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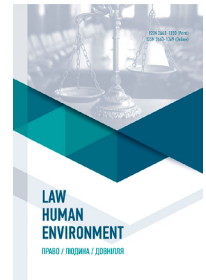
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Adaptation to Climate Change in Agriculture of Ukraine: Separate Aspects of Legal Support

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Abstract

The article is devoted to the analysis of separate aspects of legal support of adaptation of agriculture of Ukraine to climate change. The relevance of the study is conditioned upon the fact that global climate change is one of the most acute problems facing humanity today. The aim of the article is to analyse the current state of legal regulation of issues related to the impact of climate change on agriculture at the international, European and national levels, and to develop practical recommendations for implementing measures to adapt to climate change in agriculture. The methodological basis of the study was the dialectical method of scientific knowledge, general scientific (formal-logical, methods of analysis and synthesis) and special-legal method (formal-legal). The article analyses international, European and national legislation governing climate change and its impact on agricultural production. The study found that the most vulnerable to climate change industries is agriculture, which is currently negatively affected by climate trends, which in modern conditions can not be avoided. In this regard, the problem of climate change requires the prioritisation of adaptation measures to minimise losses in agricultural production. At the same time, adaptation involves the creation of new institutions, the introduction of new policies, the inflow of new funds, and, most importantly — new forms of thinking. The need to accelerate the implementation of measures to adapt to climate change in the development of national agricultural policy in parallel with the policy to prevent climate change. Practical recommendations are offered to the state executive bodies on the implementation of tasks related to the adaptation of agriculture to climate change. Emphasis was placed on the need to develop measures aimed at implementing “climate-smart” agriculture in accordance with the Climate Smart Agriculture (CSA) system, and preparing zonal recommendations for adapting agricultural production to climate change and combating desertification and drought. The necessity of creation of the system of scientific and methodical support of adaptation of separate subsectors of agriculture and the mechanism of support of realisation of adaptation strategies for separate groups of agricultural commodity producers is defined

Keywords: climate change, adaptation measures, agricultural production, “climate-smart” agriculture, agricultural legislation, legislation in the field of climate change prevention

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Introduction

Global climate change has become one of the most pressing issues facing human attention. The key international documents regulating climate change are, first of all, the UN Framework Convention on Climate Change 1992 [1], the Kyoto Protocol to the UN Framework Convention 1997 [2] and the Paris Agreement 2015 [3]. In 1988, the Intergovernmental Panel on Climate Change (IPCC) was established to assess the risk of climate change, and its main focus is on preparing regular Climate Change Assessment Reports. According to the forecasts of the Intergovernmental Panel on Climate Change presented in the Fifth Assessment Report [4], the consequences

of further climate change will be catastrophic and will affect all continents. Europe is likely to have an increase in average and maximum temperatures, including an uneven distribution of precipitation.

Climate change has been observed in Ukraine for more than a decade. Like many other countries, Ukraine faces and will continue to face a variety of challenges related to these changes. Thus, for the last twenty years, each subsequent year in Ukraine has been warmer than average, and 2020 has become the hottest year in Europe and Ukraine. The air warmed up by 2.8°C higher than the average for 1961-1990 (Fig. 1).

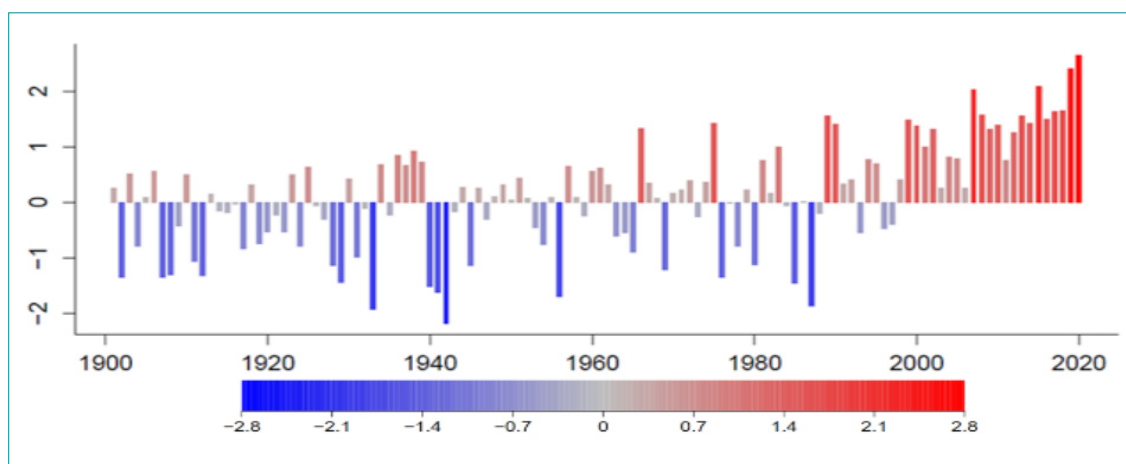


Figure 1. Change in annual temperature in Ukraine since 1901 Years warmer than the average in the base period of 1961-1990 are marked with red bars, and colder years are marked with blue bars. The larger the column, the greater the difference from the long-run average

Source: values are calculated based on Berkeley's Earth temperature data set [5]

The consequences of climate change are becoming so significant and dangerous that climate change is no longer perceived only as an environmental problem, but also as an economic and social one. Therefore, at the World Economic Forum in Davos in 2016 [6], climate change was recognised as a global environmental threat that has more devastating consequences than weapons of mass destruction, and emphasised their unprecedented impact on slowing economic development, weakening social cohesion and security.

Since 2010, Ukraine, more than ever, has experienced a number of consequences related to climate change. These are severe droughts, major floods and devastating fires, and as a result, all key socio-economic sectors have been affected by extreme weather events. According to scientists, climate change has the greatest impact on the productivity of those industries that are directly dependent on natural resources, the state and functions of ecosystems, water and weather conditions. This is, first of all, agriculture. Agriculture is also identified by the Intergovernmental Panel on Climate Change as one of the most vulnerable sectors of the economy to

climate change [7]. Research data emphasise that without the necessary adaptation measures, climate change can reduce agricultural growth by 30% by 2050 [8].

The strength and severity of the consequences will depend mainly on the natural and socio-economic conditions of each region, vulnerability to climate change, the ability of each country to adapt and respond to the effects of climate change. Thus, it is now vital for the entire world community to adopt and implement effective strategies to counter further rapid climate change and adapt to future climate change, considering the already accumulated knowledge and experience in this field.

Given that climate change will affect all industries, all countries of the world, and in particular each sector will be guided by its own interests and opportunities, which may sometimes contradict each other (a classic example is the opposition "agricultural progress — environmental protection"). It is therefore crucial that national governments take the lead in addressing this issue and setting a coordinated approach. This is the focus of all official acts of the European Union on Adaptation (EUs White Paper on Adaptation) [9, p. 5].

The problem of climate change has acquired global significance and requires the prioritisation of adaptation measures, both by the Government of Ukraine and citizens. However, the complexity of this problem in terms of unpredictability of the consequences of further rapid climate change, the uneven regional distribution of the effects of climate change significantly complicate not only scientific analysis but also consensus in effective policy making at regional and global levels. Adaptation to climate change requires the creation of new institutions, the introduction of new policies, the introduction of new tools, and most importantly — new forms of thinking about solving this problem. This process is not easy, and on the one hand, will cause many difficulties, but, on the other hand, investing in solving adaptation problems will lead to long-term benefits.

The impact of climate change on the development of agricultural production has been studied by many foreign and Ukrainian scientists who have formed their approaches to this issue. For example, foreign experts in the field of agronomy J.E. Olesen and M. Bindi analysed the effects of climate change on the productivity of EU agriculture. In their study, researchers drew attention to the positive and negative effects of climate change on agricultural production, emphasising the need to support the adaptation of European agriculture to climate change by encouraging the flexibility of land use and farming systems [10]. The impact of climate change on the water supply of agriculture in the EU and Ukraine has been studied by foreign and Ukrainian scientists I. Didovets, V. Krysanova, S. Snizhko and others. Scientists have concluded that it is important to develop adaptation strategies at the regional and national levels based on modern scientific knowledge for various industries, and especially for agricultural production [11]. The effects of global climate change on agriculture and the environment have been the subject of research and foreign scientists D. Li, J. Yuan, R.E. Kopp. Scientists have analysed the impact of extreme heat and precipitation on agricultural production and proposed a system of adaptation measures [12]. Undoubtedly, these studies have made a significant contribution to the development of a mechanism to combat and prevent the effects of climate change on agriculture, but some aspects of the problem remain relevant. That is why the presented study focuses on the characteristics of the system of legal support for climate change and the development of legal measures to adapt agriculture to the effects of climate change.

The aim of the article is to analyse the key international documents regulating climate change and its impact on agriculture, EU documents related to the policy of adaptation of agriculture to climate change, including the normative legal acts of the Ukrainian legislation adopted in fulfillment of international obligations on counteraction to further climate change and adaptation of agriculture to its inevitable consequences.

Materials and Methods

During the research, a set of methods and techniques of scientific knowledge was used, which allowed carrying out a comprehensive and objective analysis of the subject of research — philosophical and philosophical, general and special scientific methods. The application of the dialectical method allowed studying the trends of climate change and its impact on political, economic, social and environmental factors of society. The formal-logical method contributed to the characterisation of the content of system-forming concepts and constructions of the subject of study, such as “climate change”, “adaptation measures”, “agriculture”, “agricultural production”, “climate-smart” agriculture, etc. The method of analysis was used in the study of scientific achievements of scientists on the research topic, and in the study of international, European and national legislation governing climate change. Using the method of synthesis, the place of normative legal acts regulating relations in the field of combating and preventing the consequences of climate change in agriculture in the legislation of Ukraine has been established. The formal-legal method contributed to the clarification of the content of legal norms of the relevant legislation and the development of proposals for its improvement.

Characterisation of negative and positive factors of climate change affecting agriculture in Ukraine was the initial stage of the study. It was found that increasing the number and intensity of droughts in combination with other negative factors of anthropogenic impact can lead to the expansion of the zone of risky agriculture and desertification in Ukraine. Cases of extreme rainfall, which increase the frequency of rain floods, pose a serious threat to Ukraine’s agriculture and can cause significant damage to agricultural production. As a result of climate change, there have also been changes in the structure of agriculture, sown areas and crop yield levels. The second stage of the study analysed international and European legislation in the field of combating and preventing the effects of climate change on agriculture and food security in Ukraine, including implemented adaptation actions in this part. Particular attention is paid to the characteristics of the European Green Course — a system of sustainable practices of the agricultural sector, such as organic production, precision farming, agri-environment, agroforestry, compliance with animal welfare standards and more. At the final stage of the study, attention was paid to the analysis of the current state of legal support for the adaptation of agriculture to climate change in Ukraine. The content of the main normative legal acts in this part was revealed, legal gaps and conflicts were identified. The directions of improvement of legal measures on adaptation to climate change within the framework of development of the national agrarian policy in parallel with the policy on prevention of climate change are offered.

The study analysed international and European

documents regulating climate change and the system of adaptation measures in the field of agriculture, in particular: the UN Framework Convention on Climate Change 1992 [1], the Kyoto Protocol to the UN Framework Convention 1997 [2], The Paris Agreement of 2015 [3], the Coronavian Programme of Joint Work on Agriculture 2017 [13], the Food and Agriculture Climate Change Strategy of the United Nations Food and Agriculture Organisation 2017 [14], the EU Strategy for Adaptation to Climate Change 2021. [15], and regulations of national legislation in this area, used the results of assessment reports on climate change prepared by the Intergovernmental Panel on Climate Change, materials of information and analytical documents on the specific features of agricultural production in climate change.

Results and Discussion

Agriculture is one of the main economic activities in Ukraine, but recently, unfortunately, climate change has significantly affected this sector, both negatively and in some cases positively. It is worth emphasising that the negative aspects mostly prevail.

Global climate change poses many threats to agriculture, including declining productivity, loss of stability of production and income of agricultural producers. Changes in weather conditions (increase in

air temperature, unequal distribution of precipitation, which in the warm period are draining, inefficient accumulation of moisture in the soil) causes an increase in the number and intensity of droughts. In combination with other negative factors of anthropogenic impact, this can lead to further expansion of the zone of risky agriculture and desertification [16, p. 14].

The recurrence of droughts in different agro-climatic zones of Ukraine is 20-40%. Over the last 20 years, droughts have occurred almost twice as often [17]. Thus, in 2003 and 2007, the drought in Ukraine caused losses in grain production, which are estimated at 3 billion euros [18]. During the 2010s, agricultural production in Ukraine conditioned upon low rainfall and severe droughts has repeatedly suffered significant crop losses [19]. In the period from September 2019, higher than average temperatures and long-term deficit of precipitation in the south-west and in the center of Ukraine, caused a drought with a corresponding decrease in yield [20; 21]. Such crop losses will continue, with serious negative consequences for global food security.

There is a dangerous tendency to increase the recurrence of droughts in the area of sufficient humidification of the atmosphere, covering Polissya and the northern regions of the Forest-Steppe [22] (Fig. 2).



Figure 2. In 2020, the so-called "Semeniv Desert" was formed on agricultural lands in the Semeniv and Nizhyn districts of the Chernihiv region

Source: [23]

At the current rate of development of droughts in 10-15 years, part of the territory of Ukraine (about 3 million hectares of arable land) may become unsuitable for agricultural production [16, p. 16], in particular, this applies to part of the territory of Zaporizhia, Kherson, Mykolaiv and Odessa regions.

At the same time, contrary to the estimates of climatologists who predicted a decrease in precipitation, over the past 20 years the average annual rainfall has not decreased [24], and over the past 5 years there was

a very uneven distribution over time and across Ukraine [25, p. 18]. In addition, the nature of precipitation is changing, namely the number of inefficient heavy rains, which for the most part after long periods of drought do more harm than good. Extreme rains can increase the frequency of rain floods. Annual flood losses in Europe are expected to increase fivefold by the 2050s and seventeenfold by the 2080s. This requires the development of flood resistance by states [26]. Ukraine is currently facing such a problem. In Ukraine today, river floods pose

a serious threat throughout the country, as they can cause significant damage and endanger people's lives.

The forecasts contained in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change indicate the negative impact of climate change on crop yields. Thus, in regions with tropical and temperate climates, an increase in temperature by 2°C without adaptation to it will negatively affect the yield of wheat, corn, soybeans, rice. Although it should be noted that in some regions it will have positive consequences. In general, the increase in global temperature by 4°C will be a risk factor for global food security [16, p. 13].

As a result of intense warming in recent decades, there have also been changes in the structure of agricultural production in Ukraine, sown areas and their yield levels. Analytical data show that the steppe zone, where 46% of grain crops are concentrated, now gives only 35% of total grain production against 45% in 1990. The average grain yield in this area over the past five years, despite its growth of 21% across the country, decreased from 35.8 c/ha in 1990 to 32.2 c/ha in 2017-2019. In Polissia and in the Forest-Steppe there was an increase in yield from 30-37 c/ha to 48-53 c/ha. Conditioned upon this, 65% of grain is produced in these areas, although the share of crops in this group of crops is only 53% [27].

In addition to a significant territorial redistribution of crop structure, there is a change in the dynamics and growth rates of their yields. Thus, the average yield of cereals and legumes in the Forest-Steppe and Polissia increased by 46-61%, and in the Steppe decreased by 10% [28]. A similar situation is observed with regard to changes in the level of yields of other major crops. The general increase in the yield of grain and legumes in Ukraine was due to the wetter areas of the Forest-Steppe and especially Polissia.

Analysing climate change in Ukraine, it should be noted that this process in general leads to loss of fertility and potentially critical decline in yield, shift of sown areas from south to north conditioned upon rising temperatures. Significant warming in winter, slight freezing of the soil and the early onset of spring processes contribute to an increase in the number and area of pests and diseases of crops. According to experts, in the period 2011-2016, they increased by almost 25% compared to previous years and continue to increase exponentially [25, p. 25]. Probable and further migration of pests, not typical for the territory of Ukraine, increase in their number and number of generations.

At the same time, the increase in the average annual temperature may have a limited positive impact on agricultural production in Ukraine. These are improving conditions and shortening harvest times; the possibility of effective introduction of late-maturing varieties of agricultural crops that require more thermal resources; improving wintering conditions for crops and perennial grasses; improving the efficiency of fertilizer application, etc.

In addition to the possibility of zoning and growing crops typical of more southern regions [10], climate change can increase grain yields and productivity in the range of 10-20% for early spring crops by 2050 and up to 20-46% of winter crops in the period from 2030 to 2040 [29]. Thus, a study of the impact of climate change on the cultivation of major crops shows that in the next 10-20 years, favourable conditions for growing winter wheat as a result of shifting sowing dates by 20-40 days and more efficient use of autumn growing conditions, which will lead to increase overall productivity by 20-40%; in the northern regions sunflower and corn will be sown, and grain of productive medium-ripe and late varieties [16, p. 17].

At the same time, agriculture in the steppe and forest-steppe zones will require additional irrigation, which, in turn, will lead to a reduction of already scarce water resources [11] and increase spending on agriculture.

But these benefits can be offset if important warming thresholds are exceeded. In warmer climates, extreme heat is increasing, and this, combined with an increase in the frequency and intensity of droughts, will have general negative consequences.

The impact of climate change on agriculture is obvious. However, agriculture, which is often affected by climate change, is also a source of such change. First, agricultural production leads to significant greenhouse gas emissions, as livestock and crop production are directly linked to these emissions, as evidenced by emissions reports from governments to the Secretariat of the UN Framework Convention on Climate Change. Thus, agriculture is the source of about 15% of global greenhouse gas emissions [12]. Second, greenhouse gases change climate and thus affect agricultural production.

In 2019, the percentage of agricultural production in Ukraine in total emissions was 12.1. The main sources of emissions in the agro-industrial complex are intestinal fermentation and agricultural soils — respectively 22.1% and 71.0% of total emissions in 2019 [25, p. 12]. Over the last decade, Ukraine has tended to increase its greenhouse gas emissions from agriculture.

The consequences of climate change, such as rising temperatures, droughts and other adverse weather events, cannot be avoided in modern conditions, the more they can become more frequent and intense over time. Considering the effects of climate change on agriculture and food security in Ukraine requires adaptation at various levels, taking into account international experience, national and sectoral characteristics. Appropriate adaptation measures are needed to reap the benefits of climate change and offset potential losses.

According to the UN Framework Convention on Climate Change, problems related to the impact of climate change on agricultural production are also being addressed in the framework of the Coronavian Programme of Joint Work on Agriculture [13], adopted in

2017 at the 23rd Conference of the Parties Bonn [30] and in the Food and Agriculture Organization (FAO) Climate Change Strategy 2017 [14], which deals with increasing the capacity of member states in the field of climate change, deepening the integration of agriculture into the international order day in the field of climate change and increase the effectiveness of coordination measures. Currently, in many countries, the Climate Smart Agriculture Programme (CSA), developed by the United Nations Food and Agriculture Organisation, is also actively used — that is, “climate-smart” agriculture. The programme provides for the creation of conditions to increase the productivity of agricultural production and profits of agricultural producers, the creation of climate-resilient food production systems, finding ways to minimise greenhouse gas emissions and carbon dioxide emissions. The main goal of the CSA is to ensure food security, adapt agriculture to climate change and reduce its negative impact on the environment. Its implementation requires the use of special techniques of mechanical tillage and waste management, soil restoration and land reclamation on pastures, improving the organisation of collection, storage and use of manure, energy conservation and decarburisation, cultivation of drought and disease resistant, and high-yield crops [16, p. 69]. CSA works most in the direction of organic production.

Measures to adapt agriculture to climate change at EU level have previously been identified in the EU's Adaptation Strategy 2013 [15], which was approved to increase climate awareness, including the common agricultural policy. The strategy includes eight actions aimed at promoting adaptation measures at the national and local levels, supporting the exchange of knowledge to

provide more informed solutions and promoting adaptation in key vulnerable sectors, including agriculture. In 2021, the European Commission has adopted a new EU Strategy for Adaptation to Climate Change [31], which considers the main positions of the previous Strategy and focused its efforts on shifting the focus from understanding the problem to its solution and the transition from planning to implementation.

The European Green Course (hereinafter — EGC) adopted by the European Commission in December 2019 became a very important document in the field of adaptation to climate change [32]. The importance of this document was noted by the President of the European Commission Ursula von der Leyen, emphasising that “the European Green Course is our new growth strategy, a development strategy that gives more than it takes away” [32]. Politically, the EPC is “a response to the challenges of global climate change, pollution, biodiversity loss and, consequently, the EU's position as a global leader” [32]. The main goal of the EPC is a sustainable green transition of Europe to a climate-neutral continent by 2050. The EPC is a set of measures that determines the EU policy for the coming years in such areas as climate, energy, biodiversity, industry, agriculture, finance, trade and more.

Green agriculture is defined as one of the structural elements of the EGC. Its main task should be to ensure food security, transition to sustainable production, consumption and healthy eating, reduction of food waste. Practically to achieve this goal and achieve the goals of sustainable development, the European Commission announced a new strategy “From farm to fork” [33], which aims to introduce a system of healthy and environmentally friendly food (Fig. 3).



Figure 3. Farm to Fork Strategy [33]

According to this goal, the agricultural sector should have a neutral or positive impact on the environment and be aimed at the use of sustainable practices such as organic production, precision farming, agri-environment, agroforestry, compliance with animal welfare standards, etc. The urgency of this transformation is dictated by estimates of the Intergovernmental Panel on Climate Change, which show that in the EU alone, greenhouse gas emissions from agricultural activities account for almost 11% and almost

70% for livestock [34]. Moreover, agricultural-related industries, through the use of pesticides and fertilizers, contribute to significant pollution of soils and water resources.

What are Ukraine's steps to maintain such a European course? Thus, Ukraine ratified the main international documents governing climate change — the UN Framework Convention on Climate Change in 1996 [1], in 2004 — the Kyoto Protocol [2], in 2016 — the Paris Agreement [3]. In pursuance of Ukraine's international

obligations, the Cabinet of Ministers of Ukraine issued an order “On Approval of the Concept of Implementing State Policy in the Field of Climate Change until 2030” of December 7, 2016 No. 932-r [35], “On Approval of the Action Plan Concepts of implementation of state policy in the field of climate change for the period up to 2030” dated December 6, 2017 No. 878-r [36], Low Carbon Development Strategy of Ukraine until 2050 [37] (approved by the Interdepartmental Commission for Implementation of the UN Framework Convention on Climate change, Protocol of 16 February 2018 No. 1).

The Cabinet of Ministers of Ukraine has determined the country’s intentions to join the EGC. Such statements of the Government are of great importance given the importance of forming a state agricultural policy in Ukraine, which would consider the environmental and climatic challenges of today.

At the same time, the low efficiency of agricultural land use with the world’s largest plowing rate (54% of Ukraine’s territory) [38] and the constant increase in the percentage of eroded land, in particular due to plowing, makes Ukraine a priority to create an appropriate legal framework to address deep problems in this area.

Thus, the previous version of the Strategy of State

Environmental Policy of Ukraine for the period up to 2020 declared “reduction of arable land by removing from use or conservation of degraded, low-productivity and man-made contaminated agricultural land,” and so on. The current Strategy of State Environmental Policy until 2030, as well as a number of other documents, among other priorities include the rational use of agricultural land and reducing the man-made burden of agriculture on the environment, promoting organic farming, ensuring rational use of natural resources and more. But I would like to rightly note that the identified areas do not contain clear guidelines for the implementation of these measures.

In addition, the Government of Ukraine should pay attention to improving the legislation that will facilitate the transition to sustainable agricultural practices. In 2018, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” of July 10, 2018 No. 2496-VIII [39]. However, despite the fact that organic production has been developing in Ukraine since the early 2000s, the area of organic land in 2020 was only 462 thousand hectares (1.1% of the total agricultural area of Ukraine) [40] [Table 1].

Table 1. Total area of organic agricultural land in Ukraine (2002-2020)

Year	Area, ha	Year	Area, ha
2002	164449	2012	272850
2003	239542	2013	393400
2004	240000	2014	400764
2005	241980	2015	410550
2006	242034	2016	411200
2007	249872	2017	420000
2008	269984	2018	429100
2009	270193	2019	467980
2010	270226	2020	462225
2011	270320		

Source: [41]

At the same time, according to studies conducted within the project “Assessment of technological needs in Ukraine” [42], under organic production in Ukraine can be occupied up to 4 million hectares [43, p. 41]. On March 3, 2021, the Cabinet of Ministers of Ukraine approved the Resolution “On Approval of the National Economic Strategy until 2030” No. 179 [44], which plans to achieve an area of land with organic status of at least 3% of the total agricultural land area of Ukraine approximately 1.3 million hectares.

Ukraine is also an outsider on the implementation of a number of provisions related to the impact of the agricultural sector on the environment, namely: regulation of groundwater and surface water pollution by nitrates of agricultural production, adoption of a code

of best agricultural practices, harmonisation of fertilizers and pesticides. Thus, recent studies show that total greenhouse gas emissions in the agricultural sector in 2020 increased by 7.7% compared to the previous year [45]. This is justified by the increase in arable land and the growth of mineral and organic fertilizers.

The adoption of the Law of Ukraine “On Environmental Impact Assessment” of May 23, 2017 No. 2059-VIII [46], which established the legal and organisational framework for environmental impact assessment, deserves high praise for sustainable agricultural development and prevention of possible consequences of agricultural activities on the environment, aimed at preventing environmental damage, environmental safety, environmental protection, rational use and reproduction

of natural resources, in the decision-making process of economic activities that may have a significant impact on the environment, including in agriculture.

It is worth paying attention to paragraph 12 of the order of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan for the Implementation of the Concept of State Policy in the Field of Climate Change Until 2030” of December 6, 2017 No. 878-r [36], according to which The Ministry of Agrarian Policy of Ukraine was obliged to prepare recommendations on the adaptation of agriculture to climate change for the period up to 2030. In 2019, the Ministry of Agrarian Policy of Ukraine presented the draft Strategy for Adaptation to Climate Change in Agriculture, Forestry and Fisheries of Ukraine and the period up to 2030. The purpose of the Strategy was to ensure Ukraine’s participation in achieving one of the main goals of UN Sustainable Development — to take urgent measures to combat climate change and its consequences, and to adapt to them and early warning. At the end of 2021, the Cabinet of Ministers of Ukraine approved the Strategy for Environmental Safety and Adaptation to Climate Change until 2030 [47] and the Operational Plan for its implementation in 2022-2024 [48] (order of October 20, 2021 No. 1363-r) in a new version, where agriculture is identified as one of the socio-economic sectors that is most vulnerable to the effects of climate change. The Strategy identifies issues that need to be addressed as soon as possible, such as land degradation and desertification, restoration of anthropogenically altered ecosystems, improving the structure of agricultural lands and economic activities to form a balanced relationship between agricultural lands and ensure environmental safety and environmental security. It was also noted that “negative consequences of climate change in Ukraine, in particular conditioned upon increasing frequency and intensity of extreme weather events, can be considered reduced soil fertility, reduced crop productivity, the need to breed and introduce new varieties more resistant to drought and heat, expansion irrigation”. The document emphasises that “conditioned upon changes in the nature of precipitation, soils are not able to absorb water in full, moisture in the soil is not retained, the fertile layer of soil is washed away” [47].

Research and practice confirm that in the context of climate change, the level and conditions of humidity in the country is a leading factor that limits the level of productivity and use of the natural potential of agriculture. 5.5 million hectares of reclaimed land are registered in Ukraine, of which 2.2 million hectares are irrigated and 3.3 million hectares are drained. But the real area of irrigated land is 400-500 thousand hectares. The irrigation and drainage system is poorly developed: Ukraine uses about 20% of its irrigation and about 10% of its drainage potential. Conditioned upon this, every sixth hectare of agricultural land degrades [49]. It is unfortunate, but it should be noted that the reasons for this were imperfect legislation, underdeveloped system of water

resources management and land reclamation, outdated technical condition of engineering infrastructure.

To reduce the negative processes of climate change in agriculture, on August 14, 2019, the Government of Ukraine approved the Strategy of Irrigation and Drainage of Ukraine for the period up to 2030 [50], which identified strategic directions of state policy in the field of irrigation and drainage, ensuring sustainable environmentally balanced development of agriculture in Ukraine. The strategy outlines the ways to achieve this goal: change the nature of public administration of the irrigation system through the introduction of an integrated water resources management mechanism based on the basin principle; preservation and restoration of soil fertility, protection of settlements from the harmful effects of water, achievement and maintenance of river basins; restoration and increase of areas of irrigated lands, drainage systems, etc. The implementation of the Strategy is aimed at restoring the capacity of irrigated and drainage systems to further increase the area of irrigation and water regulation on agricultural land as a basis for achieving the maximum level of efficiency and environmental safety of agriculture. To implement the goals and objectives of the Strategy [50], on October 21, 2020, the Cabinet of Ministers of Ukraine adopted the Order No. 1567-r, which approved the Action Plan for the implementation of the Strategy of reclamation and drainage in Ukraine until 2030 [51]. Implementation of the adopted Action Plan will increase crop yields, the area of irrigated land, drainage systems and expand Ukraine’s agricultural potential.

To introduce the mechanism of integrated water resources management according to the basin principle and considering the need to separate the functions of water resources management from the function of water infrastructure management, on May 24, 2021, the Cabinet of Ministers of Ukraine adopted Resolution No. 539 “Some Issues of Distribution of Certain Powers of Central Executive Bodies in the Field of Land Reclamation”. The resolution restricts the functions of the State Agency of Water Resources of Ukraine for hydraulic reclamation of land; the task of the State Agency of Water Resources of Ukraine on the development of land reclamation and management of the operation of irrigation and drainage systems was terminated; the functions of the State Fisheries Agency of Ukraine, which was renamed the State Agency for Land Reclamation and Fisheries of Ukraine, were expanded; the Ministry of Agrarian Policy of Ukraine, etc., has been given the authority to formulate policy in the field of hydraulic reclamation of lands.

An important contribution to reforming the public administration system for irrigation and drainage in accordance with the order of the Cabinet of Ministers of Ukraine of December 29, 2021 No. 1793-r [52] in Ukraine was the establishment of the Institute of Climate Oriented Agriculture NAAS of Ukraine by reorganising the Institute of Irrigated Agriculture, Rice Institute and the Southern State Agricultural Research Station of the

Institute of Water Problems and Reclamation of NAAS of Ukraine. The Institute of Climate-Oriented Agriculture of NAAS of Ukraine will be endowed with the functions of the Main Scientific Institution for forming the main directions of state policy in the field of climate-oriented agriculture, developing tillage systems using climate-oriented technologies, studying crop productivity to ensure sustainability resources, restoring and increasing soil fertility, reducing anthropogenic pressure on the environment and preventing the negative effects of climate change on agricultural production.

