal and other policies of the state. At the same time, as for us, the diversity of public administration objects is an important, but not exclusive, feature of the bodies of justice, which is peculiar to some other bodies of executive power, for example, the Ministry of Internal Affairs of Ukraine, whose administrative powers are similarly related to those who are different in nature. and the status of subordinate bodies of the executive power, other state and municipal bodies, institutions and organizations, public formations and citizens.

2. The essence and features of the administrative and legal regulation of the activity of the bodies of justice of Ukraine

In Ukraine, as a modern rule of law, the status and organization of the activity of the justice bodies of Ukraine (as well as other state bodies) should be clearly regulated by the current legislation. The legality and efficiency of the implementation of the state legal policy and the fulfillment of other tasks of the bodies of justice, as well as the observance of human rights and freedoms in their activity, directly depend on the completeness, coherence and consistency of administrative and legal support. At the same time, at the level with the problem of practical implementation of the current administrative and legal foundations of the organization and activity of the bodies of justice of Ukraine (caused by a large number of legal acts and their inadequate quality), there is also a lack of complex legislative regulation of their status,

fragmentation, contradiction and lack of consistency ensuring the systematic and functioning of the Ukrainian justice authorities.

In the scientific literature, legal regulation is generally defined as the implementation by the system of legal means of effective, regulatory and organizational influence on public relations for the purpose of their ordering, protection and development. At the same time, legal regulation is not only a direct and powerful legal influence on public relations, but also its form. One way or another, we have to agree with O.F. Skakun that the essence of legal regulation lies not only in the ordering, protection and development of relevant relationships, but also in their legal expression and consolidation (and according to M.S. Kelman and O.G. Murashin – also in ensuring relations). In particular, the general purpose and content of administrative and legal regulation of the functioning of the justice bodies of Ukraine, as a means of legal influence on relations in the sphere of their organization and activity, should determine the legal expression, ordering, protection and development of such relations. In this way, the interests of the state, society, its individual parts and citizens are satisfied, as well as ensuring the proper functioning of state and public institutions, the behavior of all subjects of law in accordance with the rule of law.

In doing so, I.I. Mykultsya sees the purpose of legal regulation of the activity of the justice bodies of Ukraine in ordering such activity and ensuring its development within the normatively determined limits and directions. This can indeed be attributed to the objectives of legal regulation of the activity of the justice authorities, which at the same time requires some clarification and detail. Thus, administrative and legal regulation in general aims to formulate the proper conditions and rules for the organization of the bodies of justice of Ukraine and productive fulfillment of their tasks and functions. In our opinion, understanding of the purpose of administrative and legal regulation of functioning of justice bodies of Ukraine is directly connected with the purpose of their activity.

Equally important is the issue of the mechanism of legal regulation – a set of legal instruments that directly influence the normative and organizing influence on public relations, which consist of the formation and functioning of justice bodies of Ukraine. It should be emphasized here that, in a broad sense, administrative regulation is not limited to legal norms alone, although they, with appropriate binding rules of conduct, represent the main legal means of influencing public relations (which take some legal form).

The essential interdependent components of the administrative and legal regulation of the activity of the bodies of justice of Ukraine are both qualitative rulemaking and the precise and steady practical implementation, observance and application of the rules of law, which together provide the reality of the legal regulation of the functioning of the justice bodies of

Ukraine. In turn, the real reflection of legal principles in the organization and activity of justice bodies is a basic criterion for the effectiveness of administrative and legal regulation of their status.

It should be noted that the method of administrative and legal regulation represents the set of appropriate methods and methods of legal influence on public relations in the sphere of organization and activity of the bodies of justice of Ukraine. For the administrative and legal regulation of the functioning of the bodies of justice of Ukraine as a whole, a common administrative law (imperative method of authority) based on legal inequality and subordination of legal entities is peculiar to administrative law. In particular, this method is manifested in a clear legal definition of the tasks, powers, structural organization and management vertical of the justice bodies of Ukraine, the procedure, methods and framework for their implementation of relevant areas of management (registration, control, organizational and other) activities. Advantages of applying the imperative method of administrative and legal regulation (mostly prescriptions and prohibitions) is a high level of orderliness of organization and coherence of the activity of the whole network of bodies of justice, legality and unambiguity of power orders and promptness of their implementation.

At the same time, the development and democratization of public administration actualize the application in administrative and legal regulation of the activity of state bodies (including the bodies of justice) at the level of the imperative as well as the dispositive method. The value of the dispositive method (which is expressed, for example, through the granting of authorizations) is manifested, first of all, in the equality of legal entities, their greater degree of autonomy in the choice and use of certain legal remedies. Today, due to the increased complexity and responsibility of the functions of the bodies of justice of Ukraine, the dispositive method in regulating their organization and activity is applied to a limited extent, in particular with regard to the formation and operation of the collegium and other subsidiary bodies of the Ministry of Justice of Ukraine, the intensity and content of interaction with public authorities and the public, definition of a specific management model in the body of justice, etc.

Among the special methods of regulating the functioning of the justice bodies of Ukraine should also be mentioned subordination, coordination, coordination, administrative contract, etc. Subordination is the starting point for the organization of the entire public administration apparatus, including the system of justice bodies, which provides for the vertical subordination of the lower bodies (officials) to the higher ones and ensures the uniform, accurate and prompt execution of administrative decisions by all justice bodies, their departments and employees. Equally important is the coordination that underlies the interaction and coordination of the joint activity of the justice

authorities with directly subordinate public authorities (for example, the coordination of the territorial departments of justice with the activities of local executive authorities on the systematization of legislation). In the activity of justice bodies there is also coordination, one of the visual manifestations of which is the right of citizens (managed object) to demand certain behavior of justice bodies (managing entity), which, in turn, are obliged to respond to the legitimate demands of citizens (on state registration of civil status acts, public formations, etc.), creating the proper conditions for the exercise of their rights and interests. The use of administrative treaties, the conclusion of which may help to regulate the relations of the justice bodies with other public authorities, remains promising in regulating the activity of the justice authorities.

The legal bases of functioning of the bodies of justice of Ukraine are represented by a considerable number of various international legal, constitutional, legislative and subordinate legal acts, which directly establish the legal status, rules and conditions of organization and functioning of the system of justice bodies of Ukraine as a whole and its individual components.

Regarding the international legal principles of the functioning of the justice bodies of Ukraine, first of all, it should be noted that the subject of their regulation is the conceptual bases of the organization of the activity of the state bodies (and therefore the justice bodies) and the international legal aspects in certain areas of activity of the Ukrainian justice bodies. Thus, the bodies of justice, as well as any other authorities empowered by the authorities, must in their activity observe and contribute in every way to the implementation of international legal acts that determine fundamental human rights and their guarantees, – the Universal Declaration of Human Rights of 10.12.1948, Convention on the Protection of Human Rights and Fundamental Freedoms of 04.11.1950, International Covenant on Civil and Political Rights of 16.12.1966 and others.

The Constitution of Ukraine of 28.06.1996 is also one of the key sources of legal regulation of the functioning of the bodies of justice of Ukraine. The status of the bodies of justice of Ukraine is not directly regulated at the constitutional and legal level, however, the general rules on organization of activity of state bodies and executive authorities (in particular, apply) their orientation and coordination are determined by the Cabinet of Ministers of Ukraine and the procedure for appointing ministers). The integrity of the state apparatus and the proper performance of the state's functions are facilitated by the extension of the constitutionally defined principles of the separation of state power, legality, rule of law, observance of citizens' rights (for example, to associations in public formations, to participation in public affairs management, to legal aid) etc.

