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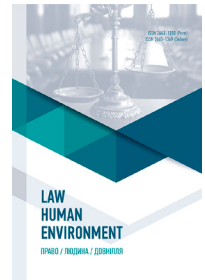
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Main trends in the development of tourism legislation in Ukraine

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Abstract

The study is devoted to the theoretical and legal analysis of the main trends in the development of tourism legislation in Ukraine. The relevance of the chosen subject lies in the presence of grounds to consider the tourism industry promising, given the possible positive social and economic effect for Ukraine, if the state considers the factors necessary for such an increase. The purpose of this study is to analyse the main trends in the development of tourism legislation of Ukraine and international legislation as part of national legislation. The analysis, synthesis, historical-legal, and comparative-legal methods are applied to achieve this goal. This methodology enabled the analysis and comparison of the international and national regulatory framework through the prism of historical and legal experience and allowed the drawing of conclusions about the current main trends in legislative development in the field under study. The results of the study are: today, tourism in Ukraine remains a non-priority industry (this statement is based on the general trend towards stagnation of the tourism sector in Ukraine), is unattractive for foreign tourists (this is due to objective reasons, including not only external threats that exist today, but also scanty indicators recorded before the outbreak of the pandemic and armed aggression by the Russian Federation) and works mainly for domestic consumers, which is confirmed by the data of the state statistics service of Ukraine. The situation has developed, in particular, due to a number of factors that are presented in this study (considering the experience of foreign countries), and insufficient regulation of tourist relations at the legislative level, which is analysed in detail in the paper. The study can be useful for further disclosure of issues in the area and as a basis for discussion in scientific circles against the background of the decline of the industry

Keywords: tourism, tourism industry, international tourism, domestic tourism, national legislation

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Introduction

For the revival of the Ukrainian tourism industry today, it is necessary to pay special attention to the creation of an effective legal mechanism in this area. In particular, the prospect of Ukraine's accession to the European Union will require an intensive rule-making process aimed at bringing national legislation in line with European standards. Moreover, this process has already begun with the adoption of the "Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2014), ratified by the Law of Ukraine of September 16, 2014 (Law of Ukraine No. 1678-VII..., 2014), and obtaining the status of a candidate for EU membership on June 23, 2022, by Ukraine.

Adaptation of the tourism legislation of Ukraine to the EU legislation was conducted rather slowly, and in modern conditions, it is practically suspended. In addition, an important and integral component of Ukrainian tourism legislation is international regulations ratified by the laws of the country. In the context of globalisation taking place in the global economy, ensuring guarantees for compliance with international standards in the field of tourism will improve the quality of the national tourism product and make it competitive on the international market. Accordingly, the research of these areas of development of tourism legislation is promising and relevant.

Particular problems of tourism legislation development were considered in papers of such researchers as: M.V. Semenova (2019), whose studies were aimed at reviewing the economic and legal regulation and the essence of tourism activities, the theoretical and practical results obtained by the author helped to identify a number of legal problems in the implementation of economic activities in the field of tourism. A.M. Williams and V. Baláž (2020), J. Fourie *et al.* (2020) analysed such a phenomenon as the development of tourist confidence in the place of tourist travel, which allowed an understanding of exactly how the tourist market is built depending on the state of social and economic development in the regions and the country in general. Ye.V. Kozlovskiy and Yu.O. Tsegelnyk (2012), in part of the papers from whom, the concept of legal status and its characteristic features were derived, and the main activities of international organisations in the field of tourism, as a result of which the authors provided their own vision of the system of international tourism legislation.

Considering the already formed discussion in the scientific community regarding the field of legal regulation in the field of tourism, the authors of this study focus on generalising the current legal framework and on general factors that negatively affect the development of the tourism sector.

According to the Administration of the State Border Service of Ukraine, published by the State Statistics

Service of Ukraine, in 2017, 38,958 foreign citizens crossed the state border of Ukraine for the purpose of tourism (State Statistics Service of Ukraine, 2018), according to other data of the State Statistics Service "the number of tourists served by tour operators and travel agents, by types of tourism" – 39,605, in 2020 – 11,964 people (State Statistics Service of Ukraine, 2020). For example, in the neighbouring country of Poland, this figure was 823,812 people in 2017 (Bilaniuk, 2018), and in 2020 – 4,696,938 people (Główny Urząd Statystyczny, 2020). Therewith, it should be considered that the recreational and natural potential of Ukraine is no worse than that of neighbouring countries. Among the reasons for the decline in this indicator, according to the authors of the study, were: the lack of sufficient state support for the tourism industry, and the presence of outdated legislation that did not correspond to modern trends in its development. Admittedly, in the realities of a full-scale war that is taking place on the territory of Ukraine, it is impossible to create a "favourable climate" for the functioning of tourism. According to experts in the field of tourist services, Ukrainian tourism is completely destroyed (Dvorska, 2022). Moreover, the UN estimates that if military operations last for over a year, the global tourism industry could lose 14 billion (United Nations, 2020).

The purpose of the study is to conduct a theoretical and legal analysis of the main trends in the development of tourism legislation in Ukraine.

The scientific originality of the results obtained lies in the fact that based on a comprehensive study of scientific doctrine and legislation in the field of tourism, the ways of reviving the tourism industry in the post-war period are justified.

Materials and Methods

During the study, a number of methods of scientific knowledge were used. These are philosophical (dialectical), general scientific (formal-logical, analysis and synthesis), and special-scientific (historical-legal, formal-legal, comparative-legal). The methodological basis of the research is based on the dialectical method. This allowed considering the main trends in the development of tourism legislation in Ukraine in the relationship of socio-economic and legal factors. The general scientific formal-logical method contributed to the preparation of the conclusions of this study. The analysis as a method is based on the examination of the basics of the doctrine of tourist law, including the identification of gaps in the legal acts regulating relations in the field of tourism, in particular, regarding tourist insurance. The synthesis method was used in the process of substantiating the conclusion about the need to develop a state target programme for the development of tourism in Ukraine. The historical-legal method was used in the implementation of a retrospective analysis

of tourist legislation. The formal-legal method allowed for identifying the content of regulatory legal regulations regulating public relations in the tourism sector and developing proposals for their better regulation. Comparative-legal method was used to compare the adaptation of the tourism legislation of Ukraine to the EU legislation, and the fulfilment of international obligations assumed by the state.

In the process of research, a number of international and Ukrainian normative legal acts were developed, which directly or tangentially regulate the development of the tourism industry and the cooperation of different countries in this field. Among the European documents considered are the following: Convention Concerning Customs Facilities for Touring (1954), Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone (1960), Recommendations on International Travel and Tourism (United Nations Conference..., 1963), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights. (1966), European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) (1970), Council Directive 90/314/EEC on package travel, package holidays and package tours (1990), Framework Convention on the Protection and Sustainable Development of the Carpathians (2003), Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements... (2015), Resolution adopted by the General Assembly "Transforming our world: The 2030 Agenda for Sustainable Development" (2015), Chengdu Declaration on "Tourism and the Sustainable Development Goals". (2017), etc.

From the Ukrainian legislation, the following were studied and compared with international documents: Laws of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine for Citizens of Ukraine" (1994), "On Tourism" (1995), "On Insurance" (1996), "On International Treaties of Ukraine" (2004), "On State Target Programmes" (2004), "On Accession to the Protocol on the Sustainable Development of Agriculture and Rural Areas to the Framework Convention on the Protection and Sustainable Development of the Carpathians" (2020), "On Ratification of the Agreement between Ukraine, on the one part, and the European Union and its Member States, on the other part, on Common Aviation Space" (2022); the State Programme for the Development of Tourism for 2002-2010 (Resolution of the Cabinet of Ministers of Ukraine No. 583..., 2002), Strategy for the Development of Tourism and Resorts for the Period until 2026 (Decree of the Cabinet of Ministers of Ukraine No. 168..., 2017), Resolution of the Cabinet of Ministers of Ukraine "On the Implementation of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2017), etc.

Results and Discussion

Tourism is not only a cultural exchange; it is an opportunity to solve a number of socio-economic problems for each country. In particular, it creates an additional stable source of income in the form of foreign exchange earnings, encourages the creation of new jobs, and invests in the development of infrastructure facilities.

One of the main problems of further development of the tourism industry in Ukraine, especially in the post-war period, may be the problem of ensuring the safety of tourist travel. A.M. Williams and V. Baláž (2020) emphasise the need to build the tourist's trust in the country to which they are travelling. In particular, the tourist expects situational normality – this is the belief that the environment of trust works "as usual". A tourist, for example, believes that no serious negative events (such as pandemics or natural disasters) will affect their intention to purchase a tourist package. J. Fourie *et al.* (2020) also highlight the "tourist safety" factor. Tourists who travel have their own safety experience, and this factor is important for them when choosing a destination. On the one hand, tourists from more dangerous countries will be more tolerant of a certain level of insecurity in the destination country, on the other hand, the negative effect will be greater if tourists travel from a safe country to a dangerous one (Fourie *et al.*, 2020). The most effective, in the opinion of the authors, mechanism of property security for a tourist is insurance. In accordance with Art. 9 of the Law of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine for Citizens of Ukraine" (1994), insurance is a guarantee of reimbursement to the tourist of expenses incurred (cases that can be attributed to insurance), in case of adverse circumstances abroad. However, it is necessary to consider the fact that this issue is not properly regulated in the legislation. Thus, Art. 16 of the Law of Ukraine "On Tourism" (1995) provides for medical insurance and accident insurance, which are mandatory. Such insurance is provided by tourist entities based on agreements with insurers. Moreover, the insurance of a tourist (citizen of Ukraine) is mandatory regardless of the place of tourist travel, that is, even if the trip is conducted only on the territory of Ukraine. Therewith, the relevant Law of Ukraine "On Insurance" (1996) does not include in the mandatory types of insurance personal insurance of tourists, which follows from Art. 7 of this Law.

Other factors include the following:

- solving the dispersion of ecotourism programmes.

For example, the study of B.S. Thompson (2022), highlights the problems of attempts to develop ecotourism operations in places with low ecotourism potential. This refers to a project in the Philippines. Stakeholders were initially involved in projects and guaranteed the economic, social, and environmental benefits that ecotourism can bring. However, most of the facilities were located far from major cities and tourist centres, with

limited infrastructure, and could not surpass other attractions, such as coastal recreation areas, etc.;

- brand creation and promotion of the tourism industry at the state level. This is noted in the study by L. Reynolds *et al* (2022). This refers to social capital (including travel service providers, tourism advocates, businesses and entrepreneurs, visitors, investors, tourism lobbyists, and community and resident groups), which considers the legitimacy that can be obtained by entities that work collectively, establish relationships, networks, and connections, develop and maintain group support. Social capital can effectively influence the development of the tourism sector.

Admittedly, the solution of the above-mentioned problems is impossible without the development and adoption of an appropriate state target programme. The draft of such a document must contain mandatory elements provided for in Art. 9 of the Law of Ukraine "On State Target Programmes" (2004), in particular, according to the authors, the main place in which should be occupied by "calculating the expected results (economic, social, environmental, etc.) of the programme's implementation and its effectiveness".

The last such state programme (for 2002-2010) was adopted in 2002 and approved by the Resolution of the Cabinet of Ministers of Ukraine No. 583 (2002). If back in 2013, the government tried to approach the adoption of the following programme (on August 1, 2013, the Order of the Cabinet of Ministers No. 638-r approved the "Concept of the State Target Programme for the Development of Tourism and Resorts for the Period until 2022" (2013); the order became invalid based on the Resolution of the Cabinet of Ministers No. 71 of 05.03.2014), then in the future this approach was generally considered unpromising and the tourism industry received only the Strategy for the Development of Tourism and Resorts for the Period until 2026, approved by the Order of the Cabinet of Ministers of March No. 168-R (2017). Notably, in the EU, the financing policy is also based on a programme-target approach and considers the combination of the economic potential of the relevant structural and investment funds (Semenova, 2019).

As noted above, one of the most important areas of development of Ukrainian tourism legislation is its harmonisation with the EU legislation. It is necessary to consider a number of obligations that Ukraine assumes under the association agreement. For example, Art. 417, concerning organised tourist complex trips and tours in accordance with the provisions of Council Directive 90/314/EEC (1990), requires substantial changes to the tourist legislation, including the adoption of the Law of Ukraine "On Tourism" in a new version. In the context of the above, even if this law is brought into compliance with Council Directive 90/314/EEC (1990), Ukrainian tourism legislation will not comply with EU legislation. Ultimately, these relations are now regulated by a new

EU regulatory document – Directive (EU) 2015/2302 of the European Parliament and of the Council (2015) on package travel and related travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

The Cabinet of ministers adopted Resolution No. 1106 "On the Implementation of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part" (2017) to bring the Ukrainian tourism industry closer to European standards. According to this document, the state should take steps to create a general strategy for the development of the tourism business, with a separate focus on the development of rural green tourism and agro-recreation clusters, on the development of resort areas until 2026, etc..

It is also necessary to pay attention to the fact that Ukraine actively cooperates with the EU (at the bilateral, regional, and European levels) to strengthen the development of the industry under study (Art. 399 of the Association Agreement). According to the national legislation, namely Art. 9 of the Constitution of Ukraine (1996) and Art. 19 of the Law of Ukraine "On International Treaties of Ukraine" (2004), "existing international treaties, the consent to be bound by which is given by the Verkhovna Rada, are part of the national legislation of Ukraine". For example, on October 12, 2021, an Agreement between Ukraine, on the one hand, and the European Union and its Member States, on the other hand, on Common Aviation space and ratified by the Law of Ukraine of "On Ratification of the Agreement between Ukraine, on the one part, and the European Union and its Member States, on the other part, on Common Aviation Space" (2022). This document has dozens of appendices that contain EU requirements, that Ukraine should gradually implement. Verification of the implementation of the above-mentioned standards is conducted by the European Commission and the European Aviation Safety Agency. The quality of implementation of standards in the aviation space on the part of Ukraine is guaranteed by the so-called aviation visa-free regime. In particular, this applies to air traffic control, flight safety, and environmental protection. This vector was chosen within the framework of the organisation of cooperation with the EU, including the regulation of global tourism policy. For Ukraine, this is an opportunity to be included in financial and technical assistance programmes and investment projects in the tourism sector.

Another substantial trend in the development of Ukrainian legislation in the field of tourism is international cooperation, which is conducted through the conclusion of bilateral and multilateral international treaties. The following can be cited: Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of India on cooperation in the field of

tourism (2003), Agreement between the Government of Ukraine and the Government of the Republic of Georgia on cultural cooperation (1993), Agreement between the Government of Ukraine and the Government of the Republic of Kyrgyzstan on cooperation in the field of tourism, mountaineering and the hotel industry (1993), Agreement between the Cabinet of Ministers of Ukraine and the Government of the Kingdom of Morocco on cooperation in the field of culture (2013), Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on cooperation in the field of tourism (2006).

In modern conditions, the role of cross-border cooperation of Ukraine in ensuring the ecological integrity of natural systems is growing. Here it is worth mentioning the Framework Convention for the Protection and Sustainable development of the Carpathians (2003), signed by the ministers of Ukraine, Slovakia, the Czech Republic, Poland, Romania, Hungary, Serbia, and Montenegro. Besides, Ukraine has joined the Protocol on the Sustainable Development of Agriculture and Rural Areas to the Framework Convention on the Protection and Sustainable Development of the Carpathians (Law of Ukraine "On Accession to the Protocol...", 2020). Ukraine, according to the provisions of these documents, should provide stable support and promote the development of rural areas, including through tourism (paragraph 3 of Art. 1).

Given that Ukraine is a member of the UN, a substantial part of its tourism legislation consists of regulations adopted by this organisation in the field of international tourism activities. Ultimately, the competence of the UN includes the adoption of documents containing various recommendations on international cooperation in this area (Kozlovskiy & Tsegelniuk, 2012). Conventionally, the documents adopted by the UN in this area can be divided into documents of a general nature; those that directly relate to the organisation of tourism activities; those that regulate the organisation of certain types of economic activities related to the tourism industry.

The first group includes documents in the field of human rights protection. These are, in particular:

- Universal Declaration of Human Rights (1948), on ensuring the right to rest (Art. 24);
- International Covenant on Civil and Political Rights, adopted by the UN General Assembly (1966), ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973, on the right to freedom of movement (Art. 12).
- International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly (1966), ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973, on the right to rest (Art. 7);
- Resolution of the UN General Assembly "Transforming our world: The 2030 Agenda for Sustainable Development" (2015), approved at the UN summit on

sustainable development. This document sets out 17 Global Sustainable Development Goals, including poverty eradication; good health; quality education; conservation of marine ecosystems; clean water and adequate sanitation; combating climate change; sustainable urban and community development; peace and justice; conservation of land ecosystems. The development of society on such principles will also contribute to the development of tourism activities in the world.

The second group should include such international documents as:

- Convention Concerning Customs Facilities for Touring (1954), New York. States that have joined this document guarantee tourists the opportunity to import personal items and gifts into the relevant country duty-free, and export them, provided that they are not intended for trade purposes.

- General Resolution on Tourism Development, adopted at the UN Conference on International Tourism and Travel in Rome (1963). It defines the main provisions for regulating border crossing (visa control, passport (documentary), customs, currency, sanitary, and epidemiological control). Due to the recommendations developed at the Rome conference, the concept of "temporary visitor" (tourists as temporary visitors – over 24 hours; excursionists as temporary visitors – under 24 hours) was later included in the legislative field of international tourism legislation (Brusiltseva & Zyma, 2019).

Examples of documents that form the third group include:

- European agreement on the work of crews of vehicles performing international road transport, adopted by the United Nations in Geneva on July 1, 1970. Ukraine joined this agreement based on the Law of Ukraine of September 7, 2005, "On Ukraine's accession to the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)". According to it, the requirements for technical equipment of vehicles have been tightened, considering passenger capacity (the use of tachographs when transporting from 9 passengers) (European Agreement..., 1970).

- Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone, adopted on December 14, 1960, at the 11th session of the UNESCO General Conference (Paris). In this document, it was proposed to understand under the term "museum" any permanent institution that serves in the general interest for storage, examination, and demonstration in various ways (displaying a set of elements of cultural value: collections of art objects, history, science and technology, botanical and zoological gardens, aquariums). Therewith, member states should undertake to take measures to ensure that museums located on their territory are publicly accessible, regardless of economic or social conditions (Recommendation..., 1960).

Separately, it is necessary to focus on the characteristics of documents adopted by the World Tourism

Organisation (hereinafter referred to as the WTO). Its main form of activity is holding international conferences on tourism. Notably, the legal nature of the final acts of such conferences is variative. They can: have a recommendatory character for the state parties (simultaneously, they are not sources of international law); be an international treaty open to signature; be sources of international law (Directive (EU) 2015/2302, 2015). Interestingly, at one of these conferences, namely in the city of Chengdu, the first international agreement in the history of the WTO was adopted – the Chengdu Declaration on Tourism and the Sustainable Development Goals (2017).

It notes that timely and systematic measurement of the economic, environmental, and social impact of tourist destinations is essential to support evidence-based decisions and the effective use of information collected to prepare informed policy decisions at all levels. Therewith, special attention is paid to the environmental component of sustainable tourism. Today, the WTO defines sustainable tourism as tourism that combines all resources in such a way that all needs, in particular, economic, social, and aesthetic, are met while preserving basic environmental processes, cultural integrity, life support systems, and biological diversity. This is directly indicated by the study of J.A. Campos-Soria *et al.* (2021). That is, there is a symbiotic relationship between tourism and the environment, and each depends on the other. Overall environmental management in the tourism sector should consider not only the environmental regulations imposed on tourism businesses and destinations but also the behaviour of tourists.

Conclusions

As a result of this study, it was found that the revival of the tourism industry in Ukraine is inextricably linked with the creation of an appropriate “favourable climate”, which should be reflected in the updated national legislation. Its further development should be directly influenced by Ukraine’s European integration and international obligations.

Analyzing the Ukrainian legislation and comparing it with the international one, the authors of the article

concluded that today the tourism legislation of Ukraine is characterised by a complex multi-level structure. It is based on regulations adopted by the UN and WTO. These documents regulate almost all areas of the organisation of tourist activities of the member countries of these international organisations, including Ukraine. In addition, Ukraine actively cooperates with other states in the field of cultural exchange and tourism, which is mediated through the conclusion of bilateral and multilateral international treaties. However, there is still no legal mechanism for compliance with international standards in this area.

As for the national tourism legislation itself, according to the association agreement, Ukraine must bring it in line with EU requirements. This primarily concerns the Framework Law of Ukraine “On Tourism”, which should become the basis for creating favourable conditions for the development of the industry and properly ensuring the rights of tourists. Unfortunately, the Draft Law of Ukraine of September 29, 2020 No. 4162 “On Amendments to the Law of Ukraine ‘On tourism’ and Some Other Legislative Acts on the Basic Principles of Tourism Development” does not fully meet these requirements. In addition, to organise funding for the relevant industry, the EU legislator applies a programme-target method. This should be considered in the process of determining the prospects for the development of tourism in Ukraine, especially in the post-war period. Therewith, the Strategy for the Development of Tourism and Resorts for the Period until 2026, approved by the order of the Cabinet of Ministers of March 16, 2017, No. 168-R, should be declared invalid. Ultimately, in modern conditions, its provisions lose their relevance. The authors of this study concluded that further development of tourist relations is impossible without the development and adoption of the concept of the state target programme for the development of the tourism industry of Ukraine in the post-war period, followed by the adoption of the corresponding state target programme. Such a document must have a long-term implementation period, real financial content; be implemented jointly by central and local executive authorities, and be approved by the Law of Ukraine.

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Основні тенденції розвитку туристичного законодавства України

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Анотація

Статтю присвячено теоретико-правовому аналізу основних тенденцій розвитку туристичного законодавства України. Актуальність обраної тематики полягає в наявності підстав уважати туристичну галузь перспективною з огляду на можливий позитивний соціальний та економічний ефект для України, у разі якщо держава врахує фактори, необхідні для такого приросту. Мета цієї статті – аналіз основних тенденцій розвитку туристичного законодавства України та міжнародного законодавства як частини національного. Для досягнення поставленої мети застосовано методи аналізу, синтезу, історико-правовий та порівняльно-правовий. Така методологія дала змогу проаналізувати та зіставити міжнародну та національну нормотворчу базу через призму історико-правового досвіду та зробити висновки щодо сформованих основних тенденцій законодавчого розвитку в досліджуваній сфері. Результати дослідження такі: на сьогодні туризм в Україні залишається неперіоритетною галуззю (таке твердження засновано на загальній тенденції до стагнації туристичної сфери в Україні), є непривабливим для іноземного туриста (це зумовлено об'єктивними причинами, серед яких не тільки зовнішні загрози, що існують на сьогодні, а й мізерні показники, зафіксовані ще до початку пандемії та збройної агресії з боку РФ) та працює здебільшого на внутрішнього споживача, що підтверджують дані Державної служби статистики України. Ситуація склалася, зокрема, через низку чинників, які наведено в цій статті (з урахуванням досвіду зарубіжних країн), та недостатнє врегулювання на законодавчому рівні туристичних відносин, що докладно проаналізовано в роботі. Стаття може бути корисною для подальшого розкриття проблематики, що існує в обговорюваній сфері, та підґрунтям для дискусії в наукових колах на тлі занепаду індустрії

Ключові слова: туризм, туристична галузь, міжнародний туризм, внутрішній туризм, національне законодавство



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Mediation as an alternative method of dispute resolution: International and national practices in legal regulation

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Abstract

The relevance of the subject under study is conditioned upon the fact that the strengthening of Ukraine's European integration requires the introduction of new, alternative methods of dispute resolution in national legislation and practice, among which mediation occupies a prominent place, the functioning of which has successfully proven itself in developed European countries. The purpose of this study was to figure out the current state of development of legal support for mediation in Ukraine, to outline prospects for improving legal regulation, considering International and European standards of mediation. The study used a system of general scientific methods of cognition (dialectical method, formal logical method, method of analysis and synthesis), as well as special legal methods (comparative legal method, formal legal method). The authors analysed the international and national practices of legal regulation of mediation in the system of alternative dispute resolution methods. Doctrinal and legislative approaches to the interpretation of the mediation were described, its main advantages in the system of alternative dispute resolution methods were found, types of mediation were outlined, and the content of the main international, European, and Ukrainian regulations governing relations in mediation were covered. It was found that mediation occupies a priority position in the international practices of conflict resolution, since it is much more effective than judicial and administrative forms of protection of rights and legitimate interests. It was proved that the attractiveness of mediation lies precisely in the simplicity and convenience of the procedure, a calm atmosphere of dialogue and the obligation to consider the opinions of all involved parties. It was found that this legal institution is based on voluntariness, confidentiality, impartiality, and neutrality, the possibility for participants to make their own decisions, and the presence of independent support of each participant from the mediator. It was noted that, despite the national legal framework for mediation developed in Ukraine, the outlined sphere of public relations requires improvement of the relevant legal mechanism and the institutional basis for its implementation. The results obtained can be used in further studies, as well as in the development of new and changing the existing regulations that determine the legal basis of mediation in the practice of implementing relevant legislation

Keywords: alternative forms of protection, non-jurisdictional forms of protection, mediative forms of protection, mediator, legal dispute, legal conflict

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Introduction

At the current stage of Ukraine's integration into the EU, mechanisms of alternative methods of dispute resolution as the most accessible, time-efficient, and effective procedures aimed at protecting the rights of individuals and legal entities are of particular relevance. At the same time, effective mechanisms for alternative dispute resolution are not widespread in Ukraine, which is due to both the lack of proper regulatory support and the unwillingness of the authorities to support such procedures.

The effectiveness of using alternative forms of protection of relevant rights is confirmed by the practices of several foreign countries, where up to 80% of cases in the field of civil, economic, and administrative relations are considered using such methods (Arseniuk, 2016). The practice of using alternative methods of conflict resolution as effective ways to resolve disputes is typical for many countries of the world. In fact, various types of alternative dispute resolution methods used to resolve conflicts have been developed in the United States, in the civil law systems of continental Europe and the Middle East (Işık, 2016).

Admittedly, previously the parties to dispute resolution preferred filing claims with the judicial authorities, i.e., conventional dispute resolution procedures. However, alternative forms of protection have become popular due to the slow progress of proceedings caused by such judicial problems as a large burden on the courts, increased legal costs, complexity and ambiguity in civil procedure, etc. Thus, alternative dispute resolution methods have become more popular and better and are effectively used in many countries around the world.

There are various types of alternative dispute resolution methods that are used to resolve conflicts between the parties. Methods of alternative forms of protection are implemented according to the specific features of the legislation of the country of application, sociological factors, customs, traditions (Işık, 2016). Therewith, alternative dispute resolution methods can be used either mandatorily or optionally. Some of these methods may be used by the courts, while the use of others is not related to judicial activity at all.

The most common alternative ways to resolve disputes are arbitration, mediation, jury trial, ombudsman, negotiation, reconciliation, etc. (Işık, 2016). Definitions of alternative forms of protection are not limited to the above methods. Furthermore, mixed methods are sometimes used by combining two or more of them, e.g., mediation-arbitration, etc. However, mediation occupies a special place among alternative dispute resolution methods.

In the scientific literature, the issue of alternative methods of dispute resolution and mediation is presented in the studies of scientists from both general theoretical and branch sciences. The problems of mediation as an alternative method of dispute resolution are investigated by S. Işık (2016), who emphasizes the

fact that alternative methods of dispute resolution are effective in any conflict situations. According to Işık, the use of mediation in resolving a dispute between the parties always leads to effective communication between them and helps find common ground, the strengths and weaknesses of their relationship, as well as the possible consequences of failure to come to mutual agreement.

F.A.H. Al-Khafaji (2021) raises the issue of international interest in developing the institution of mediation as an alternative way to resolve international disputes. Mediation in an international context is considered as an alternative idea of coercion, force, and violence that occurs between conflicting countries. It is considered an alternative method even in relation to the judiciary, which is aimed at resolving international disputes between subjects of international law. A. Tvaronavičienė *et al.* (2022) thoroughly analyse the development features and problems of implementing the European mediation model in the Baltic States (Latvia, Lithuania, and Estonia). Scientists have identified two general issues: a low level of public awareness about mediation and a lack of relevant statistical data in a particular area.

Ukrainian legal science also pays attention to the investigation of the legal nature of mediation by representatives of various branches of law. Thus, S.T. Iosypenko (2019) carried out a systematic scientific analysis of the possibility of using mediation in the settlement of private legal disputes. The scientist determined the effectiveness of the legal regulation of this method of resolving private legal disputes and provided suggestions and recommendations for further improvement and proper use of mediation legislation. K.S. Tokarieva (2021) investigated the theoretical generalization and solution of the scientific issue, the content of which is to reveal the essence of administrative legal regulation of mediation, conducted a comprehensive theoretical legal characterization of its current state and development trends.

However, the beginning of the development of a new legislative framework in Ukraine, which governs the legal basis of mediation and meets generally recognized standards in alternative dispute resolution methods, determines the relevance of the subject under study.

The purpose of this study was to analyse international, European, and national regulations that define the legal framework of mediation, to investigate scientific approaches to the characterization of this sphere of public relations, as well as to outline the prospects for the development of legal support for mediation as an alternative way to resolve disputes in Ukraine.

Materials and Methods

When drafting this paper, several methods generally accepted by legal science were used. Among the general scientific methods, this study employed the dialectical

method, formal logical, method of analysis and synthesis, and among special legal methods – comparative legal and formal legal methods. Using the dialectical method, the trends in the development of mediation as an alternative method of dispute resolution and its impact on the political, economic, and social factors of society's development were investigated. The formal logical method contributed to the characterization of the terminology used in this study. The method of analysis was used to investigate the papers of scientists on the subject under study, as well as in the characterization of international, European, and national legislation on mediation. The synthesis method allowed determining the place of regulations governing mediation relations in the legislation of Ukraine. The comparative legal method is used in the analysis of national legislation, international legal acts, and EU legislation on the issues under study. The formal legal method contributed to the investigation of the content of legal norms of the relevant legislation and the definition of prospects for its development.