Conclusions

The consequences of climate change for agriculture, such as rising temperatures, droughts and extreme weather events, cannot be avoided in modern conditions, and over time they may become more frequent and intense. Therefore, it is necessary to accelerate the implementation of measures to adapt to climate change in the development of national agricultural policy in parallel

with policies to prevent climate change. In this regard, the Ministry of Agrarian Policy and Food of Ukraine needs to ensure the proper implementation of the tasks set by the Strategy of Environmental Security and Adaptation to Climate Change for the period up to 2030 and the Operational Plan for its implementation in 2022-2024 in terms of rural adaptation to climate change; together with the institutions of the National Academy of Agrarian Sciences of Ukraine to develop measures aimed at implementing "climate-smart" agriculture, which corresponds to the Climate Smart Agriculture (CSA) system developed by the Food and Agriculture Organisation of the United Nations; develop zonal recommendations for the adaptation of agricultural production to climate change and the fight against desertification and the manifestation of droughts; provide scientific and methodological support for the adaptation of certain subsectors of agriculture; create mechanisms to support the implementation of adaptation strategies for certain groups of agricultural producers.

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Адаптація до зміни клімату сільського господарства України: окремі аспекти правового забезпечення

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Анотація

Стаття присвячена аналізу окремих аспектів правового забезпечення адаптації сільського господарства України до змін клімату. Актуальність дослідження зумовлено тим, що глобальні кліматичні зміни є однією з найгостріших проблем сьогодення, що стоїть перед людством. Метою статті є аналіз сучасного стану правового регулювання питань, пов'язаних з впливом зміни клімату на сільське господарство, на міжнародному, європейському і національному рівнях, а також вироблення практичних рекомендацій щодо впровадження заходів з адаптації до кліматичних змін сільськогосподарського виробництва. Методологічну основу дослідження склали діалектичний метод наукового пізнання, загальнонаукові (формально-логічний, методи аналізу та синтезу) та спеціально-юридичний метод (формально-юридичний). У статті проаналізовано міжнародне, європейське і національне законодавство, що регламентує питання зміни клімату та його впливу на сільськогосподарське виробництво. За результатами дослідження встановлено, що найбільш уразливою до зміни клімату галузєю є сільське господарство, що нині зазнає негативний вплив від кліматичних тенденцій, якого у сучасних умовах неможливо уникнути. У зв'язку з цим, проблема зміни клімату вимагає пріоритизації заходів з адаптації щодо мінімізації збитків у сільськогосподарському виробництві. Водночас адаптація передбачає створення нових інститутів, впровадження нової політики, надходження нових коштів, і, найголовніше — нових форм мислення. Визначено необхідність прискорення імплементації заходів з адаптації до кліматичних змін в рамках розробки національної аграрної політики паралельно з політикою із запобігання зміні клімату. Запропоновані практичні рекомендації органам державної виконавчої влади щодо реалізації завдань у частині адаптації сільського господарства до зміни клімату. Акцентовано увагу на необхідності розроблення заходів, спрямованих на впровадження «кліматично-розумного» сільського господарства, що відповідає системі агрогосподарювання Climate Smart Agriculture (CSA), а також підготовки зональних рекомендацій щодо адаптації сільськогосподарського виробництва до зміни клімату та боротьби з опустелюванням і проявом посушливих явищ. Визначено необхідність створення системи науково-методичної підтримки адаптації окремих підгалузей сільського господарства і механізму підтримки реалізації адаптаційних стратегій для окремих груп сільськогосподарських товаровиробників.

Ключові слова: кліматичні зміни, адаптаційні заходи, сільськогосподарське виробництво, «кліматично-розумне» сільське господарство, аграрне законодавство, законодавство у сфері запобігання зміні клімату



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Prospects for the Development of Legislation on Rural Green Tourism

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Abstract

The article is devoted to the study of prospects for the development of legislation on rural green tourism. The urgency of the work is conditioned upon the urgent need for special legislation that would reflect the specific features of rural green tourism and would effectively develop this area to reduce unemployment, overcome poverty, increase incomes of the rural population by intensifying non-agricultural activities. The purpose of the study is to identify possible areas of development of legislation on rural green tourism on the basis of scientific and theoretical analysis of current and future regulations in this area and developments in legal science. The methodological basis of the study was the dialectical method of scientific knowledge, general scientific (formal-logical, method of analysis) and special-legal methods (formal-legal, comparative-legal). As a result of this study, proposals were developed to improve the terminology of legislation in the field of rural tourism. Namely, the necessity of replacing the term "rural green tourism" with the term "rural hospitality" in normative legal acts is justified, the use of the category "rural tourism" exclusively in the sense of one of the types of tourism, the specific feature of which is implementation in rural areas. To increase the effectiveness of legal regulation of rural hospitality, a proposal was made to form special legislation – the Law of Ukraine "On Rural Hospitality in Ukraine". It has been proved that personal farms are the most potentially attractive subjects for the development of rural hospitality in Ukraine. For the practical implementation of this potential, changes are proposed to Part 1 of Art. 1 of the Law of Ukraine "On Personal Peasant Economy" on enabling private farms to use their property to provide rural hospitality services. It is proposed that to clearly distinguish between rural hospitality and rural tourism, the latter should be regulated by the Law of Ukraine "On Tourism" and other regulations in the field of tourism, adopted to implement the provisions of this law. The obtained conclusions can be used in formulating changes to the current legislation of Ukraine, will be useful when working on research on the specific features of the legal regulation of relations in the field of rural hospitality

Keywords: personal peasant economy, legal regulation, rural hospitality, agriculture, rural tourism, tourist services

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Introduction

According to the latest published data of the State Statistics Service of Ukraine (as of January 1, 2020), out of 41.9 million people in our country, 12.7 million are rural [1]. More than a third of Ukrainians are rural residents. At the same time, the standard of living in rural areas is much lower than in cities. There is a differentiation of income depending on place of residence. Rural unemployment is characterised by higher unemployment compared to urban areas. The issue of ensuring sustainable development of rural areas remains open, considering the fact that rural areas have their own specific features of functioning, including opportunities, resources and needs of rural residents [2, p. 2339].

There are many reasons for this state of affairs, and last but not least is the levelling of agricultural production as the main source of income. There is a need to find alternative ways to improve the welfare of the rural population, not directly related to agriculture. According to the analysis of models of regional and economic development of the village, experts argue that the development of services is one of the priority measures to improve the situation [3, p. 636].

Our country has a very great potential for the development of rural green tourism, given the available natural and recreational resources, and the territorial location of Ukraine. For example, experts point to the intensification of cross-border Ukrainian-Polish tourism business [4, p. 119].

One of them is the use of available resources in such areas as rural green tourism. For Ukraine, it was legally established in 2003 with the adoption of the Law of Ukraine "On Personal Peasant Economy" of May 15, 2003 No. 742-IV [5]. This normative act expanded the purpose of personal farming. Along with the production of agricultural products, their processing and consumption to meet their own needs, members of private farms were also able to provide services in the field of rural green tourism. The main condition of this new activity for the peasants was the use of personal peasant property.

Despite the fact that this legal provision has existed for almost twenty years, the legal support in this area remains very low, limited to general rules. There is an urgent need to form special legislation that would reflect the specific features of rural green tourism and would effectively develop this area to reduce unemployment, overcome poverty, increase the income of the rural population by intensifying non-agricultural activities. This determines the relevance of this scientific article.

Problems of legal support and legal regulation of rural green tourism in general and rural hospitality in particular have long been of interest to researchers. For example, in the works of O.V. Hafurova — a representative of the science of agrarian law, the problem of forming special legislation on rural hospitality in the context of inclusive rural development, highlights the positive features of bills in this area [6, p. 20-26]. Another scientist — O.M. Tuieva, focuses on the categorical apparatus

in the field of rural green tourism. It formulates the author's definition of "rural green tourism" and characterizes its forms such as "agritourism", "ecotourism" and "agroecotourism" [7, p. 99-102]. The importance of rural tourism in the structural restructuring of the Ukrainian market of tourist services is highlighted in the work of O. Moskvichova, I. Hryhoruk, Y. Marchenko and Y. Veretilnyk. The authors, studying the global development of international tourism and its impact on the economy of Ukraine, come to the conclusion about the intensification of cross-border tourism business, regionalisation, especially the Polish-Ukrainian cross-border corridors. The importance of these processes for promoting the development of rural tourism in Ukraine is noted [4, p. 108-120]. The work of foreign authors also plays an important role in the comprehensive analysis of the legal regulation of rural tourism in our country. For example, this is the work of T. Pilving, T. Kull, M. Sushkevics and A.-H. Viira, dedicated to the interaction of large urban tourism enterprises with small rural entrepreneurs in Estonia [8, p. 1-26]. In the context of considering the positive international experience of regional development through the development of such an alternative type of tourism as rural tourism, the article by P. Liberato, I. Cerqueira, D. Liberato is interesting, which characterises rural tourism in the historic villages of Portugal [9, p. 1-22]. At the same time, the Ukrainian legal doctrine has not yet developed a unified approach to the development of legislation on rural green tourism.

This necessitates the continuation of scientific and theoretical analysis of current and future regulations in the field of rural tourism, developments in Ukrainian and world law to determine possible directions for the development of legislation on rural green tourism, which is *the purpose of this article*.

Materials and Methods

The methodological basis of the scientific article was the dialectical method of scientific knowledge, general scientific (formal-logical, method of analysis) and special-legal methods (formal-legal, comparative-legal). Using a dialectical method of studying the state of legal regulation of rural hospitality in Ukraine, the trends of its development in relation to social, economic, sectoral and legal factors of society were identified, including such part of it as the inhabitants of rural areas. The application of the formal-logical method allowed clarifying the essence and distinguish the concept of "rural hospitality" from related categories: "rural green tourism", "rural tourism", "ecotourism", "agritourism", "agroecotourism", "rural tourism". The study of scientific positions on the areas of legal regulation of rural tourism is based on the method of analysis. The same method allowed identifying conflicting points in current and future regulations on rural tourism. Using the comparative legal method, the norms of the Ukrainian legislation on rural tourism and rural hospitality were compared with

the corresponding foreign analogues. In particular, when comparing the criteria for classifying rural green tourism as a business activity in such countries as Poland, Belarus and Ukraine. The formal-legal method helped to clarify the content of legal norms in the research area and to develop proposals for its improvement of the legal field.

The normative basis of the study were regulations of different sectoral affiliation, conditioned upon the complexity and diversity of tourism as a generalising category and the specific features of its species diversity, including rural tourism. First of all, acts of agrarian legislation were worked out, in particular the Laws of Ukraine "On Personal Peasant Economy" [5], "On Farming" [10] and basic tourism legislation — the Law of Ukraine "On Tourism" [11]. Problematic aspects of the legal regulation of food services (as mandatory within rural hospitality) were identified using the provisions of the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [12]. The study of the specific features of rural hospitality taxation and economic incentives for its development was based on the analysis of tax legislation — the Tax Code of Ukraine [13]. Part of the promising legislation in the article is presented by the draft Laws of Ukraine "On Rural and Rural Green Tourism" [14], "On Amendments to the Law of Ukraine "On Tourism" and some other legislation on the basic principles of tourism development" [15], "On amendments to the Law of Ukraine "On Personal Peasant Economy" on the development of rural green tourism" [16], "On amendments to the Law of Ukraine "On Tourism" and some other legislation on the creation of economic incentives for tourism" [17], "On amendments to the Tax Code of Ukraine on taxation of income received in the field of rural green tourism" [18], "On stimulating the development of rural hospitality in Ukraine" [19].

Generalisation on the standard of living of people living in rural areas, the level of unemployment in rural areas, the differentiation of income of rural and urban residents is based on official data from the State Statistics Service of Ukraine [1].

Results and Discussion

At present, the main normative act regulating relations in the field of tourism is the Law of Ukraine of the same name "On Tourism" of September 15, 1995 No. 324/95-vr [11]. It is present in Part 3 of Art. 4 distinguishes rural tourism as one of the types of tourism, and in Part 5 of the same legal norm enshrines the thesis of establishing the characteristics of certain types of tourism by law. At the same time, the Law of Ukraine "On Tourism" [11] does not define the concept of "rural tourism" and mentions this type of tourism in only one rule — Part 5 of Art. 6, which makes the development of rural tourism one of the priority directions of the state policy of Ukraine. There are also no norms on its legal

regulation in the Law of Ukraine "On Personal Peasant Economy" [5]. In fact, there is no special legal provision for rural green tourism in Ukraine, and the application of the norms of general legislation on tourism to this activity is complicated by the following.

In essence, rural green tourism can not be equated with tourism as a highly profitable business with its special subject composition (tour operators and travel agents, tour operators, etc.), the need for licensing, a certain form of contract for tourism services and other mandatory components, defined by the Law of Ukraine "On Tourism" [11] and other regulations in this area. The main argument in favor of this is the fact that under current legislation, activities related to personal farming are not related to entrepreneurial activities. Hence, personal farms are not registered as business entities. This state of affairs does not remove a number of issues related to the organisation of services in the field of rural green tourism. Moreover, it complicates the conduct of the activity in question.

Both in scientific doctrine and in the field of legislation, the issue of legal support for the features of rural green tourism has remained relevant for many years. The first reason for this we see the lack of legal definition of "rural green tourism", the ambiguity of its interpretation in scientific circles, the use of the terms "rural tourism", "ecotourism", "agritourism".

Experts based on the generalisation of doctrinal definitions of the term "rural green tourism" argue that it is a multifunctional, complex and systemic phenomenon that is actively spreading in the economic life of agricultural areas and contributes to their economic and social development in Ukraine [20, p. 42]. That is, as rightly noted by O.M. Tuieva, the essence of rural green tourism is not only recreation but also the preservation (restoration) of the natural environment and ethnocultural identity of the Ukrainian peasant [7, p. 99].

Regarding the ratio of rural green tourism and rural, agro-, ecotourism, O.M. Tuieva identifies rural tourism and rural green tourism, and agritourism, ecotourism and agroecotourism refers to forms of rural green tourism. The author believes that rural tourism covers all activities related to the rural way of life (culture, religion, traditions, etc.). Agrotourism is always associated with the functioning of agriculture, contains an element of knowledge. Ecotourism has an eco-educational and recreational nature, is carried out, as a rule, in the form of travel and takes place within protected areas or outside them in a pristine, wild nature. Agri-ecotourism involves the rest of tourists from farmers who grow organic agricultural products using only environmental methods [7, p. 99].

Another vision of the relationship of these concepts is found in the draft regulations. For example, the authors of the draft Law of Ukraine "On Rural and Rural Green Tourism" of March 4, 2021 No. 5206 [14] under rural tourism understand "recreational tourism,

which provides a temporary stay of tourists in rural areas (villages)". Rural green tourism and ecotourism are considered types of rural tourism. Rural green tourism is defined as "recreation from rural tourism, associated with the stay of tourists in the owner's own house, a separate (guest) house or on the territory of a personal peasant (farmer) farm." Ecotourism — as a "type of rural tourism, which involves tourists visiting areas of natural, cultural, ethnographic value" [14]. Based on the territorial feature of rural tourism, the authors identify rural tourism with tourism in rural areas, which is erroneous. This has been proven by scientists. For example, O.M. Borodina and O.V. Myhailenko concludes that the implementation of the policy of promoting "rural tourism" instead of "rural tourism on an inclusive basis" (ie, one that involves rural households) does not promote rural entrepreneurship, instead strengthening the existing dichotomy between agro-rural and non-rural populations. employed in rural areas [21, p. 77]. A similar standpoint, which we also share, is taken by O.V. Hafurova [6, p. 23].

The draft Law "On Amendments to the Law of Ukraine "On Tourism" and Certain Other Legislative Acts on Basic Principles of Tourism Development" of September 29, 2020 No. 4162 agro-tourism and rural tourism are considered not as types of tourism but as types of travel by tourist package. Agrarian tourism is defined as "acquaintance with the peculiarities of agriculture (personal peasant or farm)." Rural — as "rest in the countryside to get acquainted with the peculiarities of customs, traditions and life of the rural population and associated with temporary residence in a rural estate" [15]. That is, here in general the features of rural green tourism as a phenomenon are leveled.

Currently, another area of promising legislation is being formed — on rural hospitality. A draft Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" [19] has been developed, in which the authors propose to define rural hospitality as "one of the diversified activities of rural households engaged in agricultural production". This bill lays the foundations for rural hospitality as a type of economic activity. It outlines the approximate range of services that can be provided to guests (visitors to the countryside): reception, catering, etc. As you can see, the list of rural hospitality services is left open by the legislator, which is positive in terms of choosing the best option for a particular owner, a particular countryside. True, in terms of further development of legislation in this area, is the formulation of the purpose of visitors. The latter covers both recreation and health, and the acquisition of new knowledge, skills, acquaintance with local natural attractions, raising awareness of the history, traditions of the peasants, the peculiarities of their lives, agricultural work [19, p. 222].

As we can see, rural hospitality in this sense actually covers all aspects of rural green tourism as an

activity aimed primarily at improving the welfare of the rural population, diversifying income opportunities in parallel with agriculture, rural development, preservation of local customs, traditions, popularisation of agricultural work and lifestyle. We see it possible and even necessary to replace the concept of "rural green tourism" with the category of "rural hospitality" in the text of the Law of Ukraine "On Personal Farming" [5], setting out Part 1 of Art. 1 as follows: "personal peasant economy is an economic activity carried out without the creation of a legal entity by an individual or persons who are in a family or family relationship and live together, to meet personal needs through production, processing and consumption of agricultural products, realisation of its surpluses and rendering of services with use of property of personal peasant economy, including in the field of rural hospitality". This will distinguish rural tourism with all its varieties (tourism in rural areas), which will be regulated by the Law of Ukraine "On Tourism" [11] from rural hospitality, the legal regulation of which will be carried out by other regulations.

It should be noted at once that the author of this study does not in any way underestimate the importance of tourism development in rural areas, which should also be developed. As the experience of other countries shows, this area can be highly profitable and attractive for both domestic and foreign tourists. An example is the experience of Portugal, in the historic villages of which through the intensification of rural tourism has significantly improved the regional development of areas with low population density [9]. Rural tourism, scientists argue, is an important activity in Europe in terms of both turnover and employment [22, p. 51], it forms mutually beneficial relations between the city and the village [8, p. 1].

As an argument in favour of the proposal, we will focus on the problems in the legal regulation of rural green tourism under current legislation and assess the promising regulations in this area to address existing problems.

As we have already noted, the main controversial issue in the research area is the attribution of rural green tourism to entrepreneurship.

Let's start with the fact that different countries approach this differently. For example, Polish law establishes a criterion for exemption from taxation of income from the rental of guest rooms in residential buildings located in rural areas, on the farm, including income from their food — the number of rooms for rent. There can be no more than 5 [23]. A similar approach is used in the Republic of Belarus. Decree of the President of the Republic of Belarus "On the Development of Agro-Ecotourism" of October 9, 2017 No. 365 in paragraph 1 states that "the activities of individuals who, in particular, run a personal subsidiary farm land plots allocated for this purpose for the provision of services in the field of agriculture ecotourism, is not entrepreneurial", and

in paragraph 12 sets the maximum number of rooms in the farmstead — 10 [24].

According to Part 3 of Art. 1 of the Law of Ukraine “On Personal Peasant Economy” [5] this activity is not entrepreneurial. Income from such activities is taxed as income of individuals under Section IV of the Tax Code of Ukraine of December 2, 2010 No. 2755-VI [13]. However, in practice, income from rural green tourism is not limited to rental income, and this often leads to misunderstandings between farmers providing services in the field of rural green tourism and public authorities, local governments.

The draft regulations make various proposals regarding this aspect.

Back in 2015, the draft Law of Ukraine “On Amendments to the Law of Ukraine “On Personal Peasant Economy” for the Development of Rural Green Tourism” (registration number 0852) [16] proposed to introduce restrictions on the number of places for temporary accommodation (residence). The activity could be considered rural green tourism if there were no more than ten such places. However, the text of the same bill, adopted in the first reading (July 25, 2017) already contained completely different proposals: rural green tourism was proposed to be replaced by “rural and ecological (green) tourism”, which, as rightly noted by O.V. Hafurova, completely changes its original meaning. In addition, the author emphasises, it excluded the criteria that allowed to recognise the activities in the field of rural green tourism, carried out with the use of property of personal peasant economy, non-entrepreneurial [6, p. 22]. This bill was never adopted — on September 10, 2019 it was withdrawn from consideration.

Appropriate innovations were presented in the draft Law “On Amendments to the Tax Code of Ukraine on Taxation of Income Received in the Field of Rural Green Tourism” (registration No. 7400) [18]. Namely: it was proposed to tax the income received from the provision of accommodation and food services in the field of rural green tourism, in accordance with the rules of paragraph 165.1 of Art. 165 of the Tax Code of Ukraine on taxation of income from the sale of own livestock products. Also, the features of accommodation services in the field of rural green tourism were determined: their provision exclusively based on the property of personal peasant farms; accommodation of vacationers exclusively in residential buildings where the owners live; limiting the number of beds for vacationers (maximum 10). In justifying the need to adopt the act, the authors rightly emphasised the social aspect of rural green tourism and its importance for socio-economic development of rural areas and as a means of income for the rural population, and as a component of integrated rural development, and as a factor in overcoming poverty in rural areas [25]. Despite the objective need to support rural green tourism by the state through the elimination of gaps in the legal regulation of these activities, the definition of transparent

and unambiguous “rules of the game”, the bill was withdrawn on August 29, 2019.

Diametrically opposed proposal — to limit the subjects of tourism (including in the field of rural green tourism) exclusively legal entities and natural persons-entrepreneurs, contains the draft Law of Ukraine “On Amendments to the Law of Ukraine “On Tourism” and some other legislation on the basic principles of tourism development” (registration number 4162) [15]. Alternative draft law — “On Amendments to the Law of Ukraine “On Tourism” and some other legislative acts on the creation of economic incentives for the development of the tourism industry” (registration number 4162-1) [17] refers to tourism entities other than legal entities and individuals-entrepreneurs and individuals engaged in and/or providing tourism activities. Both documents propose to introduce additional conditions for the legalisation of tourism entities — their inclusion in the Tourist Register/Unified Tourist Register.

At the same time, none of the above bills contains norms on the specific features of the organisation and implementation of rural green tourism activities.

Another, rather controversial, in our opinion, approach is in the draft Law of Ukraine “On Rural and Rural Green Tourism” (registration number 5206) [14]. They in Art. 5 to the number of subjects of tourist activity in the field of rural tourism include: “tour operators, travel agents, business entities that provide services for temporary accommodation, food, excursions, entertainment and other tourist services; natural persons carrying out activities related to tourist support “[14], including natural persons (farmers and members of their families) who are not business entities and provide services for temporary accommodation of tourists in in the owner’s own house, in a separate (guest) house or on the territory of a personal peasant (farmer) farm; tourist catering services, tourist escort services, and other services related to the stay of tourists in the farm (rural green tourism) and in the area (rural tourism). In other words, in addition to personal farming, farms also have the opportunity to use their property for rural green tourism, and for them this activity is also recognised as non-entrepreneurial.

Similar opinions were voiced in special sources. For example, experts of the National Institute for Strategic Studies propose to expand the capacity of farms to provide tourism services, to amend the Law of Ukraine “On Farming” [10]: to supplement the list of these entities by providing services using farm property in rural areas and rural green tourism, and provide the opportunity to build on their land hotels and similar accommodation and catering establishments [26].

Without denying the need to diversify the activities of farms, we can not fully agree with the above. First of all, because the activity of a farm is entrepreneurial and it is wrong to single out rural green tourism (referring it to non-entrepreneurial activity). Secondly, the

question arises: how should the production, processing and sale of marketable agricultural products with the tourism activities of the farm? After all, the situation when the latter will dominate can become quite real. And then the very essence of the farm as a subject of agrarian law is levelled.

Analysing other provisions of the draft Law of Ukraine "On Rural and Rural Green Tourism" (registration number 5206) [14] we conclude that its authors made a not very successful attempt to take as a basis the Law of Ukraine "On Tourism" [11] and supplement its provisions norms that should reflect the specific features of rural green tourism.

For example, in Art. 12 individuals (farmers and members of their families) who are not business entities and provide services for rural and rural green tourism are entitled on the basis of agreements with insurers to provide compulsory medical and accident insurance for tourists and others types of insurance specified in the Law of Ukraine "On Tourism" [11]. In Art. 13 the possibility of engaging in tour operators or travel agency activities by farmers and members of their families — subjects of tourist activity in the field of rural and rural green tourism is considered. And at the same time the authors of the bill for some reason argue about the need for licensing of travel agency activities (which does not comply with current legislation). It is not taken into account that according to the Law of Ukraine "On Tourism" [11] only legal entities are tour operators. Other provisions of the draft law on concluding a contract for tourist services (Article 16) and a contract for excursion services (Article 17) also raise objections. Unclear, given the legal regime of land and property of personal peasant economy (Article 5 and Article 6 of the Law of Ukraine "On Personal Peasant Economy" [5]), is the provisions of Art. 24 bills, which violate the legislation in the field of rural and rural green tourism include "the use by farmers to provide tourism services in the field of rural green tourism of private farms that do not belong to them on private property (or not provided to them for management or use under current legislation of Ukraine)" [14].

Summarising the above, we conclude that the studied draft regulations not only do not eliminate the current shortcomings and gaps in the legal regulation of rural green tourism, but rather — add new open contentious issues.

In contrast, the bill "On Stimulating the Development of Rural Hospitality in Ukraine" [19] proposes a logically balanced model for regulating these relations. First of all, the signs of activity in the field of rural hospitality are highlighted: non-entrepreneurial nature; restriction of accommodation of guests exclusively by the apartment house in which owners live; limiting the number of beds (not more than 10); prohibition of the use of hired labour in the provision of services. Together, they distinguish this activity from tourism. The positive,

in our opinion, is the consolidation of a simple procedure for registration of persons providing rural hospitality services (Article 4) — through written notification of village, town, city councils at the location of the land.

Another important aspect that will address the issue of providing catering services in rural hospitality is the proposal of the authors of the bill "On stimulating the development of rural hospitality in Ukraine" [19] to include in Art. 3 of the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" of December 23, 1997 No. 771/97-VR [12] clarification on non-extension of this Law to natural persons-farmers who provide food services in accordance with with the Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" [19]. This will eliminate the problem of state registration of food production and/or circulation facilities, which is currently faced by private farms that provide catering services to tourists. This contradiction was pointed out by scientists, for example, O.V. Hafurova in the study of legal aspects of the development of gastronomic tourism in Ukraine [27].

Conclusions

The analysis of current and future regulations in the field of rural green tourism, including the generalisation of the achievements of legal science allowed formulating the following conclusions.

For the integrated development of rural areas, increasing the income of the rural population, diversifying the activities of personal farms, the development of non-agricultural activities in rural areas, it is advisable to abandon the use of the term "rural green tourism" in regulations, with its subsequent replacement by the category of "rural hospitality".

Specific features of rural hospitality should be defined in a special Law "On Rural Hospitality in Ukraine".

For the effective development of rural hospitality, it is necessary to provide opportunities for private farms to provide appropriate services using the property of personal farms, enshrining it at the level of the Law of Ukraine "On Personal Peasant Economy".

The category of "rural tourism" should be used exclusively in the sense of one of the types of tourism, the feature of which is the implementation in rural areas. Legal regulation of rural tourism should be carried out in accordance with the Law of Ukraine "On Tourism" and other regulations governing tourism.

Further research should be focused on formulating standards for the provision of rural hospitality services, determining ways to legalise them, ensuring quality assurance of relevant services, state support for farmers, the responsibility of the parties in the field of rural hospitality.

The obtained results can be the basis for the development of the content of regulations in the field of rural hospitality, and used in theoretical works.

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Перспективи розвитку законодавства про сільський зелений туризм

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Анотація

Стаття присвячена дослідженню перспектив розвитку законодавства про сільський зелений туризм. Актуальність роботи зумовлена нагальною потребою у формуванні спеціального законодавства, яке б відобразило специфіку сільського зеленого туризму та дозволило б ефективно розвивати цю сферу з метою зменшення безробіття, подолання бідності, зростання рівня доходів сільського населення зарахунок активізації неаграрних видів діяльності. Мета дослідження полягає у визначенні можливих напрямів розвитку законодавства про сільський зелений туризм на основі науково-теоретичного аналізу чинних та перспективних нормативних актів у цій сфері та напрацювань юридичної науки. Методологічну основу дослідження склали діалектичний метод наукового пізнання, загальнонаукові (формально-логічний, метод аналізу) та спеціально-юридичні методи (формально-юридичний, порівняльно-правовий). В результаті проведеного дослідження було розроблено пропозиції щодо удосконалення термінології законодавства у сфері сільського туризму. А саме обґрунтовано необхідність заміни в нормативно-правових актах терміну «сільський зелений туризм» на термін «сільська гостинність», застосування категорії «сільський туризм» виключно в розумінні одного з видів туризму, особливістю якого є здійснення в сільській місцевості. Для підвищення ефективності правового регулювання сільської гостинності висунуто пропозицію формування спеціального законодавства — Закону України «Про сільську гостинність в Україні». Доведено, що особисті селянські господарства є найбільш потенційно привабливими суб'єктами для розвитку в Україні сільської гостинності. Для практичної реалізації даного потенціалу запропоновані зміни до ч. 1 ст. 1 Закону України «Про особисте селянське господарство» щодо надання можливості особистим селянським господарствам використовувати належне їм майно для надання послуг сільської гостинності. Запропоновано, з метою чіткого розмежування сільської гостинності та сільського туризму правове регулювання останнього здійснювати за нормами Закону України «Про туризм» та інших нормативних актів у сфері туристичної діяльності, прийнятими на виконання положень цього закону. Отримані висновки можуть бути використані при формулюванні змін до чинного законодавства України, стануть в нагоді при роботі над науковими дослідженнями, присвячених особливостям правового регулювання відносин у сфері сільської гостинності.

Ключові слова: особисте селянське господарство, правове регулювання, сільська гостинність, сільське господарство, сільський туризм, туристичні послуги



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Public Associations in the Field of Medical Tourism: Role and International Experience

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Abstract

The urgency of the legal framework for the functioning of public organisations is mediated by the fact that the process of self-organisation of society and the development of civil society are interrelated and provide for rights and freedoms, dignity of every citizen, increase economic and spiritual prosperity. There is also a steady trend of aging around the world, and the progress of medical and health tourism will show signs of rapid growth, including through the growth of self-organisation of people in civil society, which determines the quality of common views and interests, including health. The aim of the article is the study, based on the analysis of regulations that determine the legal status and forms of participation of public associations in tourism and medicine, the practice of their activities at national and international level, problematic issues and possible solutions based on experience of both individual countries and internationally. Research methods were chosen considering the purpose and objectives of the study. The study used philosophical (hermeneutic), general scientific (logical, generalisation, praxeological method, modeling method, prognostic method and bibliographic) and special legal (formal-legal, comparative-legal) methods of scientific cognition. It was found that the actualisation of the study of legal regulation of tourism in the field of health care contributes to globalisation, mobility of modern society and human needs in the realisation of their natural rights to life, health care, health secrets. The legal basis of activity and main tasks of some national and international organisations in the field of medical tourism are studied. Ways to improve the legal regulation of public associations in the field of medical tourism in Ukraine in terms of improving the concept of private law in accordance with the basic values of the European community are suggested. The materials of this study can be useful for legal scholars, leaders and employees of public associations, and teachers, graduate students, students of law schools. Civil servants and everyone who is interested in this issue

Keywords: self-organisation, legal status of public associations, tourism, tourism in the medical sphere, legal regulation of medical tourism

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Introduction

Promising countries for the development of medical tourism are determined by several factors, namely: quality standards of medical services, the cost of diagnosis and treatment, development of transport and hotel sector, level of language integration, effective legal regulation and localisation on the world map. The role of non-governmental organisations is crucial in this area, as they offer special cooperation programmes and consulting services designed to help increase awareness and branding in the international medical community, attract more patients, increase search and trust on the Internet, and help with strategic planning.