The norms of the Constitution of Ukraine, acting as the basis of administrative legislation in the sphere of functioning of the bodies of

justice of Ukraine, have enhanced legal force, stability and correctness. Even a side mention in Part 3 of Art. 131 of the Constitution of Ukraine the Minister of Justice of Ukraine makes it impossible to abolish this position or to liquidate the Ministry of Justice of Ukraine, but at the same time the Basic Law allows any reorganization by the Cabinet of Ministers of Ukraine. That is why, at the constitutional level, the basics of legal status and the initial principles of organization and activity of the justice bodies of Ukraine should be prioritized.

You should also agree with P.M. Kikot here that the Constitution of Ukraine by its legal nature and purpose cannot provide comprehensive legal regulation of the activities of ministries and other executive bodies, including the bodies of justice of Ukraine. On this basis, a detailed regulation of the administrative and legal status of justice bodies is updated by a separate legislative act. The latter is supported by the provisions of Part 2 of Art. 6, Part 2 of Art. 19, item 12 part 1 Art. 92, part 2 of Art. 120 of the Constitution of Ukraine, which directly stipulate not the by-law (as it is today), but the legislative definition of the organization, powers and order of activity of bodies of executive power, and, consequently, of bodies of justice of Ukraine.

The administrative legislation that defines the organization and activity of the justice bodies of Ukraine consists of a number of legislative acts concerning either the general aspects of the functioning of the bodies of state (executive) power, or certain areas of practical activity of the bodies of justice. In the absence of a profile law of Ukraine on the organs of justice, the basic Laws of Ukraine "On Central Executive Bodies" of 17.03.2011 No. 3166-VI and "On the Cabinet of Ministers of Ukraine" of 27.02.2014, No. 794-VII are important in the legislative regulation of the activity of the Ministry of Justice of Ukraine and its territorial bodies and set out the basics of the legal status of the ministries, their tasks and principles of relations with the government, the status and powers of the minister and his deputies, the organization of work of the apparatus, territorial bodies, colleagues and support of the ministry, the status of its orders and so on. Legislative regulation of these issues as a whole ensures the uniformity of construction of all central executive bodies, the coherence of their functioning and unified approaches to the management of the system of executive bodies of Ukraine.

At the same time, it should be borne in mind that the norms of the above-mentioned legislative acts regarding the organization of activities of central executive bodies are mainly of a general nature (eg, by taking a somewhat formal approach to formulating the principles and tasks of the ministries) and are rather fragmentary, deployed without regulating the status of territorial bodies ministries and leaving undetermined the principles of the ministries' relations with various public authorities. Moreover, such an approach to legislative regulation does not allow to fully take into account the

specificities of the competence and internal organization of the Ministry of Justice of Ukraine and its territorial bodies.

At the same time, the legislative regulation of the principles of implementation of the leading directions of activity of the bodies of justice of Ukraine, directly related to important national interests and the realization of human and citizen's rights and freedoms, is quite reasonable and justified. In particular, it refers to the enforcement of registration powers by the bodies of justice on the basis of the Law of Ukraine "On State Registration of Civil Status Acts" of 01.07.2010 No. 2398-VI and others. The aforementioned legislative act contains a rather detailed legal definition of the powers of state registration bodies, the principles of keeping state registers, the procedure and features of state registration at its various phases and stages. Such an approach to legislative regulation allows to ensure the maximum regime of legality, efficiency, transparency and observance of the rights of citizens while performing the registration functions of the justice bodies of Ukraine on such fundamental issue as the status of individuals. The high level of legal regulation of registration functions by the bodies of justice is confirmed by the deepening of the provisions of administrative legislation in departmental legal acts, for example, the rules of state registration of civil status acts are also established by the Order of the Ministry of Justice of Ukraine dated December 24, 2010 No. 3307/5.

Currently, the legal regulation prevails in the administrative and legal support of the activity and organization of the justice bodies of Ukraine. By-law regulation really allows to define and modify legal bases more quickly and in detail both the functioning of the justice bodies of Ukraine as a whole, and their fulfillment by separate divisions of narrow tasks. At the same time, a large array of by-laws also reveals their instability, non-system and insufficient correctness, without excluding the existence of gaps in administrative and legal regulation.

In the Legal Regulation of the Activity of the Bodies of Justice of Ukraine I.I. Mykultsya identifies two main areas – regulation of organization of activity of the Ministry of Justice of Ukraine and its territorial bodies and regulation of their work in corresponding directions. According to the peculiarities of administrative and legal support of the functioning of the justice bodies of Ukraine, we should refer to a relatively high level of standardization and unification not only of the internal organization of the justice bodies and their designated divisions, but also of certain areas of their practical activity.

CONCLUSIONS

The nature of the bodies of justice of Ukraine, represented by the Ministry of Justice of Ukraine and its territorial bodies, as subsystems of bodies of executive power and their place in the state mechanism is determined by the totality of the following features: status of bodies of executive power, accountability, subordination and control over higher bodies of executive power; systematic and hierarchical, organizational and functional independence, interconnectedness with other state bodies; activities on behalf of the state and in its interests; mainly administrative and legal regulation of organization and activity; clearly defined territorial basis of activity; enforcement and executive nature of the activity; implementation of day-to-day and operational public administration in the field of justice and other related fields; issuing mandatory instructions for the enforcement of various forms and means of state coercion; recruiting on a regular professional basis by civil servants; providing the state with the necessary organizational and material and financial resources, etc.

The immediate purpose of the activity of the justice bodies of Ukraine is the formation and implementation of state legal policy, state policy in the field of notary, organization of enforcement of decisions, execution of criminal penalties, bankruptcy and state registration and other similar issues. Such activity of the justice bodies of Ukraine should ultimately ensure the establishment of the rule of law, the formation of the rule of law and civil society, ensuring the implementation and protection of the rights and interests of citizens, legal entities, society and the state.

The institutionalization of the justice bodies of independent Ukraine is directly linked to the development of administrative and legal principles of their activity, which generally provide higher than before the level of by-law regulation of competence and separate directions of activity of the bodies of justice of Ukraine, while remaining haphazard and fragmentary; there has also been a controversial parallel regulation of the activity of the Ministry of Justice of Ukraine by the Head of State and the Government.

Administrative and legal regulation of the activity of the bodies of justice of Ukraine is a deliberate implementation by the authorized entities with the purpose of effective formation and implementation of the legal and other policy of the state by means of a system of legal means (administrative and legal norms, legal relations, acts of legal realization, etc.), protection and development of organizational-managerial relations in the sphere of organization and activity of justice bodies of Ukraine. The reality and effectiveness of the administrative and legal regulation of the activity of the justice bodies of Ukraine requires not only the completeness, coherence and consistency of rulemaking, but also the accurate and steady implementation, compliance and application of relevant legal rules in practice.

SUMMARY

The concept and place of justice bodies in the state mechanism of Ukraine, historical and legal bases of their formation, principles of activity of justice bodies of Ukraine and features of its administrative and legal regulation are explained. The tasks, functions, powers and organizational structure of the Ministry of Justice of Ukraine and its territorial bodies, as well as the administrative and legal status of the Minister of Justice of Ukraine and the leadership of territorial bodies of justice are clarified.

It is stated that the bodies of justice, represented by the Ministry of Justice of Ukraine and its territorial bodies, are bodies of executive power, which, in accordance with the current legislation, exercise administrative powers aimed at the formation and implementation of legal and other state policies, in order to ensure the rule of law, justice and citizens' rights. In the study, a coherent understanding of the essence of the bodies of justice is a necessary condition for their systematic nature, which should not only underlie the administrative and legal status of the justice bodies of Ukraine, but also be reflected in their real organization and activity. It is stated that the absence, contrary to the requirements of the Constitution of Ukraine, of a profile law on the organs of justice of Ukraine and, as a consequence, the predominant regulation of the organization of their activities by a large number of different by-laws, is one of the main features of the administrative and legal support of the functioning of the bodies of justice.