The main provisions and results of the present study were formulated based on the analysis of international, European, and Ukrainian legislation, as well as the legislation of foreign countries. Specifically, the following provisions were used in this study: recommendation Rec (2002) 10 of the Committee of Ministers to member States on mediation in civil matters (2002), Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters (1999), Recommendation No. R (98) 1 of the Committee of Ministers to member States on family mediation (1998), Recommendation No. R (2001) 9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties (2001), Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008), as well as Ukrainian regulations, namely the Law of Ukraine "On Mediation" (2021).

Results and Discussion

The emergence and development of mediation as an alternative method of dispute resolution in the world

Mediation is one of the widely recognized, accepted, and used methods of alternative dispute resolution. The word "mediation" comes from the Latin words "*mediare*" (intervene) and "*medius*" (middle).

Mediation is a social phenomenon that has a long history, has its roots in many cultures and has been known to various civilizations over long successive historical eras. Mediation, before it became a legal means of resolving disputes, was recognized as a social phenomenon. Even in ancient times, mediation was a part of public life and played a vital role in organizing social relations for thousands of years (Işık, 2016). Mediation was used as a means of resolving social conflicts.

Mediation is native to the United States. The first immigrants used public mediation to peacefully resolve their social disputes. It is also worth mentioning the significant role of American legal scholars in the development of mediation as an institution, who focused on the need to use mediation as an alternative to judicial proceedings. The United States also plays a leading role in developing legislation related to mediation. In 1898, the first Erdman Act was passed, which governed the use of mediation to resolve labour disputes in the field of railway transport (Al-Khafaji, 2021). Presently, the development of mediation in the United States is at a prominent level.

In the United States, the entire legal system focuses on ensuring that most disputes are resolved voluntarily before going to the judiciary. Often, the trial may be suspended to ensure that the parties can contact a mediator. Without mediators in the economic, political, and business spheres, no considerable negotiation process takes place in the United States; media outlets are published that cover aspects of mediation; appropriate dispute resolution mediators are created, and private and public mediators exist.

But the level and speed of mediation in the UK is lower than in the US, and the reason for this is due to the differences that exist between American and British society, since the British prefer to go to the judiciary (Al-Khafaji, 2021). Mediation is given less attention in the UK than in the US. Legislatively, mediation in the UK was first applied to family and labour relations in the mid-1970s, while the Civil Justice Reform Act of 1990 introduced judicial mediation (Al-Khafaji, 2021).

However, the issue of mediation as an alternative method of dispute resolution in the UK has become relevant due to the discrepancy between the court costs of considering cases in court and the result of such proceedings. Thus, according to a British organization that specializes in using mediation methods to resolve disputes, legal entities pay over 33 billion pounds a year to resolve conflicts in court (Conflict costs business..., 2006).

Mediation methods of resolving disputes in their modern sense began to develop in the 1960s. First of all, mediation became popular in the countries of the Anglo-Saxon legal system – USA, Great Britain, Australia, and later it began to be implemented in European countries (Fedchyshyn, 2018). In several countries, mediation has become part of the legal system and legal culture. These states have adopted regulations governing this dispute resolution mechanism. Presently, mediation in the world is a recognized and popular mechanism for ensuring the protection of rights.

Scientific approaches to the interpretation of mediation as a non-jurisdictional form of protection

Scientific sources present different opinions on the interpretation of the term "mediation". Thus, M. Kuzmina considers mediation as a certain procedure of a

voluntary and confidential nature, according to which the parties, using a neutral third party, find an agreement on their dispute (Fedchyshyn, 2018). According to A.A. Maksurov, mediation is the activity of a third party prescribed by legal regulations as an intermediary between the parties to a legal conflict, which does not have the authority to consider the dispute on its merits, but creates conditions for reconciliation of the parties to the conflict and resolution of the corresponding dispute between them (Fedchyshyn, 2018). O.V. Belinska (2011) defines mediation as a method of voluntary resolution of a dispute situation, where the mediator, during the established procedure, involves the parties to the conflict in direct negotiations to make a joint decision that would solve the existing problem. D.V. Fedchyshyn (2018) defines mediation as a negotiation process where the mediator is its organizer and accompanies negotiations in such a way that the parties to the conflict reach the most optimal agreement between them, which would satisfy both parties and as a result of which the dispute between the parties would be resolved.

The opinions of foreign scientists on this issue are also interesting. Thus, K.K. Kovach (2004) considers mediation as a process where a neutral third party creates a certain basis for facilitating the resolution of a conflict between the parties to a dispute. The task of the mediator is to create conditions for communication between the parties and help them resolve the main points of the conflict that are essential for resolving the dispute. Some authors (Riskin *et al.*, 2014) recognize that it is during the mediation process that the mediator helps the parties to the conflict to negotiate, thusly to ensure the resolution of the dispute and the execution of the relevant agreement. According to scientists, mediation has the following features: 1) the voluntary nature of the process, during which the mediator, who must be a disinterested person, helps the parties resolve their dispute; 2) various forms of mediation, which are represented by different models; 3) the parties to mediation have the opportunity to directly influence the procedure and result of mediation (Riskin *et al.*, 2014).

Thus, mediation is an alternative method of dispute resolution, which involves a third neutral party – a mediator, through which the parties to the conflict must come to the most favourable and satisfying interests of both parties of the agreement, as a result of which the contradictions between them would be resolved. The purpose of mediation is to help the parties voluntarily, independently, and promptly resolve the dispute among themselves. The mediator is obliged to unite the parties interested and facilitate them to reach a mutual agreement, resolve the dispute between them.

The advantages of mediation as an alternative method of dispute resolution are as follows: flexibility, speed, confidentiality, and maintaining friendly relations between the parties to the procedure (Al-Khafaji, 2021).

Mediation differs from other conflict resolution methods in that it does not involve time-consuming, complex formal procedures, but rather is an easy and flexible method aimed at achieving fair results for the parties to the conflict (Mistelis, 2003).

Mediation procedures are practical procedures that keep up with the times, an element of the speed era (Al-Khafaji, 2021). Speed is one of the advantages of mediation, as opposed to a legal dispute. Mediation ensures that the parties receive quick decisions. In some cases, procedures can even last from two to four hours, and rarely a longer time is needed. This process directly depends on the mediator's skills, their persuasiveness, scientific abilities, and experience in managing the mediation process.

The principles in the judicial system are the transparency of sessions and their public nature. Mediation, however, differs by secrecy and privacy. The secrecy that distinguishes mediation procedures encourages the parties to freely engage in dialogue, make statements and testimonials, and make concessions at the negotiation stage with complete freedom, without the permission of the court or any other party. Mediation is generally confidential and consensual (Nolan-Haley, 2004; Nolan-Haley, 2009). This is considered one of the main advantages of mediation in many countries.

Litigation usually involves escalating disputes between two conflicting parties and widening the gap between them throughout the process. Mediation is a way of combining differing opinions to reach a solution that resolves all conflicting differences between the parties (Pauliat, 2008). Mediation allows turning dead ends into proposals and solutions (Pauliat, 2008) without having a winning party and a losing party, since everyone in mediation wins because the solution satisfies both parties. This means that the two parties to the dispute will stay in their previous relationship without any tension between them.

Scientific literature also describes several types of mediation that take place in practice. These include transaction mediation, judicial mediation, private mediation, and international mediation.

Transaction mediation. In this type of mediation, a transaction is considered as an agreement between the parties to appoint a mediator who will be tasked with reconciling the parties in case of a conflict situation that may further arise (Al-Khafaji, 2021). This type of mediation can be represented by two types: 1) simple agreement mediation, according to which the parties to the dispute agree to resort to mediation on their own initiative or at the conclusion of a contract, or when a dispute arises between them (Rasnic, 2004); 2) mediation/arbitration agreement, which is based on the provision in the contract that in case of a dispute, it shall be referred to a mediator; and if its settlement is impossible through mediation, the mediator becomes an arbitrator (Al-Khafaji, 2021). This type of mediation is a

mixture of mediation and arbitration, where the parties try to resolve a dispute without appealing to a judicial body – if the first method fails, then using the second.

Judicial mediation. Judicial mediation was based on the idea of the American professor Frank Sander (multi-door courthouse), the essence of which was to change the approaches to the judicial process, namely, the use of mediation and other alternative procedures for which the judicial authorities are responsible (Shaw, 1998). This type of mediation is applied directly by the judge, who appoints a third party to help resolve the dispute. A judge may order judicial mediation if they find that it is indeed necessary in the interests of both parties.

In foreign countries, there are several approaches to the use of mediation during court proceedings. According to one of the approaches, the judge invites the parties to appeal to mediation services during the trial. However, this approach was not popular because lawyers or other representatives of the parties involved in the proceedings prevented it. Pilot projects of this nature took place in the Central Land Court of London in 1996-1998, the Court of Appeal of Great Britain, as well as in the courts of Australia, New Zealand, Canada, and various states of the USA. The attempt to introduce a different practice of using mediation, i.e., to introduce mandatory mediation, was also not supported. The case was not accepted for consideration by the judicial authorities until the parties used mediation procedures. In essence, this was another formal procedure to be applied to resolve the dispute (Fedchyshyn, 2018). However, the issue was not the mandatory or optional nature of mediation during court proceedings, but the effectiveness of its application by the judicial authorities.

Private mediation. This type of mediation is provided by a group of private organizations or private mediators in exchange for a certain fee for their services. Many developed countries use this type of mediation, such as the United States, Canada, and the United Kingdom.

International mediation. Mediation is international if all or most of its elements are in contact with more than one country or are distributed among several countries. International mediation is usually political or linked to an international contract for the movement of funds, goods, and services across state borders (Tarman, 2016). The Model Law of the UN Commission on International Trade Law (UNCITRAL) of 2002 lists the cases when mediation is international: if the main offices of the parties to the mediation agreement were located in different countries at the time of its conclusion; if the headquarters of the parties' companies are in different countries (Al-Khafaji, 2021).

Legal consolidation of the mediative form of protection in international and national legislation

Currently, the term "mediation" is widely used in both international and national legislation. The formal definition of the term "mediation" is given in the Model

Law of the UN Commission on International Trade Law (UNCITRAL) on international commercial arbitration procedures (UNCITRAL Model Law..., 1985). The Model Law establishes mediation as a procedure by which, at the initiative of the parties, a mediator is involved in the process, whose purpose should be to reconcile the parties to a dispute that has arisen in a contractual or other relationship between the parties. However, the mediator is not entitled to influence the dispute settlement process itself by imposing ways to resolve the conflict.

At the EU level, the normative definition of "mediation" is enshrined in Recommendation Rec (2002)10 of the Committee of Ministers to member States on mediation in civil matters (2002), which is regulated as a procedure for resolving disputes, within which parties to a conflict, through professional mediators, negotiate problematic issues to reach a compromise. Some legal acts of the Council of Europe define the specific features of applying alternative methods of dispute resolution in certain branches of law. This group of acts includes: 1) Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters (1999); 2) Recommendation No. R (98) 1 of the Committee of Ministers to member States on family mediation (1998); 3) Recommendation Rec (2001) 9 of the Committee of Ministers to member States on alternatives to litigation between administrative authorities and private parties.

The term "mediation" is also legally defined in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008), according to Article 3 whereof mediation is considered as a procedure with an appropriate structure, through which the disputants attempt to independently and voluntarily reach an agreement to resolve the conflict with the support of a third neutral party – a mediator. Mediation can be carried out on the initiative of the parties to the dispute themselves, or at the suggestion of a judicial body, or according to the provisions of international legal acts.

In compliance with the requirements of this Directive, most European countries have adopted national regulations on mediation. In Germany, the Law "On Mediation" (Deutsches Mediationsgesetz, 2012) was adopted on July 26, 2012. The provisions of the Law define procedures for the peaceful settlement of disputes through detailed regulation of this process in the German Civil Procedural Code. Thus, according to the Civil Procedural Code of Germany, in the procedural documents that initiate judicial proceedings, the parties to the conflict must necessarily specify the mediation measures that they have taken and the result of considering the dispute through mediation. Based on the results of successful dispute resolution through mediation, an agreement is concluded between the parties, which is certified by an intermediary (lawyer or notary) and has the status of an enforcement document (Pashkova, 2020).

The Civil Procedural Code of Germany also establishes a list of categories of cases that must necessarily begin with the mediation procedure. These are disputes of a property nature, subject to district courts, and the price of which does not exceed 750 euros; land disputes between neighbouring landowners and land users; disputes in cases about the protection of honour and dignity (Fedchyshyn, 2018).

Presently, the idea of developing the institution of mediation in the Ukrainian legal system is supported by most lawyers. This absolutely corresponds to the chosen course of Ukraine towards harmonizing national legislation with the legislation of EU countries, where mediation is given considerable attention. Mediation is promoted as a promising and optimal dispute resolution tool for protecting rights because it is characterized by minimal losses for its parties.

Ukraine's attempts to implement the legal mechanisms of the internationally recognized mediation procedure, as well as to perform its obligations to implement international standards in this regard, found a place in the Decree of the President of Ukraine No. 361/2006 "On the Concept of Improving the Judicial System for Establishing a Fair Trial in Ukraine According to European Standards" (2006). This Decree focuses on the need to introduce alternative methods of dispute resolution into the Ukrainian legal system; popularization of such methods of conflict resolution in society; use of the right to appeal to the judicial authorities for protection of violated rights only in exceptional cases.

Until recently, the legislation of Ukraine did not contain a definition of the term "mediation". Although, several regulatory documents used the term "mediation". This is the Law of Ukraine "On Free Legal Aid" (2011), Art. 1, The Concept of the Development of Criminal Justice for Minors in Ukraine, approved by the Decree of the President of Ukraine No. 597/2011 dated May 24, 2011 (2011), item 3, and some others.

In 2016, the Order of the Ministry of Social Policy of Ukraine No. 892 dated August 17, 2016 approved the State Standard of Mediation Social Service, according to the provisions of which mediation is defined as "a method of resolving conflicts/disputes, through which the parties to the conflict/dispute within the regulated procedure involving a mediator, attempt to reach an agreement to resolve the conflict/dispute" (Order of the Ministry of Social Policy..., 2016). According to the Law of Ukraine "On Social Services" (2019), the procedure for providing a social service – mediation – was defined.

Since 2019, the pilot project "Rehabilitation program for minors suspected of committing a criminal offence" has been implemented in Ukraine, approved by the Order of the Ministry of Justice of Ukraine and the General Prosecutor's Office of Ukraine No. 172/5/10 dated January 21, 2019 (Order of the Ministry of Justice..., 2019). Since then, mediation has been actively used in solving criminal cases involving minors who

have committed a criminal misdemeanour or a minor crime.

However, numerous attempts to regulate mediation in the special law were never successful, which meant a clear lack of legally defined principles concerning the legal status of the mediator, the rights and obligations of participants in the mediation procedure and other important parties to the procedure under consideration.

One of the first was the Draft Law of Ukraine "On Mediation" (Draft Law of Ukraine No. 7481..., 2010), according to which mediation was defined as "a pre-trial quick and effective method of resolving disputes through a mediator". However, due to the considerable number of shortcomings that this project contained, on the recommendation of the Verkhovna Rada of Ukraine Committee on Justice, it was withdrawn and removed from consideration in the Verkhovna Rada of Ukraine.

On December 17, 2015, a new Draft Law of Ukraine "On Mediation" (Draft Law of Ukraine No. 3665..., 2015) was submitted. According to the Explanatory Note, the submitted Draft Law is primarily aimed at implementing the provisions of Directive 2008/52/EC of the European Parliament and of the Council in the national legislation of Ukraine. However, the Verkhovna Rada of Ukraine also did not support this project.

Another Draft Law "On Mediation" was submitted for consideration on December 28, 2019 (Draft Law of Ukraine No. 2706..., 2019). It made provision for the establishment of legal grounds and procedures for the implementation of mediation in Ukraine. Specifically, it defined the areas of application of mediation – from proceedings concerning civil, land, family, labour relations to criminal ones; such principles of conducting this procedure as voluntariness, confidentiality, independence, and neutrality, impartiality of the mediator, as well as self-determination and equality of the parties to mediation; the status of the mediator, the procedure, and conditions for its preparation; the procedure for applying mediation before/during/after applying to the court. This Draft Law also proposed to outline the legal status of the mediator and the parties to mediation, the mechanism for conducting it, as well as the terms of the mediation agreement and the agreement on resolving the conflict (dispute) based on the results of this reconciliation procedure. However, this Draft Law was also turned down.

On August 7, 2020, Ukraine adopted the UN Convention on International Agreements on the Settlement of Disputes by Mediation. Pursuant to the provisions of the Convention, the procedure for developing an appropriate regulatory framework has been initiated, which resulted in the submission of the Draft Law "On Mediation" (Draft law of Ukraine No. 3504..., 2020) to the Verkhovna Rada of Ukraine, which was adopted on November 16, 2021 and entered into force on December 15, 2021.

The Law of Ukraine “On Mediation” (2021) consolidates the legal basis and mechanism for the implementation of mediation as an out-of-court method of conflict (dispute) resolution, the principles of mediation, the legal status of a mediator, the principles of their training and other issues regulated by this procedure. The said Law specifically prescribes that mediation is “an out-of-court, voluntary, confidential, structured mechanism in which the parties, through one or more mediators, try to prevent the occurrence or resolve a conflict (dispute) through negotiations”. At the same time, a mediator is “a neutral, independent, impartial person who implements mediation and has special skills for this”. According to the Law, mediation procedures extend to public relations in “cases arising in civil, family, labour, economic, administrative spheres, as well as in cases of administrative offences and criminal proceedings, for reconciliation of the victim with the suspect (accused)” (Article 3).

Notably, before the adoption of the special law, mediation was actively used primarily by public organizations, institutions, and services in the field of social protection and social security, i.e., it was distributed as a service in social work. While as part of judicial practice, it did not receive an institutional level. The judicial system and mediation in Ukraine followed parallel paths and therefore mediation was not integrated into the judicial system and did not strengthen it (Romanadze, 2022). In addition, the judicial system has not yet fully recognized the significance of this phenomenon, its role in establishing the rule of law and access to justice (Drozdov *et al.*, 2021).

However, Article 3 of the Law of Ukraine “On Mediation” (2021) stipulates that any person can apply to the mediation procedure both before their appeal to the judicial authorities to protect a violated or disputed right or interest, and during the trial, or even at the stage of execution of a court decision. This Law also amended the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, and the Code of Ukraine on Administrative Procedure (Law of Ukraine “On Mediation”, 2021). Specifically, it stipulates that if during the preparatory court session, the parties agree to an out-of-court settlement of the dispute through mediation, the court must suspend the proceedings on the case. If an agreement is reached based on the results of the procedure, the court shall reimburse the plaintiff 60% of the court fee paid. These changes should undoubtedly have a positive impact on the judicial system. The main reason for the development of mediation in most countries of the world is the workload of the judicial system. Because even small disputes require a lot of time and resources to resolve them in court, not to mention more important cases that go to court.

Therewith, the Law of Ukraine “On Mediation” focuses only on general issues of mediation development in Ukraine, without providing specifics on

the introduction of judicial mediation (Tsuvinia & Vakhonieva, 2022). However, the development of this particular type of mediation is one of the strategic tasks of introducing alternative models of dispute resolution in Ukraine and reforming the judicial system. Furthermore, some other provisions of the Law on mediation are subject to improvement and adjustment to international standards. Specifically, the Law defines the categories of disputes where mediation cannot be applied, but among them only those that relate or may relate to the rights and legitimate interests of third parties who are not parties to this mediation are prescribed. The legislators did not consider the provisions of Article 1 of Directive 2008/52/EC (2008), according to which the Directive does not extend its effect to disputes in the tax, customs, and administrative spheres, or the responsibility of the state for actions or inaction in the exercise of state power.

However, the adoption of the Law of Ukraine “On Mediation” (2021) is really an expected moment in the development of Ukrainian society. The only thing that can be an obstacle to the widespread use of the mediation procedure is a lack of awareness of its capabilities, and public distrust in this procedure. Moreover, the main constraint on the development of mediation is the lack of a full-fledged regulatory framework in the subject under study.

Conclusions

According to the results of the present study, mediation is a socio-legal phenomenon, the emergence and development of which as a social institution has been determined by social needs and the ability to influence the development of a new culture of conflict-free relations in society, producing new norms and models of social behaviour, perfecting a system of ethical values and effective public cooperation. It was established that the legal content of mediation is manifested in its main purpose – regulation and ensuring law and order. The analysis of the relevant legislation helped establish that Ukraine has already created conditions for the establishment of mediation as a legal institution in compliance with the provisions of international acts governing the settlement of disputes based on the results of mediation. The introduction of the institution of mediation at the state level is conditioned upon Ukraine’s attempt to harmonize its national legislation with EU legislation, where the development of mediation is at a prominent level. The introduction of legislative grounds for the establishment and development of mediation as an alternative dispute resolution in Ukraine is one of the priorities of national strategic documents in the field of justice and human rights, as well as international regulations and EU directives.

During the present study, it was found that the current Ukrainian legislation is more consistent with generally accepted international standards in the field of

mediation. Ukraine has adopted a special law, defined the legal mechanism for conducting mediation as an alternative procedure for dispute resolution, outlined the legal status of a mediator, and other issues related to this procedure. Furthermore, the analysis of Ukrainian regulations indicated two main models of mediation that are appropriate to use in Ukraine: out-of-court (private) and judicial mediation, the harmonious combination of which should demonstrate its effectiveness, which is confirmed by international practices. However, the development of a legislative framework

on this issue is not enough, and it is necessary to introduce a corresponding legal mechanism for implementing mediation as an alternative method of dispute resolution. In this regard, further research will be aimed at perfecting the mechanism of legal regulation of mediation in terms of procedural aspects of mediation, as well as institutional support for the functioning of mediation forms of protection. The results of this study can be used in subsequent research of the issues raised, as well as in the law-making to develop new and amend the current regulations of Ukrainian legislation.

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Медіація як альтернативний спосіб вирішення спорів: міжнародний і національний досвід правового регулювання

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Анотація

Актуальність обраної теми дослідження зумовлено тим, що посилення євроінтеграції України вимагає впровадження в національному законодавстві й практиці нових, альтернативних способів вирішення спорів, серед яких важливе місце займає медіація, функціонування якої успішно зарекомендувало себе в розвинених європейських країнах. Метою роботи було з'ясувати сучасний стан розвитку правового забезпечення медіації в Україні, окреслити перспективи удосконалення правового регулювання з урахуванням міжнародних та європейських стандартів у сфері медіації. У дослідженні використано систему загальнонаукових методів пізнання (діалектичний метод, формально-логічний метод, метод аналізу та синтезу), а також спеціально-юридичних методів (порівняльно-правовий метод, формально-юридичний метод). У статті проаналізовано міжнародний і національний досвід правового регулювання медіації в системі альтернативних способів вирішення спорів. Охарактеризовано доктринальні й законодавчі підходи до тлумачення інституту медіації, визначено основні його переваги в системі альтернативних способів вирішення спорів, окреслено типи медіації, а також розкрито зміст основних міжнародних, європейських і національних нормативних актів, що регламентують відносини у сфері медіації. Визначено, що медіація посідає пріоритетні позиції в міжнародній практиці розв'язання конфліктів, оскільки значно ефективніша, ніж судові та адміністративні форми захисту прав і законних інтересів. Обґрунтовано, що привабливість медіації полягає саме в простоті та зручності процедури, спокійній атмосфері діалогу та обов'язковості урахування думок усіх залучених сторін. З'ясовано, що цей правовий інститут засновано на добровільності, конфіденційності, неупередженості та нейтральності, можливості для учасників самостійно ухвалювати рішення, наявності незалежної підтримки кожного з учасників з боку медіатора. Зауважено, що, незважаючи на розроблену в Україні національну правову базу щодо медіації, окреслена сфера суспільних відносин потребує вдосконалення відповідного правового механізму та інституційної основи його реалізації. Отримані результати можуть використовуватися у подальших наукових дослідженнях, а також у розробленні нових і зміні чинних нормативно-правових актів, які визначають правові засади медіації в практиці реалізації відповідного законодавства

Ключові слова: альтернативні форми захисту, неюрисдикційні форми захисту, медіативні форми захисту, медіатор, правовий спір, правовий конфлікт



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Theoretical and applied aspects of understanding the concept “legal orientation” in legal science

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Abstract

The study of theoretical and applied aspects of understanding the concept “legal orientation” in legal science is relevant, of practical interest and requires scientific consideration. Globalization generates radical changes that can lead to both further evolution of humanity and adverse consequences. The search for joint survival and development programs depends on the legal culture that determines the legal orientations of social actors. The purpose of this paper was to figure out the theoretical and applied aspects of understanding the concept “legal orientation” in legal science. This study is based on an interdisciplinary approach and considers the knowledge of various sciences about human behaviour. General scientific and special scientific methods of cognition of social phenomena and processes were used to conduct the study. Among general scientific methods, methods of logical-semantic and terminological analysis, anthropological, system-structural, causal-functional, data analysis, praxeological, and content analysis were used. Experimental methods of observation, conversations, surveys, and questionnaires were used to obtain empirical data. The presented results of the theoretical and applied study of the concept “legal orientation” in legal science allowed figuring out at least four meanings of its use, showed its inextricable connection with the concept “value orientations” – a dynamic system that regulates social behaviour and human activity, and therefore requires constant diagnostics. Based on the diagnosis of the value orientations of the student youth of the National University of Life and Environmental Sciences of Ukraine, methodical recommendations were developed to form the system of value orientations of a young individual who obtains higher education, which will be consonant with the system of value orientations of Ukraine. The results of this study will be useful for researchers investigating the axiological and praxeological components of human activity in various spheres of social life; for state and public institutions related to the implementation of strategies for the development of civil society and the rule of law, for teachers and lecturers in the education and upbringing of future citizens of Ukraine, as well as for all stakeholders

Keywords: culture, legal activity, legal culture, legal education, value orientations

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Introduction

Presently, changes in various spheres of human life occur at breakneck speed. It is one thing when they testify to positive changes in human development – the introduction of new technologies (nanotechnology, IT technologies, artificial intelligence, breakthroughs in medicine, education, etc.), which not only facilitated the physical and intellectual life of a human, but also changed approaches to understanding human existence. Another thing is when globalization generates adverse consequences for humanity and the environment in which it lives. Hence humankind's search for programs of joint survival and development. But regardless of what any such program is called and what it professes, the consolidating force is culture in all its forms. One of them is the legal culture, which ensures the life of various social actors in the sphere of law. In turn, the level of legal culture of each social subject directly depends on those legal orientations that form the basis of its life activities and acquire a corresponding nature (economic and value orientations, political and value orientations, value and legal orientations, value and religious orientations, etc.). Therefore, the study of theoretical and applied aspects of understanding the concept "legal orientation" in legal science is relevant, of practical interest, and requires scientific consideration.

The review of the scientific studies proved that the term "orientation" is widely used both in natural sciences (mathematics, physics, biology, etc.) and social sciences (sociology, economics, political science, psychology, law, etc.) in a wide variety of contexts and meanings. Specifically, in medicine – "value orientations" (Heim *et al.*, 2019), "political orientations" (Kannan & Veazie, 2018); psychology – "value orientations" (Braithwaite, 1998; de Groot & Steg, 2010), "political orientations" (Lassetter & Neel, 2019; Pazhoohi & Kingstone, 2021; Verkuyten *et al.*, 2022); in sociology – "social orientations" (Manfredo *et al.*, 2021), "social-value orientations" (Chirumbolo *et al.*, 2016), "social-value orientation theory" (Lewis & Willer, 2017); in economy – "socially oriented economy" (Moskvina, 2019); in ecology – "political orientations" (Trémolière & Djeriouat, 2021); in pedagogy – "professional orientation" (Ihnatovych *et al.*, 2014) and "value orientations" (Ennis, 1992); in cultural studies – "cultural-value orientations" (Schwartz, 2006; Verboord & Kristensen, 2021), "value orientations" (Schwartz, 2014), "value-orientational approach" (Watkins & Gnoth, 2011); in public administration – "professional orientation" (Orlovskaya, 2021), etc. Therewith, each of these word constructions has its meaning, which can be understood only from the context of the scientific material read.

A somewhat comparable situation is observed in the educational literature on the theory of the state and law, in which orientation is usually used in the constructions "orientational function of law" (Krestovska & Matvieieva, 2019; Rabinovych, 2021), "state of

social-democratic orientation" and "law of social-democratic orientation" (Rabinovych, 2021), "orienting form of implementation of law functions" and "legal orientation" (Kachur, 2014). As for monographs, scientific articles and reports from the legal direction, "value orientations" (Hryshchuk, 2020), "social-value orientations" (Hollander-Blumoff, 2017) and "value-legal orientations" (Ivanova, 2017) are popular here.

The question arises, what phenomena and processes in the field of legal science should be denoted using the concept "legal orientation"? Given the denotation of the word "orientation", it is unlikely that any of the researchers will be able to cope with such a task. Notwithstanding, this paper attempts to characterize several meanings of its use in legal science.

The purpose of this paper was to analyse theoretical approaches to understanding the concept "legal orientation" in legal science, as well as applied aspects of its use. To fulfil this purpose, the study was conducted in three stages, each of which corresponded to a separate task. The first stage clarified scientific and theoretical approaches to understanding the concept "legal orientation", the second stage demonstrated applied aspects of its use according to the meanings in which this concept is used, while the third stage offered recommendations to form a system of value orientations of an individual who acquires a higher education.

Materials and methods

Considering the purpose and objectives set, general scientific and special scientific methods of cognition of social phenomena and processes were used to conduct this study. Among general scientific methods, methods of logical-semantic and terminological analysis, anthropological, system-structural, causal-functional, interdisciplinary approach, data analysis, praxeological, and content analysis were applied.

The logical-semantic method was used to estimate the importance of the submitted information based on certain criteria. The method of terminological analysis covered the concept of "value orientations", as well as its place in the terminology of legal science and showed the existence of relationships between it and other categories ("social behaviour", "life position", "culture", "value", etc.).

To figure out value orientations, an interdisciplinary approach was used because human life takes place on three levels: biological, spiritual, and social, and therefore the coverage of the role of value orientations in the regulation of human social behaviour required the involvement of knowledge from other sciences – philosophy, sociology, psychology, pedagogy, etc.

The application of the anthropological method to the investigation of the role of value orientations in regulating human social behaviour became useful for understanding them as a social phenomenon determined

by human nature, while the method of analysing sociological data based on the results of a sample survey allowed identifying the principal value orientations and values among the surveyed higher education students.