Medical tourism is a phenomenon of the modern global world, the growth rate of which is among the highest in comparison with other not only tourist segments. For a country that seeks to be within the modern vector, it is necessary to consider many objective circumstances. Modern society can only be a civil society characterised by socio-culture, solidarity, tolerance and pluralism. It is these features that allow for the development of such a special area of social interaction as a combination of medical and tourism activities. Legal regulation can be effective and appropriate to fulfill the social order only when it is based on scientific knowledge and adequate reflection of the laws and urgent needs of social development. The existence of the medical tourism market is conditioned upon a number of factors and requires appropriate legal regulation that will consider them. The expert environment defines these factors as 5D, which includes: sufficiency of the service, its effectiveness in time and space (these are clinics, countries and the ability to obtain such a service in the shortest possible time); affordability and availability of additional services. According to the World Health Organisation, in 2022 tourism and the health care system combined will be one of the world's leading industries.

Significant contribution to solving problems related to the study of various features of the development and functioning of both public associations and the field of medical tourism in general was made such Ukrainian and foreign scientists as: Y. S. Hniedyk [1] studied legal relations in the field of medical tourism through the prism of the legal status of their participants, including the state as a regulator of the relevant type of economic activity; proposed the mandatory receipt of a special permit for tour operator activities, which justified the specific features of medical services that are a mandatory part of the relevant tourist product; singled out public interests in the field of medical tourism as those recognised by the state and mediated by law objectively existing needs of civil society through respect for the rights of individuals to health care and entrepreneurship. O.V. Bilash and M.V. Mendzhul [2] chose the legal personality of public associations as the subject of their monographic study; identified problematic issues in the process of their formation, in

particular regarding the founders of public organisations. M. Campa et al. [3] analysed the current challenges facing humanity, and the negative impact of which can be overcome through the field of medical tourism. V. Yilmaz, A. Puren [4] studied the positive experience of applying medical tourism mechanisms to the health sector in countries with an appropriate centralised system. A. Ceron et al. [5] studied the issues of levels of legal regulation of medical tourism and its "concentration" to overcome the low efficiency of the inadequate quality of health services in health care systems in some countries.

The purpose of the article is to study the legal regulation of public associations in the field of medical tourism, and the possibility of applying the world's effective experience in the field.

Materials and Methods

The basic sources of research were the norms of national legislation: the Constitution of Ukraine [6], the Civil Code of Ukraine [7], the Tax Code of Ukraine [8], the Law of Ukraine "On Public Associations" [9], the Law of Ukraine "On Tourism" [10], the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regulating the Transplantation of Anatomical Materials to Humans" [11], Recommendations of the Committee of Ministers of the Council of Europe by member states on the legal status of non-governmental organisations in Europe [12]. The study was also based on international regulations: US Code: Table Of Contents (US Tax Code) [13], Law of Medical Tourism in Israel [14], EU Directives: IS/IEC Directives, Part 1 — Consolidated ISO Supplement — Procedures specific to ISO [15]; ISO/IEC Directives, Part 2 — Principles and rules for the structure and drafting of ISO and IEC documents [16]. Information from the Ukrainian Bone Marrow Donors Charitable Foundation [17], the World Marrow Donor Association (WMDA) [18], the Medical Tourism Exchange in Ukraine [19].

The use of the logical method allowed fully ensuring the consistency of the formulated conclusions. The formal-legal method was the basis of a comprehensive analysis of the special legislation of Ukraine, which regulates the formation and operation of public associations in the field of tourism and medical services. The main features of public associations as non-profit organizations and the basic principles that are taken as a basis in the process of forming and defining strategic goals of their activities are analysed. Incomplete compliance of the conceptual apparatus of European concepts and definitions with regard to non-governmental organisations and the established category was established by the national legislation of Ukraine on public associations. Based on the formal-legal method, the content of norms and standards that define public associations as non-profit organisations and to explore the possibility of their implementation of certain functions in the tourism and medical spheres. The comparative law method

was used to review, study and compare relevant legal sources, basic scientific approaches to research, analysis of national and international legislation in the tourism industry, the system of norms and standards that establish quality indicators of medical services. By applying the hermeneutic method, the analysis of the content of norms and rules of legislation of individual countries in the field of medical tourism was carried out, in particular on the powers of travel agents, their functions and responsibilities in conducting their activities. The use of the hermeneutic method allowed explaining the functions of public associations, in particular, public organisations of medical tourism in both national and most powerful international associations in the field of medical tourism, the implementation of which they can provide, to open opportunities for their expansion. The praxeological method, modeling method and prognostic method were used to determine further prospects for the development of new associations in the field of medical tourism in Ukraine and increase the efficiency of existing ones, opportunities to build sustainable international relations based on legislative opportunities. Using these methods and taking into account the existing challenges: the lack of effective legal mechanisms for the interaction of public associations in the field of tourism with public authorities and local governments; insufficient harmonisation of national special legislation and international standards for the provision of medical services. The method of generalisation was used to formulate conclusions and proposals based on the results of relevant research, to outline the range of prospects and directions for further research. The bibliographic method allowed to identify and compile bibliographic characteristics of laws, bylaws, international standards and directives governing the functioning of public associations in the field of medical tourism.

Results and Discussion

Medical tourism is a growing phenomenon. Research examines the changes and challenges of current and future trends [3]. Research on medical tourism, especially in countries with public and organized health care systems, paves the way for understanding the changing role of the state in modern society [4].

Among the factors that determine the attractiveness of national medical tourism are appropriate legislation in certain areas and the introduction of accreditation, certification of clinics (ISO 9001, QHA Trent, JCI and others) [20]. Such a factor that contributes to the development of medical tourism in Ukraine is the establishment by some countries at the legislative level of a ban, or restriction, on certain types of medical intervention. In particular, reproductive programmes (IVF for surrogacy and/or donation), the use of stem cells, organ transplantation, an abortion and others) [1, p. 18].

However, there is a “reverse side” to receiving medical services within medical tourism, which has

been studied under UK law [21]. In particular, in cases of clinical negligence, patients are unlikely to have a “successful” lawsuit against the National Health Service. They will face additional difficulties — establishing jurisdiction, applicable law and enforcing the judgment. The National Health Service may have to bear the cost of corrective treatment, which is unlikely to be completely restorative. Clinicians need to know the law so that they can make a joint decision with the patient that considers the risks to the patient and the provision of appropriate services [21]. The spread of health tourism is also a source of ethical debate that goes beyond global public health and has emerged in a variety of disciplines, including research in development, social justice, law, trade and politics. However, the globalisation of health care has shaped the global healthcare industry. The ability to access more advanced treatments, differences in cost, and inflexible national health care systems encourage patients to seek treatment abroad [22]. Based on the above approaches in understanding and addressing the existence of such a category as “medical tourism”, we support the position that although regulation of the medical tourism industry is necessary, it should be done both domestically and supranationally to be effective in preventing greater inequality health care, and should be aimed at eliminating political and economic factors that force the health care systems of individual countries to create inequalities in health care [5].

Freedom of association and the right to establish public organisations are guaranteed by the Basic Law of Ukraine [6]. The Constitutional Court of Ukraine emphasises [23] “that public associations as institutions of civil society are a natural foundation of constitutional democracy in ensuring the political development of Ukrainian society and the state, promote self-realisation of citizens, enable them to implement and/or defend their rights, freedoms and interests defined and guaranteed by the Basic Law of Ukraine [6], and to participate in solving socially important issues at the local or national level, and the state should create such legislative mechanisms for associations of citizens that will ensure free development personality, opportunities to realise their creative potential and individual abilities in political, economic, social, cultural or other spheres of public life” [23].

Approaches to understanding public associations are different. Part of the scientific community claims that associations are independent of the state and the ability to influence state institutions and at the same time protect society from insufficiently justified state interference in public life [2, p. 42].

The normative definition is contained in the Law of Ukraine “On Public Associations” [9], which are mediated by voluntary associations only of individuals or with the participation of legal entities of private law for the exercise and protection of rights and freedoms, implementation of public, primarily economic, socio-cultural, environmental interests.

In Ukrainian literature, the category of “public organisations” includes voluntary groups of citizens formed as a result of their free will to express collective interests and address public issues and problems [24, p. 15]. For the legislation of European countries, in particular for countries that have ratified the Convention on the Recognition of Legal Entities of International Non-Governmental Organizations and are implementing the “Recommendations of the Committee of Ministers of the Council of Europe” on the legal status of non-governmental organisations in Europe. Regarding the establishment and operation of non-governmental organisations, the use of the term “non-governmental organisations” is typical. However, this term does not “equally” reflect the legal nature of public associations.

Forms of activity of public associations in Ukraine are of great interest in two ways of research. The first way shows the connection between law and non-legal phenomena, which must be regulated through legal mechanisms. The second concerns the role of organisational and legal forms of activity of public associations. This is a defining issue, because the form of activity of public associations can be used as a “framework”, for example, such fundamental legal phenomena as legal relations, legal procedure, legal fact, and a kind of transformation from one component of law to another. In particular, substantive law, which determines the main activities, passes to the procedural through such a form of activity as procedure [25, p. 90].

A public association may carry out activities through the formation of a legal entity, including without the development of such. A public association formed as a legal entity is a non-profit company, the priority of which is not to make a profit. According to Art. 133.4.1 of the Tax Code of Ukraine [8], an enterprise, institution or organisation is recognised as non-profit for the application of the tax process, namely: corporate income tax, there is an organisation, enterprise or institution, which together covers the following requirements: established by the law governing the activities of such a non-profit organisation; for the constituent documents of such an organisation (or the constituent documents of a higher level organisation, according to which the non-profit organisation operates in accordance with the law) prohibits the distribution of income (profits) or their part among the founders, as defined by the Civil Code of Ukraine [7]), members of the relevant organisation, employees (except for wages, single social contribution), members of management bodies and relevant related persons; the statutory documents of which (or the statutory documents of the higher level organization in accordance with which the non-profit organisation operates under the law) provide for the transfer of assets to one or more non-profit organisations of the relevant type, other legal entities funds), or crediting to the budget revenue in case of termination of the legal entity (by its liquidation, merger, division, merger or transformation);

registered by the controlling body in the Register of non-profit institutions and organizations” [8].

Both subjects of tourist activity and subjects of medical activity have the right to unite in public organisations. The legal personality of which is determined both at the level of the Civil Code of Ukraine (Art. 91) [7] and special legislation, in particular, Art. 21 of the Law of Ukraine “On Public Associations” [9].

Non-profit organisations in the field of tourism have the opportunity to focus their efforts on: creating and disseminating information about the tourist resources of Ukraine; development of proposals related to the development of tourism, resort and recreational sphere, protection of tourist resources of Ukraine, their preservation and reproduction, ways to use; popularisation of tourism and create favourable conditions for its development; development of standards of tourist, hotel, excursion, and also other service, including rules of professional ethics; establishment of own systems of quality control of tourist activity; making proposals for joint use by legal entities and natural persons-entrepreneurs who sell tourist services, signs for goods and services; modernisation of educational programs on professional training in the field of tourism, establishment of high professional standards for employees and specialists in the relevant field; implementation of the principles of self-regulation in the field of tourism; implementation and protection of common rights and interests of all stakeholders in tourism.

What in practice results in the following functions of public organizations in the field of tourism: development of standards in the field of tourism services, certification of tourism enterprises, introduction of control over their compliance with the conditions and rules of reception and service of tourists; development of new principles of legal regulation in the field of tourism; introduction of mechanisms to protect the rights of tourism entities and tourists; diversification of tourism activities, which will aim to create additional jobs, implement regional and state programmes to reduce unemployment; carrying out organisational measures for training and retraining of personnel of the tourism industry; branching out and strengthening of international cooperation in the field of tourism, carrying out activities to promote the entry of national participants in tourism in the global market of tourism services; implementation of activities aimed at advertising and promotion of the product, and the organisation of exhibitions of tourist products, both national and international; not the “last” role should be played by the celebration of the most effective participants in the tourism sector.

Today, not only domestic tourism is marked on a global scale, such as moving within a single country, but also international — crossing the border with one or more countries, from the country where the person is registered permanent residence, to obtain qualified and less expensive medical services offered in the absence of

queues or waiting lists, temporary relocation to states that do not have regulations prohibiting the provision of certain types of medical care. Of great importance in the field of medical tourism are public organisations that make every effort to provide timely and professional medical care. Such activities in the field of medical tourism are established by the norms of the laws of Ukraine "On Public Associations" [9], "On Tourism" [10]. The formed system of the regional tourist cluster should be based on the interdependence between economic entities that have merged into a network system to provide relevant services [26, p. 5], including public associations.

The importance of public organisations is manifested in establishing relationships with leading medical institutions around the world, which have the ability to provide the necessary medical services, solve legal problems of border crossing by patients, drawing up statutory packages of documents, working with foundations to raise funds for individuals that conditioned upon their difficult financial situation are not able to pay for the medical services they need on a medical institution located outside their country.

One of the leaders in the field of medical tourism is the Ukrainian Association of Medical Tourism, which has more than 100 public organisations that represent the interests of consumers of medical services, protect the rights and legitimate interests of tourists, establish cooperation with leading public and private medical institutions in Ukraine and the world, and with world-renowned providers of medical services, distributors of medicines, entities engaged in insurance activities, medical funds [27]. In 2015, the Medical Tourism Exchange was established in Ukraine. Thanks to this organisation, the patient can find a clinic, get the best offer from the participating clinics, and provide medical institutions with suggestions for attracting the best experience, cost and conditions for addressing health issues.

All-Ukrainian public organization — the Tourist Association of Ukraine, one of the "most influential" organisations, which was established in 1998 and received state support at the legislative level for its active participation in the development of tourism, including: monitoring of major vectors of tourism development; implementation of standards in the field of tourist services, implementation of actions for certification and certification of tourist enterprises, implementation of control functions regarding their compliance with the conditions and rules of reception and service of tourists; development of new approaches in legal support of tourism issues; taking actions to ensure the protection of the rights of tourism entities and tourists; diversification of tourism activities, implementation of employment policies; carrying out work on the organisation of training and retraining; development and effective implementation of international cooperation in the field

of tourism, policy of dissemination of national medical and tourist products at the international level; directing efforts to promote such products, in particular, advertising, holding international exhibitions, etc.; rewarding and encouraging legal entities and individuals who have made a significant contribution to progress in the field of tourism (in accordance with the decree of the President of Ukraine of March 2, 2001 [28]).

Ukrainian Association of Active and Ecological Tourism is a public initiative that promotes and progressive development of nature-friendly active recreation and tourism, which promotes its ecological way. The association was established based on intra-industry self-organisation and brings together those who are interested in promoting not only active tourism, but also one that aims to preserve natural and ecological properties.

Public organisations carry out intermediary activities, which include the organisation of tourist and medical services; combine the efforts of both the private and public sectors of medicine, medical institutions of different countries and offer patients high-level medical care.

An example of effective participation of public associations in the medical field, and therefore can be used in the field of medical tourism for transplantation of anatomical materials to humans, is the Charitable Foundation "Ukrainian Registry of Bone Marrow Donors", which cooperates with the World Registry of Bone Marrow Donors WMDA (The World Marrow Donor Association) and was included in the list of world registers. It was with his participation, not a state institution, that the first non-family transplant in Ukraine, which took place recently at the Okhmatdyt NDSL, was performed. Although the Regulations on the Coordination Center for Transplantation of Organs, Tissues and Cells were adopted in 2006, the Center received the authority to administer the State Information System for Hematopoietic Stem Cell Transplantation with the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regulating the Issue of Transplantation of Anatomical Materials to Humans" [11].

The way to develop the collaboration of medical institutions and public associations is to introduce legislation on the need for entities that carry out medical activities through the use of transplantation and conduct activities related to transplantation, only on a free basis to explain the medical and social significance transplantation, have the right to involve persons (their relatives or legal representatives) who were donors, underwent transplantation, were able to receive the necessary transplantation treatment in time, including representatives of religious organisations, branch public associations.

Using the experience of foreign countries for the active development of medical tourism, improving the country's economy and most importantly — the quality

of medical services. Every year, countries such as Germany, Turkey, Israel, India, etc., invest millions of public funds in the development of medicine, and invite the best experts in their field from around the world. In addition, each country has many advantages that make them competitive (for example, India provides medical services at extremely low prices — this increases the number of applications [29]).

The Medical Tourism Association is a global non-profit organisation dedicated to education and acting on behalf of medical tourism and the international patient industry. The MTA works with health care providers, governments, insurance companies, employers and other health care buyers in its initiatives in the field of health tourism, international patients and healthcare. The MTA also seeks to raise consumer awareness of international health care options and has specific initiatives to educate and increase the number of consumers traveling for health care.

The Medical Tourism Association is an international non-profit organisation that has acquired the status of 501 © (6) from the US Internal Revenue Service. Section 501 (6) of the Tax Code [13] provides for tax exemptions for commercial leases that are not organised for profit and no part of the net profit of which is directed to the benefit of any private shareholder or individual. AIT has no shareholders or investors [30].

Unlike Israel, which was the first to adopt a medical tourism legislation aimed at streamlining the activities of medical tourism agents, it provides for the creation of a Register of such participants and is strategically designed to improve not only medical services but also increase revenues to the Israeli economy. (The medical tourism law in Israel [24]), America has no laws that would regulate exclusively the field of medical tourism. However, the American Medical Association (AMA) has established ethical codes of conduct for medical tourism, and some states in the United States have enacted laws that indirectly affect medical tourism (for example, organisations involved in this type of tourism). As for the AMA's ethical standards, they stipulate that physicians should promote proper oversight of medical tourism and companies that promote it to protect patient safety and promote high-quality treatment, support the collection and access of outcomes from medical tourists to improve informed decision-making, etc.

Such non-governmental organisations, the Wellness Tourism Association (WTA) and Patients Beyond Borders (PBB), are among the most well-known organisations in the field of medical tourism in the United States and have the same goal — to help patients abroad.

WTA — “established as a non-profit organisation in the United States and launched in January 2018, the Wellness Tourism Association (WTA) is a global network for qualified hotels/resorts/retreats, tour operators, travel consultants, health practitioners, media and other partners in the global wellness tourism industry” [31].

Given the underdeveloped health care system and the quality of medical services in Ukraine for foreign patients, organisations of this type are also necessary participants in relations in the Ukrainian field of medical tourism for successful and high-quality medical tourism.

Scientific positions on the legal status of public associations and the position of national special legislation make it possible to form them in the form of a legal entity, and without creating one. However, as shown by the study and the position of Y. S. Hniedyk [1], V.O. Bilash and M.V. Mendzhul [2], and the practice of organisations in the field of medical tourism (in particular, the Ukrainian Association of Medical Tourism, the Association of Medical Tourism AMT and the Association of Wellness Tourism (WTA)), the lack of organisational and legal form of public association will not fully implement its tasks and functions will restrict its participants in the exercise of property rights. The position expressed by A. Ceron, V.A. Crooks, R. Labonte, W. Flores [5] on the “separation” of public association from the state, its independence seems justified, which is a manifestation of “healthy” civil society, its effectiveness and focus on current spheres of life. Such independence, on the other hand, paves the way for cooperation with state institutions to achieve key objectives. The practice of associations in the field of tourism and medical tourism shows that they are aimed, inter alia, at protecting the interests of consumers of relevant services. Analysis of data presented on the information resources of national and international public associations in the field of medical tourism, and the rules of special legislation that determines their legal personality, shows their significant focus on informing consumers of medical tourism about clinics, centers and other health care providers. Their participation in the development of standards for the provision of services in the field of medical tourism and the promotion of the use of the latest ways to protect the rights and interests of consumers, such as mediation, may also be promising. It will allow to resolve conflicts without “immersion” in court proceedings, which may be complicated by the existence of different jurisdictions and complex and lengthy process of enforcement of court decisions.

Conclusions

In Ukraine, there is no special legal regulation of economic activity in the field of medical tourism, although the need to regulate such activities is a condition for ensuring fundamental human rights. After all the social orientation of the state is determined by the provision of state support sectors of the economy, in particular those related to the right to life and health. The development of a responsible civil society is not possible without the development of self-regulation. The social and economic preconditions for the development and functioning of public associations in the fields of both tourism and health care in Ukraine exist, as the study shows. The legal basis of medical tourism is currently being

implemented through “disparate” regulation of certain types of relations. There are regulations that determine the basics of tourism, a large body of legislation on health care, and separately — spa treatment. Relevant legal regulation bears the hallmarks of public law, as there is state power and administrative activities carried out by executive and administrative bodies (licensing of medical practice, economic activities of umbilical cord blood banks, other human tissues and cells, etc.). Private law defines the path of development and operation of public associations, which is characterised, in particular, by the principles of voluntariness, self-government.

Legislation on public associations needs to be improved to provide for legal mechanisms and methods of interaction with local governments, executive authorities that implement state policy in the field of health services and implement tasks in the field of health care. It is advisable to use the experience of the International Tourism Association. The subject of further research should be the need for special legislation on medical tourism, which will promote the establishment of strategic partnerships between private, public and public interests, and the development of new tourism products with the participation of self-regulatory organisations.

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Громадські об'єднання у сфері медичного туризму: роль та міжнародний досвід діяльності

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Анотація

Актуальність правових засад функціонування громадських організацій опосередковується тим, що процес самоорганізації суспільства та формування громадянського суспільства є взаємопов'язаними один від одного та передбачають дотримання прав і свобод, гідності кожного громадянина, обумовлюють зростання економічного та духовного добробуту, що не можливо без здорової нації, а також стійка тенденція до старіння населення у всьому світі, поступ медичного та оздоровчого туризму набуватиме ознак стрімкого зростання, у тому числі завдяки зростанню рівня самоорганізації людей у громадянському суспільстві, що визначає якість досягнення спільних поглядів та інтересів, зокрема і у сфері охорони здоров'я. Метою статті є дослідження, на основі аналізу нормативно-правових актів, що визначають правовий статус та форми участі громадських об'єднань у туристичній та медичних сферах, практики їх діяльності на національному та міжнародному рівні, проблемних питань та висунення можливих варіантів їх вирішення на основі досвіду як окремих країн, так і на міжнародному рівні. Методи дослідження було обрано з урахуванням мети та завдань дослідження. У ході дослідження використовувались філософські (герменевтичний), загальнонаукові (логічний, узагальнення, праксеологічний метод, метод моделювання, прогностичний метод та бібліографічний) та спеціально-юридичні (формально-юридичний, порівняльно-правовий) методи наукового пізнання. Було з'ясовано, що актуалізації дослідження правового регулювання туристичної діяльності у лікувально-оздоровчому напрямку сприяють глобалізація, мобільність сучасного суспільства та потреби людини у реалізації своїх природних прав на життя, на медичну допомогу, на таємницю про стан здоров'я. Досліджено правове підґрунтя діяльності та основні завдання окремих національних та міжнародних організацій у сфері медичного туризму. Запропоновано шляхи удосконалення правового регулювання діяльності громадських об'єднань у сфері медичного туризму України в умовах наповненості на вдосконалення концепту приватного права відповідно до базових цінностей євроспільноти. Матеріали даного дослідження можуть стати у нагоді для юристів-науковців, керівників та працівників громадських об'єднань, а також викладачів, аспірантів, студентів юридичних навчальних закладів. Державних службовців та усіх, кому цікава дана проблематика

Ключові слова: самоорганізація, правовий статус громадських об'єднань, сфера туризму, туризм у медичній сфері, правове регулювання медичного туризму



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Environmental Security as a Guarantee of National Security

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Abstract

In 2021, the problems of ecology and environmental safety are the most pressing issues for the world scientific community. The basic principles of the national ecological security of Ukraine and the creation of a comprehensive programme to ensure environmental safety, biosecurity, and prevent the spread of dangerous infectious diseases deserve special attention. The purpose of the presented research is to study the issues of environmental safety in Ukraine, in particular, to clarify the specific features of the measures of the international system of environmental safety and their organisation in Ukraine. In the process of research the methods of synthesis and analysis of information, method of classification, method of systematisation, analysis of scientific literature on the researched topic were used. In the course of the research the basic principles of national ecological security of Ukraine were determined. The organisation of an international system of environmental safety requires the adoption of mandatory principles and standards of national conduct, and the establishment of basic principles of cooperation. Global issues, including the environment, cannot be resolved other than by a concerted effort based on consensus. It was determined that ensuring environmental safety and a favourable state of the environment should be recognised as a public priority for development. In practice, this principle means that socio-economic programmes must meet environmental requirements. Ukraine is taking measures to ensure biosecurity, prevent the spread of dangerous infectious diseases and support international efforts in this area. The practical value of the presented study is that it can be used to study the problem of environmental safety. The presented research can be used by theorists and practitioners to study the issue of environmental safety, and used as a basis for further study of the problem

Keywords: state security, ecology, environment, biosecurity, anthropogenic activity

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Introduction

Prolonged accumulation of knowledge about the relationship between man and the environment, including about the factors that can disrupt the system of this relationship, has led to a leap, which should result in awareness of environmental safety as a holistic phenomenon that can be the subject of serious research. Various attempts to consciously cover all aspects of environmental safety have ceased to satisfy the scientific community. Accordingly, a deep and comprehensive scientific understanding was needed. Environmental safety is, on the one hand, a stimulating factor in the development of science, and on the other hand the subject of comprehensive research in various sciences. Thus, the environmental problem is the subject of study of the whole complex of sciences, which can be called a socio-ecological scientific complex [1].

Like other complex problems, it is the subject of a holistic study that requires organic unity and interaction of different sciences to jointly study the subject and synthesise all the results obtained in different ways and methods. The originality of the complex of sciences that study the problem of ecological safety is explained by the specific features of the phenomenon of ecological safety, its diverse nature, internally contradictory and organically connected with all major spheres of society. As it arises and develops as a product of the interaction of natural and social processes, it needs the attention of natural, technical and social sciences. However, this relatively broad typology of sciences no longer covers the entire problem of environmental safety [2].

The problem of environmental safety, of course, is primarily a social problem, because it is the consequences of anthropogenic activities have a pronounced social nature and threaten the living conditions of society. It is also a natural science problem, as it significantly and increasingly affects the processes occurring in the biosphere. There is also a production and technical problem, as it relates to production activities associated with negative changes in the environment. Environmental safety is also considered as an agricultural problem, as its solution depends on agricultural production (reduction of soil degradation, pest control, increase in crops, etc.) [3].

Ecological safety can be characterised as a kind of socio-natural and scientific reality, the study of which should be carried out using appropriate methodological tools. It needs to be identified and the study adapted accordingly. The main tools chosen for such a study are methodological approaches. Of course, they do not exist by themselves, regardless of the object and subject of research, but abstractly we can identify some of them as tools that would be appropriate to use in the research process. It should be noted that the very understanding of methodological approaches is not clear. The same means of cognition are called approaches, sometimes methods, and sometimes principles. The closest

in their properties approaches and methods of scientific knowledge. There are usually two points that characterise the approach: the ability to record the general direction of the study [4].

Given the development of the principles of environmental safety, at first glance, it seems enough one principle, namely, the need for the natural environment as the basis of material and spiritual development of present and future generations of people. However, from a practical standpoint, this principle seems quite contradictory and ambiguous. Especially in this aspect, there are many contradictory proposals: from the release of toxic waste into Earth orbit to their use as a building material or fertilizer. Of course, serious projects are to some extent based on scientific developments and are subject to review. However, none of them indicates errors, especially since there is no agreement among experts on the principles of determining strategic directions of nature protection [5].

In the article by G. Varlamov and co-authors the mechanisms of influence of public ecological organisations on the problem of ecological safety of the fuel and energy complex of the country are considered [6]. The article formulates the requirements for specialists of the fuel and energy complex, considering the conditions of implementation of the new paradigm of their training and creative approaches in solving complex energy and environmental issues. The authors indicated the directions of public activity of energy specialists and their influence on the relevant decisions of state bodies and management of enterprises [6].

O. Bezpalova and co-authors found that along with the concept of "environmental safety" there is the concept of "environmental modernisation" as overcoming the negative effects on the environment by industrial society by transforming the latter with the help of new technologies [7].

A study by O. Mitryasova and co-authors showed that most post-Soviet countries do not use the terms "ecological system" and "ecosystem services" in their legislation, which are now an integral part of environmental policy and legislation in developed countries [8]. The basic principles of ecological safety of aquatic ecosystems are as follows: a water body (surface or underground) is a complex, functionally integrated and self-regulating ecological system. It cannot be considered as a resource for biological and social needs. Priority in the use of water should be living components that exist in it and ensure its functional integrity. Each aquatic ecosystem should be economically assessed not only in terms of available water resources, but also in terms of other ecosystem services, including the diversity of its biotic components. All these principles and the presented approach in case of implementation in the Ukrainian legislation will allow achieving progress in the field of ecological safety of aquatic ecosystems

and sustainable social and economic development. The approach that determines the effectiveness of environmental policy in the field of water safety has been improved by correlating the analysis of water consumption and population.

The purpose of this study is to study environmental safety in Ukraine.

Materials and Methods

The methodological basis of the presented research is a combination of theoretical methods of scientific knowledge. The following methods of scientific cognition were used in the research process: methods of information synthesis and analysis, classification method, systematisation method. During the research, an analysis of the scientific literature on the research topic was also conducted. In particular, scientific articles on environmental safety in Ukraine and the world were analysed.

Methods of analysis and synthesis are used in modern natural sciences, humanities and social sciences. These methods are characterised by special applications and modifications depending on their application for each specific industry. Analysis and synthesis are universal, oppositely directed ways of understanding an object, concept or phenomenon. They are used both in theoretical research and in practice, especially in experimental activities. Analysis provides knowledge about the individual elements of the subject of knowledge in various aspects of its existence. At the level of synthesis, an idea of the structure and properties of the system is formed and the connection between its main characteristics is established. These methods have been used to define the term "environmental safety". Using the methods of analysis and synthesis, the characteristics of ecological safety in Ukraine are considered and analysed.

The method of induction is a method of cognition, which is based on a formal-logical conclusion, which allows obtaining a general conclusion based on individual facts. In other words, it is the movement of our thinking from the individual to the general. Thus, with the help of the induction method the main characteristics of ecological safety, and also directions of development of ecological safety in Ukraine are defined.

The method of classification is a way of combining elements of classification into classification groups. There are two main methods of classification: hierarchical and faceted. The method of hierarchical classification is characterised by the fact that the initial set of information objects is gradually divided into groups (classes) of the first level of division, and then into groups of the next level and so on. Systematisation is the process of combining various knowledge about objects (phenomena) of objective reality into one scientific system, which determines their unity. Systematisation is a reflection of the material unity of the world and is based on the study of the basic connections that connect these objects (phenomena). It is based on the classification, analysis and

synthesis of the basic properties of a particular objective system. In the course of the research, thanks to these methods, the priorities of ensuring environmental safety on the territory of Ukraine were systematised.