It is established that the essence of administrative and legal regulation of the functioning of the bodies of justice of Ukraine lies in the legal expression, ordering, protection and development of organizational-managerial relations in the sphere of their organization and activity in order to effectively form and implement the legal and other policies of the state. The administrative and legal support of the activity of the bodies of justice of Ukraine is characterized, first of all, by the lack of the necessary complex legislative regulation of their status and the prevalence of by-laws (departmental) legal acts, which reveal haphazardness, lack of coherence and correctness, as well as the lack of a clear definition of the principles of systematicity and interaction and the procedure for exercising all their powers.

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PROTECTION OF THE RIGHTS AND FREEDOM OF CITIZENS IN THE CONTEXT OF THE MAIN FUNCTION OF THE STATE

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INTRODUCTION

As you know, according to Part 2 of Art. 3 of the Constitution of Ukraine of June 28, 1996 No. 254k / 96-VR, human rights and freedoms and their guarantees determine the content and orientation of the state's activities[1]. The above emphasizes the special place of human rights as a guide in shaping the state mechanism and practice of state building. At the same time, it is obvious that human rights are of equal importance for the development of the individual as a full-fledged member of civil society. Of key importance in this case is the reality of human rights, which, at the level with the legal recognition of such rights and the effective mechanism for their realization, also provides for the effectiveness of judicial and administrative protection, which is understood in science by the fact that "judicial and administrative decisions have come into force and implemented, that is, necessarily led to the restoration or compensation of violated rights and freedoms "[2].

At the same time, considering the various aspects of the administrative and legal mechanism of protection of human rights as one of the elements of ensuring their reality, which, in turn, is a kind of indicator of the development of a modern legal socially oriented state, it is necessary to pay special attention to the still existing contradictions of methodological nature in understanding the essence of human and citizen's rights and freedoms. In particular, it is about establishing the specific category of the citizen's rights, its relation to the rights, freedoms and interests of the individual and the citizen, which is directly related to the doctrinal and normative-legal definition of the content of the rights of citizens as an object of administrative and legal protection.

It should be noted that the problems of the legal status of a person and a citizen were given attention within several branches of law (the theory of law, constitutional, international, administrative law, etc.), first of all, in the works of such scientists as K.G. Volynka[3], A. M. Kolodiy and A. Yu. Oliynyk[4],

[1] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

[2] Турута О.В. Юридичний механізм забезпечення реальності прав і свобод громадян / О.В. Турута // Форум права. – 2010. – № 2. – С. 519–523 [Електронний ресурс]. – Режим доступу: http://www.nbuv.gov.ua/e-journals/FP/2010-2/10tovicg.pdf.

[3] Волинка К. Забезпечення прав і свобод особи в Україні: теоретичні і практичні аспекти / К. Волинка // Право України. – 2000. – № 11. – С. 30–34.

P.M. Rabinovich[5] and others. At the same time, these studies mainly focus on the conceptual basic foundations of human rights, unjustifiably neglecting the specific features of citizens' rights in terms of their protection mechanisms. Against this background, the issues of the concept and essence of citizens' rights as an object of administrative and legal protection are considered relevant.

First of all, it should be noted that human and citizen's rights are only one manifestation of their legal status, and apart from the latter, they cannot characterize the specifics of personal relations with the state and civil society. In particular, this is clearly stated in the fundamental principle of "no-obligation rights". However, there is no doubt that legal status cannot be limited to the rights and obligations of the individual, including other elements that ensure the reality of such rights and obligations, the proper level of alignment of the public interests of different individuals and social groups.

Thus, the elucidation of the essence of human rights and the citizen should be made taking into account their place in the general structure of legal status and the nature of the relationship between the rights, obligations and other elements of the legal status of the human and citizen. At the same time, it should be noted that such a legal status as a coherent category is also influenced by a generally unified social status of the individual, which is the most comprehensive category and is not limited to purely legal content. Thus, in sociology, the social status of the individual is defined as his position in the social system, related to belonging to a particular social group or community, the totality of his social roles and the quality and degree of their fulfillment.

In our view, it is impossible to identify all the essential features of legal status, and therefore of human and citizen rights, without a comprehensive study of all parties to such a phenomenon as status. Thus, a philosophical understanding of status indicates that it is the social, relative position (position) of an individual or group in a social system that is determined by a number of characteristics specific to such a system. Political science also refers to the category of status and defines it as a set of rights and responsibilities that determine the legal status of a person, government body or international organization; "Comprehensive indicator of the position of a particular community, group or individuals in the social system, one of the most important parameters of social stratification"[6].

So, to summarize, let us summarize that, first, status always reflects a certain position (position) of a person in a society or collective, and secondly, it includes at least such elements as rights and obligations. Legal status is a

[4] Колодій А.М. Права людини і громадянина в Україні: навч. посіб. / А.М. Колодій, А.Ю. Олійник. – К.: Юрінком Інтер, 2003. – 336 с.

[5] Рабінович П.М. Основні права людини: поняття, класифікації, тенденції / П. М. Рабінович // Український часопис прав людини. – 1995. – № 1. – С. 14–23.

[6] Політичний енциклопедичний словник / за ред. Ю.М. Шемчушенка, В.Д. Бабкіна. – К.: Юрінком Інтер, 1997. – С. 400.

much narrower category than social status, which appropriately affects the scope of those rights that will constitute the content of such status.

At the same time, in our opinion, in terms of the legal expression of a person's legal status, attention should be paid not only and not so much to the technical consolidation of its content in certain legal acts, but also in general to the legal nature of such status. Important, though not universally acknowledged, is that law (including rights expressed in legal norms), based on the theory of natural law and Roman ethical doctrine on which the modern Romano-German legal system is based, does not have its own logo, which is brought into law by ethics as a practical philosophy[7]. Thus, human and citizen rights, as an element of legal status, do not simply reflect the legal will of the legislator, but, above all, are the objective result of natural social and legal development.

Note that the essence of the legal status of man and citizen in science, as a rule, is revealed through the content of its structure. In our opinion, at the level with the elements of the legal status of a person and a citizen, a set of features that characterize both the legal status as a whole and its specific element, in particular, human and citizen rights, should be singled out. It should be noted at the outset that forms of legal expression of legal status, first of all, namely human and citizen's rights, are not limited to only legal acts, but also include other sources, such as a legal treaty, a judicial precedent, etc. Moreover, based on the provisions of Art. 19, 21 of the Constitution of Ukraine[8], under which no one can be compelled to do what is not provided by law and human rights and freedoms are inalienable and inviolable, there is every reason to assert that the concept of natural law is accepted by the legal system of Ukraine. provides as a condition for the validity of human rights the obligation of their legal fixation.

However, on the other hand, it is an indisputable positive recognition of such a sign of the legal status of a person and citizen as a guarantee by the state reflecting the latter's obligation to ensure the content of such a legal status, which includes, among other things, the appropriate mechanism and forms of protection of human rights and citizen. This is also actualized by the fact that other scholars guarantee the protection of human rights and citizens not as a principle, but solely as one of the elements of legal status. Thus, V.V. Kravchenko[9] identifies a separate constitutional and legal institute of guarantees of legal status, and he defines the legal status of the individual somewhat abstractly as his legally entrenched position in the state and society, as an important component of the social status of a person characterizing

[7] Радбрух Г. Філософія права / Г. Радбрух; пер. Є. Причепій, В. Приходько. – К.: Тандем, 2006. – 316 с.

[8] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

[9] Кравченко В.В. Конституційне право України: навч. посіб. / В.В. Кравченко. – Вид. 4-е, випр. та доп. – К.: Атіка, 2007. – 568 с.

personality traits with the state and state-organized society. In our view, it is appropriate to identify the subsidiary nature of guarantees regarding human and citizen rights, which is conditioned by the need for the state to purposely ensure the reality of such rights.