The system-structural method was used to show the place of value orientations in the "person – social reality" system. The causal-functional method determined the role of value orientations in the regulation of human social behaviour.

Thanks to the application of the method of content analysis of scientific sources, it was possible to form a holistic view of the study of the role of value orientations in legal science and to obtain data for finding effective ways to solve the existing issues.

To obtain empirical data, observation and interview methods were used, a survey based on S. Bubnova's (2002) method "Diagnostics of the real structure of the value orientations of an individual" and a survey to determine the three values that are key for the respondents at the time of survey. Value orientations of higher education seekers were diagnosed at the National University of Life and Environmental Sciences of Ukraine among 1st-year students of the Faculty of Law (2021 and 2022 admission year), 4th-year students of the Forestry Faculty majoring in "Forestry" and 1st-year masters of the Law Faculty (2020 and 2021 admission year).

1. 44 students of the 1st year of the Faculty of Law, admitted in 2022, took a survey using the method "Diagnostics of the true structure of the value orientations of the individual" by S. Bubnova (October 4, 2022). There were 28 girls and 16 boys among the subjects.

2. 64 undergraduates of the 1st year of the Faculty of Law, admitted in 2021, took a survey to determine the three values that were decisive for them at the time of their interview – November 2021. No gender differentiation was made, as the study was performed anonymously during practical online classes using the Jamboard interactive whiteboard.

3. 4th-year undergraduates of the Forestry Faculty, majoring in "Forestry", in the number of 11 people, took a survey to determine the three values that were decisive for them at the time of their interview – September 2022. No gender differentiation was made, as the study was performed anonymously during practical online classes using the Jamboard interactive whiteboard.

4. Master's students of the 1st year of study of the Faculty of Law in the year of admission in 2020 (of which 5 full-time students, 5 part-time students) and in 2021 (of which 4 full-time students, 12 part-time students) passed a survey to determine the three values that were decisive for them at the time of their interview – November 2020 and April 2022, respectively. No gender differentiation was made, as the study was performed anonymously during practical online classes using the Jamboard interactive whiteboard.

5. Group samples consisted of 8 groups (including 3 groups of 1st year students of the Faculty of Law (2021

admission year), 1 group of students of the 4th year of the Faculty of Forestry majoring in "Forestry", 2 groups of masters in the 1st year of study at the Faculty of Law (2020 admission year) and 2 groups of masters 1 year of study at the Faculty of Law, (2021 admission year)). No gender differentiation was made, as the study was performed anonymously during practical online classes using the Jamboard interactive whiteboard.

6. A group sample of 9 subgroups formed from 3 groups of students of the 1st year of the Faculty of Law (2021 admission year). No gender differentiation was made, as the study was performed anonymously during practical online classes using the Jamboard interactive whiteboard.

These surveys were conducted on the principles of voluntariness, anonymity, respect for the rights of the participants, respect for their honour and dignity, inadmissibility of any manifestations of discrimination, considering age specifics, etc.

Results and discussion

Scientific and theoretical approaches to understanding the concept "legal orientation" in legal science

Legal orientation belongs to those legal concepts that will never have a single approach to understanding their essence. This is conditioned not only upon the denotation of the word "orientation", as discussed above, but also upon the fact that the concept "law", which it includes, is also ambiguous.

The lack of a definition of the concept of orientation in philosophy and other sciences forces to refer to the lexical meaning that this word has in the Ukrainian language. The explanatory dictionary of the Ukrainian language gives three main meanings of the word "orientation": 1) the act of orienting, determining one's location in space or the direction of one's movement, the ability to determine one's location in space or the direction of one's movement; 2) the ability to understand some circumstances, the surrounding environment and 3) the direction of opinions, activities depending on particular conditions; counting on smb., smth. in the activity (Bilodid *et al.*, 1974).

The first meaning best suits the coverage of I. Pavlov's reflexive approach in understanding orientation as one of the unconditional reflexes of a human – orienting, aimed at self-preservation of their life. At the same time, nothing prevents a person from navigating law or legal matter in general. What this orientation will be based on depends on how the information form of implementation of the functions of law will be provided – to inform participants in public life about the legal requirements contained in legal regulations of a regulatory or individual nature. How such informing will be carried out is already the subject of another scientific study. The most common ones are as follows: the use of media in printed form (press, handbooks, dictionaries, educational or scientific literature),

technological means (radio or television) or in the digital space (Internet, social networks, blogging), individual consultations as household and professional level, etc. Such legal information is the basis of the presumption of knowledge of the law or the legal axiom “ignorance of the law does not exempt from responsibility”.

As for the other two meanings, they reflect the humanistic psychoanalysis of E. Fromm, where orientation is a specific mental (psychological) structure that allows a person to understand legal material and directs a person's behaviour and activity in society and certifies their inclusion in the socio-cultural space. Therefore, when it comes to the legal field in which the life of members of public life flows and their activities are carried out, it is precisely the socio-cultural legal space that is based on the teachings of E. Fromm.

The socio-cultural space acts as the environment where a person lives their life, and its defining feature is culture. Being a socio-historical phenomenon, it reflects the inner world of a person and their life activity through its forms and categories. Culture refers to a specific way of organizing and developing human life in particular historical conditions, which determines the social orientation and life position of participants in public life and manifests itself in values (Kachur, 2019).

The place of a person in this space is associated with their social orientation, which most fully reflects their attitude towards various processes in all spheres of public life, and is characterized by the following principal properties: 1) it reflects a person's attitude towards society, their awareness of their place in it, to involvement in the processes of social and economic development of society; 2) it is one of the aspects of comprehensive personal development; 3) it is a person's choice of their place in life, which is fully realized by them and characterized by an appropriate attitude towards it; 4) the criteria for its formation depend on the guidelines, as they will be the starting point and determine the basis of social orientation; 5) it is focused on obtaining a certain social status, which will reveal options for the future activity of a participant in public life; 6) it directly depends on the social environment where its carrier lives, and which will become the principal determinant of the perception of social reality; 7) its basis will be social activity, which is the driving force of all participants in social life, which ensures their interaction with the environment throughout their lives to meet personal, group, and social needs.

As for the legal sphere that influences, regulates, and ensures the life of a person and their social formations, it can be argued that the social orientation of a participant in public life will acquire specific features and receive a new status – the status of legal orientation.

Returning to the teachings of E. Fromm regarding orientation, it can be assumed that a participant in social life a) understands legal reality, knows how to

understand the legal processes that take place in society, and also 2) based on their legal knowledge, can direct their behaviour and activities according to their legal guidelines. It is these two aspects of the understanding of legal orientation that best characterize the orientational form of implementation of legal functions.

Understanding of legal reality and the ability to understand legal processes occurring in society depend not only on the legal awareness of the individual, but on the level of their cognitive sphere, when a participant in public life has enough legal knowledge. And this can only be achieved through legal training, legal self-development, and legal self-education.

As for the second aspect, it characterizes the legal activity of a person as the conscious willingness of the subject of law to commit legal acts (action or inaction) to obtain a legal result determined by the principles of law and prescriptions of legal norms. Therewith, the principles of law and prescriptions of legal norms will act precisely as those legal guidelines that will determine the legal intentions of the subjects of law. This gives reason to associate these two aspects of understanding legal orientation with the concept “legal culture”.

However, legal science holds another context of understanding legal orientation as the activity of certain subjects, aimed at developing the legal attitudes of a person for the implementation of lawful behaviour. In this sense, legal orientation is associated with such legal concepts as “legal upbringing” and “legal education”.

But in any aspect of the understanding of legal orientation in legal science, it will be inextricably linked with such a concept as “value orientations”. In the context of the present study, they mean the attitude of the individual towards various processes in all spheres of public life, which guides their social behaviour and activities according to the system of their values. As for values, at one time the author defined them as certain phenomena of the objective world (material or spiritual) that are important for the subject when making life choices (Kachur, 2020).

Value orientations as determinants of social behaviour and human activity are a dynamic system, and therefore require constant diagnostics.

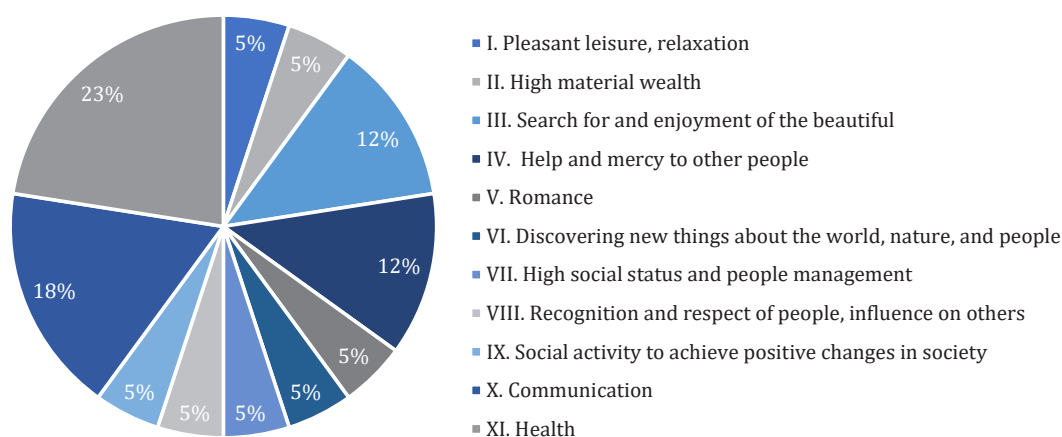
Applied aspects of understanding the concept “legal orientation”

For the experimental study of human value orientations, 44 students of the 1st year of the Faculty of Law (28 girls and 16 boys) were involved (2022 admission year), who agreed to take a survey according to S. Bubnova's (2002) method “Diagnostics of the true structure of personality value orientations”.

The results obtained for all the above-mentioned groups were summarized and illustrated considering the average indicators of the significance of value orientations, which is reflected in Table 1 and Figure 1.

Table 1. Results of diagnostics of value orientations of 1st-year students of the Faculty of Law of NULES of Ukraine according to S. Bubnova's method

Value orientation	Number of respondents	Significance of value, %
I. Pleasant leisure, relaxation	44	2%
II. High material wealth	44	2%
III. Search for and enjoyment of the beautiful	44	5%
IV. Help and mercy to other people	44	5%
V. Romance	44	2%
VI. Discovering new things about the world, nature, and people	44	2%
VII. High social status and people management	44	2%
VIII. Recognition and respect of people, influence on others	44	2%
IX. Social activity to achieve positive changes in society	44	2%
X. Communication	44	7%
XI. Health	44	9%

**Figure 1.** Diagnostics of value orientations of 1st-year students of the Faculty of Law of NULES of Ukraine according to S. Bubnova's method

As the results showed, for students of the 1st year of the Faculty of Law, yesterday's schoolchildren, the most significant value for orientation is health (9%). This orientation is explained by the fact that for the third year now, Ukrainian society has been living in quarantine restrictions and is under the information overflow about COVID-19. Therefore, attention to personal health is natural. The second position was taken by "communication" (7%) because the generation that spent a considerable part of its time in online meetings needs live communication. Such value orientations as "the search for and enjoyment of the beautiful" (5%) and "help and mercy to other people" (5%) are positively reassuring. This shows that, despite martial law, young people are drawn to the beautiful and show empathy for others.

As for the indicator of 2% for other value orientations, they are also natural for this age. However, the indicator "social activity to achieve positive changes in society" requires special attention from civil society

institutions, as it indicates a low "civic position" of these young people. After one or two years, they will become of age and receive active voting rights, and therefore will take an active part in the formation of representative bodies of state power and referendums.

As for the indicators "discovering new things about the world, nature, and people" and "recognition and respect of people, influence on others", they also require close attention from the higher educational institutions. The recommended educational and organizational measures to improve the work towards forming these value orientations will be discussed in the next subsection.

Equally interesting is the comparison of value orientations separately for boys and girls, the results of which are presented in Table 2. Notably, out of 44 people who took part in the survey, 28 girls and 16 boys took part. Such trends in gender distribution have persisted in the faculty for a long time. Still, let us analyse their value orientations.

Table 2. Diagnostics of value orientations of 1st-year students of the Faculty of Law of NULES of Ukraine according to the S. Bubnova's method on gender basis

Value orientations	Total boys	Boys, %	Total girls	Girls, %
I. Pleasant leisure, relaxation	16	25%	28	4%
II. High material wealth	16	31%	28	4%
III. Search for and enjoyment of the beautiful	16	6%	28	4%
IV. Help and mercy to other people	16	6%	28	4%
V. Romance	16	6%	28	4%
VI. Discovering new things about the world, nature, and people	16	6%	28	11%
VII. High social status and people management	16	6%	28	4%
VIII. Recognition and respect of people, influence on others	16	6%	28	4%
IX. Social activity to achieve positive changes in society	16	6%	28	4%
X. Communication	16	13%	28	4%
XI. Health	16	25%	28	7%

For girls, all value orientations, except for "discovering new things in the world, nature, people" (11%) and "health" (7%), are equivalent and account for 4% each. Such indicators confirm the restraint inherent in young Ukrainian girls. However, their increased interest in cognition may change this picture of preferences in the near future.

As for boys, their defining value orientations were "high material wealth" (31%), "pleasant leisure, recreation" (25%), "health" (25%) and "communication" (13%). All other value orientations are equivalent and account for 6% each. As for the preferences of Ukrainian young men, such indicators are also natural for Ukrainian society and are determined by well-established social stereotypes.

The results of finding out the hierarchy of values of students of I (bachelor's) and II (master's) levels of higher education, which was conducted through a survey at a practical session, where students were asked to identify the three values that lead the hierarchy of their value system, became fascinating. Note that (a) no list of values was provided, but it was explained that these are certain material or spiritual goods significant for them at the time of the task, (b) ranking by gender

was not carried out because the study was done anonymously in an online format using Jamboard, (c) group values were distinguished for 8 groups and 9 small sub-groups (3 groups of the 1st year of the Law Faculty of 2021 admission year).

In total, students named 100 individual values. However, they were not grouped by similarity, since the survey was anonymous and conversations were not conducted to find out the true meaning of these value concepts. Therefore, only 15 of them were used for analysis, which the subjects most often mentioned (Table 3). Furthermore, they are grouped by age – subjects under 20 years of age (1st-year full-time students) and those over 20 years of age (1st-year masters and 4th-year part-time students). Admittedly, this criterion is very conditional, since they did not specify their age. But in the first year, people between the ages of 16 and 20 usually study. As for the 4th year of part-time education, these were post-college students enrolled in bachelor's programs or practical workers. As for masters, they all have at least 4 years of bachelor's degree behind them. It was these considerations that gave grounds to classify them as respondents who were over 20 years old.

Table 3. Results of a survey to clarify the hierarchy of values of applicants of I (bachelor's) and II (master's) levels of higher education of NULES of Ukraine

Value	Total	Total, %	Under 18 years old	Under 18 years old, %	Over 20 years old	Over 20 years old, %
Number of respondents	101		64		37	
Family	40	39.6%	25	39.06%	15	40.54%
Honesty	17	16.83%	15	23.44%	2	5.41%
Health	15	14.85%	5	7.81%	10	27.03%
Freedom	15	14.85%	10	15.63%	5	13.51%
Self-development	14	13.86%	9	14.06%	5	13.51%
Justice	13	12.87%	10	15.63%	3	8.11%

Table 3, Continued

Value	Total	Total, %	Under 18 years old	Under 18 years old, %	Over 20 years old	Over 20 years old, %
Friendship	12	11.88%	10	15.63%	2	5.41%
Self-fulfilment	8	7.92%	6	9.38%	2	5.41%
Optimism	8	7.92%	6	9.38%	2	5.41%
Romance	7	6.93%	4	6.25%	3	8.11%
Responsibility	6	5.94%	5	7.81%	1	2.7%
Personal hobbies	5	4.95%	3	4.69%	2	5.41%
Kindness	5	4.95%	5	7.81%	0	0.0%
Understanding	4	3.96%	4	6.25%	0	0.0%
Stability and security	3	2.97%	2	3.13%	1	2.7%

All respondents (101 people) gave the first place to the value of "family" (39.6%), the second place – "honesty" (16.83%), the third place – "health" (14.85%) and "freedom" (14.85%).

As presented in Table 3, only the indicator "family" remained in priority 1 place both among respondents in the category under 20 years old (39.06%) and in the category of those over 20 years old (40.54%). Students under 20 gave the second place to "honesty" (23.44%), while those over 20 – to "health" (27.03%). Among students under 20, the third place was shared by such values as "freedom" (15.63%), "justice" (15.63%), "friendship" (15.63%). As for students who are over 20 years

old, the third place was given to "freedom" (13.51%) and "self-development" (13.51%).

Notably, applicants for higher education who are over 20 years old did not share the preferences of those under 20 years old. Such values as "kindness" (0%) and "understanding" (0%) were not included in the list of their values, while students under the age of 20 confirmed their presence in their hierarchy – "kindness" (5%) and "understanding" (4%). It was no less interesting to analyse the qualitative changes in the preferences of applicants of I (bachelor's) and II (master's) levels of higher education of NULES of Ukraine by the years when such a survey was conducted (Table 4).

Table 4. Distribution of the values of the applicants of I (bachelor's) and II (master's) levels of higher education of NULES of Ukraine by years

Value	2020	%	2021	%	2022	%
Number of respondents	10		64		27	
Family	2	20%	25	39.06%	13	48.15%
Honesty	0	0.0%	15	23.44%	2	7.41%
Health	2	20%	5	7.81%	8	29.63%
Freedom	0	0.0%	10	15.63%	5	18.52%
Self-development	0	0.0%	9	14.06%	5	18.52%
Justice	1	10%	10	15.63%	2	7.41%
Friendship	0	0.0%	10	15.63%	2	7.41%
Self-fulfilment	0	0.0%	6	9.38%	2	7.41%
Optimism	0	0.0%	6	9.38%	2	7.41%
Romance	1	10%	4	6.25%	2	7.41%
Responsibility	0	0.0%	5	7.81%	1	3.7%
Personal hobbies	0	0.0%	3	4.69%	2	7.41%
Kindness	0	0.0%	5	7.81%	0	0.0%
Understanding	0	0.0%	4	6.25%	0	0.0%
Stability and security	1	10%	2	3.13%	0	0.0%

This cross-section by year was conditioned upon the challenges that the respondents faced. Therefore, understanding the hierarchy of their personal values in

such critical years is also important. It should be recalled that the respondents of 2020 were affected by such a challenge as COVID-19 and the self-isolation

regime, the respondents of 2021 were affected only by quarantine restrictions, and the respondents of 2022 were affected by wartime.

According to the results, the respondents gave the same first place to the values “Family,” – 20% (2020), 39.06% (2021), 48.15% (2022). Values such as “justice” (10%), “romance” (10%), “stability, security” (10%) ranked second among respondents in 2020. Among the top 15 values, all others stayed unpopular (0%).

For respondents in 2021, “honesty” was in second place (23.44%), and for respondents in 2022 – “health” (29.63%). As for the third place, for the respondents in 2021 it was taken by “freedom” (15.63%), “justice”

(15.63%), “friendship” (15.63%), and for 2022 – “freedom” (18.52%) and “self-development” (18.52%).

A comparative analysis of respondents by speciality is also informatively useful (Table 5). And not only because the profession of a lawyer is included in the professional group “man – man”, and forestry – “man – nature”. Such an analysis allows the state to determine the value preferences and, therefore, the potential value orientations of its people and, accordingly, sets the guidelines for future national strategies and programs for the development of civil society and the rule of law within the framework of the Sustainable Development Goals.

Table 5. Distribution of values of applicants of I (bachelor's) and II (master's) levels of higher education of NULES of Ukraine by speciality and age

Value	Total	Total, %	Total lawyers	Total lawyers, %	Total non-lawyers	Total non-lawyers, %	Total lawyers over 20 years old	Total lawyers over 20 years old, %	Total non-lawyers over 20 years old	Total non-lawyers over 20 years old, %
Number of respondents	101		90		11		26		11	
Family	40	39.6%	33	36.67%	7	63.64%	8	30.77%	7	63.64%
Honesty	17	16.83%	17	18.89%	0	0.0%	2	7.69%	0	0.0%
Health	15	14.85%	12	13.33%	3	27.27%	7	26.92%	3	27.27%
Freedom	15	14.85%	13	14.44%	2	18.18%	3	11.54%	2	18.18%
Self-development	14	13.86%	13	14.44%	1	9.09%	4	15.38%	1	9.09%
Justice	13	12.87%	13	14.44%	0	0.0%	3	11.54%	0	0.0%
Friendship	12	11.88%	10	11.11%	2	18.18%	0	0.0%	2	18.18%
Self-fulfilment	8	7.92%	7	7.78%	1	9.09%	1	3.85%	1	9.09%
Optimism	8	7.92%	8	8.89%	0	0.0%	2	7.69%	0	0.0%
Romance	7	6.93%	7	7.78%	0	0.0%	3	11.54%	0	0.0%
Responsibility	6	5.94%	6	6.67%	0	0.0%	1	3.85%	0	0.0%
Personal hobbies	5	4.95%	3	3.33%	2	18.18%	0	0.0%	2	18.18%
Kindness	5	4.95%	5	5.56%	0	0.0%	0	0.0%	0	0.0%
Understanding	4	3.96%	4	4.44%	0	0.0%	0	0.0%	0	0.0%
Stability and security	3	2.97%	3	3.33%	0	0.0%	1	3.85%	0	0.0%

According to the survey results, the value “family” stays in the first place for both future lawyers and forestry workers (36.67% for lawyers, 63.64% for foresters). In second place, future lawyers put “honesty” (18.89%), which is not surprising for their profession. But foresters preferred “health” (27.27%). Regarding the third

place, future lawyers put “freedom” (14.4%), “self-development” (14.44%) and “justice” (14.44%). For foresters – “freedom” (18.18%), “friendship” (18.18%) and “personal hobbies” (18.18%). Such a value as “freedom” has become popular both among lawyers and foresters (Figure 2).

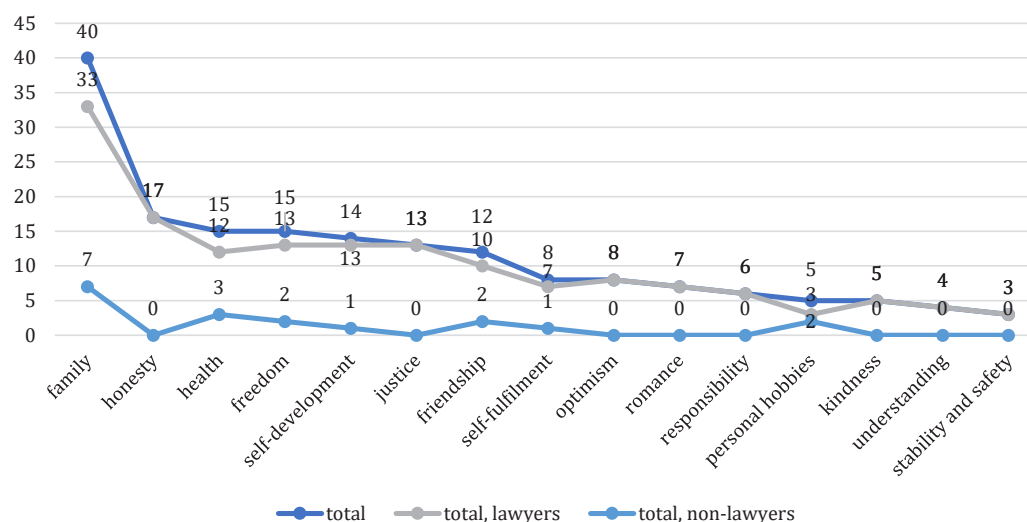


Figure 2. Distribution of the values of applicants of I (bachelor's) and II (master's) levels of higher education of NULES of Ukraine by professional direction

The hierarchy of values according to the age criterion of under the age of 20 was not distributed, since the survey did not involve students of non-law majors under the age of 20. However, it became possible to analyse the distribution of values among various specialists by age criterion, "those over 20 years old".

According to the survey results, the value "family" stays in the first place for both future lawyers and forestry workers over 20 years old (30.77% for lawyers,

63.64% for foresters). Future lawyers, as well as foresters, put "health" in second place (26.92 for lawyers, 27.27% for foresters). As for the third place, "self-development" (15.38%) became such a value for future lawyers, and for foresters – "freedom" (18.18%), "friendship" (18.18%) and "personal hobbies" (18.18%). Thus, for both future lawyers and forestry workers over 20 years of age, common values are "family" and "health" (Figure 3).

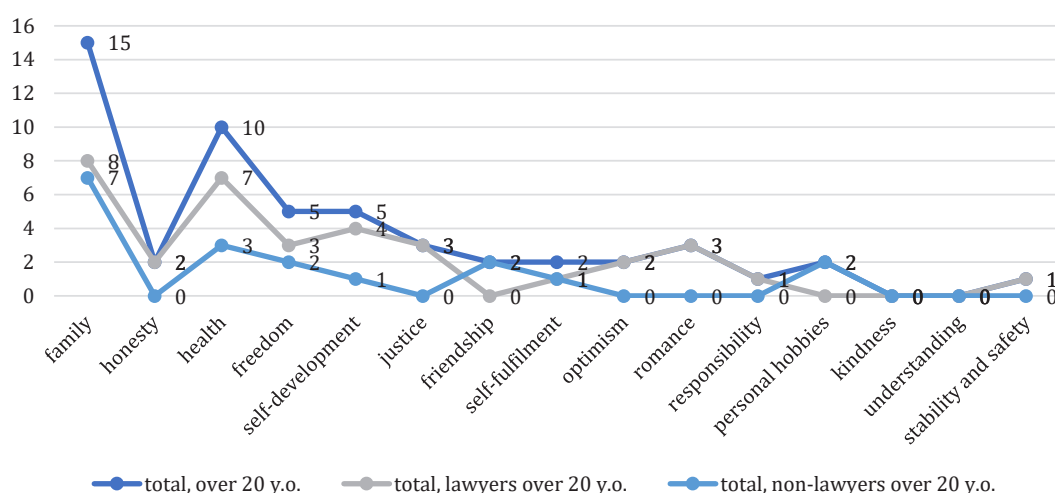


Figure 3. Distribution of values of academic groups of NULES of Ukraine by professional affiliation and age

It was equally interesting to draw a cross-section of students' preferences in the context of groups. In the same practical online classes, they were given the task to determine the three main values that are characteristic of them as an academic group. In total, 8 academic groups took part, of which 3 groups under 20 years of age (1-3 academic groups of the 1st year of the Faculty of Law of the NULES of Ukraine (2021 admission year)) and 5 groups of interviewees over

20 years of age (2 groups of masters of the 1st year of study of the Faculty of Law of the NULES of Ukraine (2020 admission year), 2 groups of masters of the 1st year of study of the Faculty of Law of the NULES of Ukraine (2021 admission year), 4th year of bachelors majoring in "Forestry" of the NULES of Ukraine). Applicants of higher education named 25 values, from which the authors of the study chose only 5 that received the most votes (Table 6).

Table 6. Distribution of values of academic groups of NULES of Ukraine by professional affiliation

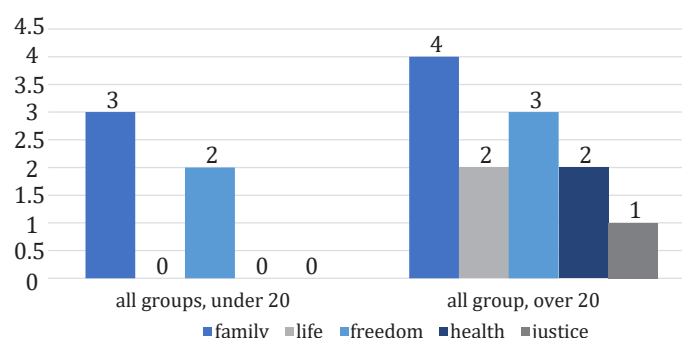
Value	All groups together	All groups together, %	Lawyers	Lawyers, %	Non-lawyers together	Non-lawyers together, %
Total groups	8	8	7	7	1	1
Family	6	75%	5	71.43%	1	100%
Life	2	25%	2	28.57%	0	0.0%
Freedom	4	50%	3	42.86%	1	100%
Health	3	37.5%	3	42.86%	0	0.0%
Justice	2	25%	2	28.57%	0	0.0%

According to the results of the survey, among all academic groups, the value “family” ranks first (75%), “freedom” ranks second (50%), and “health” ranks third (37.50%).

If one takes a sample by speciality, here the hierarchy of values for the academic groups of the Faculty of Law is as follows: 1st place – “family” (71.43%), 2nd place – “freedom” and “health” (42.86%), 3rd place – “life” and “justice” (28.57%). As for the academic group

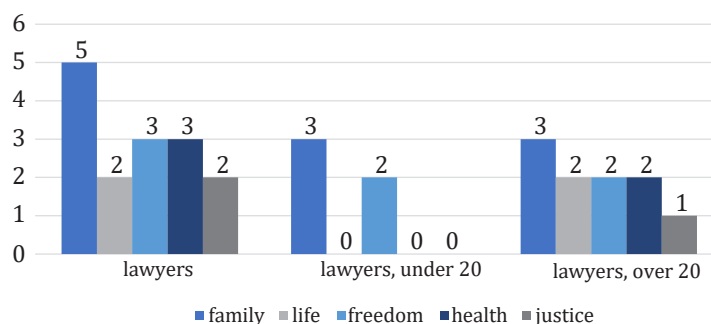
majoring in “Forestry”, they named “family”, “freedom”, and “peace” as the defining values of their group (100%).

The hierarchy of the first five values of all academic groups by age is as follows (Figure 4). For three academic groups under the age of 20: 1st place – “family” (100%), 2nd place – “freedom” (66.7%). For five academic groups over the age of 20: 1st place – “family” (80%), 2nd place – “freedom” (60%), 3rd place – “life” (40%) and “health” (40%).

**Figure 4.** Distribution of values of academic groups of NULES of Ukraine by age

The hierarchy of the first five values of academic groups by specialization and age was determined only for the Faculty of Law (Figure 5), since only one group took part in the survey from non-law majors. Therefore, for the seven academic groups of the Faculty of Law, the following values were decisive: 1st place – “family” (71.43%), 2nd place – “freedom” and

“health” (42.86%), 3rd place – “life” and “justice” (28.75%). For three academic groups of the Faculty of Law under the age of 20: 1st place – “family” (100%), 2nd place – “freedom” (66.7%). For four academic groups over the age of 20: 1st place – “family” (75%), 2nd place – “life”, “health”, “freedom” (50%), 3rd place – “justice” (25%).