Results and Discussion

The basic principles of national environmental security are formulated in the Law "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Up to 2020" [9]. The Law emphasises the strengthening of the role of environmental management in the system of public administration of Ukraine to achieve equality between the three components of development (economic, environmental, social), focusing on sustainable development, considering the environmental consequences of management decisions in preparing documents containing political and program principles of state, sectoral, regional and local development, intersectoral partnership and stakeholder involvement, including prevention of natural and man-made emergencies, analysis and forecasting of environmental risks based on strategic results, environmental assessment, state environmental expertise, state environmental monitoring.

According to this Law [9], the government focuses on ensuring environmental safety and maintaining ecological balance in Ukraine, overcoming the consequences of the Chernobyl disaster, the responsibility of the current generation to preserve the environment for future generations. Another important aspect is the participation of the public and the business community in the development and implementation of environmental policy, and consideration of their proposals for improving environmental legislation. Also, we should note the need for responsibility for violations of environmental legislation, the priority of the requirement "polluter and users of natural resources pay the full price", the responsibility of executive authorities for the availability, timeliness and accuracy of environmental information; availability, reliability and timeliness of environmental information, state aid and incentives for Ukrainian enterprises to modernise production to reduce the negative impact on the environment [9].

It follows that environmental factors affect all indicators of quality of life. Therefore, ensuring environmental safety and a favourable state of the environment should be recognised as a public priority for development. In practice, this principle means that socio-economic programmes must meet environmental requirements. It will find application in this area of environmental legislation, regulation of economic activity and the environment. This means that environmental security should be considered one of the highest priorities, to which all other tasks are subordinated, including national security measures, as environmental security is universal and cannot be implemented at the expense of some other countries [10].

The organisation of an international system of environmental safety requires the adoption of mandatory principles and standards of national conduct, including the establishment of guidelines for cooperation. Global issues, including the environment, cannot be resolved other than by a concerted effort based on consensus. These principles, standards and recommendations need to be developed together, based on a broad and constructive dialogue.

The basis for making the most important decisions must be established by the political will of states to overcome internationally acceptable environmental issues, and by preparing an effective program of joint political and environmental action. Conditioned upon the great variety of environmental problems, the company is forced to prioritise their solution and, accordingly, to attract investment. This does not mean that there should be any environmental problems they are absent indefinitely, but the priority seems significant.

Priorities should reflect the urgency and importance of addressing certain environmental issues. Based on the low quality of all natural ecosystems of Ukraine, the need for significant environmental costs of the program in general socio-economic aspects, including budgetary and financial crisis, annexation of Crimea and occupation of certain areas of Donbass by the Russian Federation became the basis for priority development of realistic, efficient solutions [11].

Hopes for a socialist environmental system that recognises the environment as public property have not materialised. Natural resources were available to agencies, irresponsible officials and anonymous organisations. This has led to unprecedented environmental losses. However, private ownership of natural resources does not bode well. In this case, nature is perceived as a means of personal gain and the establishment of

a cult of consumption. Environmental technologies, saving energy and other resources, waste disposal, environmental education, such measures allow technically developed countries to alleviate the environmental situation. But to radically improve it, thus overcoming the general ecological crisis of modern technical civilisation, is unlikely to succeed [12].

Despite all the diversity of modern political systems, socio-economic structures remain united, perhaps in essence: they remain consumer societies that deplete and pollute the environment and the biosphere. The mechanical system of technology is designed to conquer and exploit the environment, and the resources of the biosphere are known to be quite limited, while the power and capabilities of technology are growing almost indefinitely. Thus, modern technical civilisation differs only from previous ones that have unique capabilities to destroy the biosphere: in a few minutes (nuclear war), or for decades (the constant expansion of the human environment) [13].

Global environmental problems are a complex set of dynamically changing problems of natural and anthropogenic origin. Many of them are real environmental threats: changes in the chemical composition of the atmosphere and their consequences (increasing greenhouse gas concentrations and global warming, acidification of the environment and other pollution of natural freshwater, oceans and coastal waters), deforestation and desertification, soil erosion, loss of fertility soils, biotechnological risk, production, transportation and use of toxic substances, accompanied by various threats to human health and safety in different countries, including the transfer of hazardous technologies to developing countries, which poses a threat to the population, etc. [14]. Priority actions to ensure environmental safety in Ukraine are presented in Figure 1.

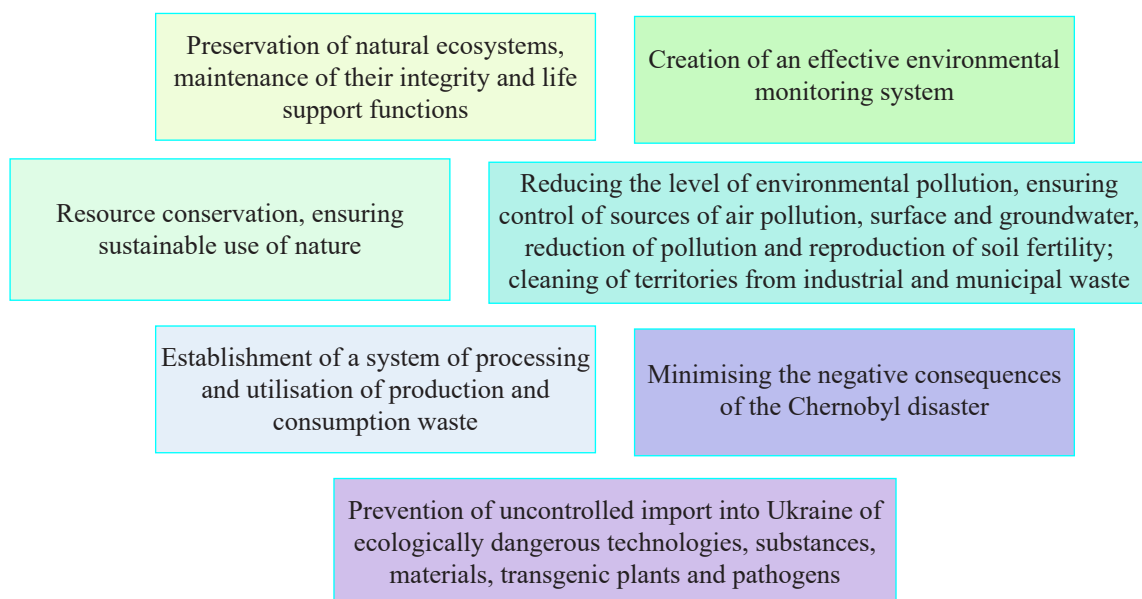


Figure 1. Priorities for ensuring environmental safety in Ukraine

Ukraine is taking measures to ensure biosecurity, prevent the spread of dangerous infectious diseases and support international efforts in this area. Undoubtedly, these are very important issues and each of them can be a priority. But so far it is nothing more than desire or planning. They will become a priority only when a comprehensive program is developed for them. It is also clear that, given the importance of these problems, the budget deficit will not solve them at the same time. Therefore, it is necessary to determine the order of their solution. It is not a matter of postponing some environmental programmes indefinitely, but of balancing the priorities that have been circulating in the ministry's documents since 1994. It is important to specify them, fill them with relevant content, outline in stages, provide scientific, material and financial resources [15].

Although great efforts and measures are being made, especially in the field of nature protection, its conceptual basis remains unclear. And when they believe that the implementation of environmentally sound development policy requires only the good will of citizens and the government, it is only a condition that is necessary, but not enough to address all environmental issues. At the same time, special knowledge is needed to navigate the various problems of food protection and find optimal solutions.

Nature protection cannot be considered an isolated and self-sufficient union, but is directly included as a main component in the system of universal priorities. This determines a systematic approach to solving food security problems, eliminates their obvious conflict over the main goals of development and the universal system of values [16].

In addition, it should be noted that the identified priorities and strategic directions of action have not yet been reflected in policy documents at the regional level. Similarly, government target programmes, current and future, do not ensure the full implementation of some strategic measures. The lack of mechanisms for linking environmental policy with plans and programmes of socio-economic development at the national and regional levels leads to low efficiency in solving environmental problems [13].

For a more detailed consideration of the issue of environmental safety of Ukraine, it is necessary to consider the research of other scientists. The article by Sokolenko and co-authors analyses the methodological approaches to assessing the level of environmental and economic security of the regions [16]. The authors proposed to assess environmental and economic security as an integrated index that considers the relationship of financial and environmental components and the impact of natural and man-made risks [16]. The main indicators of the integrated index of ecological and economic safety are determined. A scale for assessing regions (depressed, satisfactorily protected, and acceptably protected regions) is developed depending on the value of the integrated

index. In the manuscript, the authors assessed the level of ecological and economic security of the regions of Ukraine [16]. According to the results, most regions of Ukraine have a low (on average not more than 0.2) level of security.

The authors emphasised that this approach will improve the quality of regional management by developing a strategy that is most favourable for financial opportunities and the environmental situation in the region [16]. The authors propose to develop measures for the efficient allocation of budget funds depending on the level of the developed index [16].

The article by O. Bezpalova and co-authors is devoted to the study of environmental security of the state in the national and globalisation aspects [7]. The authors found that the ecological security of the state is a state of security of each person, society, state and nature from excessive danger to the environment, ie preservation and protection of life, interests of the person and his environment from negative anthropogenic and natural factors, consequences that are an important component of national security [7]. The existing threats to Ukraine's environmental security identified in the National Security Strategy of Ukraine in 2015 have been identified. The authors stressed the need for additional attention to the armed conflict in eastern Ukraine as one of the threats to the economic security of states, which corresponds to the provisions of the UN Resolution "Environmental Protection in Areas Affected by Armed Conflict" [17]. It is noted that the Ministry of Ecology and Natural Resources only formally performs environmental assessment tasks, unlike the governments of Finland and Sweden.

The issue of public participation of Ukraine in nature management still remains debatable, as defined Law of Ukraine "On Environmental Protection" [18], it remains only formal, although, for example, the public is actively involved in the management of this area in China. Accordingly, the authors proposed not only to fulfill the task of the Ministry of Environment and Natural Resources to develop a single list of indicators at the EU level to assess the state of the environment, but also to involve the public in full participation in environmental management.

The article by O. Cheberyako and co-authors is devoted to the study of the essence of "green" finance and aims to give an idea of the existing "green" financial instruments and problems of their application in Ukraine, outline ways to improve the use of "green" finance and social and environmental security [19]. The authors note that the study requires a revision and improvement of the practice of using "green" financial instruments, considering international experience [19]. The results of the study obtained by the authors allowed providing directions for the development of "green" finance in the context of social and environmental security in Ukraine, including strengthening the use

of public-private partnerships, climate risk insurance and investment in education to create skilled labour in "green" finance [19].

The main purpose of A. Kuzior and co-authors was to analyse and solve problems of green energy implementation in Ukraine, in particular to identify its advantages and disadvantages [20]. The authors emphasise the introduction of solar renewable sources, ie stations, panels and batteries [20]. The results of sociological research of Ukrainian public opinion on environmental issues, in particular energy, are presented. The presence of public demand for renewable energy and the willingness of the population to use renewable energy sources. The strategy of strengthening the energy independence of the country in the conditions of new challenges of globalisation is defined.

General scientific methods were used in the work, including special methods: statistical analysis, secondary analysis of sociological research data of state institutions, office analysis of documents and reports of public services. In the work of A. Kuzior and co-authors, it was concluded that Ukraine is geographically and territorially attractive for the development of green energy and investment [20]. It is important that there is a public and state demand in the country to strengthen the country's energy security, in particular, through the introduction of renewable energy sources. The authors note that despite the shortcomings and obstacles, green energy in Ukraine has great prospects [20].

One of the ways to prevent defects and regulate land plots in Ukraine now and in the future is to ensure the adaptation of national land legislation to the requirements of the European Union. Implementing Ukraine's European integration is an integral part of Ukrainian reforms aimed at economic growth, improving living standards, developing democracy, building civil society, guaranteeing the rule of law, freedom of expression, protecting human rights and freedoms, and strengthening national security. Sannikov notes that deepening cooperation with the European Union is an important element in strengthening stability and security on the European continent, stimulating domestic economic and political reforms, promoting social progress and developing a socially oriented economy of Ukraine [21].

Signing and ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other, the Ukrainian Parliament in 2014 and the need to adapt national legislation on land use and protection as the main national assets, determine the relevance of the chosen research topic [22].

A comparative analysis of Ukrainian and foreign normative analysis of environmental liability and compensation for land losses conditioned upon economic and other activities indicates the need to consider several provisions of the directives that will help build

a European model of financial responsibility for land in Ukraine. Considering the European experience in solving the problems of environmental damage, it should be noted that in all positive aspects the Institute of Environmental Responsibility and its effectiveness depend on the level of development of the financial guarantee mechanism.

Until 2010, the directive provided for the development of a system of mandatory financial guarantees in case of environmental damage. Insurance is considered the most affordable and universal form of financial guarantee. Therefore, for Ukraine, in addition to improving the institution of financial responsibility, special attention needs to be paid to creating a real system to ensure its implementation, one of the methods of which is environmental insurance. Therefore, it is necessary to create a legal basis for its regulation through adoption of the Law of Ukraine "On Environmental Insurance" [23]. Sannikov notes that special attention should be paid to the harmonisation of methods of environmental damage assessment, which should provide an adequate assessment of the actual damage [21]. The methods of assessing the damage caused to land in Ukraine generally correspond to modern procedures enshrined in European legislation.

The calculation method used to determine the amount of damage meets the requirements of a market economy and allows displaying the actual amount of damage. However, these techniques do not provide a mechanism for compensating for damage caused by pollution of human life and health. The effectiveness of such a settlement is important for legal standards of a protective nature [21].

O. Mitryasova and co-authors established key principles of ecological safety of aquatic ecosystems in the context of sustainable use of natural resources and socio-economic development [8]. The authors analysed the main aspects of water resources management in the world in the context of the provisions of the concept of sustainable development [8]. Comparison of countries with different levels of development allowed the authors to identify key methodological provisions that are implemented in environmental water policy. The authors proposed an approach to the establishment of environmental impact indices [8].

The results of the study by O. Mitryasova and co-authors allow quantitatively assessing the management of water resources [8]. The results of the study of the influence of the factor of freshwater resources on the socio-economic development of countries and regions of the world indicate that in this system of context there is a strong statistically significant correlation [8].

The article by Y. Samusevych and co-authors is devoted to the study of environmental, energy and economic security by methods of multidimensional analysis [24]. The set of indicators selected for the study contains 9 parameters for each type of security. The

sample consists of data for 6 Eastern European countries (Ukraine, Moldova, Poland, Romania, Hungary and the Slovak Republic) for the period 2000-2019. The authors note that the empirical study was performed by the method of factor analysis, which allowed identifying the main components of environmental, energy and economic security [24].

Comparison of the obtained results for the studied countries showed the differentiation of individual profiles of these types of security. The study of integrated vectors of environmental, energy and economic security showed the highest level of interaction between energy and environmental security and the lowest between energy and economic security.

Conclusions

It was found that the originality of the complex of sciences studying the problem of ecological safety is explained by the specific features of the phenomenon of ecological safety, its diverse nature, internally contradictory, organically connected with all major spheres of society. Given the development of the principles of environmental safety, at first glance, it seems enough one principle, namely, the need for the natural environment as the basis of material and spiritual development of present and future generations of people. However, from a practical standpoint, this principle seems quite contradictory and ambiguous.

In the course of the research the basic principles of national ecological security of Ukraine were determined. The organisation of an international system of environmental safety requires the adoption of mandatory principles and standards of national conduct, including the establishment of guidelines for cooperation. Global issues, including the environment, cannot

be resolved other than by a concerted effort based on consensus. It was also determined that ensuring environmental safety and a favorable state of the environment should be recognised as a public priority for development. In practice, this principle means that socio-economic programmes must meet environmental requirements.

It should be noted that environmental security should be considered one of the highest priorities of the task to which all other tasks are subordinated, including national security measures, as environmental security is universal and cannot be implemented at the expense of some other countries. Ukraine is taking measures to ensure biosecurity, prevent the spread of dangerous infectious diseases and support international efforts in this area. Undoubtedly, these are very important issues and each of them can be a priority. But so far it is nothing more than a desire or planning for change. They will become a priority only when a comprehensive program is developed for them.

Thus, it can be noted that the issue of environmental safety is insufficiently studied and needs further study. The presented research can be used as a basis for further study of the problem of ecological safety of Ukraine. Thus, ensuring cohesion at the national and local levels within the defined priorities remains an important area of activity. To increase the effectiveness of environmental planning, it is necessary to prepare drafts of the strategic document "Principles of National Environmental Policy", "National Plan of Environmental Measures" and the draft law "On Amendments to the Law of Ukraine" on state target programmes "Environmental Policy" in regional socio-economic development programmes, which depends on the effectiveness of planning activities in Ukraine.

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Екологічна безпека як запорука національної безпеки

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Анотація

У 2021 році проблеми екології та екологічної безпеки є найбільш актуальними питаннями для світової наукової спільноти. Особливої уваги заслуговують основні принципи національної екологічної безпеки України та створення комплексної програми з забезпечення безпеки довкілля, біозахисту, запобігання поширення небезпечних інфекційних захворювань. Метою представленого дослідження є вивчення питань екологічної безпеки в Україні, зокрема, з'ясування специфіки заходів міжнародної системи екологічної безпеки та їх організації в Україні. У процесі дослідження були використані методи синтезу та аналізу інформації, метод класифікації, метод систематизації, аналіз наукової літератури з досліджуваної теми. В процесі дослідження було визначено основні принципи національної екологічної безпеки України. Організація міжнародної системи екологічної безпеки вимагає прийняття обов'язкових принципів та стандартів національної поведінки, а також встановлення базових принципів співробітництва. Глобальні проблеми, включаючи охорону навколишнього середовища, не можуть бути вирішені інакше, як спільними зусиллями на основі консенсусу. Було визначено, що забезпечення безпеки довкілля та сприятливого стану довкілля має бути визнано суспільним пріоритетом розвитку. На практиці цей принцип означає, що соціально-економічні програми повинні відповідати екологічним вимогам. Україна вживає заходів для забезпечення біозахисту, запобігання поширенню небезпечних інфекційних захворювань та підтримки міжнародних зусиль у цій сфері. Практична цінність представленого дослідження полягає у тому, що воно може бути використане для вивчення проблеми екологічної безпеки. Представлене дослідження може бути використане теоретиками і практикаками для вивчення проблематики екологічної безпеки, а також використане як основа для подальшого вивчення висвітленої проблеми

Ключові слова: державна безпека, екологія, навколишнє середовище, біозахист, антропогенна діяльність



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Fundamentals of Patent Protection in the Field of Biotechnology

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Abstract

This article covers the concept of patent protection bases in the field of biotechnology. The urgency of the work lies in the need to establish and determine the relationship between patent protection of biotechnology and the legislation of Ukraine, as there is no proper regulation in national legislation. The purpose of the study is conditioned upon the analysis of certain legal issues of biotechnology protection, the need to highlight the features of the legal regulation of relations in the field of biotechnology in international and Ukrainian regulations. During the study, the authors used the following methods to obtain, process and present information: general science (formal-logical, methods of analysis and synthesis, comparison, methods of induction and deduction) and special-legal methods (formal-legal, comparative-legal). The results of the study revealed some inconsistencies in the legislation of the European Union, in particular in the provisions of Directive 98/44 on the conformity of the concept of model, but at the same time worked out the scope of relevant regulations and their functions. It is investigated that there are certain ethical problems in the aspect of human cloning and further development of mankind. The need to adjust the current legislation has been identified. The results of this work, including its components, can be useful for both lawyers in the field of intellectual property law and medical professionals. The practical significance of the article is characterised by a comprehensive study of patents in the field of biotechnology, and an attempt to amend existing Ukrainian legislation in the field of patenting and intellectual property law. The authors consider it expedient to adopt the Law of Ukraine "On Biotechnology Protection", which should provide criteria for compliance with publicity and morality, based on Ukrainian law, when inventions as an object of intellectual property rights can be considered non-patentable

Keywords: health care, patent law, agriculture, intellectual property rights, intellectual law

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Introduction

What does it take for society to accept a person's copyright in an invention? Morality, law and patent. Patent law in the countries of the European Union is based on the legal principles of ethics and morality. The adoption of Directive 98/44 on the legal protection of biotechnological inventions [1] was carried out to develop the economic sphere of the European Union, the ability to manage conflicting ethical and moral criteria for patenting biotechnological inventions to regulate European Union law.

Biotech companies are structures that have the potential to change healthcare relationships forever. Complexes that create the latest drugs, vaccines and other substances that are aimed at improving the health of patients and receive significant profits from patented biotechnological inventions in medicine, pharmacy and more. For similar corporations, an equally important aspect is to take measures to protect the research and technology that accompanies the breakthrough in the medical field through the acquisition of patents for inventions. At the beginning of the COVID-19 pandemic, concerns about access to coronavirus drugs worried not only society but also political circles, but later the World Health Organisation, with the support of the European Commission, publicly acknowledged that intellectual property was not an obstacle to increasing vaccine production. drugs against COVID-19 [2, p. 25-26]. An article in the medical journal Expert Review of Vaccines fully justifies the need to abandon the patent for the COVID-19 vaccine in favor of increasing their global production [3].

Given the uniqueness and specificity of patenting a biotechnological object as an object of intellectual property rights, it is necessary to clarify the problematic issues arising from the specific features of the legal regulation of relations in the field of biotechnology.

This issue was raised, in particular in the works of such Ukrainian scientists as: L. Ponomareva and her article [2], which presents the results of a study on the patenting of biotechnological inventions in medicine and pharmacy, including an analysis of the positive aspects of biotechnology in this area, which enable people with disabilities to get a chance at life and solve certain problems related to health, with the help of modern advanced achievements of science; V.G. Gerasimenko, M.O. Gerasimenko, M.I. Tsvilikhovsky [4], who studied in detail biotechnology as a field of biology and studied the current state of biotechnology, fundamentals and practical use of biotechnological developments in such areas as veterinary medicine, animal husbandry, ecology and related sectors of the economy in his textbook.

However, a clear legal approach to patenting in the field of biotechnology has not yet been formed, and there are gaps in modern Ukrainian legislation in terms of patent law.

The purpose of this article is to analyse the legal issues of biotechnology protection, to highlight

the features of the legal regulation of relations in the field of biotechnology in international and Ukrainian regulations.

Materials and Methods

The authors, collecting and analysing information for the work, used the following methods: general scientific, namely formal-logical, comparison, methods of induction and deduction, and special-legal, ie formal-legal, comparative-legal methods. Among the materials that the authors decided to use during the study — a significant part — the work of foreign scientists, which are indexed in international databases such as Scopus and Web of Science, such as articles such as “Morality: An important consideration at the patent office” [5] and “Patenting biotechnological inventions in Europe” [6]. With the help of general scientific methods, namely the method of comparison, the Ukrainian legislation in the field of patenting of biotechnologies was compared with the international one; using the method of induction and deduction, problem issues are identified and ways to solve them are suggested. Special legal methods, namely formal-legal and comparative-legal, contributed to the legislative elaboration of materials and legal support of the conclusions made. Another important component of the materials is international law, such as the European Union Directive [1].

Results and Discussion

Today's achievements in the field of biotechnology and artificial intelligence in the context of modern ideological concepts threaten the loss of the basic concept of humanity. The question of morality in the case of “patenting life” still remains open. The existing position of the European Patent Office on the morality of patenting biotechnological inventions follows from the cases before it. Inventions such as oncomys (the first patented transgenic organisms) cannot be excluded from patentability on the basis of immorality if their positive aspects outweigh the disadvantages [7].

It is necessary to pay attention at first to features of legal regulation of relations in the field of biotechnologies in the international legislation. The development of genetic engineering is inextricably linked with the use of human biomaterials, which causes even more ethical problems [8]. In particular, it should be noted that the Italian National Committee for Bioethics on June 22, 1996 approved the document “Identity and status of the human embryo” [9], according to which the human embryo is recognised as worthy of respect and care applied to human individuals, which are assigned personality characteristics. This document reads as follows: “The Committee unanimously agreed to recognise the moral obligation to treat a human embryo from the moment of fertilisation (conception) in accordance with the criteria of respect and care applicable to human

individuals who are assigned a personality" [10]. That is, the Italian National Ethics Committee recognises the embryo as a person. It should be noted that according to Part 5 of Art. 221 of the Association Agreement between Ukraine and the European Union and the Atomic Energy Community and their Member States on the other hand [11], inventions will be considered non-patentable in cases where their use in commercial activities is contrary to ordre public or public morality; nevertheless, the use of inventions is not considered as such only because of the prohibition in accordance with laws or other regulations. In summary, we can say that the following objects are considered non-patentable:

- a. the processes of human cloning;
- b. processes of modification of the germ line of human genetic identity;
- c. the use of human embryos for industrial or commercial purposes;
- d. processes of modification of the genetic identity of animals that are likely to cause their suffering without any significant medical care for humans or animals, including animals resulting from such processes [11].

The provisions of parts 9 and 10 of Art. 221 of the above-mentioned Agreement [10], according to which "legal protection does not apply to biological material obtained from cultivation or reproduction placed on the market of biological material in the territory of the Parties by the patent owner or with his consent, where reproduction or cultivation is mandatory the result of the application for which the biological material has been marketed, provided that the resulting material is not subsequently used for other cultivation or propagation. The sale or other form of commercialisation of plant cultivation material to a farmer by the patent holder or with his consent for agricultural use means the farmer's permission to use the product of his harvest for cultivation or propagation by him on his own farm. At the same time, the distribution and conditions of this partial repeal may be consistent with the conditions provided for in the national laws, regulations and practices of the Parties regarding plant variety rights" [12].

On the other hand, there is a majority to whom these technologies are provided in doses or not at all. The former may suffer from the erosion of human identity, the latter from large-scale discrimination that has no precedent in history. If earlier at all stages social strata were always more or less permeable for the lower levels, then the newly acquired biological properties or expanded knowledge of the existing ones will make these barriers insurmountable. For example, people who have not received from birth some artificially programmed abilities, resistance to disease, will be in a conscious repressed position and will not be able to fix it.

On the one hand, advantages will be given to their more successful competitors with the edited gene, and on the other hand, systems of knowledge about the properties encoded by genes will not leave less well-off

individuals a chance to hide these shortcomings. Modern legal issues in the field of biology and medicine also include the following: the ability to conduct experiments with human embryos after reaching two weeks, the possibility of using for scientific and medical purposes chimeric embryos, including methods of genome editing involving human genes and animals together, methods and processes used to change the structure of human DNA.

New technologies allow interfering in the human genome, which can lead to certain consequences for the further development of mankind. Although there will always be a dependence on genetic materials, there is a tendency for research and development activities using genetic materials to be increasingly supplemented or replaced by computerised research activities. The growth of big data raises some legal issues in terms of data ownership and intellectual property, data management and administration, including technology transfer and licensing [13].

Innovation is stimulated by the emergence of a pathogen, such as the elements or disease, so the COVID-19 pandemic demonstrates this once again. Thus, according to statistics [14], the connection between intellectual property and innovations in the field of biotechnology and drug development has been confirmed. Most impressed by the high performance in 2021 in medical technology, pharmaceuticals and biotechnology. In contrast to the total number of applications for European patents in the technical fields, which decreased, these three areas violated the trend and showed an increase of 2.6% (in the field of medical technology), 10.2 % (in the field of pharmaceuticals) and 6.3% (in the field of biotechnology). The terrible pandemic that engulfed the world in 2020 affected all aspects of the economy. The tourism industry has been severely affected by restrictions on travel and entry, but digital technologies have played a very important role in transforming the usual online style of work [14].

Thus, biotechnology is one of the priorities of modern science, which accelerates scientific and technological progress, and is an effective way to overcome problems in the field of raw materials, energy, food, economics and ecology. It finds its purpose in solving many practical problems, which are closely interrelated with increasing the efficiency of innovations in the field of human and animal health, reducing harmful effects on the environment and the ecosphere, increasing the rational use of food resources and raw materials, and the use of affordable, waste-free and efficient energy sources [4, p. 9].

Article 2 of the Convention on Biological Diversity of 06/05/1992 [15], defines the term "biotechnology" as any type of technology that involves the exploitation of biological systems, living organisms or their derivatives for the purpose of manufacturing, modifying products, or processes for a specific application.

Despite the use of biotechnology in production

and various spheres of human life, the most pressing issues related to innovation in biotechnology are the protection of intellectual property. Today, the protection of intellectual property rights in the field of biotechnology is one that is not able to fully protect the subjective rights of Ukrainian owners and other legitimate users of intellectual products. Legislative regulation of these processes in the Ukrainian legal field is virtually absent.

From a commercial standpoint, the authors of this work pay attention to the technology of Crisper (CRISPR) [16], which is known as genetic engineering. Its emergence has led to a fivefold increase in investment in genome-editing bio-enterprises over the past year. This entrepreneurial movement has stimulated the global biotech revolution in the implementation of new gene editing technologies. Such global shifts in the bio-enterprise will only increase as the demand for personalized medicine, genetically modified plant crops and environmentally sustainable biofuels grows. However, the monopolisation of intellectual property, the public's negative perception of genetic engineering and ambiguous regulatory policies may limit the growth of these market segments, with which O. Piddubny and O. Svitlichny agree.

The content of technology, which is a mandatory attribute of biotechnology, biological processes, etc., may contain more than one object of intellectual property rights (invention, plant variety, animal breed, trade secret). To clarify the protection of biotechnology, we will analyse the regulatory and legal support of this process.

Given the above, consider the features of the legal regulation of relations in the field of biotechnology in national law. It should be noted that today in Ukraine there is no special legislation that would regulate legal relations in the field of legal protection of biotechnology. This issue is briefly regulated by the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" of 12/15/1993 No. 3687-XII, in Art. 1 of which biological material means "material that contains genetic information and can self-reproduce or be reproduced in the biological system", and part two of Art. 6 of the Law stipulates that "the object of the invention, which is granted legal protection, may be a product (device, substance, strain of microorganism, cell culture of plants and animals, etc.) or process (method)" [17].

In contrast to the Law of Ukraine "On protection of rights to inventions and utility models" [18], the Rules of preparation and submission of applications for inventions and applications for utility models from 01/22/2001 No. 22, regulate this issue in more detail, referring to objects of technology material objects as the results of human activity, in particular: "device, mechanism, system (complex) of interacting devices, structure, product, substance, strain of microorganism, cell culture of plants and animals and other biological material, including transgenic plant and animal" [18].

Given the problematic issues of protection of

biotechnological inventions, the European Parliament and the Council of the EU in 1998 adopted Directive 98/44 on the legal protection of biotechnological inventions, which provided some answers to questions that arose in practice [19].

In particular, Art. 5 of Directive 98/44 [1] stipulates that: first, "the human body at various stages of its development, including the simple discovery of one of its elements, and the sequence or partial sequence of a gene", may not constitute patentable inventions; secondly, an element isolated from the human body or otherwise obtained by a technical process, including a sequence or partial sequence of a gene, may constitute a patented invention, even if the structure of this element is identical to the structure of a natural element. Art. 6 of the Directive [1] stipulates that inventions will be considered unfit for patenting if their commercial operation is contrary to public policy (*ordre public*) or morality. This norm is generally accepted.

In particular, the following cannot be patented: "processes of human cloning, processes of genetic modification of human germ lines, use of human embryos for industrial or commercial purposes, processes of changing the genetic identity of animals that can cause them suffering without provoking significant medical benefits for humans or animals, including animals that are the result of such processes" [20].