At the same time, the above definition, like the vast majority of other definitions of legal status, does not reflect the specific place occupied by human and citizen rights. At the same time, to ascertain the position of rights in the structure of legal status objectively requires the definition of all its elements, the set of organized relationships of which and constitutes the legal status itself.

First of all, we propose to distinguish legal personality as the primary basis, general condition and basis for the existence of other elements of the legal status of a person and a citizen. Certainly, the acquisition and realization of rights requires legal capacity and appropriate capacity. At the same time, it is not yet universally acknowledged that in the structure of the legal personality, apart from the mentioned elements, the ability of a person to be responsible for the exercise of his rights and the performance of duties, but such torture makes possible the existence in the legal status of a person of such element as legal liability.

In addition, it is rather ambiguous, in our opinion, to identify in the structure of the legal status of a person at the same time his principles and guarantees. Thus, the essence and content of the principles, as well as the guarantees of legal status, are determined, first of all, by human rights, the need to ensure their effective implementation.

Citizenship, which is defined as a stable legal connection of an individual with the state, as a result of which they acquire mutual rights and obligations, in the context of the characteristics of the general structure of legal status may be compared with the categories of legal personality and rights and obligations. Yes, citizenship, as well as legal personality, is the basis for the acquisition of the relevant rights and obligations, but in itself, it already provides for certain rights and obligations. Thus, although citizenship is a rather peculiar legal connection of a person with the state, however, like other socially regulated social relations (for example, marriage), it is objectified in legal status precisely in the form of specific rights and obligations. or special types of capabilities.

Moreover, citizenship is not a completely invariant part of a person's legal status and, unlike human rights principles, can change substantially depending on the individual's will or territory. However, such features as the legal expression and connection of the individual with the state, society, its individual groups or members are already covered by the above definition of legal status.

Thus, legal personality, legal principles and guarantees, legal liability are in one way or another related, above all, to the rights and obligations as the central categories of the legal status of the individual, aimed at ensuring their completeness and reality. Accordingly, we must note the ambiguity in science regarding the understanding of the essence and concept of such a category as human rights. However, this is due, among other things, to differing views on the formulation of such a definition, given the need to adapt the definition of individual rights in relation to a specific specific legal field. At the same time, such a generality in the approach to the definition of the essence of the rights of the individual does not allow to distinguish them from freedoms and legitimate interests, since it does not contain sufficiently distinctive features. The above definition reflects a basic understanding of individual rights as a measure of possible behavior that changes under the influence of social factors and responds to it, and draws attention to the universal and equal rights of individuals, which is one of the guarantees of individual rights. Thus, in this case, such important features as formal certainty, legal certainty, and official nature of the measure of possible behavior, which directly reflect in their totality the legal essence of individual rights, are presented. Although, on the other hand, even in the aspect of the narrowed administrative-legal status of a citizen, one cannot agree with such a sign of human rights as the permissibility of possible behavior of a person.

It should be noted that according to Part 1 of Art. 19 of the Constitution of Ukraine[10] establishes the principle that no one can be compelled to do what is not provided by law. At the same time, his perception of something that is not explicitly prohibited by law will be somewhat limited. Administrative-legal relations are characterized by legal inequality of the parties and have power and administrative character, however, this does not mean that absolutely all rights of participants of such relations should also acquire certain properties. The concept of the natural origin of human rights, as mediated in Art. 21, 22 of the Constitution of Ukraine, the Universal Declaration of Human Rights of December 10, 1948[11] and other international legal acts, indicates that human rights are a measure not so much of a state's permissible behavior, but rather of the very nature of possible behavior. Some of these natural rights find their further expression in relevant administrative and legal relations, such as the natural right to participate in the management of state affairs (Article 38 of the Constitution of Ukraine[12]). Therefore, even with respect to the rights of the individual, even in terms of the administrative

[10] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

[11] Загальна декларація прав людини: від 10.12.1948 р. // Офіційний вісник України. – 2008. – № 93. – Ст. 3103.

[12] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

and legal field, it is always a measure of possible behavior, which does not always require its permission from the state, the purpose of which is to provide a legal corridor for the implementation of a certain right. Moreover, as Kravchenko notes, the state should not be limited by the legal fixation of human rights, but instead should provide them not only with legal, but also with economic, political and cultural means. Thus, in the part of administrative and legal protection of the rights of the individual, it is about providing the state not just their abstract reality, but reality within the relevant specific legally formulated and socially justified and justified limits, within which the protection of such rights may be required. This feature is fully consistent with the concept of the natural origin of human rights discussed above, as well as the social conditionality of the rights and obligations of the individual, which take place in his relationship with other persons, social groups, the state and society as a whole. However, the multifaceted nature of this social phenomenon means the embodiment in the category of individual rights not only legal content, but also moral, political and philosophical content. At the same time, in our opinion, it is incorrect to distinguish only some single component of the essence of a person's rights (for example, a legal one), since the complexity and the consistent interrelationships of these factors reflect a true understanding of the category of personality rights.

Note that understanding individual rights as a multifaceted social phenomenon is important in terms of explaining it on the one hand, complex nature, and on the other hand, the place in the structure of social interaction and communication. In addition, such a comprehensive vision of human rights helps to distinguish individual rights from other social opportunities of individual behavior.

For example, a certain politically justified and justified expedient, devoid of legal content, does not in itself create the rights of a person; because, as noted above, the right is not autonomous and self-sufficient. At the same time, in Ukraine, whose legal system is still based on the ideas of legal positivism, there is a widespread technical and legal understanding of law, and therefore of human rights, which places the criterion of their legislative consolidation in the first place. Thus, all this should be taken into account in the formation and practical implementation of the system of administrative and legal protection of individual rights.

Noteworthy is the widely held position in science on the distinction between human rights in objective and subjective terms. On the one hand, it seems quite logical to extend the universal approach to the distribution of the right to objective and subjective human rights. However, it should be borne in mind that this is an objective and subjective legal law, that is, a law originating from the state. Instead, as we have stated above, a substantial layer of individual rights belongs to his or her natural rights, which, to the same extent

as subjective legal law, require appropriate safeguards and protection, including in the administrative and legal order. Therefore, at the level of subjective human rights based on objective positive law, it is quite appropriate to distinguish subjective natural rights, which do not exist by virtue of a legal norm, but derive from the very nature of man and the life of society. We believe that such an algorithm is unduly complicated, while subjective natural rights of the individual should act as a full object of administrative and legal protection, regardless of their normative expression in the current legislation. Also, in support of the above, the position of the Constitutional Court of Ukraine of 02.11.2004 in the decision No. 15-rp / 2004 that «the right is not limited only by the legislation as one of its forms, but also includes other social regulators, in particular, norms morals, traditions, customs, etc., which are legitimized by society and predetermined by the historically achieved cultural level of society»[13]. On this basis, the objects of administrative and legal protection include those rights of the person, which are directly determined and expressed by the law, regardless of its specific form.

At the same time, individual rights are not completely independent, complete category and exist in the system of logical relations with legal personality, duties and other elements of the legal status of the individual. However, on the other hand, such indivisibility of the legal status of a person necessitates the need to consider not so much a person's rights in an objective sense, as his legal status as a whole (and also in an objective sense). Therefore, in view of the above, we can confidently state that in the context of administrative and legal protection of the individual, one must distinguish between legal status in the objective sense as a coherent category, subjective legal rights, as well as subjective natural rights; the reality of the latter, to which the aim of administrative and legal protection is precisely determined by the content of the former.