**Figure 5.** Distribution of values of academic groups of the Faculty of Law of the NULES of Ukraine by age

An attempt to rank the group values of three academic groups of the 1st year of the Faculty of Law (2021 admission year) in small subgroups was also

interesting. The total number of such subgroups is nine (Table 7). Among these, the 1st place was taken by the value "family" (33.33%).

Table 7. The distribution of values of small subgroups of the 1st year of the Faculty of Law of the NULES of Ukraine

Value	Total bachelors, small subgroups	Total bachelors, small subgroups, %
Number of subgroups	9	
Family	3	33.33%
Honesty	2	22.22%
Friendship	2	22.22%
Unity	2	22.22%
Development	2	22.22%
Freedom	2	22.22%
Mutual understanding	1	11.11%
Dignity	1	11.11%
Health	1	11.11%
Knowledge	1	11.11%
Romance	1	11.11%
Moral	1	11.11%
Perseverance	1	11.11%
Independence	1	11.11%
Support	1	11.11%
Legal awareness	1	11.11%
Justice	1	11.11%
Creativity	1	11.11%
Tolerance	1	11.11%

Thus, a survey of the values of higher education students of I (bachelor) and II (master) levels of the National University of Life and Environmental of Ukraine, conducted in November 2020, April 2022, September 2022, testified that they give the first place to such a value as "family", which is inherent in the mentality of the Ukrainian people.

The results of these surveys, initiated at the Faculty of Law in 2020 within the framework of teaching the academic disciplines "Theory of the State and Law" (topic "Legal Culture and Legal Awareness") and "Philosophy of Law" (topic "Philosophical and Legal Axiology") influenced not only improvement of the work programs of the Department of Theory and History of the State and Law, but also the formation of the topics of scientific research of its employees and educational activities that it conducts among schoolchildren and students.

Admittedly, such surveys are unlikely to be of value for forming proposals for developing strategies for the development of civil society and the rule of law at the state level. However, they will be useful when developing educational work plans at the National University of Life and Environmental Sciences of Ukraine.

Methodological recommendations on the formation of value orientations of a person

As the theoretical and empirical parts of the study indicated, value orientations are a set of interconnected components, each of which correlates with the cognitive, emotional, and activity spheres of personality psychology. They certify the person's social maturity, which is manifested in a conscious attitude of the individual towards various processes in all spheres of public life, guide their social behaviour and activities.

To correct a person's value orientations, it is necessary to create conditions for the growth and improvement of the individual, as evidenced by a survey of values among students of higher education at the National University of Life and Environmental Sciences of Ukraine. This involves knowledge of the entire modern situation of human life. Determining the tasks, forms, and methods of correctional work, a psychologist, or teacher needs to have information about the interests, needs, problems of young people, and the favourable climate in the group.

Notably, at the beginning of life, values are little understood, borrowed, and based on needs. Over time, the person will change them according to life situations or

events that will happen to them on their life path. Thus, as for individual systems of value orientations, it is necessary to remember their dynamic nature, while for the values of social groups, such a system is more static in nature. Therefore, the state, to ensure the sustainable development of its society, should make substantial efforts to bring the system of human value orientations as close as possible to the system of state value orientations.

But the formation of a system of value orientations of a person is influenced by the environment in which it grows and develops, as well as value orientation as the activity of certain subjects and institutions aimed at developing legal attitudes towards legitimate behaviour. Therefore, neglecting the role played by the family and education today is a reckless step on the part of the state. After all, these institutions of civil society spend most of their time next to a young person. In addition, this educational function can be successfully performed by cultural and educational and religious institutions (admittedly, only if the religious ideology does not go against the Ukrainian values).

Since student youth were involved in this experimental study, the methodological recommendations will be more likely to apply to higher education institutions where the respondents study and develop. Among the methodological recommendations, the following may be effective: 1) unwavering adherence to the “anthropocentrism” principle, both in relation to the students of higher education and the staff of higher education institutions in their educational activities; 2) creating conditions for the growth and improvement of the individual, its self-development and implementation; 3) conducting cultural and educational events aimed at explanatory work on understanding the essence of values and their significance for the development of human value orientations; 4) formation of positive self-esteem of young people; 5) upbringing of moral and ethical, political and legal culture of student youth; 6) encouraging hard work and perseverance in achieving personal goals; 7) work on the development of skills of independent search for solutions to life problems and awareness of responsibility for personal actions; 8) conducting informative work by creating youth information centres (newspapers, magazines); 9) introduction of thematic lecture courses aimed at the formation of human value orientations.

Thus, the proposed recommendations for the development of a system of value orientations of a person who receives higher education will help them form their personal system of value orientations, which will be consonant with the system of value orientations of Ukraine as a state.

Conclusions

In summary, the concept “legal orientation” in legal science has at least four theoretical aspects of understanding. Firstly, as a person’s ability to navigate law or legal

matter in general, based on legal information. Secondly, as a participant in public life’s understanding of legal reality and the ability to understand legal processes occurring in society directly depend not only on the legal awareness of the individual, but on the level of their cognitive sphere, when a participant in public life has enough legal knowledge. Thirdly, as the legal activity of a person as the conscious willingness of the subject of law to commit legal acts (action or inaction) to obtain a legal result determined by the principles of law and prescriptions of legal norms. Therewith, the principles of law and prescriptions of legal norms act precisely as those legal guidelines that determine the legal intentions of the subjects of law. This gives reason to associate these last two aspects of understanding legal orientation with the concept “legal culture”. Fourthly, as the activity of certain subjects aimed at developing the legal attitudes of a person to carry out lawful behaviour. In this sense, legal orientation is associated with such legal concepts as “legal upbringing” and “legal education”.

But in any aspect of the understanding of legal orientation in legal science, it will be inextricably linked with such a concept as “value orientations”. They constituted a dynamic system that determines social behaviour and human activity, and therefore require constant diagnostics. A survey of the values of students of higher education at I (bachelor) and II (master) levels of the National University of Life and Environmental Sciences of Ukraine, conducted in November 2020, April 2022, September 2022, testified that the value orientations of the participants correspond to their age characteristics, do not depend on a professional orientation, reflect established social stereotypes and specific features of the Ukrainian mentality.

It is advisable to conduct such surveys not only among students of a certain speciality. They can be conducted by any researcher among diverse groups of respondents, both for cognitive purposes and to develop plans for conducting upbringing or educational work at the local level.

However, for such diagnostics to underlie the formation of strategies for the development of civil society and the state at the national level, especially in the war and post-war periods, it should cover as many social groups as possible (workers, internally displaced people, civil servants, schoolchildren, students, public organizations, etc.) and regions of the country, have well-thought-out questionnaires to clarify their system of value orientations, be conducted regularly, and its results should be brought to the attention of stakeholders and the public in the form of analytical reports.

Promising areas for further study can be the investigation of each of the above-mentioned aspects of understanding the concept “legal orientation”, including 1) legal information, 2) general legal education, 3) legal activity, 4) legal upbringing, legal propaganda, and legal education, etc.

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Теоретико-прикладні аспекти розуміння категорії «правова орієнтація» в правознавстві

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Анотація

Дослідження теоретико-прикладних аспектів розуміння категорії «правова орієнтація» в правознавстві є актуальним, становить практичний інтерес і потребує наукового розгляду. Глобалізаційні процеси породжують радикальні зміни, що можуть призвести як до подальшого еволюціонування людства, так і до негативних наслідків. Пошук програм спільного виживання і розвитку залежить від правової культури, яка визначає правові орієнтації соціальних суб'єктів. Мета наукової статті – з'ясувати теоретико-прикладні аспекти розуміння категорії «правова орієнтація» в правознавстві. Робота ґрунтується на міждисциплінарному підході і враховує знання різних наук про людську поведінку.. Для проведення дослідження використано загальнонаукові та спеціально-наукові методи пізнання соціальних явищ і процесів. У числі загальнонаукових методів застосовано методи логіко-семантичного та термінологічного аналізу, антропологічний, системно-структурний, причинно-функціональний, аналізу даних, праксеологічний, контент-аналізу. Для отримання емпіричних даних використано експериментальні методи спостереження, бесіди, опитування та анкетування. Представлені результати теоретико-прикладного дослідження категорії «правова орієнтація» в правознавстві дали змогу з'ясувати мінімум чотири значення її вжитку, показали її нерозривний зв'язок з категорією «ціннісні орієнтації» – динамічною системою, що регулює соціальну поведінку та діяльність людини, а тому потребує постійної діагностики. На основі діагностики ціннісних орієнтацій студентської молоді Національного університету біоресурсів і природокористування України розроблено методичні рекомендації щодо формування системи ціннісних орієнтацій молоді людини, яка здобуває вищу освіту, що буде співзвучною системі ціннісних орієнтацій Української держави. Результати проведеного дослідження будуть корисними для науковців, що досліджують аксіологічний та праксеологічний складники життєдіяльності людини в різних сферах суспільного життя; для державних та громадських інституцій, пов'язаних з реалізацією стратегій розвитку громадянського суспільства та правової держави, для вчителів і викладачів у навчанні та вихованні майбутніх громадян України, а також для усіх зацікавлених

Ключові слова: культура, правова активність, правова культура, правове виховання, ціннісні орієнтації



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Problems of tobacco smuggling in Ukraine

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Abstract

The relevance of the study is explained by the strengthening of the adverse impact of tobacco smuggling on economic and social processes in Ukraine. The purpose of the study was to determine the specific features of the interpretation of the category "smuggling" in the legislative and general scientific contexts, to explore the problem of smuggling of tobacco products in Ukraine. General scientific methods of analysis, synthesis, observation and the graph-analytical method of presenting research results are used in the research. The definition of "smuggling" was analysed according to Ukrainian and foreign legislation, and according to general approaches. The interpretation of the smuggling category differs depending on the aspects of the application. Thus, according to the general lexical content, smuggling is understood as the illegal movement of goods across the customs border. And at the legislative level, smuggling usually includes the illegal import or export of specific groups of goods, the list of which is established by the legislation of the state. The adverse influence of smuggling on the economic and social processes in the state is determined. The problem of tobacco smuggling in Ukraine is analysed. In recent years the area of smuggling flows of tobacco products in Ukraine has changed significantly. Conventionally, Ukraine was one of the main source countries smuggling tobacco products that were illegally supplied to EU countries. The need to introduce criminal liability for the smuggling of tobacco products in Ukraine is substantiated based on the study of foreign experience and the determination of the consequences of such smuggling for the economy and social sphere

Keywords: customs security, customs control, export, import, excise tax, excise goods

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Introduction

Smuggling is a serious problem for most countries. For Ukraine, smuggling issues are relevant enough and threaten national security in general, and such components as economic and customs security in particular. Smuggling and customs offences cause serious shortages of funds to the State budget, and for this reason, substances and devices which threaten the safety of life and health of citizens and public law and order enter the customs territory. In Ukraine, as in other countries of the world, much attention is paid to the fight against smuggling at the state level. However, not all anti-smuggling measures are effective.

Recently, in connection with the tense foreign economic and military situation in the country, issues of economic security in general and customs security, in particular, have come to the fore. The nature of the situation at the state and customs borders has changed significantly. It is important to protect the state against smuggling, especially from the eastern and northern borders. Smuggling tobacco products is especially dangerous for the economy of Ukraine.

Tobacco products are conventionally in high demand all over the world, and, in particular, in Ukraine, and have a stable level of sales. It ensures consistently high profits for tobacco producers and sellers. Tobacco products in Ukraine, as in almost all countries of the world, are excise goods. Therefore, as a result of their production and sale, high tax revenues are provided to the state budgets.

The specific feature of tobacco products is that their use can cause several adverse consequences for people's health. Therefore, taxes on tobacco products introduced in the states, in addition to filling the budget, should stimulate consumers to limit using tobacco. High prices for tobacco products should encourage citizens to quit smoking or at least reduce the amount of it. The level of taxation of tobacco products concerning to the cost of their production is, as a rule, quite high compared to other goods that are taxed in the respective national economy (Ortiz-Prado *et al.*, 2022).

And as income levels and tobacco tax rates vary from country to country, retail prices for tobacco products vary by national market. This situation frequently leads to high profitability of illegal cigarette imports from one country to another. Tobacco smuggling leads, firstly, to a decrease in tax revenues to the state budget, secondly, to an increase in the volume of tobacco consumption in the state due to the saturation of the market with cheap contraband products, and thirdly, due to smuggling, companies that legally produce and sell tobacco products, receive losses.

In Ukraine, tobacco smuggling is quite common and results in significant budget losses, as the share of taxes in the cost of cigarettes is quite high compared to other goods. In addition, the smuggling of tobacco products of dubious quality can pose a threat to the health of

Ukrainian citizens. Therefore, solving the problem of the smuggling of tobacco products in Ukraine is very important.

Early theoretical and empirical economic studies of goods smuggling, on which modern researchers rely, were conducted in the 1960s and 1970s. G.S. Becker (1968) explored the economic aspects of the crime of smuggling, and J. Bhagwati and B. Henson (1973) analysed smuggling as one of the types of disorder in the trade sector. D. Norton (1988) examined the relationship between tariff rates and smuggling in the agricultural sector of European countries and found an adverse effect of increasing taxes rates on smuggling.

Modern researchers consider various aspects of combating smuggling and ensuring customs security, considering the national characteristics of individual countries.

Problems of tobacco smuggling in the Western Balkan region were considered in the work of V. Reher (2019). The study focused on the habits, attitudes and predictors of illegal tobacco demand. Differences between the consumption of contraband tobacco products in different countries of the Western Balkan region were determined.

The principles of modern customs protection in the countries of Eastern Europe are considered in the work by T. Nowak *et al.* (2015), where it is noted that Ukraine is one of the leading countries – sources of smuggling to the European Union, and interstate cooperation according to the rules of the World Customs Organisation is one of the most effective ways to fight smuggling.

Types, forms and technologies of goods smuggling in modern conditions are explored in the work by A.H. Mozayani (2020). In addition, this publication reflects the specific features of the fight against smuggling using the example of Iran's economy.

The importance of using English by customs officials is emphasised in the study by T.C.N. Nguyen *et al.* (2019). The English language is considered here as the main channel of interaction between customs officers of different countries in the process of interstate customs interaction.

Specific features of ensuring customs security and combating smuggling in Ukraine are explored in the work by O. Dniprov *et al.* (2020). The work concluded that the main area of the work of customs authorities should be the regular improvement of the risk management system, which should combine the following aspects: technological, methodological, information technology, regulatory, organisational and personnel.

The work by S. Filippov (2019) presented the main fields of overcoming the smuggling of tobacco products in Ukraine, among which the author outlined the fight against corruption in the state, harmonisation of tobacco excise rates in Ukraine with the level of rates in EU countries, strengthening of responsibility for smuggling and destroy the "culture of impunity" for smuggling.

In the study by R. Movchan *et al.* (2021) the problem of commodity smuggling in Ukraine, in general, was analysed, examines the legislation regulating responsibility for commodity smuggling in Ukraine and EU countries.

The purpose of the research was to analyse the content of the category of smuggling, to determine the specific features of the interpretation of smuggling according to the legislation of different countries, and based on scientific approaches, to analyse the problem of tobacco smuggling in Ukraine.

Material and Methods

The theoretical basis of the study was the regulations of Ukraine, regulations of other countries, which governs the issue of defining the category of smuggling, the EU directives, the work of scientists who conducted research on the problem of smuggling in general, including smuggling of tobacco products and reports of the largest international audit companies devoted to the analysis of tobacco smuggling.

The problem of smuggling in Ukraine is complex and large-scale, related to various spheres of economic, political and social life. Thus, when exploring smuggling, it is possible to highlight both the economic and legal aspects of this phenomenon. Therefore, both of these components were considered in the research – legal provisions regulating the definition and responsibility for smuggling, and economic phenomena and processes related to smuggling were considered.

The general scientific and special methods and approaches to cognition were used in the study. The methodological basis of the work was the dialectical-materialist method, which contributed to the understanding of the research object in the context of combining the

needs of science and practice, Aristotelian method, which allowed the understanding of the content of the problem in more detail.

The method of bibliometric analysis was used to examine the content of the “smuggling” category. Using this method common and distinctive features were determined in the interpretation of the “smuggling” category according to different scientific approaches and by the legislation of different countries. The synthesis method was used to develop a common approach to the interpretation of the category of smuggling.

The work included a retrospective analysis of responsibility for smuggling in different periods in Ukraine and a retrospective analysis of the situation regarding the areas and volumes of tobacco smuggling flows in Ukraine. Using the method of theoretical generalisation, the conceptual apparatus of the research was defined.

The method of observation was used to assess the situation with cigarette smuggling in Ukraine. Using a graphic method, the rate of growth of the excise tax on cigarettes in Ukraine and the change in the volume of contraband flows of cigarettes from Ukraine to Poland are demonstrated.

Results and Discussion

The word “smuggling” is currently often used both in everyday life and scientific and professional communication, but the interpretation of this category is ambiguous.

Approaches to defining the category of smuggling are not identical. It is necessary to distinguish the legal aspect of the definition of smuggling and the general economic one.

Thus, in the regulations of some states, the definition of “smuggling” is written. However, approaches to its interpretation are significantly different

Table 1. Approaches to defining the “smuggling” category

Source	Definition of the “smuggling” category
Criminal Code of Ukraine (2001; 2011 ed.), edition valid until 2012	smuggling, that is the movement of goods across the customs border of Ukraine without customs control or with concealment from customs control in large quantities, and the illegal movement of historical and cultural values, potent, poisonous, radioactive or explosive substances, weapons and ammunition, and smuggling of the main goods of strategic importance, the export of which is regulated by the relevant legislation
Criminal Code of Ukraine (2001; 2022 ed.), edition valid since 2012	smuggling, that is the movement of goods across the customs border of Ukraine without customs control or with concealment from customs control historic and cultural values, weapons and ammunition, radioactive or explosive substances, poisonous, and smuggling of strategically important basic commodities and special technical means of secretly obtaining information
Treasury Penal Code of Poland (1999)	smuggling means the import or export of goods abroad without paying customs taxes, without presenting goods to the customs authority and without filing a customs declaration, which leads to non-performance of customs duty
Custom Act of India (1962)	smuggling means any act or omission resulting in the confiscation of goods in respect of any goods

Table 1, Continued

Source	Definition of the “smuggling” category
United States Code (n.d.)	smuggling means fraudulently or intentionally exporting or shipping from the United States, or attempting to export or ship from the United States, any merchandise or article, or object contrary to any law or regulation of the United States, or concealing, buying, selling, or transporting such merchandise prior to export, if the violator is aware that such goods are intended for export in violation of any law or regulation of the United States. Smuggling is punishable by a fine or imprisonment for up to 10 years, or both
East African Community Customs Management Act (2004)	smuggling means the export, import, or cabotage, transfer or export of goods to or from partner countries with the intent to defraud customs revenue or circumvent any prohibitions, restrictions, regulations or conditions of such import, export, cabotage, transfer or export of any goods
Encyclopedia of modern Ukraine (Pylypchuk, 2014)	secret illegal movement across the state border of dutied or prohibited goods or other valuables, the list of which is regulated by the legislation of a specific state
Law Dictionary (Bouvier, 1848)	the fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited.
Cambridge dictionary (Smuggling, 2013)	the act or process of taking things or people to or from a place secretly and often illegally

Therefore, in world practice, smuggling is understood as the illegal movement of certain prohibited types of goods across the customs border; but in some cases, illegal import or export of any goods is classified as smuggling.

According to the current version of the Criminal Code of Ukraine (2001; 2022 ed.), Art. 201, the definition of the category “smuggling” includes the illegal movement across the customs border of only certain groups of goods: cultural values; poisonous, powerful, explosive or radioactive substances; weapons and ammunition; parts of firearms; special technical means of secretly obtaining information.

In addition, according to Art. 305 of the Criminal Code of Ukraine (2001; 2022 ed.), the definition of “smuggling” is used to the illegal movement across the border of narcotic drugs, psychotropic substances, their analogues or precursors, or falsified medicinal products, although these groups of goods are not specified in Art. 201, where the smuggling category is defined.

The main distinguishing feature between a violation of customs legislation and smuggling according to Ukrainian legislation is that for committing smuggling, criminal liability arises by the Criminal Code. In the case of other violations of customs legislation, can be only administrative consequences for violators following the Customs Code of Ukraine (2012).

According to Article 201-1 of the Criminal Code of Ukraine, criminal liability applies in the case of crossing the border of Ukraine without customs control or hiding from customs control timber, lumber of valuable and rare tree species, unprocessed timber, other timber prohibited for export outside the territory of Ukraine since 2018. And according to the criterion of the presence of criminal liability, such actions can be classified as smuggling (2001; 2022 ed.).

Until 2012, in Ukraine, smuggling included the movement of any goods across the customs border of Ukraine outside of customs control or with concealment

from customs control, committed in large quantities. As of 2012, such a large amount of smuggling was set at the level of UAH 536,500 (Criminal Code of Ukraine, 2001).

At the beginning of 2012, the legislation on goods smuggling was changed. Criminal liability was abolished, but administrative liability was strengthened.

Thus, until 2012, a fine of 500 to 1,000 non-taxable minimum incomes of citizens (i.e., from 8,500 to 17,000 UAH) was established for the illegal movement of goods across the border (the value of which was less than the large level established by the law). In similar situations, confiscation of such goods and vehicles used for their movement could be applied (Movchan *et al.*, 2021).

The fine for smuggling goods is 100% of the value of the goods, and the goods may be confiscated after the entry into force of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Humanisation of Responsibility for Offences in the Field of Economic Activity” (Law of Ukraine No. 4025-VI..., 2011). For the same repeated violations of customs rules, a fine of 200% of the value of the goods is provided. The rule of confiscation of vehicles used to move these goods remained in force.

Therefore, according to Ukrainian legislation, there is a distinction between two categories – smuggling and customs offences. The basis for the distinction is the liability that arises in the case of committing such actions. Smuggling in Ukraine is subject to criminal liability, and customs offences are subject to administrative liability (Law of Ukraine No. 4025-VI..., 2011).

In international practice, smuggling usually includes a wider list of goods, and there is no such clear distinction between the illegal movement of goods into smuggling and customs offences, as is the case in Ukraine. In addition, in a large part of the states, the smuggling of goods is criminalised.

The application of criminal punishment for goods smuggling is a trend in the EU and corresponds to

Directive (EU) 2017/1371 of the European Parliament and the Council of the EU (2017), which regulates the fight against fraud. The Directive implements the basis of criminal liability for smuggling and other types of fraud. According to this directive, criminal liability should be imposed if the damage to the state exceeds 10,000 euros.

Smuggling of goods was decriminalised in Ukraine more than ten years ago (Kostiana *et al.*, 2020). It was expected that in this way it would be easier to bring perpetrators to justice, and the state would receive more benefits as a result of increased financial liability for violators. However, the problem of illegal transportation of goods across the customs border of Ukraine remains relevant. Smuggling in Ukraine brings billions of euros in losses (Movchan *et al.*, 2021) to the state budget, and contributes to the distribution of low-quality and dangerous goods that cause other social and economic problems in the state.

In international practice, the list of goods, the illegal transportation of which across the customs border is considered smuggling that threatens the national interests of the state, is very different from the goods classified as smuggling in Ukraine. People smuggling is a big problem for EU countries and the USA, but this problem is not so urgent for the Ukrainian economy.

Regarding goods which, according to Ukrainian legislation, are not classified as smuggling, the biggest damage to the state's economy is caused by the illegal transportation of cigarettes and tobacco products across the border. This situation occurs for several reasons. The price of cigarettes in Ukraine is significantly higher than in Belarus and the Russian Federation, which share a common border with it in the North and in East. However, the cost of cigarettes in Ukraine is lower than in

the EU countries which share a common border with it in the West. Thus, in Ukraine, there is a problem with the illegal import of tobacco products from the North and the East, and their illegal export to the West (Filippov, 2019).

The difference in the price of tobacco products in Ukraine and EU countries has been significant for a long time. However, in 2018, a seven-year plan to increase excise taxes on cigarettes was implemented in Ukraine (Law of Ukraine No. 2245-VIII..., 2017). It was related to the Euro integration strategy of the development of Ukraine. Thus, the Association Agreement between Ukraine and the EU (2014) contains Article 352, which stated that the parties develop cooperation and harmonise policies on countering and combating fraud and smuggling of excise goods. This cooperation, in particular, includes the gradual convergence of excise rates on tobacco products, as far as possible, considering the constraints of the regional context, including through dialogue at the regional level.

Excise tax in Ukraine is calculated by a combined rate consisting of ad valorem and specific components (Blikhar *et al.*, 2019). Only the specific component of the rate had to gradually increase according to the schedule as a result of the tax reform (Fig. 1). Such an increase in excise duty should have increased cigarette prices in Ukraine to the level of prices in the EU countries with which it shares a common border (Lysiak *et al.*, 2022). The excise tax rate is set in hryvnia, and in 2022, as a result of inflationary processes, the Ukrainian currency will significantly depreciate compared to the currencies of EU countries. Therefore, if the devaluation of the hryvnia continues in the future, the planned increase in excise duty rates may not lead to an increase in the prices of tobacco products in Ukraine to the EU level.

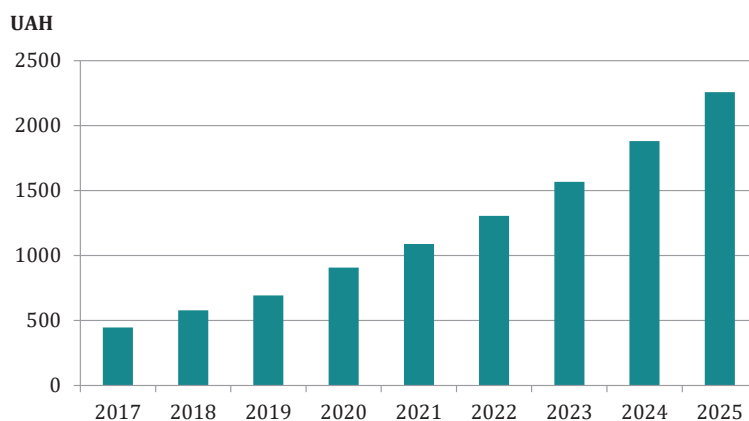


Figure 1. Specific excise tax rates in Ukraine in 2017-2025

Source: based on Law of Ukraine No. 2245-VIII (2017)

In Ukraine, tobacco smuggling has several areas:

- illegal import into the territory of Ukraine of foreign-made products (usually from Belarus or the Russian Federation);

- illegal export of Ukrainian products from Ukraine (usually to Poland, Slovakia, Hungary).

In addition, there are illegal transit smuggling schemes through which cigarettes from Belarus or

the Russian Federation are transported to EU countries (Budget Revenue Department, 2014).

A widespread scheme in Ukraine is the illegal sale of tobacco products intended for sale Duty-Free or for export. If in 2020 such production was 2.8% on average per year, then in 2021 it will be 7.6% (Lysiak *et al.*, 2022).

The situation, when the level of tobacco prices in Ukraine is significantly lower than in some of the neighbouring states, results in significant problems with the importation of illegal cigarettes into the territory of Ukraine. Thus, in 2021, the level of illegal trade in tobacco products increased to a record, reaching 16.9%, which is twice the previous maximum observed in 2013. The consequence is budget losses, which are estimated at 15.5 billion hryvnias. The volume of the shadow market of cigarettes in Ukraine is almost 8.5 billion units (Simplification of trade procedures..., 2021).

The leaders in the level of distribution of illegal tobacco products are 7 regions of Ukraine, where 61% of such products are sold: Kharkiv region (13%), Odesa region (12%), Dnipropetrovsk region (11%), Donetsk region (8%), Lviv region (6%), Zaporizhzhia Region

(6%), Khmelnytskyi Region (5%) (Kukuruza *et al.*, 2019).

In recent years, it was a decrease in the illegal import of Ukrainian tobacco products into the EU countries and an increase in the smuggling of tobacco products from the Russian Federation and Belarus to Ukraine (Simplification of trade procedures..., 2021).

Ukrainian counterfeit and smuggling of cigarette inflows declined in 2021 to the lowest level seen in the period 2017-2021. Thus, in the period from 2017 to 2021 (KPMG, 2022), illegal deliveries of Ukrainian cigarettes to Poland significantly decreased (Fig. 2). In addition, a reduction in the illegal import of Ukrainian cigarettes occurred in other EU countries with which Ukraine shares a common border (KPMG, 2021). This reduction in the smuggling of Ukrainian cigarettes is due to a decrease in the economic motivation of smugglers, due to the increase in excise tax rates, the difference between the prices of cigarettes in Ukraine and in the EU countries, with which it borders, is not large. Therefore, other countries with lower excise duty rates, such as Belarus, are becoming more attractive sources for illegal cigarette imports.



Figure 2. Inflows cigarettes to Poland from Ukraine (Billion cigarettes)

Source: based on KPMG (2022)

Illegal importation of tobacco products into the territory of Ukraine poses a serious threat to the Ukrainian economy, causes a shortage of funds for the State budget, and legal tobacco companies suffer losses due to the need to compete with smuggled products. However, punishment for committing such actions by Ukrainian legislation occurs only in the form of fines and confiscation of goods (Prokopenko *et al.*, 2021). Criminal responsibility in the form of deprivation of liberty may arise only in the case of illegal production of tobacco products (Article 204 of the Criminal Code of Ukraine (2001)).

In world practice, the occurrence of criminal liability in the form of real terms of imprisonment in the case of smuggling of excise goods is quite common.

Thus, in most countries with high indicators of economic development, where excise taxes are quite high, and the importation of illegal cigarettes is economically attractive, violators of the law can be sentenced to long prison terms.

Cigarette smuggling is criminalised in many European countries, in particular, in the UK, the term of imprisonment for this crime can be up to 10 years. In addition, there is criminal liability for smuggling tobacco products in Poland, Slovakia, Romania, Hungary, Ireland, Austria, Lithuania, Latvia, Finland, Spain, Germany. In most of these countries, the maximum prison term for smuggling does not exceed 3-5 years (Movchan *et al.*, 2021).