In addition, Directive [1] does not provide an answer to the three objections that inevitably arise in the analysis of this distinction. First, the study of almost any natural object is possible only after its previous removal from the natural environment, otherwise any action on it does not seem possible. Second, even if the natural element is isolated from the natural environment, it does not change its "natural" nature. The indication of the technical nature is an argument only in favour of the patentability of the isolation process, but not in favour of the patentability of the isolated product [21, p. 124].

Third, the Directive [1] does not contain definitions and criteria of "manufacturability", which must meet the processes by which the isolation and/or production of biotechnological products. This allows interpreting "manufacturability" unnecessarily widely and extend it even to standard and well-known processes and mechanisms used in biotechnology [22]. Of particular importance is this objection in challenging the patentability of gene sequences, the patenting of which was originally in demand conditioned upon the technical complexity of the process of their isolation. Currently, this process is carried out by specially created computers and is a standard procedure that requires only minimal human involvement [23, p. 492].

In this regard, the Directive [1] leaves unresolved the question of whether this technical process must meet the criteria for obtaining a patent, and if not, on what basis the product obtained as a result of such a process can acquire the status of a patentable invention.

Thus, the establishment of legal properties and guidelines for the interpretation of the concepts of morality and public order at the European level, enshrined in Art. 6 of the Directive [1], partly contradicts the provision of the Directive itself on the need to interpret these concepts in accordance with the national law of each EU member state. This contradiction should be resolved in favour of the preamble to the Directive for a number of reasons. First, the criteria for conformity of inventions to morality and public order cannot and should not be developed at the supranational (in this case, pan-European) level explained by the lack of a common notion of moral values and the impossibility of extending artificial norms and standards to different legal systems. Secondly, the aim of harmonising EU law is to create a single market by establishing the principles of free movement of people, goods, services and capital. Unification of concepts in the field of morality, culture or religion, the definition of which does not have clearly defined boundaries, belongs to the internal competence of the state [24, p. 12]. This position was also confirmed by the Court of Justice in a number of court cases [25, p. 7161].

Indeed, the notion of moral values varies by country. Even in developed European countries, such as the Netherlands and Poland, Germany and the United States, there are different moral ideas and principles in human life that express moral orientation and influence individual behavior through the prism of personal perception. The above can not but affect the creation of an intelligent product. For example, US law does not provide grounds for refusing a patent for moral reasons, other than patenting human-animal hybrids and keeping human stem cells in an animal [25]. But recent developments in biotechnology have opened up new opportunities not only for research but also for patenting. However, recent decisions of the US Supreme Court, such as in the case of the Association of Molecular Pathology v. Myriad Genetics [5], demonstrate the difficulty of interpreting these new technologies in patent law. Many scholars, for example, have argued that instead of using the “product of nature” doctrine [5] and focusing on the boundary between human and natural constructions, the Court should have ruled on the doctrine’s political goal: to protect basic research tools and technological works. Failure to comply with this requirement has led to confusion in doctrines, reduced patent protection and increased uncertainty in the field. In addition, recent biotechnological developments also raise increased ethical concerns

The German patent law provides for special provisions that apply primarily to humans. The human body cannot be patented during certain stages of formation and ontogenesis, including germ cells (Section 1a of the German Patent Law) [26].

Legal protection of biotechnology is regulated by the Agreement on Trade-Related Aspects of Intellectual

Property Rights of the WTO, according to Art. 27 Agreements [27] patents are granted for any inventions, products or processes in all fields of technology, provided that they are new, include an inventive step and are suitable for industrial use. However, the members of this Agreement “may refrain from patenting inventions the commercial use of which in their territory is prevented by the protection of public order or public *morals*, in particular the protection of life or health of humans, animals or plants, or which is necessary to prevent significant damage to the environment, provided that such an exception is not made simply because their use is prohibited by law, and do not allow patenting:

- a. diagnostic, therapeutic and surgical treatments for humans or animals;
- b. plants and animals, other than micro-organisms, and important biological processes for the production of plants or animals, other than non-biological and micro-biological processes. However, members must ensure the protection of plant varieties either through patents, or sui generis an effective system, or through their combination” [27].

Therefore, inventions in the field of biotechnology are non-patentable in cases where their commercial use is contrary to public policy.

At the international level, the legal protection of biotechnology is also regulated by the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 04/28/1977 [28] and the European Patent Convention of 10/07/1977 [29], which examines applications for formal requirements, including examination of patent applications for compliance with the requirements of patentability — novelty, inventive step, industrial applicability.

It is worth noting that advances in biotechnology have led to the development of numerous fundamental bioprocesses that have combined research and development, and industrial progress in this field. These bioprocesses are used in medical therapy, diagnostic and immunisation procedures, agriculture, food production, biofuel production and environmental solutions (to solve problems related to water, soil and air), and among other areas. Therefore, the authors of this article believe that there is an urgent need to ensure the greatest possible protection of such processes at the international and national levels [30].

Given the focus of the research, it should be noted that in some cases it is particularly difficult to identify the invention as new and previously unknown, because sometimes such cases relate to substances in their natural state. Such substances can be considered new, in the opinion of the European Patent Office, if they were isolated for the first time and the existence of which was not previously known. The same applies to micro-organisms. The DNA sequence, although located in a known gene library, is not considered new as long

as the special hybridisation zones required for its isolation and characterization are known (T 301/87 and T 412/93) [31].

Conclusions

Considering the above considerations, it can be concluded that modern science in the field of biology and medicine, along with its significant achievements, raises many previously unthinkable ethical issues that need to be addressed immediately. If throughout human history the notions of ethics and morality have been revised along with the change of historical epochs, today we have a situation when every five to ten years society is asked another question that was difficult to imagine before. It is even more difficult to predict ways to address these issues, but it is absolutely certain that the biological, moral and philosophical concept of man will be significantly revised. At the same time, new aggressive and

destructive methods of exploiting inequality on a new biological basis are not excluded. To regulate relations in the field of biotechnology, the Ukrainian legislator must consider the existing problems of legal regulation of patenting inventions, which are enshrined in certain articles of the Association Agreement between Ukraine on the one hand and the European Union, the European Atomic Energy Community and their Member States on the other.

Secondly, it is expedient to adopt the Law of Ukraine "On Protection of Biotechnologies", which provides for criteria of publicity and morality, based on Ukrainian legislation, when inventions as an object of intellectual property rights may be considered insolvent. In turn, the criteria of conformity of publicity and morality include the choice of the method of protection of violated rights or their combination. It is appropriate to predict the legal consequences of such a choice, which must be reflected in the provisions of this law.

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Основи патентного захисту у сфері біотехнологій

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Анотація

Дана стаття розкриває поняття базисів патентного захисту у сфері біотехнологій. Актуальність роботи полягає у необхідності встановлення та визначення взаємозв'язку між патентною охороною біотехнологій та законодавством України, оскільки відсутнє належне регулювання у національному законодавстві. Мета дослідження зумовлюється проведенням аналізу певних правових питань охорони біотехнологій, необхідністю виокремлення особливостей правового регулювання відносин у сфері біотехнологій в міжнародних та українських нормативних актах. Під час проведення дослідження автори використовували наступні методи для отримання, обробки та викладення інформації: загальнонаукові (формально-логічний, методи аналізу та синтезу, порівняння, методи індукції та дедукції) і спеціально-юридичні методи (формально-юридичний, порівняльно-правовий). За результатами дослідження виявлено деякі протиріччя у законодавстві Європейського Союзу, зокрема у положеннях Директиви 98/44 стосовно відповідності поняття моделі, але разом з тим опрацьовано сферу дії відповідних нормативно-правових актів та їх функції. Досліджено, що наявні певні етичні проблеми в аспекті клонування людей та подальшого розвитку людства. Виявлено необхідність коригування чинного законодавства. Результати даної роботи, а також її складові, можуть бути корисними як юристам у сфері інтелектуального права, так і медичним працівникам. Практичне значення статті характеризується всебічним дослідженням патентів у сфері біотехнологій, а також спробою внести зміни до існуючого українського законодавства у сфері патентування та інтелектуального права. Автори вважають за доцільне прийняття Закону України «Про охорону біотехнологій», в якому необхідно передбачити критерії відповідності публічності та моралі, виходячи із українського законодавства, коли винаходи як об'єкт права інтелектуальної власності можуть вважатися непатентоспроможними.

Ключові слова: охорона здоров'я, патентне право, сільське господарство, права інтелектуальної власності, інтелектуальне право



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Legal Aspects of Ensuring Gender Equality

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Abstract

The article is devoted to the study of the value of the idea of gender equality. Legal (gender) equality implies equal rights and opportunities for both men and women. In the context of European integration processes, the issue of ensuring and guaranteeing social and legal equality in all spheres of public life, both de jure and de facto, is important and relevant for Ukraine. With this in mind, bridging the gap and guaranteeing gender equality, including analysing the legal framework and guaranteeing equal rights and opportunities for both men and women in all spheres of public life, makes this study very relevant. The purpose of the article is to study the provision of gender equality in society, analyse the legal framework, and to clarify the causes of gender discrimination and help to overcome gender gaps in the social, cultural, political and economic spheres and more. The study of this problem uses a wide range of methods of scientific knowledge: the theoretical method allows organising a variety of knowledge about gender. The sociological method helps to identify various gender parameters and compare them with social characteristics. The application of the historical method allows for a gender assessment of various historical processes. The prognostic method allowed to find out the prospects of gender development both in the region in particular and in the developed civilized society in general. Socio-psychological method allows exploring the social roles of men and women, the relationship between the sexes, their features and psychological characteristics. The article presents the results of the study of gender issues both in the world and in Ukraine; the specific features of the division of society into two social groups on the basis of gender are covered; it is clarified how the gender approach is implemented in politics, economics and social sphere; the main directions of ensuring gender equality, guaranteed by international and Ukrainian legislation, are identified. The scientific article substantiates the need to use the gender component in legislative activities, including in politics, economics, social sphere; the necessity of using the advanced world experience of ensuring and realisation of gender equality is substantiated; based on the results of systematic scientific analysis, the basic principles of gender policy implementation in modern national and foreign legislation are determined

Keywords: gender, gender equality of men and women, discrimination on the basis of gender

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Introduction

At the heart of any democratic society are the interests and needs of different social groups. These groups differ in a number of ways, such as gender, social status, age, ethnicity or nationality, religious beliefs, region of residence, health status, sexual orientation, etc. Ensuring equality between different members of social groups is one of the main tasks of society. Today, the priority areas of society include ensuring gender equality. Gender equality and equality between men and women is one of the goals of sustainable development. The issue of gender equality does not lose its relevance over time, in connection with which there are many new scientific studies on this topic.

Gender issues, and especially gender equality, have been quite relevant since the middle of the last century. For two thousand years, such Ukrainian scholars have published their research on gender issues. Among the Ukrainian scientists who have been paying a lot of attention to the gender issue lately, we can name Y.Y. Bobrova, who in her dissertation researches the issues of gender aspects of judicial activity. This study is of great scientific value conditioned upon the fact that it identifies and scientifically substantiates the historical periods of gender symmetry in the activities of judges in Ukraine, and establishes the specifics of judicial activity as a legal category through the prism of gender understanding. In addition, Y.Y. Bobrova managed to highlight the problems of the legal principle of gender equality of judges in the modern gender legislation of Ukraine [1]. O. Kharytonova also addresses the issue of gender in his works. In her research, as a specialist in criminal law, she explores gender issues in criminal law [2]. It should be noted that the researcher pays special attention to highlighting the key principles of gender mainstreaming in Ukrainian criminal law. Particular attention in the study is paid to reforming society to prevent violence against women, including domestic violence and its prevention [3].

The study of macroeconomic indicators in overcoming gender inequality is devoted to research of modern scientists V. Kostyuchenko and L. Khoynatska. In their study, they conclude that the country's unstable progress in overcoming gender discrimination [4]. The issue of gender equality as a basis of human rights and the situation in which various factors cause and support the gender pay gap in different countries of the world, is the subject of research of J. Huang *et al.* [5]. The research of L. Samilyk and others is devoted to the issue of implementation of gender policy in public authorities [6]. In this study, based on the analysis of gender policy in public administration, the essence of gender policy in the public sector is determined. The most effective tools of gender integration are identified in the study.

In general, the issue of gender is constantly raised by various scholars. Bridging gender gaps and finding ways to prevent gender discrimination encourages both researchers and practitioners to conduct new research

in this area. This study is no exception and aims to highlight the legal aspects of gender equality.

The purpose of the article is to study the provision of gender equality in society, analyse the legal framework for gender equality, and to clarify the causes of gender discrimination and help overcome gender gaps in the social, cultural, political and economic spheres and more.

Materials and Methods

A wide range of methods of scientific cognition was used in the study of this problem. Among them it is necessary to allocate the theoretical method which allows organising knowledge about a gender properly. In addition, the study uses general theoretical methods to analyse qualitative and quantitative data, to provide statistical information. Thus, statistical observations provide a general picture of inequality between men and women.

When using structural analysis on gender, scientists can use the same criteria as when characterising society. In particular, in the study of gender, both the private and public spheres are singled out. The use of the historical-genetic method allows for a two-pronged approach in assessing specific situations, various historical events or activities of society. This approach allows highlighting different issues from the standpoint of both sexes. At the same time, gender assessment of historical processes to some extent expands the awareness and understanding of the hierarchy of power.

The application of the sociological method allows analysing family relationships, employment and professional activities of both sexes. And the socio-psychological method contributes to the study of socially constructed male and female roles, the relationship between the sexes, identity and gender. The empirical method helps to identify the positive and negative experience of gender activity, and the application of the prognostic method allowed to determine the prospects of gender development in the country. In general, gender studies do not focus on one sex, but on the dialogue of both sexes. In view of this statement, within the framework of the gender approach, a dogma has been formed that men and women are not born, but become them. According to this approach, there is neither male nor female, and gender itself is a social category intended for the body that has sex. Proponents of gender theory, without denying the difference between men and women, point out that what is important is not the difference between the sexes, but the sociocultural evaluation of the sexes and the interpretation and creation of a sustainable system based on this difference. The difference between the sexes is based on the inequality of the sexes. The gender hierarchy is also a product of inequality. Until the ideology of gender differences changes, until the demand for gender equality

by women will be interpreted as a desire to have equal rights with men. Gender theorists today face a new challenge: instead of addressing gender equality, they should consider the diversity and multiplicity of differences between individuals.

Gender issues cannot be explored without an integrated approach. It is a comprehensive approach that allows the use of a wide range of methods when considering various aspects of gender issues.

As a theory and method, gender studies have become widespread. Gender relations are seen as socially organised relations of inequality and power. The gender category has opened up new opportunities for the analysis of culture and society. Gradually, the confrontation between female and male loses its biological features. Conditioned upon gender, a person's value orientations change, many legal approaches and "truths" established in society are revised.

Results and Discussion

Research on ensuring gender equality in society

Signs of building the rule of law include guaranteeing the equality of all citizens of this state. The principle of equality of citizens is implemented under the rule of law and means equal rights and opportunities for all women and men without exception. Women on an equal footing with men receive equal opportunities and rights in the economic, political, social, cultural, and public spheres. Ensuring gender equality for men and women means that the needs and interests of different social groups, which include both men and women, must be respected. Women and men belong to different gender groups, but regardless of the group, they must be adequately represented in different spheres of life.

The division of biological sexes into women and men is called gender binary. Society divides people into women and men, who must act in accordance with the gender roles defined by that society. Gender roles determine people's self-expression depending on gender. Gender roles influence the form of behaviour, the choice of profession and even the choice of clothing of a person. Gender roles affect all aspects of self-expression including people's life experiences.

Well-known feminist Valerie Braison pointed out that most of the existing differences between men and women are a social issue based on gender, not the natural quality of the sexes [7]. Among the researchers, there are those who deny the gender binary code. Thus, Judith Lorber points out that there is no doubt about the distribution of people by gender, but the gender binary, in her opinion, is arbitrary [8].

A gender approach in the analysis of the situation of women and men is used by a wide range of scientists. Thus, for the first time in independent Ukraine, the issue of analysis of the situation of men and women was raised within the project "Gender in Development" of the

United Nations Development Programme (UNDP), which resulted in the work "Gender Analysis of Ukrainian Society" [9]. The result of the UNDP project in 2001 was the publication of the results of a study, namely gender expertise of sectoral legislation.

The analysis of the legal framework for gender equality

The specific feature of modern gender policy in Ukraine is that it is based on various kinds of international legal acts ratified by Ukraine, and on national legislation that enshrines and guarantees equality between men and women.

Among the acts of international legislation that help regulate state gender policy in Ukraine are: the Universal Declaration of Human Rights (1948) [10], The Convention on the Elimination of All Forms of Discrimination against Women (1979) [11], the Beijing Declaration and the Platform actions (1995) [12], the UN Convention on the Elimination of All Forms of Discrimination against Women (1999) [13], the UN Millennium Declaration (2000) [14].

The legal norms of international documents are the embodiment of the generalised practice of the world experience of gender transformations. The specific feature of international law is that it contains a state basis and is formed through various agreements between states. Each state that has ratified an international instrument must ensure the implementation of the rights set forth in this international instrument, in this case the provision and implementation of gender policy. Among the various international programmes, strategies and standards, priority is given to documents that contain provisions for the adoption of gender legislation, the creation of a national mechanism for legal support of gender equality, based on the implementation of international gender legal standards, promoting gender movement, conducting and analysing gender statistics and various types of gender research.

Creating an effective national and international legal mechanism for regulating various types of gender relations and its effective functioning is the main task of a democratic society and the rule of law.

According to national legislation, gender equality between women and men is guaranteed by the Constitution of Ukraine [15] — Art. 24, and a number of other legal acts, namely: the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2005) [16], the Law of Ukraine "On Combating Trafficking in Human Beings" (2011) [17], the Law of Ukraine "On Prevention of Domestic Violence" (2002) [18], the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" (2012) [19], the Law of Ukraine "On Employment" (2012) [20], the Order of the Ministry of Education and Science of Ukraine "On the Implementation of Gender Equality in Education" (2009) [21], the Resolution of the Cabinet of Ministers

“On Approval of the State Social Programme, to Ensure Equal Rights and Opportunities for Women and Men until 2021” (2018) [22] and the like.

Identifying the causes of gender discrimination and developing recommendations for bridging gender gaps in the social, cultural, political and economic spheres

Speaking of gender, we note that the historical precondition for addressing gender issues was feminism. The term “feminism” was first used by the French scientist Francois Marie Charles Fourier in 1837. He saw feminism as the empowerment of women and argued that social progress was possible only with the empowerment of women.

Another well-known British economist and politician, John Stuart Mill, argued that “legislative support for the subordination of one sex to another is harmful and one of the main obstacles to universal improvement” [23]. He even submitted a petition to the British Parliament demanding that women be given the right to vote. This petition marked the beginning of the struggle for the right to vote for British women.

One of the most famous members of the feminist movement, Simone de Beauvoir, explored the issue of discrimination and humiliation of women in her work “The Second Sex”. She found out the reasons for the subordinate position in which women found themselves [24]. The researcher called for a change in the position of women in society. In the middle of the last century, such appeals were considered revolutionary, and the Vatican added “The Second Sex” to the list of banned books.

Note that supporters of the principle of gender equality deny the difference between the sexes. During the twentieth century, the position of the woman, and her status has changed markedly. Today, women study freely at university and have the right to vote and to be elected to public and state positions on an equal footing with men.

In historical practice, the gender issue of gender equality has often come to be seen as one of the fundamental principles of a democratic society. In recent times, gender has been a lever for real change in public relations, the basic component of which is the status of men and women. Gender is a society-modeled, state-supported system of values, characteristics and norms of male and female behaviour, way of thinking and lifestyle, attitudes and roles of men and women acquired by them in the process of socialisation determined by political, economic, cultural and social contexts and captures the idea of a man or a woman depending on gender [25, p. 11].

Today, the issue of ensuring gender equality is in the field of view of the world community. Every year, the World Economic Forum prepares a Global Gender Gap Report. This report shows four indicators of inequality

between men and women: economic participation, education, political representation and health. According to the World Economic Forum, Ukraine in 2021 took 74th place among 156 countries [26]. Therefore, the issue of gender for Ukraine is quite relevant today.

Speaking of gender theory, it should be noted that it is a system of scientific views on the relationship and status of men and women, their life experience and social life, acquisition and implementation of socio-role characteristics and features [24, p. 13].

Gender theory examines the lives of both sexes, both men and women, their behaviour in society, the roles they play, the common and different between them, the relationship between the sexes, etc. The difference that exists between gender and sex accumulates the assertion that there is a direct link between gender and gender roles assigned to men and women in society. Axiom, which originated in the XIX century that the idea of natural equality of all people and natural inequality between the sexes is realised in society, continues to operate through the centuries, despite the progress which humanity has achieved during this period of time.

To date, gender analysis of public policy has identified disparities in both social and economic security of the reproductive sphere. This area has been reproduced for generations based on the unpaid work of women. Therefore, the government constantly emphasises the “adaptability” of women and the “naturalness” of their home comfort and care and care for all family members, including both husband and children. This is to some extent conditioned upon the traditions that have developed in the cultural environment. One of the aspects of culture is the legal culture of society [27]. The settlement of the gender issue is inextricably linked with the level of legal culture of society.

Speaking of gender, namely the relationship between men and women, it must be said that in Ukraine these relations are to some extent regulated by infralaw. Infralaw is not a literal right. According to T. Melnyk, it “covers thoughts, assessments, beliefs, figurative ideas, habits, stereotypes of behaviour, customs, etc., the combination of which latently affects the motivation of behavior in areas regulated by law” [9, p. 282]. The scientist emphasises that the relationship between men and women is governed by the rules of infralaw — “living law”. In Ukraine, gender relations are largely based on customary law.

Gender relations are regulated by a large number of unwritten rules. Thus, for example in politics, various political parties include women in the party's top five or top twenty lists when nominating candidates for elections to public authorities at various levels. In this way, the parties will regulate the gender issue.

It should be noted that the law is a way to maintain and regulate gender relations, the order of gender relations in society. Gender as a phenomenon needs legal support for new social relations. The market

economy and the state-building process need a broad legal system, which should be based on ensuring gender equality, to function properly. The renewal of law and its legal principles is the basis for the restructuring of the political and economic system of society, which is the environment for the realisation and self-expression of the individual man and woman, the realisation of their rights and responsibilities, freedom and responsibility.

Family members in the general system of law occupy the rights of equality. The concept of legal equality of women and men is a set of views on what legal and social policy should be pursued in society to ensure gender equality in all spheres of public life [28, p. 10].

It is important for the modern political and legal process to achieve progress in the completed position of equality of men and women. Today, not only equality of rights and freedoms is relevant and very important, but also legal provision of equal opportunities for women and men to become equal, ie equal in rights in all spheres of public life, both *de jure* and *de facto*.

Law today enshrines gender equality as a standard of behaviour and relationships between men and women. Law is the guarantor of the establishment and functioning of equality, while gender is a social model of relations between men and women. Based on the above, we can talk about gender law. Gender law is a legal institution based on legal norms that establish means of ensuring gender equality that do not depend on gender and provide for certain limits of differences in rights, depending on gender [29].

Thus, gender law provides a system of guarantees to ensure equal rights for both men and women. The scope of gender law extends to various areas of law that ensure the realisation of personal, economic, political, cultural or social human rights.

Equality between men and women must be understood as equality of their social status. Gender equality implies equal realisation of human rights and opportunities for participation in political, economic, cultural and social development. And achieving gender equality is a necessary condition for the proper functioning of economic, political, cultural and social systems. It is also necessary to consider the fact that equal treatment of women does not guarantee their equality.

Gender policy is aimed at social progress, and provides the same state and public view of life of both sexes, balanced opportunities for their development, as equal in rights, duties, freedoms and responsibilities, ensuring equal conditions for self-development and self-expression of both men and women, and a fair assessment of the results of their activities in all spheres of life [30].

Equality between men and women means equality in rights and freedoms; equality of responsibility; equality of duty; equality of chances and opportunities, etc. Equality of opportunity in the implementation of gender policy is a whole system of means, including

equal factual conditions that promote the distribution and use of both economic and political, cultural and social resources, which make it impossible to discriminate or restrict gender.

The constitutions of almost all democracies enshrine three standards of equality: equality regardless of nationality and race; equality of citizens before the law; and equality between men and women. All these principles of equality belong to the basic principles of the legal status of man and citizen.

In general, it should be noted that the law should be a factor that does not deny the peculiarities of each sex. It leads to an equal distribution of political, economic, social, cultural and other resources and opportunities. In addition, the principle of equality of the sexes provides for the right to distinction, and this must be enshrined in law.

In addition to the principles listed above, gender policy contains a number of provisions on discrimination and ways to overcome it. Discrimination against women is any restriction or difference on the grounds of sex [13].

In the context of the COVID-19 pandemic, quarantine measures have significantly changed the situation and life of many women both in Ukraine and in the world. For women, for example, quarantine restrictions, and as a result restrictions on access to social infrastructure such as schools and kindergartens, have led to an increase in the rate of unpaid homework for care. Under quarantine conditions, when all family members were forced to stay at home, women began to spend more time on household chores than men [31]. In addition, the number of women victims of mental and physical violence at home has increased at this time. In this regard, a number of measures have been taken in Ukraine to increase the level of assistance to victims of domestic violence and discrimination [32].

Although men and women are politically equal, and women can now compete with men in various fields, they do so on terms created by men. Examining the labour market in Ukraine in 2020, we note that 79.2% of men and 68.9% of women are economically active out of the total working age population [33]. These statistics are typical for EU countries, but women in Ukraine, compared to women in other countries, are forced to leave paid work conditioned upon the need to perform unpaid housework [32].

In addition, we should note that the labour market of Ukraine is characterised by stratification by type of activity for men and women. In addition, there is vertical segregation. And this in turn means a hierarchy of positions. There are whole areas that provide the vast majority of the working male population [34]. As for women, their percentage is much lower compared to men in management and executive positions, but is much higher in clerical and support work. Such a division in the labour market inevitably leads to a gender

pay gap. Thus, the average wage of women compared to men is 3/4 of wages [33]. Gender inequality occurs in Ukraine despite the existence of an optional protocol aimed at guaranteeing gender equality. There is a whole procedure for investigating systematic, serious violations of women's rights [35].

Many countries around the world have signed the UN Declaration, which sets out ten commitments to ensure gender policy: to promote changes in attitudes, policies, legislation to remove all obstacles to equality, justice and dignity in society and the family; promoting the equal participation of rural and urban women, including women with disabilities, in economic, social or political life; policy development, creating a structure to ensure fair representation of both sexes in decision-making at all levels [36].

Analysing gender policy and the process of ensuring gender equality, it should be noted that the empowerment of women is possible only in the process of ensuring equality of both sexes. Thus, to overcome inequalities between men and women in the area of separation of powers and decision-making, governments and other actors should encourage active gender mainstreaming policies in all strategies and programs; the national mechanism for the advancement of women has been recognised as the central coordination unit within the government. The government's policy in this direction should be effective and aimed at achieving equality of the sexes [37].

The Constitution of Ukraine [15] legally defines the gender strategy for the development of Ukrainian society, according to which equality of men and women is defined as a condition for ensuring justice and a prerequisite for achieving equality; guarantees the provision of equal rights and opportunities as a fundamental human and civil right; the right to equality permeates all other rights and freedoms; the expansion of women's rights and freedoms, and the provision of equality between men and women is seen as a condition for building a stable democratic, developed society. Equality between men and women is an integral part of fundamental human rights. So in particular, according to Art. 21 "all people are free and equal in their dignity and rights" [15, p. 21]. Equality of rights of women and men is ensured by: providing women with equal opportunities with men in socio-political and cultural activities, in education and training, in work and remuneration for it, as stated in Art. 24 of the Basic Law of Ukraine [15].

It should be noted that "to achieve gender equality and the empowerment of women, it is necessary to overcome inequalities between men and women, girls and boys, and to ensure their equality in rights, responsibilities, opportunities and chances. Gender equality

implies that the needs, interests, problems, experiences and priorities of both men and women are an integral part of the development, implementation of national monitoring and evaluation, including at the international level, of all activities in all areas" [38]. The principle of equality is part of the principle of non-discrimination.

In the perspective of gender policy, we note that all human rights are harmoniously correlated with the idea of gender equality [6]. For example, legislation equally provides and guarantees various kinds of economic, political, cultural and social rights. Among them we can highlight such social rights as the right of the employee to protect his dignity at work; the right of employees, regardless of gender, to equal pay for equivalent work; the right of employees with family responsibilities at the level of opportunity and equal treatment [39, Art. 4, 26]. The social status of women in particular is considered in various areas such as politics.

Conclusions

So, summarising the above, we note that gender policy, which is implemented both at the high — global level and at the lower — state level aims to establish equal status for women and men. Among these areas of activity can be mentioned: protection of personal rights regardless of gender; women's access to public office at all levels; equal rights in married life; prevention of domestic and social violence; anti-discrimination; mutual rights and responsibilities towards children in the family; providing both men and women with equal legal capacity and, accordingly, equal opportunities for their realisation, development of abilities and talent.

Today, thanks to European and Ukrainian legislation, the foundations of legal opportunities for gender transformation have been laid, the gender component has been significantly expanded, gender approaches in law-making, human rights and law enforcement, and in managing gender processes in various spheres of society have been implemented. And the study of mutual experience, either in the adoption of various legislative acts that shape gender policy, or in the generalisations of various gender transformations, the expansion of various special measures that ensure the balance of articles will positively affect the legal culture of the people in addressing gender issues.

Gender phenomena occurring in the world and in Ukraine can be analysed, which will predict their further development both with the help of a sociological approach to law and with the help of various legal constructions. The task facing both legal scholars and legal practitioners today is to transfer and integrate various kinds of customary gender norms into the system of modern legal norms.

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Правові аспекти забезпечення гендерної рівності

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Анотація

Стаття присвячена дослідженню цінності ідеї гендерної рівності. Правова (гендерна) рівність передбачає наявність рівних прав і можливостей як для чоловіків так і для жінок. В умовах євроінтеграційних процесів для України важливим і актуальним є питання забезпечення і гарантування соціальної і правової рівноправності в усіх сферах суспільного життя як де-юре так і де-факто. З огляду на це, подолання прогалів і гарантування гендерної рівності, а також аналіз юридичного забезпечення і гарантування рівних прав і можливостей як для чоловіків так і для жінок в усіх сферах суспільного життя робить дане дослідження дуже актуальним. Мета статті полягає у дослідженні забезпечення гендерної рівності у суспільстві, аналізі нормативно-правової бази, а також у з'ясуванні причин гендерної дискримінації та сприянні подоланню гендерних прогалів у соціальній, культурній, політичній і економічній сферах тощо. При дослідженні цієї проблеми використовується широкий спектр методів наукового пізнання: теоретичний метод дозволяє впорядкувати різноманітні знання про гендер. Соціологічний метод сприяє визначенню різноманітних гендерних параметрів та співставлення їх з соціальними характеристиками. Застосування історичного методу дозволяє здійснити гендерну оцінку різних історичних процесів. Прогностичний метод дозволив з'ясувати перспективи гендерного розвитку як в краї зокрема так і в розвиненому цивілізованому суспільстві загалом. Соціально-психологічний метод дозволяє дослідити соціальні ролі чоловіків і жінок, відносини між статями, їх особливості та психологічні характеристики. У статті представлені результати щодо дослідження гендерної проблематики як в світі так і в Україні; розкрито особливості поділу суспільства на дві соціальні групи за гендерною ознакою; з'ясовано як впроваджується гендерний підхід в політиці, економіці та соціальній сфері; визначено основні напрями забезпечення гендерної рівності, що гарантуються міжнародним та українським законодавством. В науковій статті обґрунтовано необхідність використання гендерного компоненту в законодавчій діяльності, а також в політиці, економіці, соціальній сфері; обґрунтовано необхідність використання передового світового досвіду забезпечення і реалізації гендерної рівності; за результатами системного наукового аналізу визначено основні засади реалізації гендерної політики у сучасному національному та зарубіжному законодавстві.