It is also necessary to distinguish subjective rights of the individual from the process of their realization. It should be noted that in this case, in fact, different subjective law and its use as a form of right-wing realization are actually identified. We emphasize that the implementation of rights is intended to ensure the implementation of the rules of law in life (legal status in the objective sense), including through the use (right realization) of subjective rights. That is, in a purely theoretical perspective, a state-protected act to exercise the ability of a particular individual to exercise a certain conduct goes beyond subjective law itself. However, for the sake of systematic administrative and legal protection of individual rights, it is necessary to take into account that protection is not only recognized as a person's ability to act

[13] Рішення Конституційного Суду України у справі про призначення судом більш м'якого покарання: від 02.11.2004 р., № 15-рп/2004 // Офіційний вісник України. – 2004. – № 45. – Ст. 2975.

in a certain way, but also his real ability to realize such opportunities available to him, which is appropriately included in the object. administrative and legal protection.

First of all, in this case, not only are the already substantiated characteristics of human rights already emphasized, but also their purpose in meeting the needs of the individual within the statutory limits is quite appropriate. Thus, the limits of the exercise of individual rights are important to protect them to the extent that their non-observance deprives the individual of the right to claim and protect their rights. In view of this, human rights, as an object of administrative and legal protection, act not only as a certain legally guaranteed possibility of behavior, but as an opportunity that is guaranteed by a person the right to satisfy his social needs in accordance with the law and order established in society and the state; providing the state with reality within the relevant specific legally formulated and socially justified and justified limits; the inseparability of subjective legal and natural rights from the process of their realization (use); protection by the state of individual rights.

It should be noted that the above list of features of personality rights is, of course, not exclusive and expresses, first of all, the essence of individual rights precisely as an object of administrative and legal protection. Accordingly, protection, including in the administrative and legal order, is one of the elements of ensuring the reality of the rights of the individual as a key component of his social position aimed at meeting the social needs of the individual in his relations with other persons, the state and society as a whole.

We also emphasize that in science, at the level with the rights of the individual, it is customary to highlight his freedoms and interests. However, the problem of distinguishing the rights, freedoms and interests of the individual is not only theoretical but also practical. In particular, for example, Part 5 of Art. 55 of the Constitution of Ukraine[14] provides for the right of everyone to "protect their rights and freedoms from violations and unlawful encroachments" by any means not prohibited by law. Thus, both rights, freedoms and legitimate interests, in essence, serve as separate specific objects of administrative and legal protection.

At the same time, unlike the rights of the individual, the category of human and citizen's freedoms is much less scientifically developed, among other things, due to the fact that, according to some scientists, the question of the demarcation of rights and freedoms in the aspect of the legal status of the individual is not fundamental, and they themselves substantively identical. In our opinion, in this case it is really impossible to overlook the single essence of human rights and freedoms as a measure of a certain possible behavior of the individual, however, one cannot agree with the view that rights and

[14] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

freedoms do not have any significant distinct differences. We believe that as a criterion for the delineation of the rights and freedoms of a person and a citizen, there should be a way of realizing a person and providing the state with such possible behavior.

From these positions, the rights of the person should be regarded as such aspirations to enjoy certain social benefits, the effective practical implementation of which requires an active purposeful activity of the state to guarantee and ensure the reality of this variant of possible behavior of the individual. An example of such rights is the constitutional right of a person to work, strike, rest, appropriate social protection (Articles 43-46 of the Constitution of Ukraine[15]).

Establishing the essence of the category of individual liberty also requires specific examples. Therefore, freedom of thought and speech, freedom of worldview and religion, freedom of creativity, envisaged by Art. 34, 35, 54 of the Constitution of Ukraine. The aforementioned possibilities, by the way of their realization, do not directly imply permanent state support activity, in other words, they may be exercised on condition that their state is not interfered with in their realization, which should provide the same non-interference by other persons or social institutions. At the same time, we should emphasize the peculiarities of the legislative technique that determine the formulation of the above-mentioned freedoms of the individual, in particular, regarding freedom of thought and speech and freedom of world outlook and religion. The Constitution of Ukraine stipulates that a person has the right to such freedoms. Thus, in this case, there is a peculiar combination of human rights and freedoms, which, in our opinion, is primarily due to certain historical and political factors, given the need for additional protection of the freedoms of the individual. In the legal field, for example, a person's right to freedom of thought and expression should be understood as a state-guaranteed opportunity for the person to think independently and independently of one's views, which, as a particular value of civil society, requires additional protection and protection from the state.

Thus, while the reality of human and citizen freedoms, unlike individual rights, is not so closely linked to the creation of conditions by the state for their realization, it, in turn, requires that the state be restrained and that other persons and social institutions be kept away from it. interference with the personal sphere of human freedom. That is why individual freedoms, as well as their rights, also need adequate protection, including in the administrative and legal order, however, somewhat in another plane, to ensure non-interference with the exercise of such freedoms.

[15] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

It should be noted that the relation between the rights of the individual and his interests, similar to the considered specifics of human and citizen's rights and freedoms, also remains rather ambiguous from the standpoint of understanding interests as an independent object of legal protection. To some extent, this is due to the fact that in the science of legitimate interest, there are generally fundamentally opposite views on the essence of the category of interest. From the above it is indisputable to deduce at least one thing – that interest in its essence represents a certain need of personality. However, on the other hand, one cannot agree with the simple identification of subjective rights and freedoms of man and citizen, which was more characteristic of Soviet law. In this regard, we draw attention to the fact that the subjective right in the first place is the opportunity to enjoy certain benefits, which may not always be supported by the corresponding real desire of the person to do so (for example, active suffrage). In turn, legitimate interests directly reflect the already formed and real existing relevant aspirations of the individual.

Another, no less significant, distinction between a legitimate interest and a person's right is distinguished in the reasoning part of the decision of the Constitutional Court of Ukraine No. 18-rp / 2004 of 01.12.2004: interest, "even under the protection of law or law, as opposed to subjective law, has no such legal capacity as the latter, because it is not secured by the legal obligation of the other party "[16]. Consequently, the category of legitimate interest, compared to the rights of a person, is characterized by a much lower degree of legal certainty and is only conditioned by the general content of objective law, which significantly complicates the protection of such legitimate interests. Thus, in the aspect of administrative and legal protection of personal rights, legitimate interest, as well as subjective law, is under the legal protection of the state, moreover, in accordance with the said decision of the Constitutional Court of Ukraine No. 18-rp / 2004 of 01.12.2004[17], it is an independent object of judicial protection and other remedies. However, in our opinion, legitimate interest, while not part of the content of the rights of the individual, but exists in parallel with it, they may coincide or flow into each other. Therefore, we consider it appropriate and appropriate to consider legitimate interests within the framework of administrative and legal protection of individual rights, which will facilitate a more complete and comprehensive investigation of the system of protection of individual rights, in particular in the activities of law enforcement agencies.

A separate issue is the relationship between the rights of the individual in general and the rights of the citizen as an object of administrative and legal

[16] Рішення Конституційного Суду України у справі про охоронюваний законом інтерес: від 01.12.2004 р., № 18-рп/2004 // Офіційний вісник України. – 2004. – № 50. – Ст. 3288.

[17] Ibid.

protection. In this regard, it should be noted immediately that Art. 55 of the Constitution of Ukraine[18] establishes the principle of protection of the rights not only of citizens, but also of all other persons, namely foreign citizens and stateless persons. At the same time, the term "person" in its meaning encompasses not only the concept of an individual, but also a legal entity, the issue of the protection of rights of which goes beyond the scope of our research.