Volumes of criminalised cigarette smuggling vary. In European countries, whose domestic markets suffer

the most from cigarette smuggling, criminal liability has been established for it, which can result from the illegal importation of even relatively small quantities of goods. In Romania, criminal liability arises for smuggling just one pack of cigarettes through the green border; in Hungary – for smuggling cigarettes worth more than 100,000 forints (about the same as 15 packs of cigarettes), and in Slovakia – for more than 8 packs of cigarettes (KPMG, 2022).

Conventionally, the most affected by cigarette smuggling are those countries that have a common border with countries where cigarette prices are relatively low due to low excise taxes. The problem of smuggling is relevant for countries with extremely high excise rates, where accordingly, cigarette prices are the highest in the region.

Accordingly, it is appropriate for Ukraine to establish criminal liability for the smuggling of tobacco products, as this corresponds to the national interests of the state and will help to strengthen the customs security of the state. Currently, according to Ukrainian legislation, responsibility for cigarette smuggling is equated to ordinary goods smuggling and usually leads to the confiscation of the goods and the imposition of a fine in the amount of 100% or 200% the value of the goods (Articles 482-483 of the Customs Code of Ukraine (2012)). Such a low threshold of responsibility and large economic benefits motivate individuals to commit such illegal actions.

Currently, there is a discussion in Ukraine regarding the feasibility of introducing criminal liability for commodity smuggling. There are different opinions on this issue in Ukrainian society. Some scientists believe that it is necessary to establish criminal liability for all large-scale commodity smuggling (Babikov, 2019). In addition, there is an opinion that it is necessary to criminalise only the smuggling of excise goods (Daniv, 2021). The opinion of the President of Ukraine V. Zelenskyi regarding the need to criminalise all large-scale and excise goods smuggling is outlined in the draft law (Draft of Law of Ukraine..., 2021) initiated by him. In general, the author agrees with this position regarding the criminalisation of smuggling. Criminalisation of large-scale commodity smuggling in general (as stated in work by D.V. Babikov (2019)), and criminalisation of excise goods smuggling (as stated in work by R. Daniv (2021)) completes the needs of modern Ukrainian society. However, the approaches to establishing liability for the smuggling of ordinary goods and the smuggling of excise goods should be different.

However, the text of the draft law (Draft of Law of Ukraine..., 2021) does not consider the specific features of tobacco products as an object of smuggling. The connection between the physical volume of contraband (number of cigarettes, cigars, the weight of tobacco, etc.) and the type of punishment has not been established. The large volume of tobacco smuggling,

for which criminal liability arises, is relative only in terms of estimation. This approach contradicts the global practice of establishing responsibility for tobacco smuggling. In addition, it is a short-sighted solution to the problem of cigarette smuggling, which is based on the constant increase in the cost of cigarettes in Ukraine, associated with the increase in excise rates and inflationary processes.

In addition, this draft law (Draft of Law of Ukraine..., 2021) has several problematic aspects, which in case of its adoption may lead to adverse consequences. The draft law provides for amendments to the Criminal Code of Ukraine and the establishment of criminal liability for the commission of commodity smuggling in general and smuggling of excise goods in particular. Criminal liability is defined as a false declaration of goods, which resulted in or could result in an illegal reduction or exemption from customs payments. The problem is that such a rule provides for the possibility of bringing business entities to criminal liability even for unintentional errors in customs declarations.

Thus, the establishment of criminal liability for cigarette smuggling is currently appropriate, but the procedure for its establishment needs serious revision.

In the works of authors from other countries, devoted to the problem of tobacco smuggling, the question of the need to introduce criminal liability for such actions is often not relevant, since criminal liability for tobacco smuggling already exists in most countries. In works (Zhang & Schwartz, 2015; Kasri et al., 2021), in particular, the factors affecting tobacco smuggling were examined. In both works, among the reasons that stimulate smuggling, the authors identify high excise taxes on tobacco. But high excise taxes by themselves, without the presence of other factors, according to the results of research, do not lead to a significant increase in the volume of smuggling. In general, this position of the authors is well-founded, however, in Ukrainian realities, the influence of the level of tobacco excise on contraband flows is much higher than in other countries. It is connected with the geopolitical position of Ukraine. The state shares a common border with many countries, some of which have high excise tax rates (EU countries), and some have low rates. Therefore, the increase in excise taxes in Ukraine, as the study presents, led to a change in the flow of tobacco smuggling. Ukraine ceased to be a source of smuggled cigarettes to the EU, and on the contrary, smuggled cigarettes from other countries began to appear on the Ukrainian market.

Conclusions

The problem of smuggling is quite relevant for Ukraine. In international practice, the category of smuggling is quite extensive, it usually includes the illegal transportation both outside the country, and inside it of several prohibited goods, and products on which taxes have not been paid. Illegal transportation of migrants is often

classified as smuggling in the world. In Ukrainian legislation, the definition of the category of smuggling is narrower, it includes only the illegal transportation of certain goods groups across the customs border.

There are two categories in Ukraine: smuggling and customs offences. Illegal movement across the customs border of goods not included in the list of smuggling is qualified as a customs offence. There is a difference in liability for smuggling and customs offences by the legislation of Ukraine. Violators face criminal liability for smuggling and administrative liability for customs offences. Illegal movement of tobacco products across the customs border of Ukraine according to the legislation of Ukraine is not smuggling and does not entail criminal liability.

For a long time, Ukraine was the source of smuggled cigarettes, which were taken to EU countries. However, as a result of the gradual increase in excise duties that began in 2018, the illegal import of Ukrainian cig-

arettes to EU countries has significantly decreased. But when the prices for cigarettes in Ukraine became much higher than in some neighbouring countries (Russian Federation, Belarus), the illegal import of cigarettes into Ukraine became economically profitable and massive. The problem of a large share of the shadow segment of the tobacco market has caused serious losses to the state budget of Ukraine. Therefore, it is currently advisable to strengthen the liability of persons who perform illegal movement of tobacco products across the customs border.

Areas for further research are the development of recommendations for changing legislative provisions into separate regulations, namely the Criminal and Customs Codes of Ukraine, which governs the issue of criminal liability for smuggling. Determination of the scope of criminal liability for tobacco smuggling and the conditions for its occurrence.

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Проблеми контрабанди тютюнових виробів в Україні

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Анотація

Актуальність дослідження обумовлена посиленням негативного впливу контрабанди тютюнових виробів на економічні та соціальні процеси в Україні. Метою дослідження було визначення особливостей трактування категорії «контрабанда» в законодавчому та загальнонауковому контекстах, дослідження проблеми контрабанди тютюнових виробів в Україні. У статті були використанні загальнонаукові методи аналізу, синтезу, спостереження, а також графічно-аналітичний метод для представлення результатів дослідження. У роботі проаналізовано визначення контрабанди відповідно до українського та зарубіжного законодавства, а також відповідно до загальних наукових підходів. Трактують категорії контрабанда в залежності від аспектів застосування має відмінності. Так відповідно до загального лексичного змісту під контрабандою розуміють незаконне переміщення товарів через митний кордон. А на законодавчому рівні зазвичай до категорії контрабанда відносять незаконне ввезення або вивезення окремих груп товарів, перелік яких встановлено відповідно до законодавства держави. Визначено негативний вплив контрабанди на економічна та соціальні процеси в державі. Проаналізовано проблему контрабанди тютюнової продукції в Україні. Визначено, що протягом останніх років напрями контрабандних потоків тютюнових виробів в Україні істотно змінилися. Традиційно Україна була однією з основних держав-джерел контрабандної тютюнової продукції, що незаконно поставлялася до країн ЄС. У статі обґрунтування необхідність впровадження кримінальної відповідальності за контрабанду тютюнової продукції в Україні на основі вивчення іноземного досвіду та визначення наслідків такої контрабанди для економіки та соціальної сфери

Ключові слова: митна безпека, митний контроль, експорт, імпорт, акцизний податок, підакцизні товари



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Rural hospitality: Problems of legal regulation of guest safety

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Abstract

This study investigates the problems of legal regulation of the safety of visitors – guests of rural estates during the provision of rural hospitality services. The relevance of this study is conditioned upon the urgent need to develop special legislation that would reflect the specifics of such a new area of agricultural diversification for Ukraine as rural hospitality, specifically one of the defining aspects for the development of this sphere – the safety of guests of rural estates. The purpose of this study was to characterize the state of legal support for the outlined area and formulate proposals for improving the legal regulation of the safety of visitors/guests of rural estates. The methodological framework of this paper included a set of general scientific and special legal methods of scientific cognition, namely dialectical, system-structural, formal logical, system analysis, and formal legal methods. As a result of the conducted study, the term “safety of rural hospitality” was defined in broad and narrow meanings, and the external and internal levels of safety in rural hospitality were also distinguished. The possibility of applying tourism legislation to regulate external security relations in rural hospitality was substantiated. The need to regulate internal security relations in rural hospitality in a special regulation on rural hospitality in the form of a law was proved. It is proposed to establish in this prospective regulation an imperative rule regarding the conclusion of a written agreement on rural hospitality services, and the substantial terms and conditions of such a contract were defined. A proposal was put forward to develop a model agreement for the provision of rural hospitality services. To streamline the safe rendering of services within rural hospitality to attract guests of a rural estate to perform agricultural work, it was proposed to develop safety instructions for attracting guests of rural estates to perform agricultural work. The obtained conclusions will help in the development of legislation on rural hospitality and can also be used in theoretical and applied scientific research on the specific features of legal regulation of relations concerning rural hospitality

Keywords: country estate, guests of the country estate, consumers of rural hospitality services, service, safety, dangerous factor, damage, legal protection

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Introduction

An indisputable condition for the development of industries related to the provision of certain services is to guarantee at least two aspects: the quality of services rendered and the safety of consumers of such services. This is especially true for tourism and its related areas. These include rural hospitality, which, on the one hand, cannot be identified with, as it were, “classical” tourist activities (the authors of this paper proved this in their earlier studies (Novak, 2022)), and on the other hand – it also aims to organize recreation, sanitation, cognitive activities, specifically mastering knowledge about history, traditions, rural lifestyle, agricultural labour. Therewith, rural hospitality services, apart from temporary accommodation, meals, and leisure activities, also involve attracting guests (at their request) to perform certain works in a rural estate (e.g., gardening, floriculture, caring for agricultural livestock or poultry, etc.). In turn, agricultural labour itself is specific and quite dangerous. For agricultural work, the presence of such harmful and dangerous factors as biological (farm animals, poultry, insects, nematodes, pathogens common to humans and animals, etc.), physical (machines and mechanisms, dust, vibration, electric field voltage, etc.), chemical (pesticides, agrochemicals, disinfectants and detergents, etc.) is conventional. When inviting guests and organizing leisure activities for them, the farmer must take these dangers into account and respond accordingly. Security measures in this area should be based on regulatory requirements.

In the current legislation of Ukraine and special sources, there are virtually no provisions and works covering the safety of visitors to rural estates. The principal reason here is, as the authors of this paper have already noted, the novelty of this activity. Although, the topic of agricultural tourism or rural green tourism increasingly often becomes the subject of scientific research.

These are studies that identify the prospects of rural tourism in the development of regions/countries. For instance, a study of the cultural and economic consequences of agricultural tourism in unspoiled rural regions of Iran (Lak & Khairabadi, 2022); developments in determining the relationship between the socio-economic revival of villages and the development of agricultural tourism in Albania (Sulaj *et al.*, 2022); assessment of the tourist potential of historic villages in Portugal (Liberato *et al.*, 2021); determination of links between tourism entities in urban and rural areas of Estonia with the search for optimal mutually beneficial ways of interaction (Pilving *et al.*, 2022). Researchers pay considerable attention to the investigation of the accumulated successful practices of agricultural tourism in European countries and identify ways and areas of its consideration in countries where agricultural tourism is just emerging. For instance, a study of understanding agricultural tourism services and agricultural tourism

development areas with evidence from Iran and Poland (Mahmoodi *et al.*, 2022), Italy and Uzbekistan (Matyakubov *et al.*, 2022). There are also studies identifying and classifying the characteristics of services preferred by agricultural tourism clients to form appropriate popular tourist products (Vélez Arenas *et al.*, 2022). As for the safety of tourists in agricultural tourism, then the bulk of work is currently related to the COVID-19 pandemic and measures to prevent the spread of this virus. Therewith, researchers conclude that agricultural tourism farms are relatively safe due to the low concentration of visitors, the remoteness of destinations from crowded places, unity with nature, etc. (Zawadka *et al.*, 2022). A considerable contribution to the regulation of the safety of rendering services of rural green tourism (rural hospitality) in Ukraine in the corona- and post-coronavirus period was made by Ukrainian specialists, having developed methodological recommendations (protocol) for the provision of services of rural green tourism (rural hospitality) in the corona- and post-coronavirus period (Vasylyev *et al.*, 2020).

At the same time, the issue of safety of visitors to rural estates in the context of rural hospitality activities stays virtually open today, except for occasional norms of promising regulations. This encourages the authors of this study to identify the prospects for statutory regulation of the safety of consumers of rural hospitality services through the formulation of the main areas for its improvement. Achieving this purpose of the study involves the following tasks: to analyse the current and promising legislation on the safety of tourism and rural hospitality, scientific and special sources on ways to ensure the safety of visitors to rural estates; to formulate the concept of the safety of rural hospitality; to develop proposals for improving the legal regulation of the safety of rural hospitality services in Ukraine.

Materials and Methods

The methodological framework of this study included such methods of scientific cognition as dialectical, system-structural, formal logical, system analysis, as well as a special formal legal method. The use of the dialectical method allowed clarifying the state of legal regulation of security in the field of rural hospitality, including trends in the development of relevant legislation concerning social and legal factors. The formal logical method was widely used in the study, which allowed the authors of the study to clarify the meaning of the term “safety of rural hospitality” and distinguish it from the related term “safety in tourism”. The same method of scientific cognition contributed to the definition of security in rural hospitality in a broad and narrow sense, as well as to the identification of such types of security as external and internal security in rural hospitality. The study of scientific and special sources on the areas of legal regulation of security in rural hospitality was based

on the use of the method of system analysis. The same method of scientific cognition was used as the basis for determining the shortcomings of the current legislation in the field of tourism safety and promising legislation in the field of rural hospitality safety. The formal legal method helped clarify the content of legal norms in the field under study and develop proposals for its improvement of the legal field.

Considering the specifics of the study, its regulatory framework included acts of various branch affiliation. These are legislative acts governing activities in the tourism sector. The Law of Ukraine "On Tourism" (1995) as a basic regulation that currently governs the principal issues of safety in tourism, and sub-legislative acts adopted for its implementation: the Order of the Ministry of Education and Science of Ukraine "On Approval of Regulations Governing the Procedure for Organizing Tourist and Local History Work" (2014), specifically its appendices, such as Instructions for organizing and conducting tourist sports trips with schoolchildren and students, Instructions for organizing and conducting excursions and trips with schoolchildren and students, and Regulations on tourist route and qualification commissions of educational institutions; Order of the Cabinet of Ministers of Ukraine "On the procedure for conducting search and rescue operations at tourist sites" (2012). To determine promising areas for improving security in tourism, the strategy for the development of tourism and resorts for the period up to 2026 was analysed (Order of the Cabinet of Ministers of Ukraine "On the Approval of the Strategy...", 2017). The Law of Ukraine "On Insurance" (1996) and the Civil Code of Ukraine (2003) were also used in the study in terms of regulating the issue of tourist insurance and relations on compensation for damage caused to the life, health, and property of guests of rural estates. When formulating the proposal for the development of the Exemplary Safety Instructions for the Involvement of Guests of Rural Estates in Agricultural Work and the content of this document, the prescriptions of such acts of labour legislation as the List of Works with Increased Danger (Order of the State Committee of Ukraine on Labour Safety Supervision "List of Works...", 2005), List of Heavy Work and Work with Harmful and Dangerous Working Conditions, Where the Labour of Minors is Prohibited (Order of the Ministry of Health of Ukraine "On the Approval...", 1994), Rules of Labour Safety in Agricultural Production (Order of the Ministry of Social Policy of Ukraine "On the Approval...", 2018), Collection of Exemplary Instructions on Labour Safety for Workers in Crop Production (Order of the Ministry of Agro-Industrial Complex of Ukraine "On the Approval...", 1999) were used. Part of the prospective legislation in this paper is represented by the draft Laws of Ukraine "On Rural and Rural Green Tourism" (2021) and "On Stimulating the Development of Rural Hospitality in Ukraine" (Borodina, 2020).

Results and Discussion

As noted above, the terms "safety of rural hospitality" or "safety of visitors to a rural estate" have not been defined in modern scientific doctrine and legislation. However, the term "tourism safety" is already well-established. Given the importance of the terminology for legal science, it is worth starting research by defining the term "tourism safety".

In the legal doctrine, tourism safety is proposed to be considered as a comprehensive system of measures (administrative, legal, organizational, socio-economic). The area of these measures is determined by 1) protection of the constitutional rights of subjects of tourist activity during tourist trips; 2) prompt identification, prevention, and elimination of both real and possible threats to national interests in the tourism sector of internal and external nature; 3) creation of safe living conditions in the provision and consumption of tourist services (Toryanyk & Dzhyndzhoian, 2018).

Some comments can be made on this approach. Firstly, according to the authors of this study, it is impractical to narrow the area of tourism safety measures exclusively to the protection of constitutional rights, since the rights of tourism entities are not limited to those declared in the Constitution of Ukraine. And secondly, it is controversial to use the term "protection" proceeding from the following. In legal science, there has long been a discussion about the differentiation or identification of such two concepts as "protection" and "security". The authors of this paper join the well-founded conclusions of S. Bulavina and D. Davydova (2017), who prove that "security" is understood as guaranteeing the grounds for acquiring the rights and legitimate interests of persons, while "protection" is expressed through active actions aimed at restoring the right that was violated. That is, security exists, as it were, constantly, while protection is applied after the commission of an offence. Defining tourism safety solely through the protection of rights, according to the authors of this study, unnecessarily narrows this category. It would be more expedient to use the terminological construction "security and protection of rights".

In contrast to the doctrinal definition, the legal definition of tourism safety, prescribed in Part 1 of Article 13 of the Law of Ukraine "On Tourism" (1995), is more successful. According to the mentioned legal norm, tourism safety is considered as "a set of factors that characterize the social, economic, legal, and other state of ensuring the rights and legitimate interests of citizens, legal entities, and the state in the field of tourism" (Law of Ukraine "On Tourism", 1995). According to the authors of the present study, this refers to tourism safety in a broad sense, which covers the interests of not only tourists, but also other subjects: the state, local governments, tourist operators, etc. The essence of tourist safety is covered in Part 3 of Article 13 of the Law of Ukraine "On Tourism" (1995), where the

duties of tourist entities are concentrated. This refers to tourism safety in a narrow sense: in relation to consumers of tourist services (tourists). According to the above-mentioned norm, the duties of tourism entities include informing tourists about potential hazards and risks during travel; providing information about existing preventive measures, namely sanitary and epidemiological ones; organizing places for rendering tourist services according to the current safety requirements; special security measures in the rendering of tourist services according to types of tourism with increased risk; compliance with the requirements for the qualification of tourist support specialists; providing tourists with equipment and inventory that meet the established requirements; organizing prompt aid to victims; informing state authorities according to the established procedure about emergencies that have arisen upon rendering tourist services. Furthermore, Part 4 of Article 13 of the Law of Ukraine "On Tourism" (1995), among the duties of persons engaged in tourism activities, prescribes compliance with environmental requirements, requirements for the protection of historical and cultural heritage, compensation for damage caused to the environment and socio-cultural environment.

As follows from the above, tourism safety is a complex concept. And it is worth agreeing with the existence of separate forms of its manifestation. For instance, M.Ya. Vashchyshyn (2014) identifies three principal forms of tourism safety: 1) personal (physical safety); 2) property safety; 3) external safety.

The legislation on tourism governs safety issues in this area at a fairly prominent level. Foremost, it is an effective mechanism for insurance of risks related to the implementation of tourist activities and consumption of tourist services (Article 16 of the Law of Ukraine "On Tourism" (1995), Law of Ukraine "On Insurance" (1996), etc.); settlement of the issue of financial support of the responsibility of the tour operator and travel agent (Article 15 of the Law of Ukraine "On Tourism" (1995)); establishment of safety rules for the organization of tourism and local history work (Order of the Ministry of Education and Science of Ukraine "On the Approval of Normative...", 2014); normalization of the issue of conducting search and rescue operations at the objects of tourist visits (Order of the Ministry of Emergencies of Ukraine "On the Approval...", 2012). Finally, clear rules of responsibility for violations of legislation in the field of tourism are stipulated (Chapter VI of the Law of Ukraine "On Tourism" (1995)) and requirements for the form, content, and procedure of concluding a contract on tourist services (Article 20 of the Law of Ukraine "On Tourism" (1995)).

In addition, the safety of tourists is reflected as a separate area of implementation of the Strategy for the Development of Tourism and Resorts for the period until 2026 (Order of the Cabinet of Ministers of Ukraine "On the Approval of the Strategy...", 2017). To

improve the quality of tourist services rendered, the Strategy makes provision for organizational measures for emergency aid to injured tourists (during travel or in case of an emergency); information activities (including the operation of a hotline for tourists' appeals and complaints, information support, calling for help); measures for monitoring emergency events in tourism; measures to increase the responsibility of entities involved in the tourism sector to tourists – consumers of tourism services (Order of the Cabinet of Ministers of Ukraine "On the Approval of the Strategy...", 2017).

A radically different situation is observed in the regulation of relations to ensure the safety of rural hospitality. The only available draft of the Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" (Borodina, 2020) proposes a rather controversial option for the distribution of responsibility between the provider of rural hospitality services and the consumer of such services. Thus, Part 2 of Article 3 of the draft law makes provision for the "principle of complicity and trust", which prescribes guaranteeing the owner of a rural estate compliance with the agreed parameters of services and coordinating these parameters by guests. Additionally, attention is focused on the fact that certification and control of these services is not carried out. Under such conditions, it would be logical to consolidate the agreements reached between the farmer and the guests of the rural estate in the rural hospitality services agreement. However, in the draft Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" (Borodina, 2020), Article 6 establishes a dispositive approach to concluding such an agreement, giving the parties a) freedom to choose the oral or written form of the transaction; b) the possibility to independently regulate its content, specifically its substantial terms and conditions. In the practical implementation of these provisions, difficulties may arise in case of disputes and the need for the parties to prove the agreed terms, quality characteristics of the services rendered/consumed, etc.

For the objectivity of the study, the authors of this paper consider it necessary to turn to the most relevant areas of rural hospitality – agricultural tourism, rural green tourism.

Researchers distinguish two levels of safety factors in agricultural tourism. External includes the general political situation, the ecological state of the area, the criminal situation, and the socio-economic conditions of doing business. The owner of the farmstead cannot directly influence this level. In contrast, the internal level of safety directly depends on the organization of such activities by the owner of the farmstead, since it includes the organization of safe accommodation for tourists, the quality of food, compliance with sanitary and hygienic requirements, fire safety rules, electrical safety (Duga, 2016). This gradation can also be fully applied to the safety of rural hospitality.

As for the statutory regulation of the safety of consumers of rural green tourism/agricultural tourism/rural tourism services, the situation is as follows. One of the latest drafts of the Law of Ukraine "On Rural and Rural Green Tourism" (2021), registered in the Verkhovna Rada, establishes the need to be guided by the norms of the Law of Ukraine "On Tourism" (1995) when defining general provisions on safety in rural and rural green tourism; financial support of rural tourism service providers; insurance and medical care for tourists in rural and rural green tourism. Additionally, Part 2 of Article 10 of the draft Law of Ukraine "On Rural and Rural Green Tourism" (2021) establishes the obligations of tourism entities in the field of rural and rural green tourism, due to the specific features of this activity. These include informing tourists about potential dangers, considering the specific features of the terrain, fauna, flora; familiarizing tourists with the rules of safe behaviour on the route, during rest, during the night; supervising the preparation of tourists for events organized in the field of rural green tourism; familiarizing tourists with the rules of fire safety, first aid. Finally, the mentioned norm directly refers to the duties of the subjects of tourist activity that provide rural green tourism services: a) warning about possible dangers that may occur on the territory of a private farm in case of accommodation of tourists on this farm; b) direct prohibition of contact of tourists with animals, birds, which may be dangerous for them (Draft Law of Ukraine "On Rural...", 2021). Accordingly, the draft law under study combines the general requirements for the safety of tourists in rural and rural green tourism with special requirements.

Projecting the above on the activities of rural hospitality, the authors of this study see possible subsidiary application of certain norms of tourism legislation when regulating relations in the field of safety of visitors to rural hospitality. The main thing that can be resolved in this way is external safety. All the measures listed in Article 13 of the Law of Ukraine "On Tourism" (1995) are also expedient and applicable in rural hospitality. These are, as it were, "general principles of legal regulation of security in rural hospitality".

As for internal security in rural hospitality, the authors of the present study consider it correct to govern it in a special regulation – the promising law of Ukraine "On Rural Hospitality". It should prescribe requirements for the legal registration of relations between the farmer (provider of rural hospitality services) and visitors/guests of rural estates (consumers of rural hospitality services). It is also proposed to establish in the specified regulation the obligation to conclude a written rural hospitality services agreement, which allows registering the agreements of the parties regarding the scope, quality and safety of services, responsibilities of the parties, etc. It is proposed to determine the substantial terms and conditions of the rural hospitality

services agreement as follows: the period of stay of the guests in the rural estate, indicating the start and end dates of the provision of rural hospitality services; information about the location of the rural estate, living conditions; types and methods of food provision; a program for the organization of leisure for guests of the village estate; the list of services included in the cost of the rural hospitality product; cost of services and payment procedure; payment forms. To help farmers, it is expedient for the Ministry of Agrarian Policy and Food of Ukraine to develop a Model rural hospitality services agreement.

According to the authors of the present study, special attention should be paid in the Law of Ukraine "On Rural Hospitality" to the regulation of the safe rendering of services within the framework of rural hospitality to involve guests of rural estates in performing agricultural work (caring for animals, poultry, growing vegetables, working in gardens, vineyards, harvesting, etc.). The first prerequisite for guests' involvement in such events must be their consent. The second is the mandatory informing of guests by the owner of the country estate about the content and features of such events. The third is to provide guests with full and truthful information about the dangerous and harmful factors present in the performance of such agricultural work. The fourth is that the owner of the country estate or another authorized person conducts a safety briefing for the guests before allowing them to perform the stipulated agricultural work.

To regulate these issues, the authors of the present study propose to develop an Exemplary Safety Instruction for Involving Guests of Rural Estates in Agricultural Work. This document should include the following information.

Firstly, a list of works in which it is forbidden under any circumstances to involve guests of rural estates, even with their consent. When determining such works, the basis should be the List of Works with Increased Danger (Order of the State Committee of Ukraine on Labour Safety Supervision "List of Works...", 2005) and the List of Heavy Works and Works with Harmful and Dangerous Working Conditions, which prohibits the labour of minors (Order of the Ministry of Health of Ukraine "On the Approval...", 1994). Specifically, such especially dangerous works include maintenance of breeding bulls, breeding boars, stallions, suckling sows, work at height, work with pesticides and agrochemicals.

Secondly, safety requirements when involving guests of rural estates in the care of farm animals, poultry, bees, etc. According to the authors of the present study, it is correct to take as a basis/use by analogy the safety rules established by the Rules of Labour Safety in Agricultural Production (Order of the Ministry of Social Policy of Ukraine "On the Approval...", 2018).

Thirdly, safety requirements when attracting guests of rural estates to perform work in crop production.

When formulating them, it is permissible to use exemplary instructions on labour safety for workers during work in crop production (Order of the Ministry of Agro-Industrial Complex of Ukraine "On the Approval...", 1999).

To duly organize the safe rendering of services to guests of rural estates concerning their involvement in agricultural work, the prospective Law of Ukraine "On Rural Hospitality" establishes the obligation of the owner of the rural estate as a service provider to provide guests with all the necessary equipment, tools, and bear responsibility for their good condition.

The authors of the present paper disagree with the approach set out in the draft Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" (Borodina, 2020) (Part 4 of Article 6) regarding the possibility of establishing in the rural hospitality services agreement other rules of liability for damage caused to the life, health, and property of consumers of such services in the process of their rendering, except for those prescribed by the Civil Code of Ukraine (Civil Code of Ukraine, 2003). Such freedom in the settlement of a crucial safety issue, according to the authors of the present study, can have adverse consequences in case of abuse or basic ignorance of the parties to the agreement with the legal order. Hence, it is proposed to determine the mandatory application of civil legislation in the regulation of a certain range of relations.

Conclusions

The analysis of current regulations in the field of tourism safety and promising legislation on rural hospitality, as well as generalization of the achievements of legal science, allowed the authors of the present study to formulate conclusions as follows.

The security of rural hospitality is a category that can be considered in a broad and narrow sense. In a broad sense, this concept is proposed to be defined as a set of legal, organizational, socio-economic, and other

measures aimed at ensuring the rights and legitimate interests of individuals and the state in the field of rural hospitality. In a narrow sense, the authors of the present study propose to define the safety of rural hospitality as a comprehensive system of measures that ensure the security and protection of the rights and legitimate interests of subjects of rural hospitality and create a state in which there are no or minimized threats to their life and health.

When regulating relations of the external level of safety in rural hospitality, it is advisable to subsidize the application of the norms of tourism legislation.

Internal safety in rural hospitality should be regulated by the norms of a special regulation (law). It is proposed to include in its content a provision on the form and content (substantial terms and conditions) of the rural hospitality services agreement; obligations of the owner of a rural estate as a service provider before entering into an agreement; mandatory provisions on the procedure for resolving issues of compensation for damage caused to the life, health, and property of guests of a rural estate caused upon rendering relevant services. It is advisable to develop a Model rural hospitality services agreement.

To standardize the safe rendering of services within rural hospitality involving guests of rural estates to perform agricultural work, it is proposed to develop a Model Safety Instruction for Involving Guests of Rural Estates in Agricultural Work.

Further research should be aimed at formulating the content of the proposed documents, developing mechanisms for raising awareness of the owners of rural estates regarding the safety of services that they can render, and their regulatory consolidation.