Ключові слова: гендер, стать рівноправність чоловіка і жінки, дискримінація за гендерною ознакою



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Features of Personal Non-Property and Property Relations of Parents and Children in Ancient Rome

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Abstract

Roman law is one of the foundations of modern law. However, today the issue of personal non-property and property relations between parents and children of ancient Rome remains poorly understood. This determines the relevance of the research. The aim of the article is to study the non-property and property relations between parents and children of ancient Rome. The methodological basis of the research was the dialectical method of scientific knowledge, general scientific (formal-logical, methods of analysis and synthesis, method of observation and comparative method) and special-legal method (formal-legal). The article analyses a number of scientific works of Ukrainian and foreign scholars on non-property and property relations between parents and children of ancient Rome. It was found that the status of children as participants in property and non-property relations between children and parents in ancient Rome was directly dependent on the status of parents. In particular, it was illustrated that the status of children born in concubinage and children born in marriage was different. It is substantiated that the mother and father had somewhat different rights in the context of caring for and raising children together. It was established that in the families of that time the power of its head was introduced not only over the children born in the family, but also over the persons whose will was included in the family as its free members by the will of the householder. At the same time, under the paternal authority was not only the property of children, but also their lives. At the same time, it was found that the content of personal non-property and property relations of parents and children in ancient Rome changed for the most part during the period of Roman private law, which under the influence of different circumstances and during the reign of different rulers. The presented data can serve as a guide for Ukrainian and foreign scholars in the process of further research in this field in Ukraine and around the world

Keywords: Roman family, paternal authority, Roman law, property law, non-property law

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Introduction

In the context of the harmonisation process in Ukraine, the study of the origins of Ukrainian law, the history of which dates back to ancient times, is becoming very important. After all, one cannot ignore the fact that Roman law is one of the foundations of modern European civilisation, and the historical origin and development of Ukrainian law are related to Roman legal doctrine. The sphere of relations between parents and children is no exception. In view of the above, it is quite expected that the study of aspects of the “Roman family” is constantly gaining momentum in the Ukrainian legal doctrine, without losing its relevance today.

Both Ukrainian and foreign researchers have raised the issue of personal non-property and property relations between parents and children in ancient Rome. For example, a whole paragraph in the textbook I.G. Kozub and M.I. Bodnaruk is devoted to personal and property relations between parents and children [1]. However, the authors of the manual focused mainly on property relations. Some aspects of this topic were also studied in his article by Yu. Monnickendam [2]. Thus, in particular, the scholar analyses the relationship of children with their adoptive parents. G. Jassogne [3] considered the relationship between children and mothers in the days of ancient Rome, focusing mostly on the duty of children to care for their mothers. O.V. Rezvova [4] researched the rights and responsibilities of parents in raising a child. However, in her dissertation research, the author considered the rights and responsibilities of parents to raise a child mainly in the family law of Ukraine. The question of the rights and responsibilities of parents regarding the upbringing of a child in Roman law is only partially mentioned in the work of O.V. Rezvova. The dissertation is a complex research of the institute of rights and responsibilities of parents regarding the upbringing of a child in family law of Ukraine. In the relevant context, the evolution of the legal regulation of the institute of rights and responsibilities of parents for raising a child in Ukraine is traced and the legal regulation of the institute of rights and responsibilities of parents for raising a child under the legislation of other countries is considered. The concept and legal nature of parents' rights to raise a child are identified and their place in the system of personal non-property parental rights is determined. The concept, content and types of responsibilities of parents in raising a child are described. Roman private law was also studied by T.I. Demchuk, O.V. Manzhosova, Ya.S. Moshinska [5]. Scholars have focused on parental authority. In particular, the grounds for its termination. Indirectly, the question of the relationship between parents and children in Roman families was considered by O. Safonchuk and O. Shamota [6] in the study of personal intangible rights of men and women in actual marital relationships. Scholars, in particular, paid attention to the personal non-property and property rights of children born

in concubinage and legal Roman marriage. A significant contribution to the development of the theme of family relations in ancient Rome was made by O.V. Kozynets [7] in his work on paternal authority in ancient Rome. However, many aspects have gone unnoticed by the scholar O.M. Ponomarenko [8], considering the alimony agreement as a basis for alimony obligations, in her article on the debatable issue in modern civilisation on the possibility of alimony agreement to be the basis for alimony obligations, the solution of which depends on the study of potential subjects of this agreement and its conditions conclusion, partly also mentions alimony from Roman times.

In general, the current research examines the personal non-property and property relations of parents and children of ancient Rome is quite limited. There are no comprehensive studies in this regard, which determines the scientific novelty of the integrated approach outlined in this article.

The purpose of this article is to study the features of personal non-property and property relations of parents and children in ancient Rome.

Materials and Methods

During the research, a set of methods and techniques of scientific knowledge was used, which allowed carrying out a comprehensive and objective analysis of the subject of research — philosophical and philosophical, general and special scientific methods. The application of the dialectical method allowed studying the tendencies of change of personal non-property and property relations between parents and children of the times of Ancient Rome under the influence of various factors of development of society. The formal-logical method helped to characterise the content of system-forming concepts and constructions of the subject of research, such as “personal intangible rights”, “property rights” and so on. Methods of analysis and synthesis have been used in the study of scientific achievements of scholars on the topic of research. With the help of the method of observation, knowledge about the external parties, the properties of the studied relations was obtained. The comparative method allowed to compare the features of personal non-property and property relations between parents and children of ancient Rome, depending on the status of parents and other factors. The formal-legal method helped to clarify the content of legal norms governing personal non-property and property rights and relations of parents and children in ancient Rome.

The initial stage of the study was to characterise the grounds for establishing parental authority. It was found that paternal authority arose on three grounds: the birth of a child from a man to a woman who was legally married to him; by legalisation; by adoption. The requirement to obey the father was conditioned by the special nature of the development of family relations, in

which the main and indisputable authority has always been recognised as the eldest in the family. At the same time, personal non-property and property relations of parents and children in ancient Rome had their own specific features depending on the status of the relationship between parents, the status of parents. In the second stage of the study, the Roman legislation on property relations was analysed. It is established that under the law of ancient Rome, all property acquired by children of different ages belonged to their parents. However, over time, they have been affected by the development of economic life and, accordingly, certain changes. Particular attention is paid to the characteristics of *peculium* — the right to manage part of his property, which the father often endowed his children. At the next stage, attention was paid to the personal non-property relations of parents and children. It was found that parental authority, in addition to the child's property, extended to the child's identity. The focus is on the right to life. At the final stage of the study, attention was paid to the analysis of the legal relationship between mother and children. The content of such legal relations was identified. In particular, it was found that mothers who felt abandoned by their children could go to court to obtain the necessary assistance or resources for survival, and other relatives could apply on their behalf.

In the course of the study the Ukrainian and foreign literary sources are analysed, which consider the issues of personal non-property and property relations of parents and children in Ancient Rome, in particular, the works of such scholars: G. Kozub, M.I. Bodnaruk [1], Yu. Monnickendam [2], G. Jassogne [3], O.V. Rezvova [4], T.I. Demchuk, O.V. Manzhosova, Ya.S. Moshinska [5], O. Safonchyk, O. Shamota [6], O.V. Kozynets [7; 9], O.M. Ponomarenko [8], L.R. Antonova [10], S.C. Mancisidor [11], O.I. Lukianchuk [12], R.F. Cidoncha [13], Yu.O. Melnychenko [14], S. Demina [15].

Results

Both personal non-property and property relations of parents and children in ancient Rome had their own specific features depending on the status of the relationship in which the parents were, the status of parents. At the same time, in general, according to Roman legal customs, parental legal relations are based on the dominant position of one subject (*pater familiae*) over others [10, p. 30]. The rights of fathers and mothers in Roman families to care for and raise their children were not the same. Such relations led to the adoption of a number of legal norms, according to which the power of its head was introduced in the family both over children born in the family and over persons who were included in the family as its free members [2]. From the beginning of Roman history, the power of the father, the master over the children was so indivisible that Guy claimed: "there are almost no other nations that have such power over their sons as we have" [1, p. 43-44].

Parental authority arose on several grounds:

— first, in connection with the birth of a child from a man to a woman who was legally married to him. It belongs to the husband if he was *sui juris* at the time of the birth of the child, otherwise to the landlord and only after the death of the latter to the husband;

— secondly, by legalisation (*legitimatio*). That is, granting rights to legitimate children born out of wedlock. As a result of such actions, children are included in their father's family and, as a result, are further subject only to him;

— thirdly, by adoption [1, p. 175].

It should be noted that in Roman law there were two options for adoption: adoption of a person of his own right (*arrogatio*) and adoption of a person of another's right (*adoptio*). Both options for establishing adoption were accompanied by the process of certain actions, which resulted in the emergence of paternal authority of the adopter over the adoptee. Children were adopted if there was no male heir. The simplest form was adoption immediately after the birth of a child. Older children were adopted, reimbursing their parents for their upbringing. These actions were designed as purchases. The adoption contract contained conditions to preserve the status of the heir (the wording was as follows: "even if the couple has ten sons, the adopted child will still be considered their firstborn") [11].

The family, based on the subordination of power to the landlord, was called the *lamb*. All subordinates of one householder were considered relatives, ie agnats. The blood relationship at that time had no legal significance. Therefore, the girl, who married and moved into her husband's family, held the position of his parents' daughter, that is, became the sister of the husband's siblings, losing family ties with blood parents. Interestingly, the *lamb's* kinship persisted after the death of the landlord.

In fact, children in a patriarchal Roman family were slaves to the head of the family, the eldest husband in the family. First of all, the father could for some reason not accept the newborn baby, just not taking him in his arms. In this case, the child was deprived of the opportunity to stay in the parental home and become a citizen. In some cases, such children fell into other families, more often — died [2].

Interestingly, the requirement to obey the father did not follow from the legal norm, but was conditioned upon the special nature of the development of family relations, in which the main and indisputable authority has always been recognised as the eldest in the family. This position of the father in the family and his power was historically determined. The ancient Romans were a warlike people and they had to constantly defend themselves against the aggressive actions of their many neighbors and attack neighboring tribes. The success of hostilities and the security of the Roman family depended on how strong the power of the landlord was. Only under

the unlimited authority of the head of the family could the safety of all family members be fully ensured.

Under Roman law, all property acquired by children belonged to their parents. At the same time, children's property dependence did not weaken with their age. At the same time, the child had no rights to the father's property. The children could neither dispose of the property belonging to the father nor limit his responsibilities. In the case of an offense (tort) by a subordinate, the victim was given a special claim *actio noxalis*. In turn, the father had the freedom of choice: pay the victim the amount of damage caused to him or give the subordinate in bondage for the period necessary to work out the amount of damage. In this case, if the offender came under the authority of another homeowner, then the responsibility for the *actio noxalis* passed to the new homeowner, because the responsibility follows the guilty person [1, p. 178].

Subsequently, under the influence of the development of economic life, these norms *jus civile* underwent certain changes. This situation is quite logical, because the actual inability to demand anything from the subordinate and the legal irresponsibility of the homeowner under the subordinate's agreements led to the fact that third parties were not interested in concluding agreements with the latter. Therefore, the position of subordinates becomes unfavourable for the homeowner. In addition, the economic interest of the homeowner required the widespread use of subordinates not only to provide a variety of actual services and works in the economy, but also legal action. This led to the expansion of property capacity and legal capacity of the subordinate, and the recognition of the responsibility of the homeowner under the agreements of the subordinate. Therefore, the father often gave his children the right to manage part of his property. This part was called *peculium* [1, p. 178]. *Peculius* was not inherited, and in the event of the death of the son to whom it was transferred, was returned to the ownership of the head of the family. In case of death of the head of the family, *peculium* was inherited along with the rest of the property. In the case of the emancipation of the subordinate son, *peculium* became the property of the son as a gift and could not be returned to the father of the family. In addition to *peculium profecticum*, ancient Roman law knew other types of *peculium*. Thus, we can distinguish military *peculium* (*peculium castrense*), which meant the property that the son bought in military service or in connection with military service. This *peculium* included salary, military output, gifts during military service and other property. Unlike *peculium profecticum*, *peculium castrense* belonged to a subordinate person on the right of ownership. Meanwhile, this type of *peculium* was also not inherited in the event of the death of a subordinate. In the latter case, it became the property of the head of the family [12].

Parental authority extended not only to property but also to the person of the child [4, p. 43-44]. The exclusive power was the right to life and death (*ius vitae*

as necis), which remained in force throughout the classical period [12, p. 39]. For example, the father ("*pater familias*") single-handedly decided on the life or death of a child. This rule applied not only to weak, unviable children or children with developmental disorders ("*monstrum*"), but also to completely healthy newborn girls [1, p. 30]. The father was given the right to dispose of the child's life until he or she reached the age of majority. At the same time, it should be noted that this right was governed by customs and required the participation of the family council [4, p. 43-44].

Children born in a concubine were not endowed with the status of children born in wedlock. They could not acquire the status and name of their father, did not have the right to alimony ("*alimentum*" translated means "feed, keep, grow" [8, p. 54]), could not be the heirs of the father, they were not subject to paternal authority [8, p. 50]. These children inherited the name of the mother's family, regardless of whether the mother was free or a slave [13, p. 309]. However, "given the importance of concubinage as a de facto marriage, the rights of persons in such relationships, including the rights of children born in this marriage, over time began to be protected by various legal means. The father could recognise his children born in the concubine. At the request of the father, such a child could acquire the rights of a child born in wedlock by legalisation" [14, p. 32; 6, p. 55].

According to the Emperors Marcus Aurelius and Lucio Vero, illegitimate children had to be registered in the state register after birth, including legal. These emperors set a thirty-day deadline to give their son a name and announce his birth to the appropriate authorities in both Rome and the provinces. They also acknowledged that a birth declaration made through a letter from the mother could be accepted if its veracity was verified without the need to contact the authorities [13, p. 310]. It should be noted that before the coming to power of these two emperors, the births of these illegitimate descendants were not registered. Despite their illegality, these free-born children had a higher status than freed slaves.

It is also worth noting that in classical Roman law, actions such as exposing children, selling children or pledging children could not change the legal status of the child and turn the freeborn into a slave. The paternal authority of the head of the family over his children allowed him to expose or sell them. However, although the *pater familias* who exposed his children lost *patria potestas* as a result of this act, the status of the exposed child remained unchanged. Free children were protected from enslavement after being exposed, sold or pledged by their parents, children in care or found if they could confirm their status. Naturally, without such evidence, the exposure of children and the sale of children have led to a change in status and enslavement, de facto, if not de jure [2].

Claims that the exposure does not change the legal status of the child appear in classical Roman legal

sources until the reign of Diocletian, who repeated this principle as early as 294 AD. Initially, Constantine continued this trend. Only twenty years after the reign of Diocletian, on April 24, 314, Constantine decided that if a person knew about a free-born man who was treated like a slave, he should try to free the free-born and return them to natal status, bearing in mind that free-born man has not lost his status [2].

A few years later, on May 18, 323, he decided that parents should not enslave their children. At this stage, Constantine tried to prevent the influence of children by providing financial assistance to parents who intended to kill or expose children due to economic difficulties. Subsequently, on August 18, 329, he ruled that, although the sale of free children into slavery was legal, such children could return to their free-born status provided they paid compensation to the buyer. Constantine establishes that the natal status of children can be restored, but also recognises that the action of the father can change the status of his child [2].

On April 17, 331, Constantine ruled that the *pater familias*' knowledge of the revelation changed his status. That is, if the child was exposed to the knowledge of his *pater familias*, the finder could decide whether the child would be adopted as his own or his slave. This trend continued. Thus, in particular, on March 5, 374, Valentinian repeated this decision, annulling all the *patria potestas* that the whistleblower could possess. Honorius later upheld his decision on March 19, 412, stating that such children could not be returned, but seven years later he also tied the status of a child subject to the costs of her upbringing. He reiterated the justification for this decision, but allowed the status of the child to be changed subject to the payment of double maintenance costs invested in the child's upbringing [2].

The power of the finder to decide the legal status of the child also appears in the Roman laws of the fifth century and the *Sententiae Syriacae*. These collections of Roman law give the right to determine the status of the toss to those who found it. At the same time, the *Sententiae Syriacae* limits enslavement to twenty years and stipulates that the status must be determined at the time of discovery, in writing, before a court. Later, in the sixth century, when the focus of legal discourse shifted from *pater familias* to exposed children, the status of abandoned children improved. On September 17, 529, Justinian ruled that exposed children could not be raised as slaves, whether they were born free or slaves. He later added, according to the edict of Claudius (41-54 AD), that a slave who was abandoned when he was ill was automatically a Roman citizen [2].

It should be noted that in Roman law there is no concept of adulthood [15]. Roman law determines the legal age only to consider someone a teenager: 14 years for boys, 12 years for girls. They are always under the rule of the *pater familias*, who must dictate to them the law until his death. Under Roman law, children had to be under the constant control of others. If the father

dies early, the children enter a special status: they are under the supervision of another man under 14 years of age and under the care of up to 25 years of age. Yes, if a young man's father dies, he is no longer under his father's authority and becomes, de facto, *sui iuris* and *pater familias*, even if he is not yet an adult. If the boy is not yet 14 years old, he is under the supervision of a man who should lead him through life. Then, and up to the age of 25, the young man is under the supervision (less strict supervision) before becoming a full-fledged *pater familias*. This age, only to a certain extent and in this particular case, marks adulthood: the ward acquires all the virtues necessary for civic life [15, p. 166]. This also applies to young people whose father has not died, but has given them some savings so that they can manage them on their own [15, p. 165].

Parental authority over children was terminated, according to sources in the law of the time, for several reasons:

- 1) first, in the event of the death of the father;
- 2) secondly, in case of death of children;
- 3) thirdly, at the will of the father through emancipation as a result of which the son gained full legal capacity and independence, but lost the inheritance, and the father retained the right to use half of the son's property [5, p. 12].

As for the legal relationship between mother and children, they were also determined depending on the form of marriage. Generating a completely different order in the relationship between spouses, marriage *cum manu* and marriage *sine manu* differed sharply from each other in the form of conclusion and termination, and the content of property and personal relations of spouses, and the legal status of the mother in relation to children [14, p. 29]. Thus, in marriage with male authority, the mother, like her children, was under the authority of her husband or his landlord. Therefore, along with the children, she inherited after the death of her husband, children — after the death of her mother. As lambs, the adult sons took care of the mother after the death of their father (her husband). At the same time, in a marriage without male power in the early republican period, the mother was almost unrelated to her children. She remained a fiancée of her blood relatives — parents, brothers, sisters, etc. Therefore, she could not be the heiress after the death of her husband and her children, as well as they after her" [1, p. 182].

Meanwhile, the growth of private property, in turn, led to the emergence of the Kognat (blood) family. For some time the Agnatian and Cognate families existed in parallel, but the Cognate family under new conditions supplanted the Agnatian family. In turn, with the establishment of the Cognate family, the mother's rights changed. From now on, she received the right to live with her minor children, in case of divorce from their father, and the right to child support [1, p. 182].

In turn, the children also had responsibilities to their parents, providing them with the necessary

services that stemmed from the normal way of life of the family and were not purely legal in nature (it was not possible to require their implementation by court decision) [2]. Yes, in the literature [3] there are references to letters aimed at protecting mothers. One such example is a letter in which Theogiton threatens to complain about Apollonius, who does not provide the care he promised his old widowed mother. Another example is a letter from a woman named Galla who claims that her children do not respect her and use physical violence against her. Another illustrative example is a letter written in the 2nd century AD reproaching Sempronius to his brother Maximus, who was responsible for caring for their mother Saturnilus. The letter stated that Sempronius had heard that their mother was not receiving proper care.

Under the law of ancient Rome, children are obliged to respect their parents [13, p. 234]. Respect and obedience to parents were one of the key concepts of Roman families. Older people who felt abandoned by their children could go to court to get the help or resources they needed to survive [3].

Conclusions

Thus, the personal non-property and property relations

of parents and children in ancient Rome had certain features related to the status of the relationship in which the parents were, including the status of parents. In particular, the personal non-property and property relations of parents and children born in concubinage and the personal non-property and property relations of parents and children born in wedlock were somewhat different in content. Thus, unlike children born in wedlock, children born in a concubine could not acquire the status and name of their father. Such children had neither the right to alimony nor the right to inherit from their father. Parental authority did not extend to them either. Although, if the father wanted, children born in the concubine could still acquire the rights of children born in wedlock. The personal non-property and property relations of parents and children also had their specificity, depending on whether it is a relationship between children and a father or between children and a mother. Moreover, such features were also determined by the form of marriage. At the same time, it should be noted that the personal non-property and property relations of parents and children under Roman law were a dynamic phenomenon and changed during the period of Roman private law under the influence of various circumstances.

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Особливості особистих немайнових та майнових відносин батьків та дітей у Стародавньому Римі

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Анотація

Римське право є одним із підґрунть сучасного права. Втім, попри це, на сьогодні питання особистих немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму залишається маловивченим. Це зумовлює актуальність дослідження. Метою статті є вивчення немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму. Методологічну основу дослідження склали діалектичний метод наукового пізнання, загальнонаукові (формально-логічний, методи аналізу та синтезу, метод спостереження та порівняльний метод) та спеціально-юридичний метод (формально-юридичний). У статті проаналізовано низку наукових праць українських та зарубіжних вчених з питань немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму. З'ясовано, що статус дітей, як учасників майнових та немайнових відносин між дітьми та батьками, часів Стародавнього Риму перебував у безпосередній залежності від статусу батьків. Зокрема, проілюстровано, що неоднаковим був статус дітей народжених у конкубінаті та дітей народжених у шлюбі. Обґрунтовано, що матір та батько мали дещо різні права у контексті догляду та виховання спільних дітей. Встановлено, що у тогочасних сім'ях запроваджувалася влада її глави не лише над дітьми, що народжуються в сім'ї, а й над особами, яких волею домовладки було включено до складу сім'ї в якості її вільних членів. При цьому, під батьківської владою було не лише майно дітей, а також їх життя. Водночас було встановлено, що зміст особистих немайнових та майнових відносин батьків та дітей у Стародавньому Римі здебільшого змінювався на протязі усього періоду існування римського приватного права, які під впливом різних обставин, так і у часи правління різних правителів. Представлені дані можуть служити орієнтиром для українських та зарубіжних науковців у процесі проведення подальших досліджень у цій області в Україні та світі

Ключові слова: римська сім'я, батьківська влада, римське право, майнове право, немайнове право



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Legal Bases of Land Use in Ukraine and Canada: Comparative Legal Aspect

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Abstract

The issue of land use plays an important role in shaping Ukraine's economy. Therefore, the study of the market for agricultural land is a high priority and relevant to legal doctrine, as this issue directly affects the national security of the state, because it involves control over the risks that may arise conditioned upon the high concentration of areas agricultural land owned by one person, uncontrolled acquisition of land by foreigners, and partial monopolisation of certain segments of the agricultural market. The purpose of this work is to carry out a comparative legal analysis of the legislation of Ukraine and Canada in the field of land use, highlighting their common and distinctive features. To achieve this goal, the article used several methodological approaches and methods for research, including functional and theoretical approaches, the method of logical analysis, synthesis method, formal-legal method, method of comparative analysis, method of analysis of scientific literature. After the research, the theoretical and practical principles of this issue were obtained. The first includes the analysis of regulatory frameworks of Ukraine and Canada, and the second analysis of direct methods and approaches used in these countries during land use. Based on the results obtained, differences were formed between the legal basis for the implementation of the above process and revealed positive aspects that would be appropriate to implement in future rule-making activities in this area of Ukrainian legislation. In the further works it is necessary to determine the prospects of the methods on which the current land policy of both countries is based and to identify ways to increase its effectiveness. As for the practical value of the work, it certainly lies in the fact that it identifies the main theoretical aspects related to the implementation of land reform in Ukraine, and thus facilitate the interpretation of certain rules for both ordinary citizens and civil servants

Keywords: agricultural lands, land reform, legislation, land market, land policy

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Introduction

The comparison of Ukraine and Canada in this study is not accidental, this explained by the fact that the issue it raises concerns land use policy, in particular the land market, which is quite different in these countries. Before describing the features of the practical implementation of their land use policy, it is advisable to consider its theoretical concept, to fully understand the subject of research [1]. Thus, the term land use should be understood as the development of land distribution based on the prospects of improving the country's economy and the organisation of the territory, establishing and consolidating other approaches to efficient and safe land use and protection not only within the state but also in isolated regions and other administrative units. It should be noted that the determining factor in the use of land is the method of land use, as it plays a significant role in terms of agricultural development of the country and in the social sense [2].

As for the legal framework governing land use, in Ukraine it consists of the Constitution of Ukraine [3], the Land Code of Ukraine [4], the Law of Ukraine "On Land Protection" of 06/19/2003 [5], the Law of Ukraine "On State Control Over Land Use and Protection" of 06/19/2003 [6], the Law of Ukraine "On Basic Principles (Strategy) of the State Environmental Policy of Ukraine until 2030" of 02/28/2019 [7], the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land" from 03/31/2020 and other local regulations [8]. Therefore, it can be argued that the Ukrainian regulatory framework in the field of land use is quite capacious and meaningful. However, regardless of its volume, there are more and more questions and contradictions regarding the regulation of such economic relations, which in turn play an extremely important role for the socio-economic development of Ukraine. That is why the study examines the historical path of land reform, which was implemented in our country in 2001. In addition, this paper identifies the main gaps that need to be urgently addressed in land legislation, for a smooth process of land use policy [9].

Another component of the article, which is quite different from the previous one, is an analysis of the regulatory framework for land use in Canada. The absolute distinction is the different views and approaches used in these countries. Given that Canada is currently one of the most developed countries, and it has a positive experience in land market reform, it is advisable to trace the historical development of such reform and identify priority aspects that need to be applied in the future in Ukraine to accelerate this process [10].

Given the above, it should be noted that the *purpose of this work* is to study the process of land reform in Ukraine and Canada, in particular at the legislative level, and in the practical determination of its impact on socio-economic development. To achieve this goal,

a number of tasks were identified in the work, in particular: in-depth study of the legal system of Ukraine in the field of land use, trace the development of land reform since 2001, identify gaps in legislation and prospects for action by the government concerning regulation of land relations. In addition, the paper should analyse Canada's experience in this area, identify differences in the country's legislation with Ukrainian law, analyse the conditions of land reform implementation, and draw conclusions based on their historical development, which will be useful for the reform process of land relations in our country.

Materials and Methods

Since this scientific work is quite broad in scope and content, a necessary condition for its implementation is the use of a large number of tools for research, namely methodological approaches and scientific methods. This is conditioned upon the fact that the subject of the article contains various elements that certainly need to be analysed to study in depth the issue, namely the legal aspects of land use in Ukraine and Canada [11]. Based on the functional approach, the work was divided into several stages and the functions and tasks for each of them were defined. As for the theoretical approach, it helped to consider in more detail such concepts as land use and land market, their main features and characteristics, including the principles on which their implementation is based.

Undoubtedly, the use of the method of logical analysis was important in the work, because due to it the topic of the work was divided into several components, which allowed to thoroughly consider each of them. That is, the issue of land use was divided into theoretical and practical aspects, which resulted in an analysis of both the legal framework and directly the methods of practical implementation of land policy. Next in the work was the method of synthesis, which is the opposite of the previous one, because on the contrary combines the separated components. This process is extremely useful for research, because it traces the main features that are different in the legislation of Canada and Ukraine in the field of land use. The formal-legal method is thorough in the work, based on which the study and interpretation of legal norms enshrined in the legislation of both countries was carried out, which allowed considering in detail the legal aspect in the implementation of land use policy.

Since the work is performed in the form of comparative law analysis, the method of comparative analysis plays a significant role in it. This is conditioned upon the fact that the essence of the article is formed on its basis, and so its practical and theoretical value is directly dependent on it. As a result of its application, the legislation of Ukraine and Canada was compared, which allowed identifying differences between them,

and drawing the necessary conclusions that will be useful for the implementation of land reform in Ukraine. The method of analysis of scientific literature also played an important role in the study, as it analysed the opinions and approaches of various scholars to this issue, which resulted in the study of modern legal doctrine in this field by analysing scientific articles, theses, dissertations and monographs.

It should be noted that the work is divided into three stages, namely:

1. At the first stage, the current normative legal acts of Ukraine regulating the basic principles and procedure of land use were considered in depth, including the historical development of land reform and its prospects for future socio-economic development of the country.

2. In the second stage, the legislation of Canada was studied and the changes implemented in the country in the field of land relations, in particular during the land reform, were followed. Also at this stage, the main legal aspects of these countries were compared and important recommendations for Ukraine were formed, based on the positive and effective Canadian experience.

3. At the third stage, conclusions were drawn based on the results of the work, which summarised the main differences between the legislation of Ukraine and Canada, and identified a number of measures to be taken in our country for further effective development of land use.

Results and Discussion

The issue of regulation of land relations, and thus their use has always been relevant for Ukraine, as it ranks fourth in the world in terms of agricultural land. Under land relations should be understood public land relations that arise in the field of interaction of society with the environment and regulated by land law. Land relations are a special type of property relations concerning land, which are regulated by land legislation. The specificity of relations related to land, due to the specific features of the subject of these relations — land — as an object of nature, spatial and territorial basis, territory and the main means of agricultural production [12].

Thus, in these relations there are generally established principles governing public relations, determined by the rules of law, the implementation of which is carried out by the state. It is important to note that they are formed between entities such as the state, legal entities or individuals. It is expedient to divide land legal relations according to the institutes of land law, which differ in the form of their implementation. From this, we can distinguish land relations arising in the field of land ownership, relations formed as a result of the exercise of the right of common land use, and land relations in the context of land use management and protection [13].

As for public relations in the field of land use management and protection, they are implemented when the state or relevant local authorities perform their functions, namely, provide ownership or use of land with the

issuance and registration of specific documents, and this process is accompanied by the maintenance of the state land cadastre. In addition, the Land Code of Ukraine [4] provides for the distribution of land to their intended purpose. Land used for agricultural production belongs to agricultural land, which in turn is further divided into agricultural land, in particular: arable land, perennials, hayfields, pastures and fallow lands. Another category of land is non-agricultural land, which includes farm paths and runs, forest strips and other protective plantings, other than those classified as land of other categories, land under farm buildings and yards, land under the infrastructure of wholesale markets for agricultural products, temporary land conservation, etc.