Therefore, one should refer to the category of "citizen's rights", although there are several approaches to science in its understanding at once. The first of these is based on an additional element of a person's legal status – citizenship, which constitutes his or her permanent political and legal connection with a particular state. In this case, this term will not include foreigners and stateless persons, but who are equal with the citizens of Ukraine in the right to protection. Therefore, in terms of administrative and legal protection of individual rights, it is more appropriate to follow a second approach to understanding citizens' rights. We emphasize that in the part of administrative and legal protection it is necessary to speak a language, first of all, about the protection of the rights of citizens, that is, both citizens of Ukraine, foreigners and stateless persons. It is this broad generalized understanding of the category of citizens' rights that, on the one hand, denotes the rights (and freedoms) of all individuals, regardless of their nationality, and on the other hand, encompasses not only those special rights stipulated by the relevant public-legal status of the individual, but also its natural rights, that is, human rights.

In our opinion, beyond the protection of the rights of citizens, remedies may serve not so much the specificity of the infringed law as the competence of the respective law enforcement agency, which would ensure the completeness of consideration and resolution of issues of protection of citizens' rights, as well as the implementation of the adopted in this regard. solutions.

Thus, the rights, freedoms and legal interests owed to citizens of Ukraine, foreigners and stateless persons as a basic element of their legal status, provided with appropriate guarantees from the state, are the object of administrative and legal protection. The administrative and legal mechanism of protection plays an important role in ensuring the reality of such citizens' rights as one of the key factors for the formation of the rule of law and the development of civil society in Ukraine.

Today, the protection of citizens' rights is understood as one of the indispensable features of the modern state, ensuring the reality of human and citizen's rights and freedoms is a kind of indicator of the maturity and maturity of such a state. Certainly, this position is the result of the gradual formation of state-legal views towards the recognition of human rights, freedoms and

[18] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

legitimate interests of the highest social value, a guideline in the activities of the state and all public institutions.

Humanistic theories of civil society, natural law, social and democratic state, as well as the rule of law, play an important role in this. It should be noted that the latter is a qualitatively new model of the state, the basis of which is the priority of human and citizen's rights and freedoms, their reality, the provision of sufficient and adequate legal means, the state guarantee. Thus, the protection of human and citizen's rights and freedoms is conceived as one of the key activities of the rule of law, its pivotal function, which permeates the essence of the whole array of public, including state-power, relations.

In this regard, the constitutional foundations of the state system in Ukraine clearly state that Ukraine is not only a sovereign and independent, democratic, social, but also a rule of law (Article 1 of the Constitution of Ukraine of June 28, 1996 No. 254k / 96- BP[19]). At the same time, the practical implementation of this constitutional norm of a declarative nature is substantially complicated by the contradictions of the state government, the fragmentation of legal regulation and the lack of sufficient political will to build a truly rule of law in Ukraine. First of all, we will note that the ideas that underpin the concept of the rule of law today have been developed since ancient times and to this day. On the one hand, this has led to the formation of a more or less holistic view of such a phenomenon as a rule of law and, in particular, an understanding of the protection of citizens' rights as its defining feature. However, on the other hand, it also results in the current and to this day controversy regarding approaches to the perception of the diversity of the rule of law, which in turn affects the definition of the place of protection of citizens' rights in the substantive expression of the rule of law. In addition, the current problem of the relation of the rule of law with the democratic state, the welfare state and civil society cannot be overlooked. The above shows its importance in terms of the characteristics of the category of human and citizen's rights and freedoms, the substantiation of their leading role in the modern rule of law, the protection of which is understood as one of the main duties of such a state.

Today, the general features of the state as a political organization of society by theorists of law include, first of all, the existence of public power, territory, sovereignty, apparatus of government, apparatus of coercion, taxation, etc. Indeed, considering the state solely from the standpoint of institutional and formal criteria, protection of human rights cannot be considered as an indispensable feature in general of any state that emerges in the course of its evolution as a result of changes in the system of social relations itself.

[19] Конституція України: від 28.06.1996 р., № 254к/96-ВР // ВВР України. – 1996. – № 30. – Ст. 141.

The rule of law is a qualitatively new social phenomenon on par with the state in general, which is manifested also in the aspect of protection of human and citizen's rights and freedoms. It should be noted that considering the state as a historically changing phenomenon whose features and functions change with each new socio-economic formation (civilization), the protection of citizens' rights cannot be undoubtedly claimed as the value of each state at all. For example, for states of slave-owning, feudal and bourgeois type, protection not only and not so much of human and citizen's rights and freedoms as defending the interests of a separate economically and politically dominant social class (slave-owners, feudal lords, capitalists) is more characteristic. In particular, the bourgeois states, which occupy a prominent place on the geopolitical map of the world, are characterized by the narrowing of their social base, economic and political monopoly, which leads to the recognition, assertion and protection of the interests of only the monopolistic bourgeoisie.

It is quite ambiguous to defend the rights of citizens in the aspect of the socialist state, the experience of practical construction of which even more recently undermined the authority of the ideology of socialism, among which values including the rule of rights and freedoms of man and citizen. In this case, scientists often adhere to diametrically opposite points of view. Certain thing is that this divergence in the characterization of the functions of the socialist state is caused, first of all, by a certain ideological dissonance, since on the one hand, the denial of the bourgeois theory of the rule of law leads to the denial and protection of the rights of citizens as its sign, which under conditions of the socialist capitalism cannot characterize a socialist state. Therefore, outside the field of Soviet ideology alone, the construction of the socialist state in its "pure" form, as well as the concept of the rule of law, requires recognition of the social significance and assurance of the rights and freedoms of the individual and citizen, their proper protection and protection by the socialist state.

At the same time, in our opinion, it would be more appropriate to speak not so much about the realities of the modern world as socialist states but as post-industrial states that embody capitalism imbued with ideas of the social value of each person, the guarantee, protection and reality of his rights and freedoms. In doing so, we must disagree with the definition of undemocratic regimes as regimes under which state power is exercised through the restriction and violation of formally proclaimed human rights and freedoms. First and foremost, undemocratic states are characterized by a violation not only of the formally proclaimed, but also, not least, of the natural rights and freedoms of man and citizen. Moreover, not only the facts of violation of such human rights are decisive, but also the absence of legal mechanisms and other guarantees for their implementation, an effective, state-guaranteed system of

protection of human and citizen's rights and freedoms. And this is contrary to the essence of the rule of law, which underlies the rule of law and the mutual responsibility of the individual and the state.

Therefore, recognition, guarantee and, as a consequence, protection of human and citizen's rights and freedoms characterize a democratic state, since the wide and real participation of individuals and their associations in the organization of public and state life prevents possible violations of human rights, directs the activity of state institutions in the the channel of securing and protecting such human rights and freedoms. Of vital importance in substantiating the protection of the rights and freedoms of man and citizen, as an indispensable feature of the modern rule of law, is the concept of natural law, which is to some extent opposed to the theory of positive law. Accordingly, a state has no right to restrict the rights and freedoms of a person and a citizen, solely on the basis of a voluntary restriction of which, according to social contract theory, such a state does exist. That is why the public welfare should be a guideline in the activity of the state – the rights, freedoms and legitimate interests of the individual (not only natural but also acquired), ensuring the observance, realization and protection of which is the main social goal of the state.

On the other hand, the inferiority of law, its non-monopolization by the state proclaimed by the natural-law concept, directly determine the primacy of the right over the state, its connection not only by law, but also by natural human rights (which reflect human values), which embodies such a conceptual basis rule of law as the rule of law over the state.

At the same time, the protection of citizens' rights within the concept of positive law cannot be denied in full. It should be noted that the latter also adheres to the primacy of the right over the state, however, with the sole observation that such a right is conceived of as state law, which is formed by the state itself. Therefore, positivism implies that the respective rights and freedoms of the individual and the citizen will be subject to state protection, provided that they are legally enshrined and guaranteed, but completely limited by a positive law adopted by a state that is bound by nothing but its own in matters of the protection of citizens' rights.