The results obtained can be used in the development of regulations on safety of rural hospitality services, as well as used in theoretical studies covering the issues of legal regulation of rural hospitality.

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Сільська гостинність: проблеми правового регулювання безпеки відвідувачів

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Анотація

Статтю присвячено дослідженню проблем правового регулювання безпеки відвідувачів – гостей сільських садиб під час надання їм послуг сільської гостинності. Актуальність роботи зумовлено нагальною потребою в розробці спеціального законодавства, яке б відобразило специфіку такого нового для України напрямку диверсифікації сільськогосподарської діяльності, як сільська гостинність, зокрема одного з визначальних для розвитку цієї сфери аспектів – безпеки гостей сільських садиб. Метою дослідження є характеристика стану правового забезпечення окресленої сфери та формулювання авторських пропозицій щодо удосконалення правового регулювання безпеки відвідувачів/гостей сільських садиб. Методологічну основу наукового дослідження склав комплекс загальнонаукових та спеціальних юридичних методів наукового пізнання, а саме: діалектичний, системно-структурний, формально-логічний, метод системного аналізу, формально-юридичний метод. У результаті проведеного дослідження сформульовано визначення поняття «безпека сільської гостинності» в широкому та вузькому значеннях, а також виокремлено зовнішній та внутрішній рівні безпеки в сільській гостинності. Обґрунтовано можливість застосовувати законодавство про туризм для врегулювання відносин зовнішньої безпеки в сільській гостинності. Доведено необхідність урегулювання відносин внутрішньої безпеки в сільській гостинності в спеціальному нормативному акті про сільську гостинність у формі закону. Запропоновано встановити в цьому перспективному нормативному акті імперативне правило щодо укладання договору про надання послуг сільської гостинності в письмовій формі та визначено істотні умови такого договору. Висунуто пропозицію з розробки договору про надання послуг сільської гостинності. З метою упорядкування безпечного надання в межах сільської гостинності послуг із залучення гостей сільської садиби до виконання сільськогосподарських робіт запропоновано розробити інструкцію з безпеки під час залучення гостей сільських садиб до виконання сільськогосподарських робіт. Отримані висновки допоможуть у розробці законодавства про сільську гостинність, а також можуть бути використані в теоретичних та прикладних наукових дослідженнях, присвячених особливостям правового регулювання відносин у сфері сільської гостинності

Ключові слова: сільська садиба, гості сільської садиби, споживачі послуг сільської гостинності, послуга, безпека, небезпечний фактор, шкода, правове забезпечення



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Features of e-court regulation in Ukraine

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Abstract

The relevance of the subject under study is determined by the fact that five years ago in Ukraine, the transition to the electronic justice system began with the purpose of increasing the level of public trust in judicial bodies, speeding up the terms of consideration of cases and saving time. However, as of the end of 2022, the operation of electronic courts faced certain difficulties. The purpose of this study was a comprehensive regulatory analysis of the transition of the judicial system to the implementation of electronic legal proceedings. The methods used in this study included system-structural, comparative, comparative legal, formal legal. The results of the present study found that the process of launching electronic legal proceedings began in 2017 after the adoption of the Law of Ukraine "On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" and continues until now. It was found that in the conditions when the legal regime of martial law is in effect, the accession of all courts of Ukraine to the subsystem of the "Electronic court" would substantially speed up the consideration of cases and relieve the courts that were not under occupation. The paper substantiated the necessity of considering the practices of Estonia, which has one of the best automated judicial systems in the world. It was established that despite the perfect statutory regulation of electronic legal proceedings, it is also necessary to provide financial and technical support for courts to fully join such a subsystem. The materials of this study can be useful in investigating the disciplines "Judicial and Law Enforcement Agencies", "Problems of Judicial Proceedings in Ukraine", "Information Law", etc.

Keywords: electronic justice, remote justice, Unified judicial information and telecommunication system, martial law, judicial self-government

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Introduction

Current trends in the reform of the judicial system are certainly associated with redirecting the vector of improving the judiciary according to the ideology of reforms in Ukraine. The state of war in Ukraine has made certain adjustments in the administration of justice and in some way inhibits the process of fully launching the electronic court system.

The information technology revolution adjusts the forms and methods of doing business. The use of information and technical resources allows quickly and easily creating and implementing the necessary information, solving operational and monetary management tasks, which enables saving time on these processes. Admittedly, the advantages of the latest information and telecommunications technologies are the efficiency, comprehensiveness, and reliability of information necessary for making vital decisions. Therefore, the study of legal issues concerning the further implementation of the electronic justice system in Ukraine is of significant importance both for representatives of legal science and for ordinary citizens.

The impetus for the introduction of electronic justice in Ukraine became the amendments to the procedural codified laws of Ukraine related to the creation of the Unified Judicial Information and Telecommunication System (UJITS) (Law of Ukraine "On Amendments...", 2017). Launching such a system is a lengthy process and requires considerable financial and human resources. One of the modules of such a system is the electronic court, the first joining of which took place in 2021. Therefore, the relevance of the subject under study is determined by the need to identify further prospects for the functioning of the electronic court. Therefore, the purpose of this study was to establish the specific features of the legislative regulation of the gradual transition of the judicial system to the automated consideration of cases.

Considering the latest research and publications, it is possible to confirm the relevance of the subject under study and its interest for the scientific community. L.R. Serdiuk (2016) was one of the first researchers to recognize the need for the introduction of electronic justice and defined the main purpose of introducing such justice.

S. Stetsenko *et al.* (2019) in their study "E-Justice: European Standards and the State of Implementation in Ukraine" considered the features of the current state of legislative support for automated justice in the process of European integration and identified the role of European standards of electronic justice in the judicial system of Ukraine.

Worthy of attention is also the study by O.A. Tereshchenko (2020), who analysed the foreign practices of e-government through the lens of its application in Ukraine. Specifically, the researcher determined the need to introduce electronic applications for court proceedings, as well as the creation of an electronic index of legal offences of citizens.

The study by N. Kovalenko and I. Bernaziuk (2018) "Topical issues of financing electronic legal proceedings in Ukraine" identified the advantages of using an electronic court, including saving time because the exchange of documents is more reliable and prompter; providing swift access to the case materials; no need to certify copies of documents. Kovalenko and Bernaziuk concluded that the automated judicial system allows saving time on the production of hard copies of documents.

H.C. Boscheinen-Duursma and R. Khanyk-Pospolitak (2019) conducted a comparative legal analysis of the implementation of electronic justice in Ukraine and Austria. They concluded that when developing a regulation on the judicial system in Ukraine, it is necessary to consider such aspects as ensuring information security, protecting personal data, and expanding the elements of electronic justice that exist in Austria. And when implementing the electronic judicial system in Ukraine, one should focus on electronic communication.

In the study by S.O. Kravtsov *et al.* (2021) "Electronic justice as a modern trend", the authors identified the key advantages of the implementation of electronic justice in Ukraine. Among them, the researchers named the reduction of the monetary costs of the parties when preparing and reviewing documents in court; reduced number of cases of missing the statute of limitations; reduced terms of processing claims, etc.

One of the latest publications in the field under study is the paper by I.Y. Tatulych (2022), who analysed the impact of the introduction of the legal regime of martial law on the sphere of electronic legal proceedings in Ukraine.

The main objectives of the present study are to analyse the current state of providing the judicial system with opportunities for the implementation of electronic justice, namely to identify the main regulations governing the outlined topics; to determine the impact of the legal regime of martial law on the further implementation of the subsystem of the Unified Judicial Information and Telecommunications System – "e-Court" in Ukraine; to highlight the positive foreign practices of Estonia, which has one of the most effective judicial systems in the world, and to formulate prospects for the introduction of electronic justice in Ukraine.

Materials and Methods

When analysing promising opportunities for further development of the e-justice system, a set of general scientific and specifically legal methods was used. The comparative legal method was used to analyse the practices of Estonia in the processes of full-fledged launch of electronic judicial systems. The comparative method helped show the impact of the introduction of martial law on joining judicial bodies to the "e-Court" subsystem. The system-structural method was used to analyse the features of the electronic court as an integral part of the Unified Judicial Information and

Telecommunications System. The formal legal method allowed defining the term “electronic legal proceedings”. Using the systematization method, the conclusions of this study were formulated.

To clarify the regulatory bases that determine the activity of the electronic court, some regulations and sub-legislative acts were used, including the Constitution of Ukraine (1996), the Law of Ukraine “On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts” (2017), the Law of Ukraine “On Amending Part Seven of Article 147 of the Law of Ukraine “On the Judiciary and the Status of Judges” regarding the determination of territorial jurisdiction of court cases” (2022), Decision of the High Council of Justice “On approval of the Regulation on the Procedure for the Functioning of Individual Subsystems of the Unified Judicial Information and Telecommunication System” (2021) and others.

Results and discussion

Features of the current state of regulatory support for the judicial system

E-justice is a common phenomenon in the world practice. The very idea of electronic information dates to the beginning of the late 20th century, when it became popular and began to operate in countries such as Italy, Canada, the United States, Australia, Switzerland, and many others. Therefore, from the very beginning of e-justice (i.e., the 1980s), the UK government gradually introduced some of its elements, which allowed citizens to get used to and adapt to the innovations that contributed to society through great relief.

The strategic course of the Ukrainian state towards joining the European Union requires further development of the judicial system, which should be characterized by independence, fairness, transparency, and efficient functioning. To fulfil the aforementioned purpose, the following tasks are essential: 1) to strengthen guarantees of independence of judges and courts; 2) to consolidate the efforts of employees of the court apparatus and the judicial corps; 3) to harmonize Ukraine's legislation with the standards of the European community, etc. (Tereshchenko, 2020).

That is why, in October 2017, the main legislative body of Ukraine adopted a legislative act – the Law of Ukraine No. 2147 “On Amendments to the Economic Procedural Code, the Civil Procedural Code, the Code of Administrative Procedure of Ukraine and other legal acts” (2017), according to which Unified Judicial Information and Telecommunication System will be gradually introduced in Ukraine, which enables the exchange of electronic documents between all participants in the procedure and the court, as well as video broadcasting of sessions and participation in video conferences.

The implementation of the UJITS consists of the gradual launch of modules (subsystems), one of which

is the electronic court, or electronic justice. The Regulation on the Procedure for the functioning of individual subsystems of the Unified Judicial Information and Telecommunication System “e-Court Subsystem” (e-Court) defines that such a subsystem provides its users with the possibility of sending and creating automated procedural documents to judicial bodies, including judicial self-government bodies (Decision of the High Council of Justice “On the Approval...”, 2021).

The development of modern technologies has prompted many people to create an electronic signature. The opportunity to take part in a court session using an electronic signature is a positive step towards the introduction of the “e-Court” system. By creating an account in the system through registration, citizens, representatives of organizations and institutions can considerably reduce the time it takes to submit numerous documents related to the court procedure. In this system, a person registers with their digital signature, creates an account once; the system accordingly creates a personal account, using which all procedural documents are sent to the person's email address in electronic form. This system forms all the necessary documents, and when the judge puts their electronic digital signature, a copy is automatically sent to the Unified Register of Court Decisions and to the person who registered in the electronic court and is a party to the case (Tatulych, 2020).

According to the information published by the State Enterprise “Centre of Court Services”, in 2021, 55,183 new users were registered in the “e-Court” subsystem, of which 29,900 were registered after the launch of the subsystems (Electronic court and “e-Court” ..., 2021). Even though Ukraine lived in the conditions of coronavirus disease during 2020–2021, a considerable part of the courts was forced to switch to remote work. However, as statistics for the past year indicate, the judicial authorities are still not willing to join the implementation of electronic justice. This can be explained by the lack of technical capabilities for such accession because in this case, it is necessary to increase funding for the judicial system.

N. Kovalenko and I. Bernaziuk (2018) point out that the assessment of the adequacy of court funding does not always depend on formal consultation procedures or submission of judicial decisions by judicial bodies. Direct involvement of the courts has always been a necessity. Furthermore, upon surveying judges, many shortcomings were revealed: from the lack of necessary material resources (premises, furniture, office equipment, computer equipment, etc.) to the required number of qualified specialists, assistants, etc.

The impact of military actions on the territory of Ukraine on the implementation of judicial proceedings in general and electronic justice in particular

Difficulties in 2022 were also added in connection with the beginning of active hostilities on the territory of

Ukraine, which led to the introduction of the legal regime of martial law (Decree of the President of Ukraine "On the Introduction...", 2022). Under martial law, all state institutions switched to a special mode of operation, including the courts. According to Article 55 of the Constitution of Ukraine (1996), human and civil rights and freedoms are protected by the court. Article 56 states that in the conditions of the legal regime of martial law, the right of a person "to appeal to court cannot be restricted." Taking this into account, legislators and bodies of judicial self-government have an important task – to do everything possible for the effective administration of justice, considering the new realities of life in Ukraine.

For this purpose, in the first days of the war, the Verkhovna Rada of Ukraine adopted a regulation aimed at ensuring the administration of justice in conditions of war and martial law. According to this law, the Verkhovna Rada of Ukraine has determined the conditions for ensuring the smooth operation of the judiciary to exercise due justice. Thus, by a decision of the High Council of Justice, on the proposal of the Chairman of the Supreme Court of Ukraine, the territorial jurisdiction of court cases in courts that are or have been under temporary occupation or on the territory of which active hostilities were conducted can be changed (Law of Ukraine "On Amending Part 7...", 2022).

In addition, the judicial self-government body – the Council of Judges of Ukraine – issued recommendations on the work of courts under martial law in early March 2022. Specifically, this concerned the possibility of postponing the consideration of court cases for a certain time (except for urgent ones). Such innovations, admittedly, were connected with the fact that a substantial number of participants in the court procedure could be part of the Armed Forces of Ukraine, volunteer formations, territorial defence or under the real threat to health and life in certain territories of active hostilities (Press Service of the Council of Judges of Ukraine, 2022).

Thus, the jurisdiction of a certain number of courts, including those in the temporarily occupied regions, regions under de-occupation, or damaged by enemy shelling, was changed. Such a considerable factor as martial law and the conduct of active military operations on the territory of Ukraine certainly hinders further implementation of the "e-Court" subsystem. Most courts have no technical possibility to access subsystems. To solve this issue, it is necessary to attract more funding, which is not a priority in war conditions.

Foreign practices in implementing the electronic legal proceedings system

The next stage of this study lies in the consideration of positive foreign practices. According to H.L. Chyhyryna (2018), most European countries have successful indicators of the use of electronic legal proceedings. Estonia is one of the most successful countries in the field of e-justice. According to Z.M. Gadetska, it was the

successful practices of Estonia that became a key aspect for the adoption of amendments to the procedural codes in 2017, which concerned the introduction of electronic justice (Gadetska & Shtabrat, 2021).

O.A. Tereshchenko (2020), analysing the practices of Estonia, notes that back in 2005, the country's government introduced the development of a special e-file system. This system can simultaneously ensure the exchange of information between the information systems of all parties to the judicial procedure: prosecutor's office, courts, police, judicial supervision, lawyers, state service centres, and ordinary citizens. Such a system can substantially save time and money because data is entered only once, and all communication between the parties is online.

A year later, the "Court Information System" was put into operation, which made provision for the functioning of one information system for all. Such a system allows registering court cases, automatically distributing all cases among available judges. In addition, new classifiers, determined by the needs of judges, were introduced. Tereshchenko concludes that Estonia's e-justice system is one of the most effective in the world (Tereshchenko, 2020).

Hence, online governance is perfectly acceptable in a small state with a young population, reliable institutions and a need for technological upgrading. It is the Estonian example of the use of e-government that shows that development, age, and trust are important for the use of digital public services in Europe (Stephanie, 2020).

According to the information of the Ministry of Digital Transformation of Ukraine dated September 2, 2022, Ukraine and Estonia will improve, develop, and expand cooperation on digital transformation. One of the steps of said cooperation will be the creation of an application in Estonia similar to the Ukrainian application "Diia". Specifically, the Ministry of Digital Transformation of Ukraine will consult and transfer its access to the launch and content of the digital application (Ministry of Digital Transformation of Ukraine, 2022).

Apart from European countries, electronic justice is also beginning to be introduced in rather poorly developed Asian countries. One of them is Indonesia. H.R. Helmi (2019), notes that e-court is the future of Indonesian courts and courts in other developed countries. If implemented, handling cases and court services will become easier, faster, cheaper, more transparent and accountable. The electronic court is designed to facilitate administration and justice. Each applicant/plaintiff or participant in the proceedings represented by a lawyer must arrive at the court. One can send an electronic claim registration from their office or home. This system contributes to the speed and low cost of litigation. In addition, the court fees are symbolic (i.e., small) because they are sent directly to the court's bank account, through electronic payment.

As the analysis of foreign practices indicates, the transition of case consideration within the scope of electronic justice is accompanied by the following positive aspects: 1) speed and time saving for case consideration; 2) transparency and increased level of trust in judicial bodies; 3) simplification of the procedure for submitting procedural and other documents, etc.

Conclusions

Therefore, it can be concluded that the rapid development of information and telecommunication systems, the wide use of Internet resources became the reason for changing the established worldview regarding the legal foundations of the existence of the judicial system in general. Electronic justice can be considered as a way of organizing state power using information networks.

The analysis of Ukrainian realities indicated that the turning point for the launch of electronic justice was the adoption of the Law of Ukraine "On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" in 2017, which for the first time legislatively consolidated the gradual transition of the judicial system to a Unified Judicial Information and Telecommunications System. Later, other sub-legislative acts were adopted,

including those that define the basis for providing an "e-Court".

Even though Ukraine currently finds itself in the legal regime of martial law, the consideration of court cases through the "e-Court" subsystem could substantially relieve the load and speed up the consideration of such cases, including without endangering the participants in the trial. However, according to the study, most Ukrainian courts have not yet joined such a subsystem due to technical and/or financial circumstances. The number of people connected to the subsystem over the past year is not indicative.

The present study draws attention to practices experience of Estonia as a relatively young and small state, and the prospects for further introduction of electronic legal proceedings in Ukraine. The importance of using Estonia's practices is justified by agreements between the central executive authorities of Ukraine and Estonia in the field of e-governance.

Thus, in summary, despite the perfect statutory regulation of electronic justice, it is also necessary to provide financial and technical support for courts to fully access such a subsystem.

Further research may include the analysis of interaction between the governments of Estonia and Ukraine during cooperation on digital transformation.

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Особливості нормативно-правового регулювання електронного суду в Україні

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Анотація

Актуальність обраної тематики зумовлено тим, що п'ять років тому в Україні розпочався процес переходу до системи електронного судочинства з метою підвищення рівня довіри населення до судових органів, пришвидшення строків розгляду справ та економії часу. Проте станом на кінець 2022 року функціонування електронних судів зіткнулося з певними труднощами. Мета роботи – комплексний нормативно-правовий аналіз процесу переходу судової системи до здійснення електронного судочинства. Методами дослідження стали: системно-структурний, компаративний, порівняльно-правовий, формально-юридичний. Результатами дослідження встановлено, що процес запуску електронного судочинства розпочався ще у 2017 році після ухвалення Закону України «Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів» і триває до цього часу. Визначено, що в умовах, коли діє правовий режим воєнного стану, приєднання всіх судів України до підсистеми «Електронного суду» дало б змогу суттєво пришвидшити розгляд справ та розвантажити суди, що не перебували в окупації. Аргументовано необхідність врахувати досвід Естонії, що має одну з найкращих автоматизованих судових систем світу. Установлено, що незважаючи на досконале нормативно-правове регулювання електронного судочинства, необхідним є також фінансове та технічне забезпечення судів для повноцінного приєднання до такої підсистеми. Матеріали цього дослідження можуть бути корисними під час вивчення дисциплін «Судові та правоохоронні органи», «Проблеми судочинства України», «Інформаційне право» тощо

Ключові слова: електронне судочинство, дистанційне правосуддя, Єдина судова інформаційно-телекомунікаційної система, воєнний стан, суддівське самоврядування



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Activities of military administrations under martial law in Ukraine

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Abstract

The relevance of the subject under study is conditioned upon the fact that in Ukraine, during the period of the legal regime of martial law, special bodies of public power with the powers of a military management organization can be created. Such bodies are military administrations and civil-military administrations, whose separation of powers is a complex process that requires more research. The purpose of this study was the legal characterization of the activities of special bodies in the conditions of military threats in Ukraine and the formation of proposals for improving the legislation in the area under study. The methods employed for this study include comparative, system-structural, comparative legal, formal legal, and systematization. The results established that in the conditions of a full-scale invasion, supporting the proper level of activity of public administration bodies is a necessary component in the fight against the enemy that encroaches on the territorial integrity of the state. It was found that ordinary citizens often identify the activities of military administrations and military civil administrations, which have different powers. This paper argues the need to outline basic provisions in the Constitution of Ukraine regarding the organization of the activities of military administrations to harmonize the provisions of the Law of Ukraine "On the Legal Regime of Martial Law" with the provisions of the Constitution of Ukraine. The relevant practices of Israel and the United States of America were analysed. It was proposed, following the example of Israel, to introduce separate zones in Ukraine, considering the level of potential or existing military threat, and, depending on this, to give military administrations proper autonomy and powers. The materials of this study can be useful in studying the disciplines "Military law", "Municipal law", "Administrative law" since this study distinguishes the powers of military civil administrations and military administrations and provides examples of positive foreign practices in organizing the activities of public authorities in the context of military threats

Keywords: military aggression, local authorities, public administration, military-civil administrations, legal regime of martial law

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Introduction

At the end of February 2022, according to the Decree of the President of Ukraine, a legal regime of martial law was introduced throughout Ukraine in connection with the full-scale invasion of the Russian Federation (Decree of the President of Ukraine "On the Introduction...", 2022). Simultaneously with the introduction of martial law, pursuant to the Decree of the President of Ukraine No. 68/2022, twenty-five special bodies with military powers were created – regional military administrations and the Kyiv Military Administration based on the existing regional administrations and the Kyiv City State Administration. Furthermore, district military administrations were created at the district levels to replace the existing district state administrations. However, this does not mean the cessation of the activities of state authorities and local self-government bodies, which are defined by the Constitution of Ukraine and the laws of Ukraine (Decree of the President of Ukraine "On the Formation...", 2022).

Notably, even before the full-scale invasion on the territory of Ukraine, since 2014, military actions have been taking place within the Donetsk and Luhansk regions (the area of the Anti-Terrorist Operation and the Joint Forces Operation). Thus, within these areas, military civil administrations were established with a different legal status from military administrations.

The purpose of the present study was to analyse the activities of military administrations, created by the Decree of the President of Ukraine as a result of active offensive, military actions of the Russian Federation, to outline the differences between military-civil administration and military administration, to describe the foreign practices of military administrations with the possibility of implementing them in Ukraine.

To fulfil the outlined purpose, it was necessary to complete the following tasks: to analyse the relationship between the declared war and martial law and the need for the existence of military administrations; characterize the powers of the military administration, considering the amendments introduced in recent years to the Law of Ukraine "On the Legal Regime of Martial Law" (2015); to figure out the correlation between the military administration and the military-civil administration, to define their common and distinctive features; to describe the foreign practices of the military administration and provide recommendations and suggestions for improving the current legislation governing this sphere of public relations.

The analysis of the latest research and publications indicates the relevance of certain aspects of the activities of special bodies of state power and local self-government in the conditions of martial law for the scientific community. Separately, it is worth noting the studies of V.V. Dulger (2018; 2019), who investigated the question of the affiliation of military administrations to security and defence bodies of Ukraine. Furthermore, Dulger's

classification of measures of the legal regime of martial law deserves attention.

It is also necessary to consider the study of D.O. Kuzmenko (2020), who covered the features of the exercise of state power in frontline zones, namely the interaction of military civil administrations with state authorities and local self-government. The researcher also analysed the positive foreign practices of organizing the activities of state authorities in the context of military threats.

In her thesis "Administrative legal status of military-civil administrations", V.I. Shevchenko (2019) carried out a legal analysis of military-civil administrations within the Donetsk and Luhansk regions. Shevchenko also addressed the structural modernization of state authorities and local self-government in areas of potential danger, for their effective organization and interaction. There is also a distinction between managerial functions in the activities of military-civil administrations, proceeding from the specifics of their powers.

O.Yu. Lialiuk (2022) performed a comparative analysis of military and military-civil administrations in the current conditions. The author concluded that the model of organization of modern territorial power should make provision for uniform approaches to the formation of military, including military-civil, administrations in all administrative-territorial units of a particular territory.

In his study "Features of the activities of military administrations in the conditions of martial law", V. Bortniak (2022) analysed the powers of military civil administrations according to the provisions of the legislation on the legal regime of martial law and on local self-government.

This is the first study to analyse the activities of newly created military administrations, identify shortcomings in the statutory regulation of the activities of such administrations, and propose ways to eliminate these shortcomings.

Materials and Methods

Within the framework of this study, a complex of general scientific and special legal methods was used. Thus, the comparative method was used to analyse the relationship between the introduction of martial law and the need for the existence of specific military bodies. The system-structural method was used to analyse the principal regulations and sub-legislative acts defining the activities of military administrations in Ukraine. The comparative legal method was used to identify the common and distinctive features in the legal status of the military administration and the military-civil administration, as well as to analyse the positive foreign practices of the existence of special bodies in the conditions of military conflicts. The formal legal method allowed defining the concept of the legal status of military

administrations in Ukraine. The systematization method was used to formulate proposals for regulatory support for the activities of military administrations.

When analysing the key aspects of the activities of military administrations created by the Decree of the President of Ukraine, some regulations and sub-legislative acts were used. Specifically: the Constitution of Ukraine (1996); the Law of Ukraine "On the Legal Regime of Martial Law" (2015), the Law of Ukraine "On the Defence of Ukraine" (1991), the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" (2022), the Decree of the President of Ukraine "On the Formation of Military Administrations" (2022).

Results and Discussion

The relationship between war and martial law and the need to create military administrations

At the beginning of the 21st century, one of the manifestations of the new world order was the gradual transformation of such a socio-political phenomenon as war. The key signs of war can be a transformed set of means to ensure the political goals of war, including non-military means and means of armed struggle; an increased list of subjects of struggle (not only state formations take part, but also other paramilitary or terrorist formations); an increase in the time frame for purely armed struggle, etc. To date, the largest military conflict is taking place in Ukraine, the consequences of which are spreading to the entire world (Kopytko *et al.*, 2022b).

War is a process aimed at resolving state, religious, economic, as well as socio-political and ideological conflicts (contradictions) between nations, state entities, peoples and social groups through armed violence. The war causes changes in all spheres of social life universally: political, economic, social, spiritual, since they are fundamentally restructured into a military system. This happened to Ukraine as a result of a full-scale invasion of the Russian Federation (Kopytko *et al.*, 2022a).

A declaration of war is usually accompanied by the following essential signs:

- 1) severance of any consular and diplomatic, economic and cultural-economic or other relations between states;
- 2) cancellation of any peacetime treaties and agreements, except for those regulating the conduct of war or concluded specifically in case of war;
- 3) introduction of a special legal regime that may have signs of partial restriction of rights and freedoms; the transformation of the entire political system, which begins to perform some specific functions caused by the war and aimed at victory;
- 4) waging war in a specific area (land, sea, or air), called a theatre of war or theatre of military actions, that has the potential to develop hostile activities (Pankevych & Slovka, 2020).

Although it is worth noting that the neighbouring state has not formally declared war on Ukraine, the

actions of the Russian Federation and the above-mentioned signs of war fully confirm that there is a war in Ukraine. It should be recalled that for the first time since the independence of Ukraine, martial law was introduced in November 2018 at an extraordinary meeting of the Verkhovna Rada of Ukraine. The introduction of such a legal regime became necessary in connection with the aggression of the Russian Federation in the Kerch Strait. Specifically, back then martial law was introduced only in certain territories bordering the Russian Federation and regions of Moldova not controlled by the government of the country (namely in Chernihiv, Kherson, Kharkiv, Sumy, Odesa, Mykolaiv, Luhansk, Zaporizhzhia, Donetsk, Vinnytsia regions, and internal waters of the Azov-Kerch water area). The aggression of the Russian Federation forced the then authorities to take such a necessary step to preserve the state sovereignty, territorial integrity, and independence of Ukraine. Martial law was imposed only for a month, although the armed aggression of the Russian Federation continues to this day.

As for the essence of martial law, there is a special legislative act – the Law of Ukraine "On the Legal Regime of Martial Law" (2015) (Law No. 389-VIII). According to Article 1 of Law No. 389-VIII, martial law is recognized as "a special legal regime introduced in Ukraine or in some of its localities in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and stipulates granting the relevant state authorities, military command, military administrations, and local self-government bodies the powers necessary to prevent the threat, repel armed aggression, and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as temporary, conditioned by the threat, restriction of constitutional rights and freedoms of human and citizen and rights and legitimate interests of legal entities with an indication of the validity period of such restrictions". Apart from Law No. 389-VIII, the legal grounds for the introduction of martial law are determined by the provisions of the Law of Ukraine "On Defence of Ukraine" (1991). This Law also defines martial law identically to the definition outlined in Law No. 389-VIII, and therefore there is no need for its separate indication.

Analysing the legislative definition of the concept of martial law, it is possible to distinguish the following features: it is a special type of legal regime; it may prescribe restrictions on the rights and freedoms of a human and a citizen regulated by the Constitution of Ukraine; it can be established on the entire territory of Ukraine or be limited to its individual localities; it has a clearly outlined purpose – to eliminate the danger to the state independence of Ukraine, to repel armed aggression; it may stipulate the granting of special powers and jurisdiction to state authorities, local self-government bodies, which are necessary for such bodies

to avert the threat and repulse armed aggression; the introduction of such a state does not mean a declaration of war, since it is a response to armed aggression and an existing external threat to sovereignty and territorial integrity; it makes provision for the creation of special military bodies with defined powers – military administrations, etc.

Considering the fact that one of the signs of martial law is the possibility of transferring special powers for armed resistance, there is a need for special bodies of state power and local self-government.

Thus, the Decree of the President of Ukraine No. 68/2022, which was mentioned at the beginning of this paper, created such temporary authorities – military administrations.

Analysis of Article 4 of Law No. 389-VIII indicates that to ensure the validity of the norms of the Constitution of Ukraine and maintain law and order in those territories where the legal regime of martial law has been introduced, special temporary state structures – military administrations – may be formed.