Based on this classification, it should be noted that Ukraine has more concentrated resources for agricultural use. Undoubtedly, the most important of all resources is land. This conclusion can be made based on the fact that the total area of agricultural land in Ukraine is 41.3 million hectares, of which 33 million hectares are arable land. Analysing these indicators, it should be noted that Ukraine is provided with a large amount of land resources, in particular, as mentioned above, a significant proportion of them are agricultural lands, which indicates a high potential for farming and improving the socio-economic condition of the state in the context of taxes received from this industry, but at the same time this situation implies the lack of reserves for future expansion of land resources [14].

Having identified the theoretical concepts of land use, it is advisable to review the Ukrainian legal framework governing such relations. It constitutes the Constitution of Ukraine [3], in turn, the central legislative act is the Land Code of Ukraine [4], the Law of Ukraine "On Land Protection" of 06/19/2003 [5], the Law of Ukraine "On State Control over Land Use and Protection" from 06/19/2003 [6], the Law of Ukraine "On Basic Principles (Strategy) of State Environmental Policy of Ukraine for the period up to 2030" from 12/28/2019 [7], the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the conditions of circulation of agricultural land" from 03/31/2020 [8], the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Sphere of Land Relations" from 04/28/2021 [15], the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Provision of Land Plots to Cultural, Educational and Health Care Workers Living in Rural Areas" of April 20, 2004 [16], the Law of Ukraine "On Amendments to Certain Legislative Acts in Ukraine on the delimitation of state and communal lands" of 09/06/2012 [17], the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Documents Certifying the Right to Land, as well as the procedure for division and consolidation of land plots" of 03/05/2009 [18], the Law of Ukraine "On Land Valuation" of 12/11/2003 [19], the Law of Ukraine "On

Land Lease” of 10/06/1998 [20]. Having formed a full-fledged system of normative legal acts constituting the land legislation of Ukraine, it can be argued that some of them are obsolete, and therefore unable to cover the entire scope of land relations, which leads to disputes both in the process of application and in the course rule-making.

Considering the general Ukrainian legislation, it is necessary to specify the subject of work, namely the object that will be compared between Ukraine and Canada, of course, based on their common feature, namely the presence of a large number of agricultural lands. In particular, it can serve as land reform, as it is carried out in both countries, affects changes in legislation, including the overall socio-economic development of countries. Thus, it should be noted that this reform was one of the longest in Ukraine, in particular it began on March 15, 1991 and consisted in the fact that the land was transferred from state to private ownership, but the ineffectiveness of this process is evidenced by the fact that before at this time, not all owners received the right to dispose of their agricultural land [21].

In addition, in 2001, the Land Code No. 2768-III was adopted in Ukraine, which provided for the introduction of a moratorium on the alienation of agricultural land [4]. Under this concept should be understood the statutory temporary ban on the purchase, sale, otherwise alienation of agricultural land of state and communal ownership, land owned by citizens and legal entities for commercial agricultural production, land allocated to in kind (on the ground) to the owners of land shares (units) for personal farming, and land shares (units) [22].

The first legislative attempt to introduce the land market was the submission of the Draft Law “On the Land Market” of 12/07/2011, but it was rejected and withdrawn in 2012 [23]. This bill was important for Ukraine’s land legislation, which could accelerate its development in the sector and bring our country closer to Canada’s success. This is conditioned upon the fact that it provided for the implementation of land reform and the introduction of the land market, in addition, its main advantage was the lifting of the moratorium on the sale of agricultural land and the ban on land sales to foreigners and even the development of the State Land Bank [24].

The defining step in this 30-year process was the adoption by the Verkhovna Rada of Ukraine of the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Circulation of Agricultural Land”, which entered into force on 07/01/2021 [8]. It is worth noting that the draft Law has some differences from the Law itself, in particular, they are that the current regulations do not contain provisions on the involvement of medium and large agricultural producers, which were mentioned in the draft. The purpose of the current land reform is to ensure the realisation of the constitutional rights of citizens to freely dispose

of their property; development of territorial communities by transferring state-owned agricultural lands to their disposal; transparent and efficient management of land resources that cannot be transferred to territorial communities.

In addition, this legal act aims to consistently eliminate the current ban on the alienation of privately owned agricultural land with a number of restrictions, which in turn are limited to restricting their acquisition by individual entities, and to control the concentration of land to a certain area owned by one person. However, it should be noted that the ban on the alienation of state and communal lands is quite effective. Exceptions to this list are lands of state and communal farms, which belong to citizens on the right of permanent use, including lifelong inherited possession. These entities will be able to have the right to purchase them in the future with the possibility of deferred payment for 10 years. It should also be noted that this law eliminates restrictions on changing the purpose of land in the prescribed manner; this approach will meet the needs of other sectors [21].

Since the paper needs to consider all legal aspects of this issue, it is advisable to compare the provisions of the adopted law [8] with the relevant provisions of the Constitution of Ukraine [3]. This step will help identify existing gaps to avoid them in future regulations. Therefore, given the novelty of this document, it is impossible to consider the practice and decisions of the Supreme Court of Ukraine on this issue, as all applications are still under consideration. Nevertheless, it can be established that most issues arise in the aspect of providing the opportunity to acquire ownership of agricultural land to other entities that are not citizens of Ukraine. This is conditioned upon the fact that this law [8] stipulates that foreign entities, both natural and legal, will be able to purchase agricultural land, but this process is somewhat limited, as it is an important condition, namely the approval of such a decision in a referendum. In addition, residents of the aggressor or occupying power, and other sanctioned states, may not have such an opportunity.

Thus, it should be noted that the entry into force of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Circulation of Agricultural Land” from 07/01/2021 is undoubtedly the first thorough and effective step in the process of land reform and implementation of such an institution as agricultural land market [8]. In addition, the advantage of such a process is that it is carried out in stages, and thus gives all its subjects the necessary time to prepare for it. Moreover, land lease does not change its status as a result of a change of land owner, so this approach is a very promising tool in the agricultural market of Ukraine and in land use relations.

As for Canada, land reform was carried out there in the 19th century, and from this it can be argued that it has more experience in the development of the

agricultural land market. Its purpose was to abolish the existence of the landlord class and give the right to land and natural resources of the first settlers. Under a law passed back in 1872, anyone who wished to relocate to Alberta, Saskatchewan, and Manitoba and farm there for only \$ 10 was given 65 acres of land. However, it was important to fulfill one condition, namely that the provided land should be used for its intended purpose, and can not be resold [25].

The Gratuitous Land Act [26] for certain provincial regions was repealed in 1930, and for full-fledged territories in 1950 and throughout its existence, only 5% of land in Canada was transferred to private individuals. Canada's land fund in the late 20th century is characterised by a sharp increase in leased land. In 1971, 28% of the land was leased, and in 1991, 37% of the land. Determining factors that contributed to the spread of land use in the form of its lease are: the lack of tenants' ability to independently and rationally carry out economic activities on their leased lands; tenants benefited more from farming in the context of land leases because they had some freedom to maneuver their financial resources. In addition, a special feature of improving the lease institution in Canada is certainly the active role of the lessor state. This directly depends on the establishment of the Land Bank, which existed until 1982), its main function was to increase the efficiency of the mechanism of transfer of leased land to future generations of farming families, including developing and consolidating various alternatives for those who wanted to change the law land ownership.

Currently, Canada ranks second in the world in its area of 10 million square meters. 7% of this area is used for agriculture, in particular 68 million hectares, in turn arable land occupies 5% of the total land area, and cultivated land — 4%, which is 41 million hectares. In terms of the area of land cultivated, Canada ranks 5th in the world. It is worth noting that about 90% of Canada's land belongs to either the federal government or the provinces. In particular, almost 60% of agricultural land is privately owned. However, in contrast to Ukraine, this country is characterised by an active and progressive market for agricultural land [27].

An important feature of Canada is that the control of the dynamics of the agricultural land market is carried out separately in each province. In addition, they have the right to impose specific restrictions, such as on the purchase of land by non-residents of the provinces. As for the powers of the federal government, they are certainly broader, as it can impose restrictions on foreign investment in agricultural land, provided that they pose a threat to national security [28].

There are no restrictions on the area you can buy, except for the province of Prince Edward Island. In this province, an individual may not own more than 1,000 acres (404 hectares) and a legal entity may not own more than 3,000 acres or 1,214 hectares. Foreign

individuals and legal entities can buy no more than 5 acres (about 2 hectares) without government permission. In Quebec, foreigners can buy no more than 10 acres (4 hectares) without the permission of the Commission for the Protection of Agricultural Territories of Quebec. The maximum size with a permit is 2,470 acres (about 1,000 hectares). In Manitoba, foreigners cannot buy more than 40 acres or 16 acres. Unless authorised by the Manitoba Board of Agriculture. In Saskatchewan, foreigners cannot buy more than 10 acres or 4 hectares. In Alberta, foreigners can buy no more than two plots with a total area of 20 acres or 8 hectares. Interestingly, the sale of land is not limited at all in British Columbia and Ontario [29].

In view of the above, it should be noted that in Canada, there is no legal norm that would require federal monitoring of foreign investment in the agricultural land market, and the implementation of national regulation of such markets, in particular in the United States (hereinafter — the US). In Canada, in turn, as noted above, each province has a full right to impose its own restrictions on foreign investment, including the amount of land that one entity can acquire. This rule does not apply only to Prince Edward Island, as there are limits on the acquisition of land by both residents and non-residents. Nevertheless, in the vast majority of provinces, including those with the largest number of agricultural lands, such restrictions are implemented only for non-residents [30].

The aspect of inheritance transfer requires special attention, as no taxes are levied on its use. As for other provinces, they are determined separately there. In Ontario, Toronto, Quebec, British Columbia, Prince Edward Island, Newfoundland, the Northwest Territories, New Brunswick, the Yukon, Nova Scotia and Montreal — 0.5-2% of the transaction amount or fixed rate. In Manitoba, the registration fee is 70 US dollars and a tax of 0-2% of the price. In Alberta and Saskatchewan, the registration fee is about 0-0.3% of the transaction amount or surcharge [31].

Considering the legal basis for the existence of the agricultural land market in Canada, it can be noted that it was in this country that one of the largest land market reforms in the world was implemented. An important and distinctive feature of this country is that to prevent the abuse of certain positions in the sale of state land, all these operations take place only in open auctions, which ensures the transparency of this process.

Comparing the legal aspects of land use regulation, on the example of land reforms, in Ukraine and Canada, it should be noted that these countries are at completely different levels of development, due to the duration of such changes. In particular, despite the fact that land reform has been implemented in Ukraine since 1991, such an institution as the land market appeared only a few months ago, so in our country at the moment there is no sufficient list of regulations that

would fully consolidate the entire procedure for the sale of agricultural land, and determine the rights and obligations of the subjects, conditions and features of such a process. As for Canada, of course, the country's experience is much greater, but it is important that it is characterised by high efficiency. Therefore, it is advisable to formulate recommendations for the process of implementing the land market in Ukraine, through the prism of differences between the laws of these two countries [32].

First of all, it is necessary to eliminate the moratorium on the sale of agricultural land, in particular the sale at open auctions, so that this process was transparent and did not contribute to the formation of monopolies. In addition, the land market can be a stimulus for small and medium-sized farms, as Canada has the legal capacity to lend land and equipment for its operations, both through commercial banks and through Farm Credit Canada. Therefore, if the agricultural land market did not function, such loans would be impossible.

Moreover, further capital is attracted to the agricultural sector through specialised funds that buy land and lease it to farmers. Another distinctive feature of Canadian law is that the agricultural land market is characterised by liquidity that can be provided to farmers. That is, for farmers who decide to stop farming, the agricultural land market allows them to get the value of the land. This phenomenon is especially valuable after retirement, when a farmer can use the value of land to secure a fixed amount of capital, either through the sale of land or through the flow of income from its lease [33].

Conclusions

It should be noted that in the course of a comparative legal analysis of the regulation of the process of land

use, a number of features inherent in the legislation of Ukraine and Canada were identified. The paper identified theoretical concepts such as land use and land relations. The main features of such social relations were identified, including a number of regulations that constitute land legislation. A common object for comparison was land reform, particularly in the context of land market implementation. To carry out the analysis, both the historical development of such an institution in both countries and the practical principles of its implementation in them were studied. With regard to Ukrainian legislation, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Circulation of Agricultural Land", which entered into force on July 1, 2021, was considered to a greater extent. This is conditioned upon the fact that this is the first and only currently legal act governing the above institution.

If we talk about Canada, it still has a large number of legal acts that constitute legislation governing the land market. Of course, this is explained by the duration of its existence in this country, in addition, it differs from Ukraine in government, as it is a federation, each province has almost the same number of rights and autonomy, which is not typical for administrative-territorial units in our country. In addition, a notable difference is the lack of a moratorium on the sale of agricultural land in Canada.

In future studies, it is advisable to compare the sanctions provided for violations of established norms on the market of agricultural land, enshrined in the laws of Ukraine and Canada. This direction is extremely relevant and important for modern legal doctrine and society in general, especially in the context of dynamic implementation of land reform.

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Правові засади використання земель в Україні та Канаді: порівняльно-правовий аспект

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Анотація

Питання щодо використання земель відіграє важливу роль у формуванні економіки України. Через це, вивчення ринку обігу землі сільськогосподарського призначення, є досить пріоритетним й актуальним для правової доктрини, оскільки дана проблема безпосередньо дотикається до національної безпеки держави, через те, що передбачає здійснення контролю за ризиками, що можуть виникнути у зв'язку з високою концентрацією площ сільськогосподарських угідь у власності однієї особи, неконтрольованого придбання землі іноземцями, а також часткової монополізація окремих сегментів аграрного ринку. Метою даної роботи є здійснення порівняльно-правового аналізу законодавства України й Канади, у галузі використання земель, виокремлення у них спільних й відмінних рис. Для досягнення даної мети, у статті було використано декілька методологічних підходів й методів для наукових досліджень, зокрема функціональний й теоретичний підходи, а також метод логічного аналізу, методу синтезу, формально-юридичного методу, методу порівняльного аналізу, методу аналізу наукової літератури. Після проведення дослідження, було отримано теоретичні й практичні засади даного питання. До перших варто віднести аналіз нормативних баз України й Канади, а до других аналіз безпосередніх методів й підходів, що використовуються у даних країнах під час використання земель. На основі отриманих результатів було сформовано відмінності між правовими засадами реалізації вищенаведеного процесу і розкрито позитивні аспекти, які було б доцільно втілити в майбутній нормотворчій діяльності у цій галузі українського законодавства. В подальших роботах необхідно визначити перспективність методів, на яких базується поточна земельна політика обох країн та визначити шляхи для підвищення її ефективності. Що стосується практичної цінності роботи, то вона безумовно полягає у тому, що в ній розкриті головні теоретичні аспекти, що пов'язані з впровадженням земельної реформи в Україні, а від так дозволяють полегшити тлумачення окремих норм, як для пересічних громадян, так і державних службовців

Ключові слова: сільськогосподарські угіддя, земельна реформа, законодавство, ринок землі, земельна політика



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Legal Liability for Corruption and Related Offenses in the Field of Land Relations

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Abstract

Corruption in its various manifestations still remains an acute problem for Ukraine, as a brake on its economic development and effective European integration activities. The opening of the market of agricultural lands in itself provokes the growth of the use of corruption tools, therefore, improving the legal responsibility for corruption and related manifestations in this area is extremely important at the present stage of statehood. The purpose of the study is to analyse the problems of corruption in the land sector and the types of legal liability for such offenses under Ukrainian law. The use of logical-semantic, system-structural, historical and comparative-legal methods of scientific cognition served as an effective method of analysis of research problems. In the context of the study, an analysis of the types of legal liability for corruption and related offenses in the field of land relations; their specific features at the present stage of construction of the normative basis in the researched sphere are clarified. Administrative, criminal, civil and disciplinary liability for corruption in the field of land relations is analysed. A relatively new institution of Ukrainian law, namely, civil confiscation, including the types of offenses under study are also considered. At the same time, regulatory gaps remain significant, in particular, inconsistencies and conflicts between the so-called anti-corruption terminology contained in related regulations, which should be unified by amending the basic Ukrainian anti-corruption law

Keywords: administrative responsibility, criminal responsibility, civil responsibility, disciplinary responsibility, corruption, land sphere, anti-corruption legislation

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Introduction

High levels of corruption threaten the development of society as a whole and individual areas of its activities, including land, while preventing effective investment in new projects that could bring the country to a higher level of development and ensure prosperity and well-being of its citizens.

Therefore, it is important to provide adequate legal safeguards, aimed primarily at preventing and then counteracting corruption of various legal qualifications. These are, first of all, the so-called anti-corruption restrictions presented in the Basic Anti-Corruption Law of Ukraine (hereinafter — the Law) “On Prevention of Corruption” [1] and the norms of Ukrainian legislation that: 1) define the so-called “corruption categorical apparatus”; 2) regulate liability for actions/omissions that can be interpreted within the same “corrupt categorical apparatus”.

A separate and most noticeable corruption risk in the area under study is the opening of the market for agricultural land, which is a moving mechanism for the development of new corruption schemes. Because land relations are perhaps the most popular area for the practice of “illicit enrichment.” In particular, the main anti-corruption body of the state (National Agency for the Prevention of Corruption) identified “top 30 corruption schemes in the land sphere” and proposed algorithms to minimise them.

The opening of the market for agricultural land, in itself, already increases the corresponding corruption risks. After all, land is an object of increased interest for all citizens, because, according to the Constitution of Ukraine [2], it is the object of property rights of the Ukrainian people. Given the relatively recent adoption of the Law “On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land” [3] and the corresponding amendments to the Land Code of Ukraine [4], the above thesis is particularly relevant.

The issue of legal liability for corruption and related offenses in the field of land relations was directly or indirectly studied by a whole cohort of scientists, in particular: L. Shestopalova studied the issues of delimitation of corruption offenses and those related to them [5]; O.V. Shkuropat in his the dissertation level analysed the features of anti-corruption policy in the field of land relations [6]; A. Sira studied the issue of administrative liability for offenses related to corruption in the land sphere [7]; A. Halai, V. Halai and S. Marchenko analysed the topic under study through the prism of the organisation of social work in rural communities of Ukraine [8]; V. Ladychenko and Yu. Danyliuk — in terms of ensuring sustainable development of local self-government [9]; L. Kurylo, I. Horodetska and Ye. Shulga — through the need for public awareness of the basics of environmental legal culture [10]; L. Golovko, O. Uliutina and O. Yara conducted a comparative analysis of environmental

responsibility in Ukraine and the EU [11]; V. Kurylo, T. Gurzhii, V. Mushenok and S. Sliusarenko conducted an analysis, including compliance with anti-corruption legislation in the implementation of financial payments sent to the budget of the territorial community by agribusiness entities [12]; V. Yermolenko, O. Hafurova, M. Krasnova and Y. Krasnova studied the legal basis of environmental accounting as a tool to ensure both sustainable development and prevention of corruption in Ukraine [13], O. Piddubnyi analysed the legal support for the expansion of land powers of local governments [14], and M. Deineha — features of legal regulation in the context of preventing land flooding in Ukraine, which also has significant corruption risks [15].

The purpose of the article is to identify issues in the context of ensuring legal liability for corruption and related offenses in the field of Ukrainian land relations, its analysis and the development of author’s conclusions and proposals.

Materials and Methods

General scientific and special scientific methods of cognition were used during the research. In particular, the logical-semantic method was used to analyse the categorical apparatus considered in the research (“corruption offenses”, “corruption-related offenses”, “criminal corruption offenses”, “criminal offenses related to corruption”, “administrative offenses related to corruption”, etc.). The method of hermeneutics allowed analysing the current Ukrainian anti-corruption legislation and relevant land legislation to determine its effectiveness at the present stage and identify regulatory gaps, shortcomings and conflicts (in particular, the Constitution of Ukraine [2], Law of Ukraine “On Prevention of Corruption” [1], Anti-Corruption Strategy [16], Code of Ukraine on Administrative Offenses [17], Criminal Code of Ukraine [18], Civil Procedure Code of Ukraine [19], Land Code of Ukraine [4], etc.). The historical method allowed considering both the actual development of the general Ukrainian anti-corruption legislation and the types of legal liability for “corruption and corruption-related offenses in the field of land relations” (“criminal, administrative, civil property and disciplinary”) and the introduction of “civil confiscation”). The comparative legal method helped to analyse the types of legal liability for the investigated offenses and their relationship. The system-structural method contributed to the complex development of the vision of the research issue, highlighting its general component (“legal liability for corruption and related offenses in the field of land relations”, shortcomings of anti-corruption legislation in general) and partial (criminal liability for corruption and corruption-related offenses”, “administrative liability for corruption-related offenses”, “civil liability for corruption and corruption-related offenses”, “disciplinary liability for corruption and corruption-related

offenses”, shortcomings of normative anti-corruption safeguards in the field of land relations), etc. The statistical method allowed to get acquainted with the database of international and Ukrainian public organisations in terms of collecting information on corruption, which would objectively and independently reflect the state of anti-corruption activities in Ukraine, based on the opinion of citizens (annual reports of Transparency International and Transparency International in Ukraine) and official data of Ukraine, which are published at the level of annual anti-corruption reports, for which the National Agency for the Prevention of Corruption is responsible, highlighting relevant anti-corruption statistics, The National Police, the Prosecutor’s Office, the Supreme Anti-Corruption Court, local governments and a number of other bodies).

Results and Discussion

Corruption is a widespread phenomenon that has been known to mankind since the development of the first state formations. It is the establishment of a certain kind of advantage of one group of people over another and became a prerequisite for the emergence of such a concept, because in conditions of social inequality is best seen the possibility of “stronger” by attracting material factors to defend their own needs and interests. Today, Ukrainian realities have not undergone significant transformations. The main difference is that the essence of modern legal views on the state and law eliminates any discrimination, and corruption, in its original form, serves as a tool for its spread, and thus — appears as a socially negative factor.

Currently, the regulatory field enshrines this term in Article 2 of the Law “On Prevention of Corruption” [1], understanding it as two basic components: 1) “receiving/offering to obtain an illegal claim” and 2) “by abusing the official position provided by the state/local community”. Similarly, the term “illegal benefit” has received

its normative consolidation, embodying any benefits and requirements, both material and other.

At the same time, the legislator enshrined in this notion the action aimed at “proposing such an immeasurable benefit” (Article 369 of the Criminal Code [18]) and “provocation to implement such an action” (Art. 370 of the Criminal Code [18]), in particular, by providing for criminal liability in the relevant articles of the Criminal Code.

The social danger associated with obtaining illegal benefits lies in its prevalence among the subjects of power — those whom we trust to make important decisions for citizens, which in fact leads to distrust of society.

An important element in creating a positive image for Ukraine is the development of a set of measures to, above all, “prevent corruption”, which are a set of state-sanctioned remedies aimed at establishing preventive measures to prevent corruption risks and impose sanctions for abuse of power in public administration. Accordingly, legal means are an important indicator of minimising corruption risks in any sphere of public life, especially in land, as it is for Ukraine the main natural resource and wealth of the Ukrainian nation.

As the sphere of land relations has been in the process of reform throughout Ukraine’s existence, especially during the opening of the land market, the progression of corruption risks is growing rapidly, and thus necessitates effective ways to overcome them. One of the precautionary elements of corruption-dangerous situations is the awareness of responsibility for illegal actions.

At the same time, the analysis of statistical data showed [20] that the number of persons against whom verdicts/rulings on corruption offenses came into force in 2020 – 524. And the distribution of the National Agency for the Prevention of Corruption according to their areas of activity gives us reason to say that “corruption risks in the field of land relations” are among the highest (Table 1) [20].

Table 1. Information on registered criminal corruption offenses in 2020 according to the spheres of activity of the perpetrators

Persons who have committed offenses in the system	Financial and credit system	1
	Banking system	2
	Fuel and energy complex	7
	Agro-industrial complex	1
	Education	4
	Health care	5
	Transport	6
	At the enterprises of the defense-industrial complex	–
Persons who have committed offenses in the system	Budget	4
	Land relations	8
	Privatisation	–
	Health care	2

Source: [20]

The Law “On Prevention of Corruption” [1], adopted on October 14, 2014 within the framework of the so-called anti-corruption package of laws, which the Verkhovna Rada dared to adopt only under pressure from the international community and protesters under the walls of the legislature, became current and essentially new with unprecedentedly strict anti-corruption norms. This legal act “determines the legal and organisational basis for the functioning of the anti-corruption system in Ukraine, the content and application of preventive anti-corruption mechanisms, rules for eliminating the consequences of corruption offenses” in general [1].

At the same time, the Law “On Principles of Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017” [16] was adopted, which is completely new for Ukraine and the most comprehensive and systematic in relation to the most important spheres of public life. It is worth noting that the implementation of the strategy should have been and adopted the relevant State Programme for its implementation, however, much later. To date, the Verkhovna Rada of Ukraine has failed to adopt a new Anti-Corruption Strategy, which is developed annually and submitted to the appropriate authorities by the National Agency for the Prevention of Corruption.

In summary, we can safely say that in the period since 2014, anti-corruption legislation has reached a fundamentally new level and began to be implemented in practice. At the same time, the instruments, including the basic anti-corruption law, have not yet been implemented at a high effective level, and the minimisation of corruption risks remains extremely important in the exercise of their respective powers. Despite the active fight against illicit enrichment, there is a need to improve and harmonize the system of anti-corruption laws.

Despite the development of appropriate anti-corruption legislation that ensures the practical implementation of the rules and does not create only a “visible” effect, an important element of understanding the issue in full is its theoretical component. To fully understand the problem, it is necessary to pay attention to the essence and delimitation of concepts that identify the degree of responsibility for illegal corruption.

The Law on Prevention of Corruption of 2014, which is the “flagship” in modern anti-corruption legislation, presents a number of important legal terminology and legal concepts for combating corruption, namely: “anti-corruption expertise”, “corruption”, “corruption offense”, “illegal gain”, etc. This law introduced a new concept of “corruption-related offenses” into social and legal circulation (Article 1) [5, p. 194].

“Corruption” is the basic definition for bringing to justice, and in accordance with Article 65-1 of the Law “On Prevention of Corruption”, for committing corruption or corruption-related offenses provides for all four types of legal liability: criminal, administrative, civil legal and disciplinary [1].

The newly mentioned Ukrainian anti-corruption law regulates two types of relevant offenses: “corruption-related offenses” and “corruption offenses”, which are different. Because, “corruption offense” is defined as an illegal act with signs of corruption, and its feature is the presence of three types of legal liability: criminal, civil and disciplinary.

At the same time, “corruption-related offense” does not include any signs of corruption (as a criminal offense), but such an act violates the requirements of the Law “On Prevention of Corruption” [1]. It is no coincidence that this normative act in the transitional provisions contained an updated version of Chapter 13-A of the Code of Ukraine on Administrative Offenses (hereinafter KUpAP) [17] with a list of articles providing administrative liability for these offenses, which, in fact, correspond/should correspond with the requirement/prohibitions established by the Law “On Prevention of Corruption” in relation to the entities listed in Article 3 [1].

On the grounds of corruption offenses in general, in particular L.M. Shestopalova, like many other scholars, note that the jurisdiction over them should be within the competence of anti-corruption government agencies, special departments and authorised leaders [5, p. 195]. The authors of this study do not support this view, because: 1) there are clearly defined subjects of anti-corruption, of which only half are the bodies of purely anti-corruption; 2) the system of newly created anti-corruption bodies is unreasonably inflated and unjustified.

Returning to the subject of the study, we note that the unifying component of both illegal acts is the subject — a person who commits a criminal offense or an offense related to corruption through the use/abuse of office/authority.

Legal regulation of preventing and combating corruption in the field of land relations is the application of legal liability, where the most common is administrative, in fact, for corruption-related offenses, where offenses in the field of land relations are their component, ratified by the current version of Chapter 13 and the Code of Administrative Offenses entitled “Administrative Offenses Related to Corruption” [17] and the Law “On Prevention of Corruption” [1].

Analysing the sanctions provided for in Chapter 13-A of the Code of Administrative Offenses, the following types of liability can be stated: 1) fine; 2) confiscation of income, rewards of gifts received by committing an administrative offense and 3) deprivation of the right to hold certain positions/engage in relevant activities [5].

Administrative liability for corruption-related offenses in the field of land relations has two components: “land relations” and “administrative liability for corruption-related offenses”. Similarly, corruption offenses in the field of land relations include two definitions: “land relations” and “criminal liability for corruption offenses”.

The key in both terms is “land relations”, because they determine the specifics of responsibility. At the

same time, as noted by O. Shkuropat, the Ukrainian anti-corruption regulatory framework does not provide acts that would draw attention to the need for a special type of public administration in the field of land relations. The researcher pays special attention to the negative impact of corruption on the ecological and territorial integrity of the state, so given the above problems, the priority is to approve a programme that could soon create a tool to identify corruption and corruption-related offenses in land relations [6, p. 144].

Since the institution of civil liability belongs to the sphere of private law, which regulates personal non-property/property relations based on the principles of legal equality of their participants, as opposed to the basics of service law as part of a more complex, administrative law, in terms of public relations inequality of the parties and their certain hierarchy, the list of corruption articles in civil law is not given. At the same time, at the end of 2019, the so-called mechanism of "civil confiscation of assets obtained illegally" was introduced. In particular, the Law "On Amendments to Certain Legislative Acts of Ukraine on Confiscation of Illegal Assets of Persons Authorised to Perform State or Local Self-Government Functions and Punishment for Acquisition of Such Assets" [21], adopted at that time, provides for amendments to a number of laws Ukraine regarding the implementation of such a mechanism. The most significant of them were the updated norms of the CPC of Ukraine, in particular Chapter 12 with the new title: "Specific features of litigation in cases of unfounded assets and their recovery in state revenue" and Art. 290, which regulates the procedure for filing claims for unfounded assets persons authorised to perform public functions, and the collection of such in state revenue [19].

Significant changes in connection with the adoption of the above law and received the Criminal Code of Ukraine, which appeared Article 368-5 [18], which actually defined the term "illegal enrichment", its features and the degree of responsibility for such corruption offenses with implementation mechanism, regulated already in Article 290 of the CPC, and in a number of other regulations both on the prevention and direct counteraction to corruption and its manifestations.

Therefore, civil liability for the relevant type of offense arises from the contractual or contractual law, and the specific feature of such offenses is the infliction of material damage by acts of corruption. Violation of labour or official discipline in connection with the violation of corruption legislation entails disciplinary liability. At the same time, such a terminological description of corruption offenses is absent in the anti-corruption regulatory framework.

At the same time, the widest range of such violations, and hence liability, provided for in the Criminal Code of Ukraine, however, in contrast to, in particular, the Code of Administrative Offenses, and neglecting the rules of rulemaking, without systematic and presented

in one structural element. Thus, the note to Article 45 of the Criminal Code of Ukraine establishes a list of articles that establish criminal liability for corruption offenses, distinguishing only those, according to two criteria: 1) the presence/absence of "abuse of office" in the commission of corruption offenses; and 2) committing an actual "criminal offense related to corruption", to which only two articles are absolutely rightly attributed, namely: on liability for false data in e-declarations (as a result of the Constitutional Court of Ukraine decision of October 27, 2020 for No.13 [22], including the inexpediency of criminal liability for an offense that does not contain signs of "criminal corruption violation").