Thus, the importance of the concepts of natural or positive law in protecting the rights of citizens is not so much in its substantive side as in substantiating the source of origin of human and citizen's rights and freedoms and protection as their binding legal guarantee. It should be noted that the protection of citizens' rights is directly related not only to the rule of law, but also to civil society, the main features of which are the control of power of the society, the person and his legitimate interests as the main value in society and the state, equality and equal protection of human rights in economic, spiritual and political spheres. Therefore, it is possible to speak about the commonality

of civil society and the rule of law with such features as the recognition of human rights, freedoms and legitimate interests of the highest social value, general humanistic principles, state control of society, self-restraint of power, rule of law, mutual responsibility of the state and the individual. All this, in turn, lays the foundations for the protection of citizens' rights as a sign and a fundamental function of the rule of law.

Therefore, in the aspect of the protection of citizens' rights, it is necessary to establish a fairly close link between civil society and the rule of law. However, in science there is no single point of view regarding the relation between civil society and the rule of law, the priority and priority of one of these categories. We proceed from the fact that the phenomenon of the rule of law is such that positively contributes to the formation and development of civil society, acts as its political basis. It should be noted that the dialectical unity of civil society and the rule of law is expressed in the fact that the latter, on the one hand, determines, and on the other, itself determined by civil society. This is manifested in the unity of their features, in particular, in a somewhat generalized form it can be argued that the signs of the rule of law constitute a separate segment of civil society, which, at the level with the economic and spiritual basis, and determine its essence. In other words, the rule of law encompasses the political realm of civil society.

Civil society envisages a diversity of state-mediated relationships between free and equal individuals in a market environment and democratic rule of law. We emphasize that only a rule of law capable of self-restraint, guided by the rule of law in its activities, and recognizing, guaranteeing and protecting natural human rights, is truly capable of actually securing similar, unmediated social relations, freedom, equality and other rights of each human rights, the free formation and functioning of the economic sphere of society, democracy as a starting point for the management of public affairs. Thus, the formation of the rule of law is an integral element of civil society, which in turn also serves as a prerequisite for the effective functioning of the rule of law.

Thus, their unity, interconnectedness and interdependence, that is, both civil society and the rule of law, are different aspects of the same social reality. The protection of citizens' rights is not only one of the fundamental provisions of the rule of law as a political foundation of civil society, but is extrapolated in its economic and spiritual components.

Of particular importance is the fact that under the conditions of civil society, as in a democratic state based on the concept of natural law, a person has the right to demand from the state the protection of his rights, freedoms and legitimate interests. In other words, the protection of the rights and freedoms of the individual and the citizen is seen not as a privilege granted by the state, but as a natural right and a universal democratic value. And this, in turn, directly corresponds to the definition of the rule of law as "an

organization of political power, whose activity is based on the recognition and real protection of human rights and freedoms, the rule of law and mutual responsibility of the individual and the state"[20].

It should be noted that the protection of citizens' rights characterizes not only a democratic and rule of law in the conditions of civil society, but, as a consequence, also a social state as a post-industrial state. In general, in our opinion, the social nature of the state can be said, based primarily on the principle of social orientation of the state, the rule of law as the highest justice, the recognition of the priority of human rights and their freedoms, which is a clear expression of the protection of citizens' rights. At the same time, it should be noted that some scholars do not consider the protection of citizens' rights among the central features of the social and legal state separately. At the same time, it cannot be overlooked that the absence of an effective and efficient system of protection of human and citizen's rights and freedoms will testify to them, for the most part, only of a formal nature, under which it is not possible to speak of any social orientation of the state.

It should be emphasized that the rule of law, as a complex socio-legal phenomenon, can be characterized from different sides through the lens of many phenomena and processes. For example, in the political science dimension, the rule of law is defined as the legal form of organization and activity of public-political power, created on the basis of legitimacy, separation of powers, which builds its relations with citizens and society based on the presumption of the rule of law. In this regard, it should be noted that this definition is not sufficiently informative and does not reflect all the main features that make up the essence and content of the rule of law phenomenon, in particular, the place in the rule of law of rights and freedoms of a person and a citizen, their protection and protection are not revealed at all.

In general, there are at least two approaches to understanding the rule of law, which is considered either as a legal form of organization and exercise of political power, or as an appropriate sovereign political organization. At the same time, in the aspect of the researched issues of protection of the rights of citizens as a sign of the rule of law, we find it more expedient to define the signs and principles of the rule of law. So, first of all, it can be concluded that at the level with the principles of the rule of law, separation of powers, mutual responsibility of the individual and the state as an indispensable characteristic of the construction of the rule of law is also considered a priority of human and citizen rights and freedoms. At the same time, as we have already noted, the principle of the state's connection with the rights and freedoms of a person and a citizen is defined as essential in the understanding of the rule of law,

[20] Загальна теорія держави і права: підручник [для студентів юридичних спеціальностей вищих навчальних закладів] / М.В. Цвік, В.Д. Ткаченко, Л.В. Авраменко та ін.; за ред. М.В. Цвіка, О.В. Петришина. – Х.: Право, 2009. – 584 с.

since it is, in essence, an important factor of self-limitation of such a state and the formation of civil society.

On the other hand, as regards the rights and freedoms of man and citizen in relation to the rule of law, scholars tend to refer to their "recognition", "observance" and "realization". In our opinion, the participation of the rule of law should be somewhat broader and should consist not only of recognizing the legal definition of the exercise of human and citizen's rights and freedoms, but also of ensuring their reality. It should be noted that ensuring the reality of human and citizen's rights and freedoms requires the formation of special social and legal mechanisms for their realization, protection and protection. Therefore, in the absence of adequate measures to protect and protect against the prevention of violations and restoration of already violated rights of citizens, as well as the responsibility of perpetrators, there can be no question of a truly rule of law, since it violates the principles of mutual responsibility of the individual and the state, the priority of human rights and freedoms and citizen, social orientation of the state and the rule of law.

Therefore, the principle of ensuring the rights and freedoms of a person and a citizen by the state is considered to be properly included in the characteristic of the rule of law. At the same time, there is no consensus among scientists regarding the understanding of the concept and relation of these categories of protection and protection, including in relation to citizens' rights. It is noted that protection in a legal sense means a positive, static state of law, aimed directly at protecting the subjective rights and legitimate interests of citizens from possible offenses. In turn, the protection of citizens' rights is often interpreted as an active activity aimed at preventing, ending the offenses and restoring the violated rights of citizens.

In our opinion, the differentiation of categories of protection and protection matters except in the aspect of establishing their deep content and methods of implementation, while considering them in the perspective of features and functions of the rule of law, such differentiation is deprived of its principle, given the common purpose and essence of such varieties. ensuring the rights and freedoms of man and citizen.

Therefore, in this case, it is not entirely correct to claim that the primary purpose of protection is to prevent offenses, and remedies include both the restoration of violated rights, as well as the prevention of human rights violations, and their restoration, together with legal responsibility, all in their own right. collectively, serves the purpose of protecting the rights of citizens in the rule of law. Therefore, regarding the features and functions of the rule of law, the various mechanisms and forms of legal protection and protection of human and citizen's rights and freedoms are embodied in a holistic direction of state activity – protection of citizens 'rights, which is united by the focus of all means of the rule of law mechanism on ensuring the reality of citizens' rights.