Therewith, the Constitution of Ukraine (1996) does not consolidate the activities of such bodies of emergency jurisdiction, grounds, and procedure for their formation. Although Ukraine has been living in a military conflict with a neighbouring state for eight years, the definition of such state authorities with elements of a military management organization should be reflected in the Constitution of Ukraine.

Article 15 of Law No. 389-VIII contains an inexhaustible list of powers of military administrations of localities and district regional military administrations. The key powers are as follows: the introduction and implementation of the measures of the legal regime of martial law; drafting and approving the local budget or introducing changes to it; ensuring rational and effective use of financial, natural, and labour resources; aid to owners of houses (apartments) affected by military operations in the form of reconstruction of such housing; facilitating the organization of conscription of citizens for non-military or temporary military service, including mobilization; organization of activities related to civil protection and mobilization training; facilitating the activities of judicial bodies, prosecutor's offices, the National Police, etc.

Therefore, the above-mentioned powers of military administrations can be divided into those related to the introduction of a legal regime of martial law and those unrelated to such a regime and closely intertwined with the powers of the relevant local, district, or regional council. Considering the current conditions in which military administrations operate, it can be reasonably stated that in territories where there are no military operations and which are not front-line, military administrations have powers only directly related to the imposed martial law (e.g., the Kyiv Military Administration).

Comparative legal analysis of the activities of military-civil and military administrations

Within the framework of the present study, it is also necessary to point out the possibility of creating military-civil administrations, which are often identified with military administrations. The existence of the first military-civil administrations was connected with the need to organize the activities of local authorities in the territory where the Anti-Terrorist Operation was carried out. Such bodies played the role of chief advisers to the authorities and performed the following official and combat tasks: 1) establishing and maintaining communication with the civilian population at the appropriate level, promoting cooperation, harmonization, exchange of information, ensuring integrated planning and conduct of operations; 2) defining and explaining military goals, tasks, and concepts of operations (to ensure proper security and control of operations with classified materials); 3) promoting parallel and, where possible, integrated planning of further operations between the military forces and the friendly civilian population (where the involvement of community groups in planning is possible); 4) integration with other types of personnel in all aspects of activities; 5) continuous assessment of the operational environment, including local needs and unequal opportunities for problem-solving; 6) act towards timely and uninterrupted transfer of responsibilities to the relevant state bodies (Komisarov *et al.*, 2018).

However, the legal regulation of such special state bodies is different. Thus, the validity of military-civil administrations is regulated pursuant to the provisions of the Law of Ukraine "On Military-civil Administrations" (2015), whereas military administrations are governed by the Law "On the Legal Regime of Martial Law" (2015). Considering the activities of such special bodies in general, it is possible to determine that in case of the creation of a military-civil administration, such a body takes over all the powers of a local self-government body, which in turn entails the termination of the activities of such local self-government body, whereas the military administration can exist alongside the local self-government body. Furthermore, military administrations would differ in the purpose of their creation. Specifically, military administrations aim to ensure compliance with the Constitution of Ukraine and the Laws of Ukraine, to implement the measures of the legal regime of martial law, protect the rights and legitimate interests of the population. Military-civil administrations are created to exercise the powers of local state authorities and local self-government bodies in areas of active military aggression.

Foreign practices of military administrations and modern organization of military administrations in Ukraine

For Ukrainian legislators, it is important to consider foreign practices in regulating a certain sphere of public

relations and the possibility of adopting their positive aspects. Practices in organizing the activities of military administrations is no exception.

For the first time, the activities of the military administration were introduced in Israel back in the 1940s. Thus, in 1948-1949, the activities of military administrations were characterized by the fact that they supervised the movement of Arabs; increased the number of control bodies in the territories where the majority of the Arab population was stationed (including the Northern Negev, Galilee, and the small triangle); in cases of active armed aggression from neighbouring states, they prevented attempts to activate the local Arab population to promote the spread of armed aggression (a crucial function in Ukrainian realities). Furthermore, military administrations had the power to prevent the creation of Arab nationalist organizations whose ideological appeals were anti-Israeli, including the ability to respond quickly to crimes committed against the state (Neuberger, 1998).

The military administration comprises three districts: Southern, Northern, and Central. At the head of each district, a military governor was appointed, who also had a wide scope of powers. Such a governor was guided by a special legislative act – the Code on Defence. The governor's key powers were as follows: imposition of administrative or house arrest measures on any resident within their administrative-territorial unit; liquidation of a certain public organization or prevention of its creation; measures to restrict freedom of movement; deportation measures; decision-making on property confiscation or house demolition; establishment or cancellation of the curfew, introduction of measures to restrict employment, etc. (Kuzmenko, 2020).

Even though Israel still lives in a rather turbulent situation, it is precisely this administrative system that has existed in the state for decades. The division of problem territories into three zones with the corresponding level of autonomy and distribution of powers can be a positive practice for Ukraine.

In addition, within the scope of the present study, it should be mentioned that the United States of America was also faced with the issue of creating military administrations on Japanese territories. Specifically, in 1945, based on the results of military operations, the state authorities of the United States of America took some measures aimed at developing a new system of administration in Okinawa. Thus, the military administration was headed by mayors who had assistants. Such positions were elected and formed from among local residents. The first elections to form a local branch of government were held in 1945. At that time, Okinawa was divided into sixteen districts. Notably, the policy of the United States of America was generally characterized as positive towards local residents. After all, building a new administrative management system

by actively involving local residents has gained trust among Okinawans (Neuberger, 1998).

Consequently, the activities of military administrations were directly related to the local residents who inhabited the relevant territory.

Since in the 21st century, Ukraine is living in the conditions of military aggression of a neighbouring state, foreign practices are extremely limited for application. At the same time, the Ukrainian public administration bodies have an increased responsibility to organize a suitable level of management.

Conclusions

The organization of public power in Ukraine has different forms of manifestation depending on the region. The territorial organization of power can be considered as an organizational and functional characteristic of public institutions of the state, which reflects the correlation with the territory within which it operates. As it was found out and argued, military administrations have a special connection in the context of the introduction of a legal regime of martial law – as specific authorities with elements of a military management organization. Thus, military administrations have a complex legal nature, which is reflected in a special connection with 1) local authorities, which can partially transfer certain powers to the military administration; 2) citizens who inhabit the relevant administrative-territorial unit and to ensure whose rights, freedoms, and legitimate interests they are created; 3) the higher bodies of state power, created to ensure the defensive capability to resist the enemy.

It was found that there are cases of identification of the legal status of military administrations and military-civil administrations, even though the Law of Ukraine "On the Legal Regime of Martial Law" governs the activities of military administrations, and military-civil administrations – by the Law of Ukraine "On Military-Civil Administrations". Furthermore, it was found out that such special authorities have different goals of creation.

The need to amend the Constitution of Ukraine is argued, since the fundamental law of Ukraine does not establish the basic principles of the activities of such specific bodies as military administrations and military-civil administrations. Thus, the Constitution of Ukraine should consolidate both the general principles of military cooperation and the particular institutional foundations of these bodies.

Considering the absence of military conflicts on the territory of states of the world in recent decades, except for some, the practices of Israel and the United States of America were analysed. Thus, a positive practice of organizing the activities of military administrations in Israel for Ukraine might be the introduction of separate zones in Ukraine, according to the level of

danger, and depending on this, provision of military administrations with the proper level of autonomy and powers.

Further research may involve the analysis of the activities of military administrations in the territories of

active combat operations or those that are under temporary occupation. After all, it is simply impossible to investigate their activities in the current conditions of warfare, and this issue should be re-addressed in the aftermath of hostilities.

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Особливості діяльності військових адміністрацій в умовах воєнного стану в Україні

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Анотація

Актуальність обраної проблематики зумовлено тим, що в Україні на період дії правового режиму воєнного стану можуть створюватися особливі органи публічної влади з повноваженнями військової організації управління. Такими органами є військові адміністрації та військово-цивільні адміністрації, розмежування повноважень яких – це складний процес, що потребує додаткового дослідження. Метою дослідження виступає правова характеристика діяльності особливих органів в умовах воєнних загроз в Україні та формування пропозицій щодо удосконалення законодавства в досліджуваній сфері. Методами дослідження стали компаративний, системно-структурний, порівняльно-правовий, формально-юридичний та метод систематизації. Результатами дослідження встановлено, що в умовах повномасштабного вторгнення підтримання належного рівня діяльності органів публічної адміністрації – необхідний компонент у боротьбі з ворогом, що посягає на територіальну цілісність держави. Визначено, що часто пересічні громадяни ототожнюють діяльність військових адміністрацій та військових цивільних адміністрацій, які мають різних обсяг повноважень. Аргументовано необхідність визначення в Конституції України базових положень щодо організації діяльності військових адміністрацій з метою узгодження положень Закону України «Про правовий режим воєнного стану» з нормами Основного Закону. Проаналізовано відповідний досвід Ізраїлю та Сполучених Штатів Америки. Запропоновано за прикладом Ізраїлю запровадити в Україні окремі зони, враховуючи рівень потенційної чи наявної військової загрози, і залежно від цього наділяти військові адміністрації належними автономією та повноваженнями. Матеріали цього дослідження можуть бути корисними під час вивчення дисциплін «Військове право», «Муніципальне право», «Адміністративне право», адже в дослідженні здійснено розмежування повноважень військових цивільних адміністрацій та військових адміністрацій, зокрема наведено приклади позитивного зарубіжного досвіду щодо організації діяльності органів публічної влади в умовах воєнних загроз

Ключові слова: військова агресія, органи місцевої влади, публічне управління, військово-цивільні адміністрації, правовий режим воєнного стану



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Problems of concluding an expert opinion based on the results of a forensic veterinary examination of a live animal and ways to solve them

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Abstract

Forensic veterinary examination is a new type of forensic examination that is actively developing in the forensic examination institutions of the Ministry of Justice of Ukraine. Since its theory and methodology are yet forming, there is a need to develop its terminology, methods, and means of conducting and formalizing research results. The purpose of this study was to single out the problematic issues of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal and to outline ways to solve them. The study employed various scientific methods, namely dialectical, methods of logic (formal legal, system-structural analysis, modelling, analysis, synthesis, induction, deduction), general cognitive methods (description, observation), special methods, the functions of which are performed by methods of lifetime clinical forensic veterinary diagnostics of animals. The present paper focuses on the fact that the specific feature of the introductory part of the conclusion of a forensic expert is that it indicates the object of examination – a live animal. A list of issues to be resolved by the authorized body or person who appointed the forensic veterinary examination was developed in this study. The structure of the investigative part of the forensic expert's opinion was covered and substantiated for the first time, which is based on a forensic veterinary examination of the subject animal based on the principle of analysing the state of individual body systems, including blood circulation, breathing, urination, sexual, nervous, and sensory. The description in the expert opinion of the results of the analysis of individual veterinary documents concerning the subject of proof was substantiated. It was shown that based on the results of the clinical forensic-veterinary examination of a live animal under expert examination, the forensic expert outlines the forensic-veterinary diagnosis, and in the section of the examination part of the opinion, which synthesizes the results, summarizes the obtained data. It is stated that the final part of the forensic expert opinion contains comprehensive, scientifically sound, consistently laid out, clear, specific, expressive, understandable answers to the questions raised, the list of which is indicated in the introductory part of the opinion. The present paper outlined the structure of appendices to the opinion of a forensic expert, which is most often photo illustrations of injuries found in an animal under examination. The solutions developed in this paper concerning the drafting of an expert's opinion based on the results of a forensic veterinary examination of a live animal are guaranteed to be reflected in the conduct and drafting of the results of forensic veterinary research

Keywords: forensic veterinary examination, forensic veterinary expert, subject animal, forensic expert activity, registration of the results of forensic veterinary examination

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Introduction

Forensic veterinary examination as a scientific field and an applied branch is a relatively new class of forensic examination not only in Ukraine (Kliuiev, 2019), but in many foreign countries (de Siqueira *et al.*, 2016; Rebollada-Merino *et al.*, 2020; Smith-Blackmore & Bethard, 2020) and occupies a prominent place in the system of expert research (Babinska *et al.*, 2018).

One of the objects of this class of forensic examinations is a live vertebrate (Barington & Jensen, 2013). The provision of Article 299 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2021) prescribes criminal liability for intentionally causing bodily harm to an animal as a result of its cruel treatment, which was once investigated by Sims *et al.* (2007) and which can lead to maiming (Yatsenko & Parilovsky, 2022a) or death (Finnie, 2014). Thus, when investigating offences related to establishing the cause of death of an animal, as well as determining the degree of severity and nature of bodily injuries, special veterinary knowledge is required, which is usually applied during forensic veterinary examination that is based on scientific and practical achievements of veterinary medicine (Stroud, 1998; Byard & Boardman, 2011; de Siqueira *et al.*, 2016) and is a source of evidence in legal proceedings (Mills, 2013; McDonough & McEwen, 2016).

Forensic veterinary examination was introduced into the system of state expert institutions relatively recently (in 2019, at the initiative of the National Scientific Centre "Ex. Prof. M.S. Bokarius Institute of Forensic Examinations"). However, the development of methods of forensic veterinary examination of various objects, methodological recommendations, rules for conducting the said forensic examination considering the specifics of the objects and active implementation of the specified developments into forensic activity (Yatsenko *et al.*, 2021a; Yatsenko *et al.*, 2021b). However, many issues are still unresolved, including the compilation of procedural expert documents, specifically an expert's opinion based on the results of a forensic veterinary examination of a live animal, considering the specific features of the algorithm for compiling the results obtained during its clinical forensic veterinary examination (Parry & Stoll, 2020).

Therefore, the analysis of the problems of concluding an expert opinion based on the results of a forensic veterinary examination of a live animal is an urgent issue from the standpoint of legal science and expert practice.

Drafting an expert's opinion on the results of a forensic examination based on special knowledge is an integral part of the legal principles of forensic expert activity in Ukraine. In part, the concept of a forensic expert opinion was investigated by Ukrainian scientists, namely: M.H. Shcherbakovskiy (2021) formulated a standard for the reliability of an expert opinion in criminal proceedings; O.M. Kliuiev and E.B. Simakova-Yefremian

(2021) developed doctrinal approaches to forensic examination in Ukraine; A.R. Vorobchak (2019) detailed and justified the concept of a forensic expert's opinion in a criminal trial, and also characterized the evolution of this procedural document as a source of evidence, covered the essence and provided the author's definition of the very term "expert opinion", characterized the structure and investigated the requirements for its content, singled out criteria for the classification of expert conclusions and characterized their types, established a system of procedural properties and provided their characteristics; H.M. Pylypenko (2013), H.S. Bidniak (2014); D.V. Davydova and O.O. Volobuieva (2015), G.V. Muliar and O.S. Hovpun (2018) covered the legal nature and argued the evidentiary value of the expert's opinion; Yu. Piliukov (2018) substantiated the procedural requirements for the expert opinion in criminal proceedings; I.P. Osypenko and V.V. Prorochenko (2020) showed the importance of the expert opinion in the pre-trial investigation; E.B. Simakova-Yefremian (2021) and O. Mieshkov (2021) identified problematic issues of using the expert opinion in criminal proceedings; M.P. Klymchuk and S.I. Marko (2011) proved the informational value of the expert opinion as a source of evidence in a criminal case; M. Hetmantsev (2018) covered the legal nature of the expert opinion; Yu.Yu. Yaroslav (2019) and V.Yu. Shepitko (2018) substantiated the evaluation of the expert opinion; B.V. Shabarovskyi (2019) argued ways to verify the expert opinion in the criminal procedure of Ukraine. This indicates the relevance of a comprehensive investigation of the issues concerning the conclusion of an expert opinion.

However, despite the multi-vector nature of scientific research on theoretical, methodological, and praxeological foundations, as well as the legal status of an expert's opinion, the scientific papers of these and other researchers do not solve the issue of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal and do not outline its solutions. Such a situation in legal science and forensic practice can lead to the presentation of the results of a forensic veterinary examination in the forensic expert's opinion in an incomplete, limited, and rather generalized manner. As a result, it can adversely affect the formation of a true picture of the facts and circumstances of an offence against animals among the investigation and court workers, as well as the establishment of the truth in the case, because the expert's opinion is a source of evidence in court proceedings.

Consequently, problematic and controversial issues, inconsistencies, and gaps in legislation that arise upon drafting an expert opinion, especially based on the results of a forensic veterinary examination, require their identification and integration into the theory and practice of forensic expert activity.

The purpose of this study was to single out the problematic issues of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal and to outline ways to solve them.

General provisions of the conclusion of a forensic expert opinion

The main sub-legislative regulatory document governing the conclusion of an expert opinion based on the results of forensic examinations of any kind, including forensic veterinary, is the "Instruction on the Appointment and Conduct of Forensic Examinations and Expert Investigations" (the Departmental Instruction) (Order of the Ministry of Justice of Ukraine, 1998), namely its section IV "Organization of examinations (investigations) and registration of their results", which contains requirements for the conclusion of an expert's opinion and describes the method of its implementation in Items 4.12-4.18.

The basis for conducting a forensic veterinary examination is a procedural document (a decision of an investigator or inquirer or a decision of an investigating judge or court, an appeal by a party to the case), drafted by an authorized person (body), or an agreement with a forensic veterinary expert or an expert institution concluded under a written request of an authorized person, pursuant to Item 1.8 of the Departmental Instruction. However, this Departmental instruction regulates the structure of the expert opinion for all types of forensic examinations, without considering the features inherent in each particular type of forensic examination, including forensic veterinary.

The opinion of the forensic expert(s), if a commission or complex forensic examination was conducted, is drafted on the form of the expert institution, pursuant to Item 4.15 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998).

According to Item 4.12 of the Departmental Instructions, the opinion of the court expert is drafted pursuant to paragraph 6 of Item 4.12 of the Departmental Instructions with the mandatory indication as follows:

- details (document name, date and number of drafting the conclusion, category of forensic veterinary examination (additional, repeated, commission, comprehensive);
- type of forensic examination (by branch of knowledge, in a particular case – it is forensic veterinary, pursuant to Item 1.2.10 of the Departmental Instruction);
- the case to which it is assigned (criminal, administrative offence case, civil, economic, administrative, etc., case number);
- an article of the law that prescribes the provision of a forensic expert opinion (if any).

E.g.: "EXPERT OPINION No. __ based on the results of the forensic veterinary examination, based on the materials of the pre-trial investigation, entered in the

Unified Register of Pre-Trial Investigations under No. __ dated __ (date). Drafted __ (date)."

The forensic expert's opinion based on the results of a forensic veterinary examination consists of three parts: an introductory one, which is marked "Introduction" in the expert's opinion, an investigative one – marked in the conclusion as "Investigation" and a final, or closing one, which is marked in the expert's opinion as "Conclusions".

Structure of the introductory part of the expert opinion

The first part of the expert's opinion is the "**Introduction**", which contains a formal statement of information, the source of which is a document on the appointment of a forensic veterinary examination or the involvement of a forensic expert, and a list of regulations and literature sources that were used by the forensic expert to substantiate their conclusion. However, this part should not contain any subjective judgments of a forensic expert.

The introductory part of the conclusion of a forensic veterinary expert reflects the following points:

- 1) the date of receipt of a document on the appointment of a forensic veterinary examination or the involvement of a forensic veterinary expert at the state expert institution;
- 2) the name of the expert institution and/or the name, surname, patronymic of the forensic veterinary expert;
- 3) the name and date of drafting the document on the appointment of a forensic veterinary examination, the name of the body and/or the position and surname of the person who appointed this examination or involved a forensic veterinary expert;

E.g.: "On __ (date), the National Scientific Centre "Ex. Prof. M.S. Bocarius Institute of Forensic Examinations" of the Ministry of Justice of Ukraine received from the Investigative Department of the B... District Police Department of the Head Department of the National Police in P... Oblast with the cover letter No. __ dated __ (date) a decision on the appointment of a forensic veterinary examination dated __ (date), issued by senior investigator of the Investigative Department of the B... District Police Department of the Head Department of the National Police in P... Oblast __ (title, name and surname of the investigator)."

- 4) the list of objects subject to examination and samples (if received). As a rule, this item of the expert opinion indicates information about the subject animal;

E.g.: "To conduct a forensic veterinary examination, the expert was provided with a dog named Barsyk."

- 5) the information about the provided materials, indicating their type, name, number of sheets in each individual provided document;

E.g.: "For the forensic veterinary examination, a special package No. __ and copies of documents were

provided: an illustrative table for the report of the inspection of the scene of the incident dated __(*date*) (on 2 sheets), a report of the N... District State Hospital of Veterinary Medicine (*address of the institution*) dated __(*date*) (on 1 sheet), report of inspection of the scene of the incident (on 1 sheet), X-ray images (on 4 X-ray films). Special package No. __ is made of polymer material, blue and white colours with a drawing of the emblem of the National Police of Ukraine. Sealed, the integrity of the packaging is intact. The special package has a printed and handwritten explanatory inscription."

6) the method of delivery and the state of packaging of the researched objects, indicating, when necessary, information about whether the method of packaging affected their preservation;

E.g.: "To conduct a forensic veterinary examination, the expert was provided with a dog named Barsyk; It was taken to the expert institution by road by police officers."

7) a record of the compliance of the materials and objects received by the expert institution (expert) with the materials specified in the procedural document on the appointment of a forensic expert (involvement of a forensic expert);

E.g.: "The objects provided for examination correspond to the list of objects specified in the investigator's decision dated __(*date*)."

8) the list of questions put to the decision of the forensic veterinary expert is quoted verbatim in the wording of the procedural document on the appointment of a forensic veterinary examination, putting them in quotation marks;

E.g. (non-exhaustive):

" – To what species and class does the animal provided for examination belong? Does it belong to vertebrates?

– What is the nature of injuries from a veterinary standpoint, and what is their localization?

– What is the mechanism of occurrence of bodily injuries in the animal provided for examination?

– What is the order and sequence of causing injuries detected in the animal?

– What is the statute of limitations for the occurrence of bodily injuries in an animal?

– What is the severity of each of the injuries found in the animal's body?"

The most comprehensive list of questions that can be asked by an authorized person in a decision on the appointment of a forensic veterinary examination of an animal is presented in another paper of the author of this study (Yatsenko, 2022).

If the question is not clearly formulated, but its meaning is clear to the forensic veterinary expert, then after citing the question in the wording in which it is stated in the procedural document on the appointment of a forensic veterinary examination or the involvement of a forensic veterinary expert, he or she can provide

relevant clarifications and restate the question in the wording that corresponds to the "Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies" (Order of the Ministry of Justice of Ukraine, 1998), pursuant to the requirements of paragraph 11 of Item 4.12. of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998). At the same time, the issues of forensic veterinary examination of a live animal in these documents require substantial amendments and systematization.

The forensic veterinary expert is entitled to group several questions for resolution and put them in a sequence that ensures the most appropriate order of investigation. If some of these issues were resolved during forensic examinations of diverse types, then information about these forensic examinations (expert institution, number and date of opinion) must be specified. Questions submitted to the forensic veterinary expert, which are beyond the expert's competence, must not be resolved, with a mandatory reasoning provided, which meets the requirements of paragraph 5, Item 2.2 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998).

9) the issues to be resolved by a forensic veterinary expert in the order of expert initiative, if such was considered;

E.g.: "Since the examination revealed facts that may be of importance for the objective investigation of criminal proceedings and are a logical continuation of the questions raised in the investigator's decision on the appointment of a forensic veterinary examination dated __(*date*), then pursuant to Item 4 of Art. 69 of the Criminal Procedural Code of Ukraine (Criminal Procedural Code of Ukraine, 2012) and paragraph 6 of Item 2.1 and paragraph 1 of Item 4.14 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998), as well as at the initiative of the forensic veterinary expert, the following questions were resolved additionally: 1) To which species and class does the animal provided for examination belong? Does it belong to vertebrates? 2) What injuries were found on the body of the subject animal?"

10) data on the forensic veterinary expert(s): the surname, first name, and patronymic, position, class of the forensic expert, scientific degree and academic title, education, educational degree, expert speciality, seniority of expert work, certificate of qualification of a forensic expert with date and issue number indicated, issued by whom and validity period;

E.g.: "The forensic veterinary examination is entrusted to a forensic expert of the 2nd qualification class, a leading researcher of the physical, chemical, biological, and veterinary research sector of the laboratory of physical, chemical, biological, and molecular genetic research at the National Research Centre "Ex. Prof.

M.S. Bokarius Institute of Forensic Examinations”, doctor of veterinary sciences, professor I.V. Yatsenko, who has a higher veterinary and legal education, the qualification of a forensic expert in speciality 18.1 “Veterinary research” (certificate No. __, issued by the Expert Qualification Commission of the Kharkiv Scientific Research Institute of Forensic Examinations of the Ministry of Justice of Ukraine __(*date*), valid until __(*date*). Seniority of expert work – since 2017.”

11) a record of a warning (awareness) of a forensic veterinary expert about criminal liability, according to the requirements of Article 70 and Part 2 of Article 102 of the Criminal Procedural Code of Ukraine (Criminal Procedural Code of Ukraine, 2012) for providing a knowingly false conclusion under Article 384 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2012) or for refusing to provide a conclusion under Article 385 of the same code;

E.g.: “Pursuant to the requirements of Article 70 and Part 2 of Article 102 of the Criminal Procedural Code of Ukraine, the expert is warned of responsibility for a knowingly false conclusion and refusal without valid reasons to fulfil the duties assigned to them under Article 384 and Article 385 of the Criminal Code of Ukraine __(*signature*) __(*initials and surname*).”

12) the information that the opinion has been prepared for submission to the court or attachment to the materials of criminal proceedings (in case of conducting a forensic veterinary examination based on a written request of a person that contains such information);

E.g.: “The opinion of the expert No. __ dated __(*date*) based on the results of the forensic veterinary examination was prepared for attachment to the materials of the criminal proceedings No. __.”

13) the date of sending the request of the forensic veterinary expert for the provision of additional materials, the date of receipt of additional materials or information on the consequences of the consideration of the request; circumstances that are essential for providing an expert’s opinion, with a mandatory indication of the source of their receipt;

E.g.: “__(*date*) __(*full name of the institution, title, surname, and initials of the authorized person to whom the forensic veterinary examination was assigned*) a request was sent for the provision of additional materials, namely: a dog named Barsyk.

On __(*date*), the National Scientific Centre ‘Ex. Prof. M.S. Bokarius Institute of Forensic Expertise’ received from __(*full name of the police agency, title, initials and surname of the person who appointed the forensic veterinary examination*): a dog named Barsyk.”

14) if an additional or repeated forensic veterinary examination was conducted, information about the primary (preliminary) forensic veterinary examination(s): name of the forensic veterinary expert; name of the expert institution or the place of work of the forensic veterinary expert; number and date of the expert’s opinion;

the content of the final conclusions of the primary forensic veterinary examination or previous forensic veterinary examinations; the content of the questions that were put before the forensic veterinary expert for additional or repeated decision, as well as the reasons for the appointment of additional or repeated forensic veterinary examination, indicated in the document on its appointment (if such reasons are not included in it, a corresponding record is made);

15) information about the grounds and individuals who were present during forensic veterinary examinations (initials, surname, status);

E.g.: “On __(*date*), during the forensic veterinary examination of a cat named Murzyk, according to the decision of the investigator __(*name of the police agency and title of the investigator*) dated __(*date*), the following were present: investigator __(*name of the police agency; investigator’s title, initials, and surname*), the owner of the animal __(*initials and surname*).”

16) regulations, methods, recommended scientific-technical and reference literature from the “List of recommended scientific-technical and reference literature used during forensic examinations” (Order of the Ministry of Justice of Ukraine, 2010), other information sources, which were used by the forensic veterinary expert during the resolution of the questions, according to the rules of the bibliographic description, with an indication of the registration codes of forensic examination methods from the “Register of forensic examination methods”, which is maintained pursuant to the “Procedure for maintaining the Register of forensic examination methods” (Order of the Ministry of Justice of Ukraine, 2008).

Structure of the examination part of the expert opinion

The second part of the expert’s opinion based on the results of the forensic veterinary examination of the subject animal is the “**Examination**”. The structure of this part of the expert opinion is regulated by Item 4.13 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998). According to the tasks of the examination, the forensic veterinary expert determines the algorithm for the presentation of the stages of the forensic veterinary examination of the subject animal.

In his personal forensic veterinary activity, the author of the present study first developed and proposed for practical use the algorithm for describing the results of the examination of a subject animal according to the systemic principle of the structure of the organism in the examination part of the expert’s opinion, as well as the description of individual veterinary documents contained in the proceedings or case materials and relating to subject of proof. At the final stage of concluding the examination part of the opinion, the forensic expert formulates a forensic veterinary diagnosis and drafts a synthesizing section (Fig. 1).