It is this norm (Article 45 of the Criminal Code) that regulates the impossibility of releasing a person from criminal liability for effective repentance if the latter has committed a corruption criminal offense and a criminal offense related to corruption for the first time. This imperative is explained, in particular, by the threat of corruption as a phenomenon and the interest of the state in overcoming it as soon as possible [18].

In accordance with the amendments made on June 29, 2021, the note to the said article of the Criminal Code was supplemented by a list of articles that are considered "criminal offenses related to corruption." This update established an additional terminological conflict, as the previous version of the article used only the meaning of corruption offenses [18], and the Law of Ukraine "On Prevention of Corruption" [1] does not contain such a term.

And no matter how society as a whole relates to the rather controversial decision of the Constitutional Court of Ukraine of October 27, 2020, which actually paused and canceled a significant work of the National Agency for Prevention of Corruption and a number of other anti-corruption bodies, including associated with the prosecution of such corruption offenses, however, the decision of the Ukrainian constitutional body has a legal basis, despite the fact that as a state, Ukraine, in the international arena has received negative reactions and suffered significant reputational risks conditioned upon its adoption.

At the same time, it should be noted that in 2018, the legislator, with the relevant amendments to the Criminal Code of Ukraine [23], changed the essential approach to the category of "crime" within the regulatory field, replacing it with "criminal offense", which, in turn, is divided into "criminal offenses" and "crimes", thus, so to speak, unified the holistic system of offenses of any legal nature.

In fact, bringing a perpetrator to disciplinary responsibility for corruption and related offences, including in the land sphere, is carried out through such a legal instrument as an official investigation conducted in accordance with the "Procedure for conducting an official investigation of persons authorised to perform functions of the state or local self-government, and persons who for the purposes of the Law "On Prevention

of Corruption” [1] are equated to persons authorised to perform the functions of state or local self-government”, defined by the Cabinet of Ministers, where paragraph 8 stipulates that the members of the commission that conducted the official investigation shall draw up an act describing all the circumstances of the investigation, statements and explanations of the person under whom the investigation was initiated, and conclusions and proposals to eliminate identified violations, etc. [24].

In particular, disciplinary liability may “accompany” other types of liability, penalties in accordance with which are imposed on a person for committing relevant acts of corruption, or be imposed separately. In any case, if there is relevant information, the head of the body is obliged either on his own initiative or in accordance with the instructions of other specially authorised entities, to initiate an official investigation and make decisions upon its fact.

The issue of amending Art. 1 of the Law of Ukraine “On Prevention of Corruption” [1], because despite the existence of “legal liability for corruption offenses and offenses related to corruption in the form of criminal, administrative, civil and disciplinary”, there is no clear terminological definition for each type. As the current regulatory framework for the offenses we are investigating is quite complex and conflicting, as it operates in a number of categories: “corruption offense”; “offense related to corruption” (Article 2 of the Law “On Prevention of Corruption” [1]); “corruption criminal offense”; “criminal offense related to corruption” (Article 45 of the Criminal Code of Ukraine [18]) and “administrative offense related to corruption” (Chapter 13-A of the Code of Administrative Offenses [17]) and needs to be systematised in the basic anti-corruption law.

Conclusions

Legal liability for corruption and related offenses in the field of land relations includes all four types: criminal,

administrative, civil property and disciplinary. Administrative liability for offenses related to corruption in the field of land relations is regulated by Chapter 13-A of the Code of Administrative Offenses “Administrative Offenses Related to Corruption” and the Law of Ukraine “On Prevention of Corruption”. The list of “corruption articles” in respect of which criminal liability is applied is enshrined in the Criminal Code, namely, the note to Art. 45, and contains a clear distinction between articles that provide for liability for corruption-related offenses and corruption offenses themselves. Disciplinary responsibility is characterised by a low level of public danger, and its basis is labour discipline. Civil liability is compensation for material and moral damage caused by corruption-related offenses/corruption offenses. A rather new institution has been introduced for the system of Ukrainian law — civil confiscation, which actually regulates the procedure for filing a lawsuit to declare unfounded assets of persons authorised to perform public authority functions and collect them in state revenue.

The sphere of Ukrainian land legal relations is characterised by quite significant corruption risks. “Opening the market of agricultural land” actually increases them by an order of magnitude. At present, the current Ukrainian anti-corruption legislation, although in historical retrospect — in good condition, including the mechanism of its implementation — still needs significant improvement, change and the presence of political will to strictly comply with it. Despite the active fight against corruption, there is a need to improve and harmonize the system of anti-corruption laws, in particular, the terminology, the adoption of a topical Anti-Corruption Strategy with a structural unit to prevent and combat it, especially in land relations, and strict compliance with anti-corruption legislation concerning bringing the perpetrators to justice.

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Юридична відповідальність за корупційні та пов'язані з нею правопорушення у сфері земельних правовідносин

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Анотація

Корупція у різноманітних її проявах й досі залишається гострою проблемою для України, будучи гальмівником у її економічному розвитку та ефективній євроінтеграційній діяльності. Відкриття ринку земель сільгосппризначення саме по собі провокує ріст застосування корупційних інструментів, відтак, удосконалення юридичної відповідальності за корупційні та пов'язані з такими проявами у вказаній сфері є вкрай важливим на сучасному етапі державотворення. Мета дослідження полягає у аналізі проблематики корупційних проявів у земельній сфері та видів юридичної відповідальності за такі правопорушення в межах українського законодавства. Ефективній методиці аналізу проблематики дослідження послугували використання логіко-семантичного, системно-структурного, історичного та порівняльно-правового методів наукового пізнання. У розрізі дослідження здійснено аналіз видів юридичної відповідальності за корупційні, та пов'язані з такими, правопорушення у сфері земельних правовідносин; з'ясовано їх особливості на сучасному етапі побудови нормативної основи у досліджуваній сфері. Проаналізовано адміністративну, кримінальну, цивільну та дисциплінарну відповідальність за корупційні прояви у площині земельних правовідносин. Розглянуто і відносно новий інститут українського права, а саме, цивільної конфіскації, у тому числі і щодо досліджуваних нами видів правопорушень. Водночас, значними залишаються і нормативні прогалини, зокрема, невідповідність та колізійність так званої антикорупційної термінології, що міститься в суміжних нормативно-правових актах, які мають бути уніфіковані шляхом внесення відповідних змін у базовий український антикорупційний закон

Ключові слова: адміністративна відповідальність, кримінальна відповідальність, цивільна відповідальність, дисциплінарна відповідальність, корупція, земельна сфера, антикорупційне законодавство



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Comparative Analysis of the Legal Status of the High Council of Justice in Ukraine and Foreign Countries

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Abstract

The need to study certain aspects of the judiciary is explained by the constant updating of current legislation. Given that the Ukrainian legislator has recently paid close attention to the call-up foreign experience, there is an objective need to analyse the legal status of the High Council of Justice, or bodies that perform its functions in foreign countries. The purpose of the article is to conduct a comprehensive comparative legal analysis of the status of the High Council of Justice in Ukraine and abroad. In the process of comparative legal analysis of the status of the High Council of Justice in Ukraine and foreign countries, the following methods were used: formal-legal (dogmatic), comparative-legal and the method of dogmatic (logical) analysis. According to the results of the research, it is determined that the current state of activity of the High Council of Justice is characterised by a certain representation of executive bodies, including judicial bodies. The key task is to work on the development of the judiciary, participation in the administration of judges, and the disciplinary responsibility of prosecutors and judges. It was found that the legislation of foreign states, consolidating the powers of judicial self-government bodies, gives them the right to select candidates for judges, appoint court chairmen, including bringing judges to disciplinary responsibility. Such bodies always involve government officials, including the president. However, it should be noted that the judiciary has exclusive independence from other bodies, including the executive and the legislature, which is manifested in broad powers. It is argued that the world practice identifies two main options for the appointment of judges: appointment by the President or Parliament on the proposal of the Ministry of Justice or the relevant body of judicial self-government (judicial councils); direct appointment of judges by the relevant body of judicial self-government (judicial councils). The study provides a comprehensive comparative legal analysis of the functioning of the High Council of Justice in Ukraine and foreign countries in today's conditions, and provides specific proposals to improve existing legislation in terms of the activities of the body under study. The materials of this study can be useful for teaching training courses: Judicial system of Ukraine, international law. Also, the submitted proposals to improve the functioning of the body under study can be used by the legislature in considering the possibility of updating special national legislation

Keywords: court, judicial proceedings, judicial governing bodies, judicial power

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Introduction

The problem of the independence of the judiciary has always been and remains relevant for Ukraine, given the difficulty in applying the practical aspects of its implementation. The content and necessity of ensuring the independence of judges have always been clear to expert and scientific circles, from the very beginning of the development of Ukrainian statehood. At the same time, the lack of necessary experience in the activities of certain institutions is a consequence of having ineffective and declarative experience.

The judicial system in Ukraine cannot function effectively and successfully without the full staffing of the judiciary. In general, the issue of forming the judicial corps of Ukraine is extremely important for the state, because the quality of staff (judges) directly affects the administration of justice and strengthening the authority of the judicial system. Therefore, the main goal of judicial reform in Ukraine is to ensure that justice in Ukraine is comprehensive, impartial, fair and just, and as a result, we can see an increase in public confidence in the judiciary and an increase in the status of the state at the global level. This goal, of course, requires reorganisation and the search for new practices; in the case of the High Council of Justice (юстиції), it became the High Council of Justice (правосуддя), and the changes were not limited to renaming the body. All the efforts of the body under study are aimed at forming a highly qualified corps of judges, creating conditions under which independence is a priority, including a harmonious atmosphere for the interaction of courts.

It should be noted that the HCJ is endowed with significant powers (considering the provisions of the Constitution of Ukraine and specialised legislation), in particular, it concerns the impact on the mechanism of the judiciary, staffing at all levels, control over compliance with the law, responsibility (not only judges but also prosecutors). That is why it is necessary to consider the activities of the HCJ and analyse in detail every aspect of the received HCJ powers, because without a clear definition of the “path” in which the investigated body should develop, there is always a chance to level certain norms.

In addition, recently in scientific circles more and more attention is paid to the need to consider the positive foreign experience. The judiciary is no exception, as most of the reforms that have taken place in the framework of judicial reform since 2016, were based on foreign experience [1, p. 18]. Therefore, there is an objective need to analyse the foreign experience of individual states in the activities of the body under study.

Analysis of recent research and publications indicates the relevance among scholars in the analysis of positive foreign experience in the functioning of one of the important bodies in the field of justice — HCJ. In particular, it is worth noting the work of O. Prudyvus [2], who studied the independence of judges as a criterion

for assessing the effectiveness of judges in reforming the judicial system of Ukraine. He determined that the principle of independence of judges from any interference in the judicial process is enshrined in international and Ukrainian regulations. The principle of independence is multifaceted and involves the adoption of various means for its implementation. In addition, he argued that the development of an appropriate level of independence of judges is important for a fair trial and the creation of conditions for restoring public confidence in the judiciary. After all, Ukrainian courts generally maintain a negative balance of trust and distrust in society: 14% of the population trust the courts, and 75 % do not trust them (the balance is 61%). Therefore, it is important that the state take measures that could simultaneously create the desire of judges to act independently, develop mechanisms and guarantees of such independence, and regulate the level of trust in the judiciary in the minds of judges and citizens. Also the work of M. Liakh [3], who defined that judicial self-government is a favourable environment in which the democratic identity of the judiciary develops. It is an autonomous self-governing social organisation capable of taking responsibility for managerial decisions, and its value lies in seeking to determine the prerogatives of the independence and autonomy of the judiciary in the administration of justice based on social expectations to strengthen public confidence in the judiciary. The work of Sh. Shetreet [4] determined that national law had a strong influence on international law (first stage). Later, in the second stage, international law gained its force through treaties, conventions, regional agreements and broad jurisprudence. Later, in the third stage, this international law began to influence national laws, for example in Great Britain, where the concept of judicial independence began. The author explored the need to ensure the complete independence of judges from state bodies, by forming a judicial body exclusively by the judiciary.

The purpose of the article is to carry out a comparative analysis of foreign experience of the bodies that form the apparatus of the judiciary and compare it with the experience of the High Council of Justice in Ukraine.

Materials and Methods

A comparative analysis of the legal status of the High Council of Justice in Ukraine and abroad was carried out using three interrelated and successive stages.

In particular, at the first stage, the specific features of transformational changes related to the liquidation of the High Council of Justice (юстиції) and the launch of a new judicial body — the High Council of Justice (правосуддя) — were identified. The key powers of the High Council of Justice and its legal status are outlined. The need to ensure a balance between the independence of judges and the protection of their legitimate rights and interests, including ensuring an

adequate level of responsibility of judges for their work and the quality of justice, was argued. The importance of the existence of e-court in the modern realities of life in Ukraine is briefly defined.

In the second stage, the foreign experience of individual countries in the justice process, namely the bodies that select judges, is analyzed. It was found out that in foreign countries a special place belongs to special bodies of judicial self-government (it can be a judicial council or a judicial power). In particular, the experience of France, the Republic of Poland and Moldova is analysed. It was also found that in states with a monarchical form of government (Great Britain, Luxembourg, the Netherlands and Japan) judges are elected by the monarch. In countries with a republican form of government (Moldova, France, Poland), as in Ukraine, such powers are vested in special judicial bodies (the High Judicial Council, the High Council of Magistracy, the National Judicial Council, the High Council of Justice, etc.). It is argued that such special bodies play an important role in the mechanism of ensuring the independence of the judiciary and try to ensure complete separation from state bodies and administrative control measures.

At the third stage, conclusions and proposals to the current legislation were formulated based on the analysis of positive foreign experience. In particular, the need to reduce the number of judicial self-government bodies and increase the scope of powers of the High Council of Justice has been identified.

In the process of conducting a comparative legal analysis of the status of the High Council of Justice in Ukraine and foreign countries, a set of general scientific and special legal research methods was used. In particular, the formal-legal (dogmatic) method allowed to analyse and interpret the content of the current legal norms of the Constitution of Ukraine and legislation in the field of justice, international treaties and legal acts; the comparative legal method was used throughout the study in the form of an analysis of current Ukrainian legislation on the activities of the High Council of Justice and similar bodies in foreign countries; the method of dogmatic (logical) analysis is used in formulating the conclusions and proposals contained in the study, considering the requirements for certainty, consistency, consistency and validity of judgments and implementation within theoretical positions using the conceptual apparatus of general jurisprudence.

In the process of comparative analysis of the status of the High Council of Justice in Ukraine and foreign countries, the following legal acts were used: the Constitution of Ukraine [5], the Law of Ukraine "On the High Council of Justice" [6], the Law of Ukraine "On Judiciary and the Status of Judges" [7], the Law of Ukraine "On Amendments to the Constitution of Ukraine (on Justice)" [8], the Law of the Republic of France "On the High Council of Magistracy of France" [9], the Law of

the Republic of Poland "On the National Council of Justice" [10], the Law of the Republic Moldova "On the High Council of Magistracy" [11].

Results and Discussion

The rule of law is the existence of a perfect and independent judiciary. The desire to form and improve the judicial system has led to several stages of legislative, institutional and personnel changes. In particular, changes in the structural nature provided for the transition to a three-tier system of courts: local courts, appellate courts, the Supreme Court, including the establishment of a new higher specialised courts in the judicial system: the Supreme Court. The Intellectual Property Court and the Supreme Anti-Corruption Court, which will act as courts of first instance to hear categories of cases defined by law. Organisational changes were presented, for example, conditioned upon the narrowing of the boundaries of judicial immunity from absolute to functional and raising the age and professional qualifications of candidates for judges [2].

To begin with, it should be noted that the judicial system in Ukraine has been changing its structure for a long time since Ukraine's independence. This can be explained by Ukraine's efforts to comply in some way with the modern judicial system of European states, which have characteristic advantages in their judicial systems [12].

One of the important bodies of the modern judicial system of Ukraine is the High Council of Justice. The legal status of HCJ is determined by Art. 131 of the Constitution of Ukraine [5], the Laws of Ukraine "On the High Council of Justice" [6] and "On the Judiciary and the Status of Judges" [7]. In accordance with the provisions of Part 1 of Art. 1 of the Law of Ukraine "On the High Council of Justice" states: "The High Judicial Council is a collegial, independent constitutional body of state power and judiciary, which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, honest and highly professional judiciary, compliance with the Constitution and laws Ukraine, and professional ethics in the activities of judges and prosecutors" [6].

It should be noted that the High Council of Justice replaced the High Council of Justice in the judicial system of Ukraine, the legal status of which was similar to the HCJ and was also determined by Art. 131 of the Constitution of Ukraine. In 2016, the Law of Ukraine "On Amendments to the Constitution of Ukraine (on Justice)" [8] Art. 131 was adopted in a new version, instead of the High Council of Justice created the High Council of Justice, which the Constitution of Ukraine and the Law "On the High Council of Justice" gave much broader powers than the previous body [6].

In accordance with the provisions of Art. 131 of the Constitution of Ukraine, the HCJ has quite broad powers regarding the appointment (development),

transfer, temporary removal and dismissal of judges, imposition of disciplinary sanctions on judges, ensuring the independence of judges, etc. [5].

If we compare the content of the powers of both HCJ, it is worth emphasising that the functional powers of such subjects of the judiciary have significant differences, including non-characteristic functions. Thus, when consenting to the detention of a judge in custody, the HCJ performs a procedural-permitting function. Although before, the HCJ's powers were characterised as recommendations or advisory. In addition, in the process of deciding on the dismissal of a judge, the HCJ performs a full-fledged personnel function.

In general, scientific circles (eg. Yu.O. Kostkina) and international experts positively assess the activities of HCJ, and in particular, the latest changes that have been made to specialised legislation on the order of their activities [13, p. 145].

Examining the positive changes in the legal status of HCJ, its importance in ensuring a balance between the independence of judges and the protection of their interests and rights, and the appropriate level of responsibility of judges for their work and the quality of justice, can be noted. Such increased interest can be emphasised in Art. 1 of the Law of Ukraine "On the High Council of Justice" [6], according to which the Council is responsible not only for "ensuring the independence of the judiciary", but also for its operation on the basis of accountability to society.

Suffice it to say about the digital transformation of the interaction of the parties to the lawsuit. This is a public service "Electronic Court", which has greatly simplified, during the epidemiological crisis, interaction with the court. In addition, an appeal was also sent to the Parliament of Ukraine, the Verkhovna Rada of Ukraine with a request to make the necessary changes to the procedural codes of Ukraine norms concerning ensuring the right of persons to access to justice in conditions of quarantine restrictions. Also, an appeal was sent to the State Judicial Administration of Ukraine to immediately submit to the HCJ regulations on the Unified Judicial Information and Telecommunication System for approval, which aims to ensure citizen participation in court hearings remotely, and to provide documents in electronic form [14, p. 167].

Also, if we consider the foreign experience of operation, the issue of litigation via the Internet or what is known as electronic litigation (e-litigation), today is an important issue in litigation. The judiciary in various countries has additionally used this method of communication to continue to provide effective justice. In fact, such a trial has a number of advantages for the course of the proceedings, such as reducing the burden on the parties to the claim, lawyers, judges and citizens [15].

Thus, we can conclude that the current state of HCJ is characterised by a certain representation of both the executive and the judiciary. The activity of this body

is to elect judges, participate in the management of judges and bring prosecutors and judges to disciplinary responsibility. As a consequence, Art. 1 of the Law of Ukraine "On Higher Justice" defines the following tasks, namely: ensuring the independence of the judiciary, its functioning based on responsibility and accountability to society, the creation of a virtuous and highly professional body of the judiciary, observance of the Constitution and laws of Ukraine, and professional ethics in the activities of judges and prosecutors, and to recognize that the High Council of Justice occupies a special place in the system of state power" [6].

Ensuring equal access to justice, access to legal aid, raising the legal awareness of vulnerable groups and a strong strong civil society that promote access to justice are key criteria for ensuring access to justice for vulnerable people. Ensuring equal access to justice through access to legal aid is the key to ensuring access to justice in any state. Today, it is important to overcome barriers to access to justice, such as the digital barrier, barriers to financial costs, complexity, lack of information and access to services, and lack of access to legal aid or representation. States must be effective, must ensure strong commitment, maintain coordination and promote cooperation. Public justice systems must work with civil society organisations and civil society to address the root causes of disputes and prevent violence, conflict and human rights abuses [16].

Analysing the activities of HCJ (or similar bodies) in the judicial system of some foreign countries, it is appropriate to note that in foreign countries an important place is occupied by special bodies of judicial self-government, for example, it may be the judiciary or the judiciary. These bodies have a special place in the mechanism of ensuring the independence of the judiciary and seek to "remove" the judiciary from the sphere of administrative control and effective management of the executive and legislative branches [17].

The analysis conducted by the Center for Judicial Studies indicates that in countries with a monarchical form of government (Japan, Great Britain, the Netherlands, Luxembourg), the heads of higher judicial bodies are appointed by monarchs. If we consider states with a republican form of government, the chairmen can be appointed by the President, parliament or other special bodies [18]. Such special bodies include the High Council of Justice (Ukraine), the High Council of Justice (Georgia), the National Council of the Judiciary (Poland), the Supreme Judicial Council (Bulgaria), the Superior Council of Magistracy (Moldova and France), etc.

It should be noted that the process of emergence and development of relevant independent bodies in the legal systems of other countries were in the field of view of Ukrainian scholars. For example, according to the results of O. Nazarov dissertation research, it was noted that "... its oldest representative is the Supreme Council of Magistracy of France — a constitutional body

that has administrative functions in relation to the corps of magistrates. It appeared in 1883. Since then, the powers of the Supreme Council of Magistracy have changed significantly several times, and the principles and procedure for forming its composition, but the tasks remained constant: ensuring the functional independence and discipline of magistrates" [19, p. 15].

It is worth considering the place of a special controlling body in the judicial system. In France, in particular, the Supreme Council of Magistracy is endowed with the honorary status of guarantor of an independent judiciary and is in fact a symbol of the unity of the judiciary. If we consider the competence of the above body, we can highlight the following. The Supreme Council of Magistracy is empowered to study cases, conduct inspections and surveys, and may initiate and withdraw proposals. At the same time, the appointment of other powers in this area is within the competence of the Minister of Justice. In turn, the Supreme Council of Magistracy can provide its own opinion on draft proposals that are of a recommendatory nature to the Minister of Justice [19].

It is also pertinent to note that as a result of the constitutional reform in France, the legal status of the Supreme Council of Magistracy was changed. First of all, separate procedures have been established for the appointment of judges and prosecutors. In addition, the principles of forming the Council have changed. The form of the body's meetings is open plenary sessions, chaired by the First President of the Court of Cassation. The composition of the Supreme Council of Magistracy is as follows, 8 qualified members and six magistrates. In addition, the French Supreme Council of Magistracy has been given additional powers, firstly, to nominate candidates for the presidency of the courts of first instance and, secondly, to have an advisory vote on all other appointments. With regard to judges, the Supreme Council of Magistracy may adopt decisions on disciplinary liability, and in particular, the imposition of disciplinary sanctions. In this case, the decisions of the Supreme Council of Magistracy can be appealed to the State Council [9]. The powers of the French Minister of Justice include the imposition of disciplinary sanctions on prosecutors, in turn, the Minister's decisions can be appealed only in terms of abuse of power. In addition, one of the innovations of the 2008 reform is that the participants in the trial were given the opportunity to apply directly to the Supreme Council of Magistracy. There are three commissions that consider such appeals. Two commissions consider appeals against judges, the latter against prosecutors.

The experience of the neighboring state — the Republic of Poland — is also relevant. The collegial body that oversees the independence of courts and judges in Poland is the National Council of the Judiciary. The modern judicial system, the order of activity of the National Council of the Judiciary of Poland are defined by the Constitution of Poland and the Law "On the National

Council of the Judiciary" [10]. According to the judge of the Supreme Court of Poland Katarzyna Honera, "the National Council of the Judiciary itself is of great importance in the process of electing judges to the Supreme Court — it is a constitutional collegial body that protects the independence of courts and judges" [21]. The main powers of the National Council of the Judiciary of Poland are:

- selection of candidates for the positions of judges of the Supreme Court and judges of courts of all levels (general jurisdiction), administrative and military courts, including for positions of judges in administrative courts;
- submission to the President of the Republic of Poland of proposals for the appointment of judges to the Supreme Court and courts of general courts, administrative and military courts, and for the appointment of assistant judges in courts;
- submission to the President of the Republic of Poland of applications for the appointment of an examination trainee judge and the training of a prosecutor for the positions of assistant judges in courts of general jurisdiction;
- adoption of a set of rules of professional ethics of judges and deputy judges and ensuring their observance;
- expressing an opinion on the state of judges and jurors;
- statement of position on issues related to the judiciary, judges and jurors submitted to the President of the Republic of Poland, other state authorities or judicial self-government bodies.

The Council consists of 25 members. Traditionally for European countries, in Poland the composition of the National Council of the Judiciary is mixed, but still, most of its members are judges.

The most important tasks of the Council include: providing opinions on issues (related to the scope of the Council's independence of courts and judges), which are considered by the Constitutional Court and on regulations (in the judiciary and judges), as well as submitting applications for candidates for judges [22, p. 67].

Also within the analysis it is necessary to pay attention to experience of the Supreme Council of Magistracy of Moldova. In Moldova — the Supreme Council of Magistracy consists of 12 members, including:

- judges (six members of the Supreme Council of Magistracy, who are elected from among the judges by secret ballot by the General Meeting of Judges, considering the views of each level of the judiciary);
- full-time law teachers (three members who are openly and transparently selected by the Parliament's Committee on law, appointments and immunity under a public procedure (competition) and elected by a majority vote of the Members of Parliament);
- Chairman of the Supreme Judicial Chamber;
- Minister of Justice;
- Attorney General [19].

The responsibilities of the Supreme Council of Magistracy of Moldova regarding the staff rotation of judges include: taking the oath of a judge; submission of candidates (to the President of the Republic of Moldova or the Parliament); determination of the procedure for selection of candidates (judges); transfer to a court of higher instance, court of the same or lower instance, appointment to the position of chairman or vice-president of the court or dismissal of judges, chairmen and vice-presidents of courts; decision-making on the temporary performance of the functions of the chairman or vice-president of the court, appellate board or the Supreme Court in case of vacancy or temporary dismissal until the vacancy is filled in the manner prescribed by law or appeal, suspension; approval of regulations on the organisation of competitions, etc. [11].

The Supreme Council of Magistracy of Moldova has the authority in the field of initial and continuous training of judges and employees of the Secretariat of Judicial Institutions, which is emphasised by O.B. Rosolak: appointment of judges to the Board of the National Institute of Justice; approval of the strategy of initial and continuous training of judges, etc.; consideration and issuance of its decision (position) on the Regulations on the competition for the exchange of teaching positions, including on the composition of the commissions of entrance and final examinations of the National Institute of Justice, etc. The latter has much less power to elect judges compared to Ukraine or other European countries [22, p. 86].

Legislation of foreign states, consolidating the powers of judicial self-government bodies, gives them the right to select candidates for judges, appoint court chairmen, and bring judges to disciplinary responsibility. Such bodies always include representatives of the authorities, in particular, the President. However, it should be noted that the judiciary has exclusive independence from other bodies, including the executive and the legislature, which is manifested in broad powers. There are two main options for the appointment of judges: appointment by the President or Parliament on the proposal of

the Ministry of Justice or the relevant body of judicial self-government (judicial councils); direct appointment of judges by the relevant body of judicial self-government (judicial councils).

Conclusions

Thus, analysing the legislation in the field of HCJ, it can be unambiguously attributed to an independent constitutional body of state power and judicial self-government — that is, the HCJ is rather a body of public administration in the relevant field. Therefore, the aspect of forming such a body should be openness and publicity and direct public participation. Separately, the principle of balance should be considered, ie the composition of representatives should not be significantly formed from current or former judges (it is 10 representatives), because it is not a body of judicial self-government, so it is necessary to revise part 1 of Article 5 of the Law of Ukraine and analyse the experience of foreign countries.

Ukrainian legislation in the field of ensuring the activities of the High Council of Justice considers the best European standards and practices, in particular, independence from other branches of government, this is precisely the case with the adoption of experience in republican states, the judicial bodies of which are formed by judicial self-government bodies, where the influence of executive bodies is minimal.

A feature of the experience of the studied states is a wide range of powers of the High Council of Justice (bodies that replace it), which do not have the High Council of Justice in Ukraine, given that powers in the field of justice, in addition to the High Council of Justice — have other bodies such as: State Judicial Administration of Ukraine, Council of Judges of Ukraine, Congress of Judges of Ukraine, High Qualification Commission of Judges of Ukraine, etc. Conditioned upon the fact that foreign countries with positive experience do not have such a significant number of bodies, the Ukrainian legislator should consider reducing such bodies, with an increase in the powers of the High Council of Justice.

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Порівняльний аналіз правового статусу Вищої ради правосуддя в Україні та зарубіжних країнах

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Анотація

Необхідність дослідження окремих аспектів, що стосується судової гілки влади пояснюється постійним оновленням чинного законодавства. Зважаючи на те, що український законодавець останнім часом приділяє вагомому увагу саме позивному зарубіжному досвіду виникає об'єктивна необхідність здійсненні аналізу правового статусу Вищої ради правосуддя, чи органів, що виконують її функції в зарубіжних країнах. Метою статті є здійснення комплексного порівняльного правового аналізу статусу Вищої ради правосуддя в Україні та зарубіжних країнах. У процесі здійснення порівняльно-правового аналізу статусу Вищої ради правосуддя в Україні та зарубіжних країнах було використано такі методи: формально-юридичний (догматичний), порівняльно-правовий та метод догматичного (логічного) аналізу. За результатами дослідження визначено, що сучасний стан діяльності Вищої ради правосуддя характеризується визначенням представництвом органів виконавчої влади, а також судових органів. Ключовим завданням є діяльність у сфері формування суддівського корпусу, участі в адмініструванні суддів, а також дисциплінарної відповідальності прокурорів та суддів. З'ясовано, що законодавство іноземних держав, закріплюючи повноваження органів суддівського самоврядування, надає їм права щодо відбору кандидатів на посади суддів, призначення голів судів, а також притягнення суддів до дисциплінарної відповідальності. До складу таких органів завжди входять

представники влади, зокрема президент держави. Проте, варто відмітити, що органи суддівського врядування мають виключну незалежність від інших органів, зокрема виконавчої та законодавчої влади, що проявляється у широких повноваженнях. Аргументовано, що світовою практикою визначено два основні варіанти щодо призначення суддів: призначення Президентом або Парламентом за поданням Міністерства юстиції або відповідним органом суддівського самоврядування (судовими радами); 2) пряме призначення суддів відповідним органом суддівського самоврядування (судовими радами). У дослідженні зроблено комплексний порівняльно-правовий аналіз функціонування Вищої ради правосуддя в Україні та зарубіжних країнах в умовах сьогодення, а також надано конкретні пропозиції щодо вдосконалення діючого законодавства у розрізі діяльності досліджуваного Органу. Матеріали цього дослідження можуть бути корисними для викладання навчальних курсів: Судової системи України, міжнародного права. Також, надані пропозиції щодо удосконалення функціонування досліджуваного Органу можуть бути використані законодавчим органом при опрацюванні можливості актуалізації спеціального національного законодавства

Ключові слова: суд, судочинство, органи суддівського врядування, судова влада

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