It should be noted that under this approach not only the protection but also the restoration of the violated rights and freedoms of the individual and the citizen are in fact distinguished from the protection of the rights of citizens, the content of which remains definitively uncertain. In fact, none of these elements of human and citizen's rights and freedoms can be said to be unrelated to their protection as a state guarantee of the reality of citizens' rights. Important in the aspect of the rule of law is the understanding and practical implementation of the protection of citizens' rights not only as one of its features, but also as a fundamental function of the rule of law. In general, the functions of the state are represented as the main directions and types of its activity, which express the essence and social purpose of such state in the sphere of public administration and state governance. It should be noted that we must distinguish between the general functions of each state as such (economic, political, defense function) and functions that directly derive from the basic socio-political, legal and spiritual principles and laws that underlie a particular state. The same applies to the functions of the modern democratic rule of law, which, as already stated, is a kind of product of the historical development of society and the state. Accordingly, it is possible to state at least such major functions of the rule of law as ensuring democracy, the rule of law and protecting the rights of citizens, which reflect the qualitative characteristics of the rule of law in comparison with other types of states. All of the above comes down to the category of the reality of human and citizen's rights and freedoms as the central and general goal of the rule of law, to which both democracy, the rule of law and the protection of citizens' rights are oriented. In other words, the protection and state of protection of citizens' rights as an indispensable factor of their reality in the rule of law is not isolated, but permeates all directions and spheres of state activity.

In this regard, first of all, it should be noted that the exercise of the protection of human and citizen's rights and freedoms is connected with the full existence of a person not just as a "being", but as an individual and a member of society. In addition, in our opinion, it should be not so much a "process of exercising rights and freedoms" as their actual reality and implementation as a result of state-guaranteed measures for the protection and protection of such rights and freedoms of man and citizen, which, respectively, is the purpose of this feature. However, in our opinion, this list of functional areas of protection of citizens' rights will be incomplete without including it and bringing the perpetrators to justice, as well as eliminating other negative social consequences. The latter is explained by the specific essence of the protection of the rights of citizens as the main function of the rule of law, which aims at restoring not only the ability of an individual to exercise their rights freely, but also the violation of social relations, the achievement of a certain social justice, including through means of legal responsibility and

overcoming negative social consequences of violations of human and citizen's rights and freedoms. In addition, the definition of the protection of the rights and freedoms of the individual and the citizen must include its ultimate purpose, which is to ensure the full reality of such citizens' rights.

In addition, based on such features of the rule of law as the rule of law and the concept of natural law, it would be more right to characterize the protection of human and citizen's rights and freedoms as being exercised not so much in a "legal way" but in accordance with a non-monopolized state law. A separate issue of understanding the protection of citizens' rights as a feature and function of the rule of law concerns forms whose pluralism, in our opinion, is an essential characteristic of a full-fledged system of protection of human and citizen's rights and freedoms. One of the most accessible and rapid forms of protection of citizens' rights is the administrative and legal form. Yes, its essence is to apply measures of administrative coercion aimed at restoring, recognizing the rights and ending violations of citizens 'rights, committed by public authorities on citizens' declarations or at the initiative of competent authorities. At the same time, in the context of a modern democratic rule of law, the pluralistic nature of the protection of citizens' rights is of particular importance, which implies the equal functionality and effectiveness of all forms and methods of protection of human and citizen's rights and freedoms, the freedom of the citizen to choose and apply the forms of protection of his or her own. right.

Therefore, in summarizing the issues of understanding the function of the rule of law on the protection of citizens 'rights, we note that it should be understood as a system of measures to prevent violations of citizens' rights, control and supervision of their observance, confirm or restore the appealed or violated rights, ensure the legal liability of offenders and eliminate other negative social consequences of violations of citizens' rights implemented by organizational and legal means in accordance with the principles of the rule of law by public bodies Ada, public formations and citizens to ensure the reality of human rights.

The function of protection of the rights and freedoms of man and citizen, aimed at the realization of the social purpose of the rule of law, occupies a prominent place in the system of its functions, has systemic significance, extrapolating in all directions of the activity of the modern rule of law. Therefore, we emphasize the dialectical unity of the protection of the rights and freedoms of the individual and the citizen with all other features of the rule of law, which makes it possible to highlight the crucial role of the protection of the rights of citizens in the formation and functioning of the rule of law.

Thus, the protection of citizens' rights is in fact a complex multifaceted integrative feature and function of the modern state, while characterizing it through the lens of the structures of a democratic, legal and social state,

natural law and civil society. All this testifies to the fundamental importance of protecting the rights of citizens for the social development and formation of a modern rule of law, ensuring and realizing its social purpose in guaranteeing the reality of human and citizen's rights and freedoms.

Administrative and legal protection is established with regard to the rights of citizens of Ukraine, foreigners and stateless persons, which covers not only the special, conditioned by the relevant public-legal status, but also the natural rights and freedoms of all individuals regardless of their citizenship. The essence and content of the principles of the legal status of a person and a citizen (inviolability, universality, universality, freedom, equality, dignity, justice), as well as guarantees of legal status, are determined precisely by human rights, the need to ensure their effective implementation.

The rights of the individual as an object of administrative and legal protection are characterized by the following basic features and properties: it is a multifaceted social phenomenon that covers legal, moral, political and philosophical content; it is a measure of possible behavior in concrete and historical conditions of social development; it is a fundamental element of the legal status of the individual, the inalienability of rights from duties; the conditionality and expression of the right, regardless of its specific form (not only in the legislation), as well as legal certainty and official character; the purpose is to meet the social needs of the individual in accordance with the law and order established in society and the state; providing the state with reality within the relevant specific legally formulated and socially justified and justified limits; the inseparability of subjective legal and natural rights from the process of their realization (use); protection by the state of individual rights.

Administrative and legal regulation is manifested in relation to all means and methods of administrative protection of citizens 'rights, defining the organization of the activity of executive bodies, which exercise the protection of citizens' rights; the procedure and cases of application of administrative coercion and administrative responsibility; the system of administrative justice and other procedural aspects directly related to the organization of administrative protection of human and citizen's rights and freedoms.

The priority areas of administrative and legal regulation should be the normative expression of the principles of coordination in the relations between state authorities and citizens, the formation of modern administrative and legal bases aimed at establishing the legal regime of real assistance to the state in the exercise and observance of human and citizen rights and freedoms, as well as the embodiment of relations in the system of protection of citizens' rights. In order to guarantee the true reality of the rights and freedoms of citizens under the rule of law, the provision of these relations of coordination with special means of administrative appeal and judicial protection of violated rights and freedoms of citizens is actualized.

Concerning the category of public administration, the protection of citizens 'rights is conditionally made up of three segments – first, it is the organization of the system of protection of citizens' rights as an element of public administration (organization of activities of competent authorities, definition and organizational support of its legal mechanisms, control over the legitimacy of such protection), secondly, the coordination of the protection of citizens 'rights in public administration (between authorized public authorities and citizens), and third, the protection of citizens' rights outside the sphere of government governance (self-defense as a separate form of protection of citizens' rights).

CONCLUSIONS

The importance of the protection of citizens 'rights is manifested in their place in the general mechanism of protection of citizens' rights, in particular, in creating the conditions and ensuring the reality and effectiveness of existing forms and methods of protecting the rights, freedoms and legitimate interests of the individual and the citizen. Remedies are an indispensable element of preventing and ending violations, as well as restoring citizens' rights.

Means of protection of citizens 'rights are a complex of legal phenomena (instruments, measures, actions, etc.) carried out in accordance with the legislation in order to ensure the organization and implementation of protection of citizens' rights, including through the application and use of appropriate forms and methods of protection aimed at preventing and termination of violations, as well as restoration of rights, freedoms and legitimate interests of the individual and the citizen.

The system of administrative remedies consists of different in nature and purpose of legal phenomena, instruments, measures, actions carried out by different entities and at different stages of human rights activities, which jointly solve the problems of prevention and termination of violations, as well as restoration of rights, freedoms and the legitimate interests of the individual and the citizen. Systematic administrative remedies, in turn, requires not only their organic unity, but also a consistent combination and streamlining of administrative legal forms and methods of protection.

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