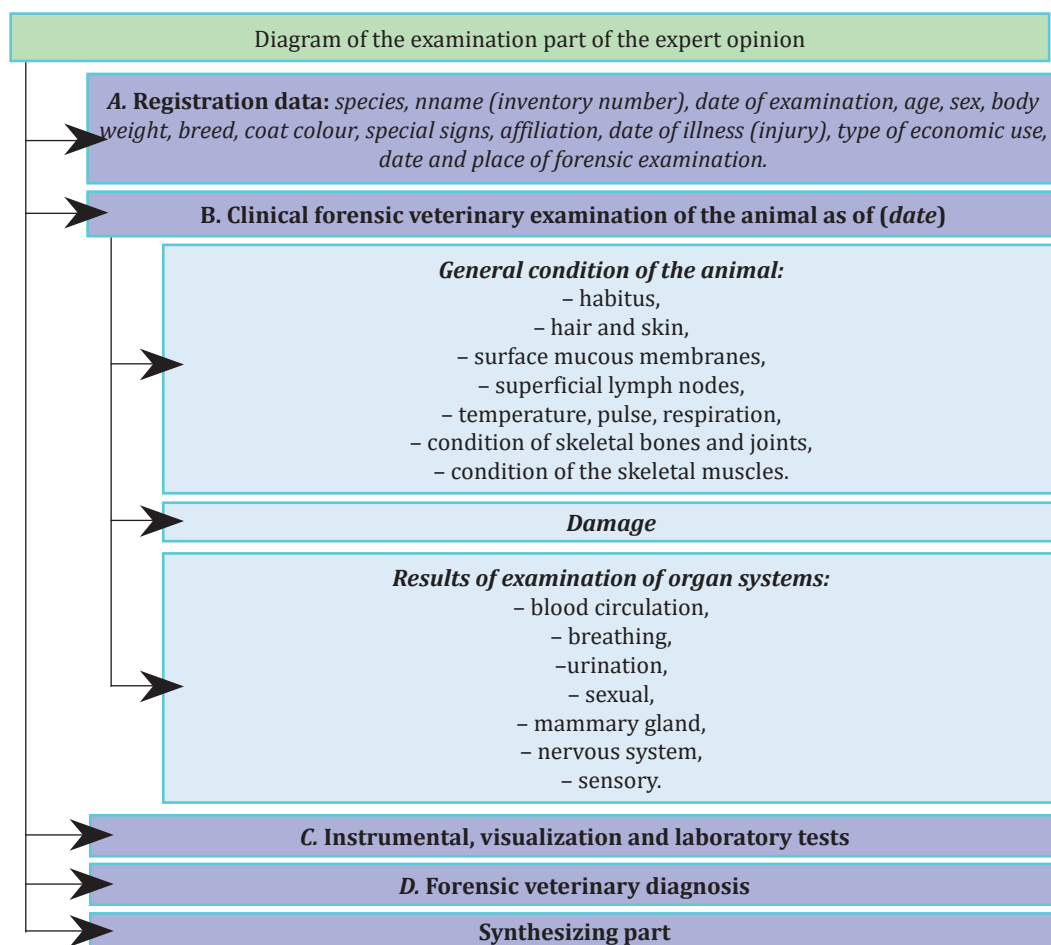


Figure 1. Scheme of the examination part of the expert's opinion based on the results of the forensic veterinary examination of the subject animal

Source: developed by the author of this study

In the examination part, the following subsections are distinguished:

1) medical history (injury), information about which the forensic veterinary expert receives from the procedural document on the appointment of a forensic veterinary examination or from veterinary documents (excerpts from the medical history of a subject animal, cards of an outpatient sick animal, etc.). From the same documents, the forensic veterinary expert finds out the circumstances under which the animal's health was harmed;

E.g.: "From the decision on the appointment of a forensic veterinary examination dated *__(date)* issued by the senior investigator of the Investigative Department of the B*** District Police Department of the Head Department of the National Police of the P*** Region *__(title, name and surname of the investigator)*, it is known that on *__(date)*, at about 3:30 p.m., *__(full name)* was at the residence address of his mother *__(full name)*, located on the 6 Shch*** street, P*** village, K*** district, R*** Region, where the day before a dog named Barsyk

inflicted bites on his mother. Fulfilling his criminal intent, aimed at abusing an animal, violating generally accepted norms of behaviour; principles of morality and decency, in violation of Articles 4, 18 of the Law of Ukraine "On the Protection of Animals from Cruel Treatment", *__(full name)*, using a car of the brand *__(name)*, licence plate *__(licence plate No.)*, tied the specified dog to the back of the car using a metal chain and set the car in motion. Later, *__(full name)* chose such a speed that the dog was unable to keep up with the car and fell and dragged along the asphalt road behind the car, which caused it pain, torment, and suffering, which was expressed in bodily injuries. Continuing the movement at the chosen speed, which did not allow the animal to stand in a natural anatomical position, i.e., on all four limbs, *__(full name)* continued his criminal actions aimed at cruel treatment of the animal, and, realizing that his actions are observed by citizens, continued to move until he was stopped by a police inspector."

2) examination of veterinary documents contained in the materials of a criminal proceeding or case (civil,

economic, administrative), e.g., examination of the protocol of an animal examination by veterinary medicine specialists (name of the hospital or clinic of veterinary medicine, its legal address, full name of the veterinary medicine specialist who examined the animal), protocol of ultrasound or X-ray examination, results of haematological or microbiological examination, etc.;

3) forensic-veterinary examination of the subject animal, which contains the following sections: *A. Registration data*, *B. clinical forensic veterinary examination of the animal as of __ (date)*, *C. Instrumental, visualization, and laboratory examination of a subject animal*, *D. Forensic veterinary diagnosis*.

Section *A "Registration data"* displays the identification features of the subject animal, indicating its species, name or individual number; the number and content of the animal's passport; examination date, age, gender (male or female), body weight, breed, cross, line; coat colour, ownership (data about the owner of the animal), special signs, date of illness or injury of the animal; type of economic use of the animal (e.g., service dog, domestic cat, dairy cow, etc.); the date and place of the forensic veterinary examination.

E.g.: "The type of animal is a domestic dog. Name – Barsyk. Date of examination – __ (day, month, year). Age of the animal – no information available. Gender – male. Body weight – 11 kg. Breed – mongrel. Coat colour – white-red-black. Distinctive features – none. The animal belongs to __ (initials and surname, address of the owner or guardian). Date of illness (injury) – 15.05.2022 (according to the data presented in the investigator's decision dated __ (date)). Date and place of forensic veterinary examination – CE "Treatment of Animals" (358 Haharin Avenue, Kharkiv). __ (date)."

A special place in the expert's opinion is given to the reactions of the animal during the removal or application of the bandage to the injured areas, what they were treated with, what treatment was applied to the subject animal, etc. This is also indicated in the "Registration data" section.

E.g.: "When removing the bandage, both from the thoracic and pelvic limbs, the animal shows a reaction to pain. All wounds on the limbs, as well as the neck, are treated with a purple liquid. The animal was treated with antibiotics, painkillers, and regeneration stimulants."

Section *B. "Clinical forensic-veterinary examination of an animal as of __ (date)"*, records objective data obtained by a forensic veterinary expert during a direct objective examination of an animal subject to expert examination, which meets the requirements of paragraph 4 of Item 2.2 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998), as well as Item 5.1 "Rules for forensic veterinary determination of the degree of severity of damage caused to the health of an animal (methodical recommendations)" (Yatsenko &

Parilovsky, 2022b). Detected painful changes or the nature of injuries are noted, as well as the unchanged morphological and functional state of the organs is recorded by detailed description. It is not allowed to use the expressions "normal", "without special features", etc.

Methodical approaches to the presentation of the results of a forensic veterinary examination of a subject animal to expert examination in the expert's opinion may vary depending on the specific features of the questions posed to the forensic veterinary expert, the circumstances, and specific features of harm to the animal's health, its species, age, sex, physiological state, etc.

During the preparation of the results of a forensic veterinary examination of a subject animal, the objectivity of the presentation of data in the expert's opinion is achieved through a correctly constructed examination algorithm with an emphasis on the damaged part of the body or organ (*Status localis*). In the expert's opinion based on the results of the examination of the subject animal to determine the degree of damage caused to its health, the first and mandatory section of the examination part is a description of the general condition of the animal, its habitus, skin and hair, visible mucous membranes, superficially located lymph nodes, bones of the skeleton, as well as joints.

When describing *the animal's appearance* (habitus), the forensic veterinary expert ascertains the specific features of behaviour (satisfactory, depressed, agitated), the position of the body in space (physiological, unnatural), movements (physiological, forced), notes the fatness (high, average, thin animal), the constitution (tender, dense, rough, loose) of the subject animal, as well as the animal's reaction to manipulations.

E.g.: "The general condition of the subject animal is depressed. The pupils of the eyes are slightly dilated, the animal fearfully observes the surrounding environment. The body structure is correct, symmetrical; fatness is average; the constitution is dense; temper – good; coordination of movements is preserved. During the forensic veterinary examination, the animal is socialized, does not show aggression."

When describing *the state of the hair coat* in the examination part of the expert's opinion, the forensic veterinary expert notes its colour, density, cleanliness, shine, uniformity of development and degree of retention in the hair follicles of the skin, the degree of manifestation of shedding, the degree of severity of alopecia (apteriosis in birds), manifestation of congenital hypertrichosis (long hair) or, conversely, congenital hypotrichosis (complete absence of hair).

E.g.: "The hairline is thick, clean, shiny, evenly developed on all parts of the body, except for areas of injuries where the hair was easily pulled out, traumatic baldness is observed in the area of abrasions of the left

knee fold. In other parts of the body, the hair is well retained in the hair follicles. Shedding is moderate, hair loss and alopecia are absent (photo No. 1-2)."

When describing the condition of the *skin* of the subject animal, the forensic veterinary expert notes its colour (pigmented, pale, reddened, bluish, jaundiced, with the phenomena of melanosis), a violation of the natural pigmentation of the skin (albinism), the presence of pigmentless spots on the skin (vitiligo), elasticity (moderately elastic, reduced elasticity, complete loss of elasticity), humidity (moderately moist, dry, increased moisture), odour (moderately specific, sharply increased, acetone, putrid, smelly, etc.) and temperature (moderately warm, cold, hot, uniform, or uneven heat), its anatomical integrity or damage (sores, bruises, cracks, wounds, bedsores, gangrene, etc.), skin rashes (sores, cracks, wounds, bedsores, gangrene), increase in skin volume (oedema, emphysema, clubfoot, phlegmons, haematomas, lymph extravasates, neoplasms, dermatosparaxis), skin rashes (spots, roseolae, petechiae, ecchymoses, haemorrhages, papules (nodules), tubercles, vesicles (blisters), pustules, blisters, scales, crusts, erosions, ulcers, scars); indicates whether the animal has pronounced skin itching.

E.g.: "The skin is pigmented, light slate colour, elastic, moderately moist, with a characteristic "dog" smell, evenly warm. Wounds are found in the areas of the thoracic limbs and neck on the left. No skin rashes, oedema, or haematomas. Swelling is found in the area of the intermaxillary space, which is not painful upon palpation."

When noting the condition of *visible mucous membranes* of the subject animal in the expert's opinion (eyes, nasal and oral cavities, vagina), and, if necessary, also deeply located mucous membranes (throat, larynx, bronchi, stomach, and intestines), the forensic veterinary expert emphasizes their colour (pale pink, with a slight yellowish tint, with a jaundiced tint, red, pale, bluish, etc.), moisture (moderately moist, highly moist), integrity, the presence of layers and swelling (if applicable).

E.g.: "The mucous membranes of the eyes, nasal and oral cavities, vagina are pale pink with black pigmentation in some areas of the oral and nasal cavities. They are moderately moist, anatomically intact, with no signs of swelling."

When describing the condition of the *superficial lymph nodes* (mandibular, prescapular, knee fold, inguinal) in the subject animal, the forensic veterinary expert notes their size and shape (round, oval, oblong), mobility (mobile, sedentary, immobile), sensitivity (painful, painless), consistency (dense, soft), nature of the surface (smooth, bumpy), temperature of the skin in the projection of the lymph node (moderately warm, elevated).

E.g.: "Lymph nodes (mandibular, prescapular, knee fold, inguinal) are not enlarged, smooth, mobile,

painless, of a dense consistency, the temperature of the skin above them does not differ from the temperature of the adjacent area."

The description of the condition of *the bones of the skeleton, joints and skeletal muscles* in the subject animal lies in the fact that the forensic veterinary expert notes the degree of their development, shape, strength, detected unnatural mobility in the bones or joints, the elasticity of the skeletal muscles, ascertains whether the animal can independently lean on the thoracic and pelvic limbs while moving in space.

E.g.: "No fractures of the bones of the skeleton, including the limbs, were detected. The animal rests on the thoracic and pelvic limbs unassisted, lameness is observed during movement, and the natural position of the limbs is recorded. The animal's movements are somewhat constrained, its gait is shaky and cautious. No unnatural mobility is observed in the joints. Skeletal muscles are well-developed, according to the age of the animal. Upon palpation – no pain, moderately elastic."

The forensic veterinary expert notes the parameters of *the temperature, pulse rate, and breathing* of the subject animal, and indicates whether it has clinical signs of infectious diseases.

E.g.: "Body temperature (rectal) – 38.5°C (physiological norm – 37.5...39.0°C). Pulse on a. femoralis: 80 bpm (physiological norm – 70-120 bpm). The frequency of breathing is 18 breaths/min (physiological norm – 15-20 breaths/min). No clinical signs of infectious diseases were established."

The second subsection of the examination part of the expert's opinion is the subsection "**Damage**", where the forensic veterinary expert must concisely but consistently describe all violations of the anatomical integrity of tissues and organs of the body and their functions in the subject animal, which were formed as a result of external damaging factors.

E.g.: "Left thoracic extremity: – the wound in the area of the dorsal surface of the left wrist is an open, bruised, not deep, non-penetrating wound, measuring 1×1.5 cm. The bottom of the wound canal is the bones of the wrist, the edges of the wound and the walls of the wound canal are saturated with blood, swollen, the wound is painful to the touch, hot, the wound lumen is gaping. The wound is not contaminated, contains a small amount of serous-purulent exudate;

– the wound located on the dorsal surface of the carpal joint is open, bruised, not deep, not penetrating, measuring 1.8×1.5 cm. The bottom of the wound canal is the bones of the wrist, the edges of the wound and the walls of the wound canal are saturated with blood, swollen, the wound is painful to the touch, hot, the wound lumen is gaping. The wound is not contaminated, contains a small amount of serous-purulent exudate;

– the wound located on the dorsal surface in the proximal part of the forearm is an open, clogged, shallow,

non-penetrating wound, measuring 0.5×1.0 cm. The bottom of the wound canal is the skeletal muscles, the edges of the wound and the walls of the wound canal are saturated with blood, swollen, the wound is painful to the touch, hot, the wound lumen is gaping. The wound is not contaminated, contains a small amount of serous-purulent exudate. Traumatic baldness with a diameter of 1.5-2 cm is observed around this wound.

In the area of the neck, a round wound is registered in the area of the left lower third of the neck; it is not deep, not penetrating, open, measuring 2×1.5 cm. Fragments of skeletal muscles are visible on the wound bottom. The edges of the wound do not close; the edges of the wound and the walls of the wound canal are soaked with blood, swollen, the wound is painful to the touch, hot, the wound lumen is gaping. The wound is not contaminated, contains a small amount of serous-purulent exudate.

Mandibular space and ventral chest wall: bruising of soft tissues of mandibular space and lower chest wall; moderate soreness and moderate swelling. The wool in these areas is contaminated with blood, stuck together with dried blood."

Next, the forensic veterinary expert describes the condition of the animal according to clinical signs: severe, moderate, mild; indicates whether it is life-threatening or not; whether the detected injuries are lethal.

E.g.: "At the time of conducting the forensic veterinary examination on __ (date), the condition of the animal according to clinical signs is of medium severity, not life-threatening, the injuries inflicted on the dog named Barsyk are non-lethal."

Estimation of the state of the organ systems of the cardiovascular system, breathing, digestion, urination, reproduction, nervous system, sensory systems: vision, hearing, tactile, pain and temperature sensitivity of the skin, deep (proprioceptive) sensitivity in the expert's opinion is necessary to identify complications, accompanying and background pathologies. The forensic veterinary expert describes in detail the morphological features of the examined organs, noting their position, size, mobility, consistency, asymmetry, and describing the functional changes of these organs under painful factors or injuries, emphasizing specific syndromes, features of organ sensitivity (painful or painless), etc.

The description of the condition of *the heart and blood vessels* in the expert's opinion is reduced to the fact that the forensic veterinary expert indicates the nature of the field of percussion dullness (changed or not changed), substantiates the animal's pain reaction during percussion of the heart area (pronounced or absent), details the nature of heart sounds, indicates the presence or absence of extraneous sounds and extracardiac murmurs; the elasticity of the wall of blood vessels, the nature of the venous pulse (positive or negative).

E.g.: "The field of percussion blunting of the heart is unchanged. There is no pain reaction of the dog during

percussion of the heart area. The heart tones are moderately sonorous and clear. There are no extraneous sounds in the heart, as well as extra-cardiac noises. The pulse is rhythmic, medium in size, medium in filling, moderate in the shape of the pulse wave. The arterial wall is elastic. Venous pulse is negative."

When describing *the respiratory organs* of the subject animal in the expert's opinion, the forensic veterinary expert notes the state of the contours of the nostrils, their patency, as well as the patency of the nasal passages, the condition of the nasolabial (nasal) mirror, the presence or absence of foreign objects in them, the presence or absence of swelling in the nasal cavity and wounds; anatomical position of the larynx and trachea, their sensitivity during palpation; skin temperature in the area where these organs are located; nature of noise during auscultation of the larynx; the shape of the chest, its symmetry, tenderness, skin temperature in this area; the presence or absence of oedema and emphysema, as well as the nature of the percussion sound and breathing noises in the chest area; presence or absence of pathological breathing noises; rhythmicity, symmetry, and activity of respiratory movements; type of breathing; presence or absence of cough, wheezing, runny nose.

E.g.: "The contours of the nostrils are clear, even, unchanged. Nostrils and nasal passages are free. The nasolabial mirror is moderately moist. There are no foreign contents, swellings, swellings, or wounds in the nasal cavity. The anatomical position of the larynx and trachea is unchanged, they are painless upon palpation, the skin, in the projection of these organs, is moderately warm. Auscultation of the larynx established stenotic noise (laryngeal respiration). The chest is round, symmetrical, painless, the skin in its projection is moderately warm, there are no oedemas and emphysema in the subcutaneous tissue. During percussion, a clear pulmonary (atympanic) sound is observed in the projection of the lungs. The most intense percussion sound is recorded in the middle third of the chest. During chest auscultation, only the main bronchopulmonary respiratory noises were detected in the lung projection. There are no pathological respiratory noises. Breathing movements are rhythmic, symmetrical, and calm. The type of breathing is thoracic. There is no coughing, wheezing, or nasal discharge."

When noting the condition of *the digestive organs* in the expert's opinion, the forensic veterinary expert states the possibility and activity of the act of swallowing (unimpaired or impaired), the number and state of development of the teeth, the colour of the tooth crowns (white or white with yellow layering, white with brown spots, etc.), their integrity, bite defects; the colour of the gums, their moisture, sensitivity (painful or painless); the condition of the tongue (colour, mobility, moisture, visible layers, whether it fits in the oral cavity

itself, whether it is not increased in size, its anatomical integrity, etc.); pharynx and esophagus (patency, the presence of foreign objects in the lumen, the temperature of the skin in the projection of these organs, the colour of the mucous membrane, its anatomical integrity), the condition of the stomach and intestines (soreness, bloating), the condition of the side abdominal walls (elasticity, soreness, symmetry), are defecation disorders observed (according to the anamnesis); the state of the liver (topography, whether its edges extend beyond the right costal arch; the nature of the area of hepatic dullness: displacement, features of sensitivity).

E.g.: "The act of swallowing is unimpaired. The teeth are developed according to the age of the animal, the crowns are white. However, the crowns of the second and third incisors on the left on the upper dental arch are broken, to a greater extent on the second incisor (fracture in the lower third of the crown) (Photo No. 1). The gums are pink, moderately moist, painless, and anatomically complete. The tongue is mobile, pink, with a white layer on the back; moist, fits freely in the oral cavity itself, not enlarged in size, undamaged. The teeth are developed according to the age of the animal, the crowns are white. However, the crowns of the second (22) and third (23) incisors on the left on the upper dental arch are broken, to a greater extent on the second incisor (22) (fracture in the lower third of the crown). The pharynx and esophagus are free-flowing, without extraneous contents, the skin in the projection of these organs is moderately warm. The pharyngeal mucosa is light pink, anatomically complete. The stomach and intestines in the projection of their location are not painful upon palpation. The lateral abdominal walls are moderately elastic, not painful, and symmetrical. No defecation disorders were observed (according to the medical history). The liver is located in the area of the right hypochondrium, occupies a natural anatomical position, does not go beyond the right costal arch. The area of hepatic blunting is unchanged, painless."

When describing *the urinary organs* in the expert's opinion, the forensic veterinary expert notes the anatomical position of the kidneys, their possible displacement, sensitivity (painful or painless), size (enlarged or not), the nature of the surface (smooth or grooved); the presence or absence of swelling in the area of the chest, intermaxillary space, abdomen, external genitalia, and other parts of the body.

E.g.: "The kidneys occupy a natural anatomical position, not displaced. Upon external palpation, they are painless, not enlarged, their surface is smooth. Urination is painless. There are no oedemas in the area of the chest, intermaxillary space, abdomen, and external genitalia."

When describing the state of *the bladder* of the subject animal in the expert's opinion, the forensic

veterinary expert indicates its size, sensitivity upon palpation (painful or not painful), degree of fullness.

E.g.: "The bladder is palpated as a dense pyriform body, it feels like a slightly strained bladder with fluid, moderately filled, with a physiological volume."

When describing the state of *the external genitalia* in the subject animal, the forensic veterinary expert notes their development in relation to the age of the animal, the correctness of their formation in relation to the sex of the animal, the colour and integrity of the mucous membrane of the urogenital sinus in females or the urogenital canal in males, the presence of two testicles in the scrotal cavity, their sensitivity and skin temperature in the projection of the testicles, the condition of the foreskin.

E.g.: "The external genitalia of a dog named Barsyk are developed according to age and formed correctly in relation to the sex of the animal. The left and right testicles with appendages occupy a natural anatomical position in the scrotal cavity, are anatomically intact, painless, the skin in their projection is moderately warm. The mucous membrane of the urogenital canal is pale pink, whole."

When describing the state of *the mammary gland*, the forensic veterinary expert notes its size (enlarged or not), the presence or absence of damage, the sensitivity of the skin (painful or painless) and its temperature in the projection of the gland, whether there is milk secretion, the presence of parenchymal compactions.

E.g.: "The mammary gland is not enlarged, anatomically intact, painless upon palpation, the skin in its projection is moderately warm. Milk release is not recorded. No parenchymal seals."

When describing the state of *the nervous system* in the expert's opinion, the forensic veterinary expert ascertains its type in the subject animal, the reaction of the subject animal to stimuli (depression or agitation). When describing *the skull*, the expert notes its volume, shape, the presence of deformations, the temperature of the skin in its projection, sensitivity (painful or not), the consistency of the bones (hard, soft), their integrity, the nature of the percussion sound. When describing the condition of *the spine*, the expert notes its sensitivity (painful or not), the temperature of the skin in its projection, the presence or absence of curvatures.

E.g.: "The type of nervous system of a dog named Barsyk is strong, balanced, mobile, there are no signs of depression or agitation. The skull is of normal volume, characteristic for a dog, the skin in the projection of the forehead is moderately warm, the bones are hard, the percussion sound in the area of the frontal and maxillary sinuses is boxy. The spine is painless upon palpation, the skin in its projection is moderately warm, no pathological curvatures."

When describing the *organs of vision*, the expert's opinion states the condition of the eye slits (open or

closed), eyelids (presence or absence of swelling, infiltration, neoplasms, their position, movements, sensitivity), the size of the eyeballs (usual size, enlarged, reduced), what anatomical position they occupy (natural, shifted, protruding, sunken), whether eye twitching (nystagmus) is detected, whether the animal has squint, how the animal reacts to artificial lighting, the condition of the pupils of the eyes (dilated, narrowed); condition of the conjunctiva (colour, moisture, anatomical integrity, presence or absence of secretion from the eyes, condition of the eyelids: presence or absence of swelling, anatomical position, integrity, sensitivity); the act of blinking (impaired or not), the condition of the iris (presence of pigmentation, opacity), the condition of the cornea (anatomical integrity, sensitivity), the colour of the iris, the state of lacrimation (moderate, absent, increased).

E.g.: "The eye slits are sufficiently open. The eyelids are intact, in their natural position, there are no swellings, infiltrations, or neoplasms. Eyeballs of the usual size, not enlarged, mobile, occupy a natural anatomical position. The animal reacts to artificial lighting by squinting. The pupils of the eyes are slightly dilated. The conjunctiva is pale pink, moderately moist. There is no secretion from the eyes. Eyelids are without oedemas, occupy a natural anatomical position, anatomical integrity is not violated, the act of blinking is not violated. The iris is pigmented and transparent. The cornea is anatomically intact, not painful. The iris is pigmented. Lacrimation is moderate."

When describing the condition of *the hearing organs* in the expert's opinion, the forensic veterinary expert notes how the animal responds to auditory stimuli of different intensity from different projections and distances, how the animal reacts to smelly dry food raised at 30-50 cm from the animal's face.

E.g.: "During the hearing test, by presenting auditory stimuli (calling the dog by its name with different intensity of the expert's voice and from different projections and distances from the animal), it was found that the animal responds adequately and quickly to them; during the smell test, by raising a smelly dry feed 30-50 cm from the animal's face, it was established that the dog reacts to the smell, which indicates that the animal has a moderate sense of smell."

When describing *the sensitivity of the skin* (tactile, pain, temperature), as well as *deep (proprioceptive)* sensitivity in the expert's opinion, the forensic veterinary expert specifies the degree of its preservation or absence, the degree of expression of skeletal muscle tone (well or moderately expressed, weakened or tense), the state of reflexes (skin, conjunctival and corneal reflexes, tendon, muscle and periosteum, knee and Achilles tendon reflexes): well or moderately expressed or weakened.

E.g.: "Tactile, pain, and temperature sensitivity of the skin is preserved in all parts of the body, including

in the areas of detected post-traumatic skin scars. Deep (proprioceptive) sensitivity is moderate. The general tone of the skeletal muscles is expressed well, they are moderately tense, offer some resistance to passive movements, and are capable of active coordinated movements. The eye-cardiac reflex is pronounced, normotonic."

In section **C. "Instrumental, visualization, and laboratory studies of a subject animal"** the results can be presented in the form of X-ray, ultrasonographic, tomographic, and other, as well as laboratory studies of biological body fluids (blood, urine, faeces, stomach contents, etc., cytological or histological analysis of biological material obtained from a subject animal), performed using the following methods: imaging, forensic toxicological, forensic histological, forensic immunological, microbiological, parasitological, etc., indicating the number and date of their execution.

It is advisable to describe the results of laboratory studies of the biological environments of the subject animal by systematizing the data in such a way that the indicators with deviations from the norm are first analysed, and then the investigated indicators that are recorded within the norm are listed. Among indicators with deviations from the norm, those that are deviated in the upward direction are first evaluated, and then those that are changed in the downward direction, substantiating such changes.

The description of the application of instrumental methods of forensic veterinary research may be limited to the argumentation of the final results. In these cases, graphs, diagrams, tables should be stored in supervisory expert proceedings and, at the request of the body (person) that appointed the forensic veterinary examination, can be provided to them for review.

E.g.: "X-ray of the corpse of a red-coloured cat dated _(date). X-rays in the left lateral and dorsal positions reveal a multifragmentary diaphyseal-epiphyseal fracture of the right humerus; multifragmentary fracture of the upper epiphysis of the right radius and ulna; gross anatomical damage (traumatic destruction in the form of crushing) of the right elbow joint; multifragmentary fracture of the lower epiphysis of the left humerus; unifragmentary fracture of the body of the left ulna; gross anatomical damage (traumatic destruction in the form of crushing) of the left elbow joint. Foreign objects are detected in the form of an X-ray shadow with a diameter of 0.3-0.4 mm in the areas of the body and the xiphoid process of the sternum, the right and left shoulder, the right and left elbow joints, the right and left forearm, and the chest."

After describing in the expert's opinion the results of forensic veterinary, instrumental, imaging, and laboratory studies of the subject animal, the forensic veterinary expert drafts section **D. "Forensic veterinary diagnosis"** in the form of an opinion on the essence of the

disease or injury and the condition of the sick (injured) animal, formulated based on medical history data, results of clinical and laboratory studies, expressed in nosological terms provided by generally accepted classifications and nomenclature of diseases and reflects the cause, mechanism of development, pathological morphology signs and functional manifestations of the disease or injury. It is formulated precisely, fully, clearly, concisely, logically, without any explanations or substantiations.

The structure of the diagnosis makes provision for a consistent presentation of nosological forms: the underlying disease (damage), complications, concomitant and background pathology.

E.g.: "Forensic-veterinary diagnosis: multiple, mechanical, punctured, open, superficial, non-penetrating wounds of the thoracic and pelvic limbs, neck areas, chest contusion, wound in the area of the left knee fold."

The generalization and evaluation of the results of individual studies, which serve as the basis for formulating conclusions, is presented by the forensic veterinary expert in the *synthesizing section* of the examination part of the expert's opinion. This section should begin with the phrase (as an example): "Having examined the materials of the criminal proceedings entered in the Unified Register of Pre-Trial Investigations No. __ dated __(*date*) and summarizing and providing an expert opinion on the clinical condition of the dog named Barsyk, pursuant to the decision dated __(*date*), the forensic veterinary expert states as follows."

The main outline of the synthesizing section should be a consistent, clear, grouped analysis of the detected diseases or injuries of the subject animal with an emphasis on the local status – the damaged area of the body or organ (*Status localis*).

It is expedient to begin the synthesizing section with a statement of the fact that the subject animal belongs to vertebrates, with an indication of its species, which is an essential requirement of the disposition of Article 299 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001) or Article 89 of the Code of Ukraine on Administrative Offences (Code of Ukraine on Administrative Offences, 2005). Next, the expert notes the animal's physiological features (pregnancy, immature age, etc.), which may be recognized by the court as a qualifying feature and influence the court's decision.

The data of objective studies of animal injuries, presented in the examination part of the expert's opinion, allow specifying the localization of each injury, substantiating the nature, mechanism, ascertaining the order and sequence of the injuries detected, and stating whether the injuries detected could have been formed without outside intervention; the expert argues the statute of limitations for the formation of injuries and substantiates their degree of severity, indicates the

danger of the injuries caused to the life of the subject animal and their consequences for health; ascertains the causality between the injuries inflicted on the animal, under the established circumstances, and its health disorder.

Special attention should be paid to summarizing the results of objective clinical forensic veterinary studies on the development of injuries in an animal due to injuries caused. The justification for animal mutilation is based on the definition of this concept in the author's wording (Yatsenko & Parilovsky, 2022a).

Furthermore, the expert notes whether there are traces on the body of the subject animal that indicate pain, and it is also argued whether actions related to prolonged deprivation of heat, food, drink, maintenance, etc. affected the health status of the subject animal.

The ultimate point of the synthesizing section of the expert's opinion based on the results of the conducted forensic veterinary examination is the substantiation of whether the identified injuries caused physical pain and suffering to the subject animal.

Structure of the final part of the expert opinion

The third part of the expert opinion is "**Conclusions**". According to Item 4.14 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998), they must be formulated based on the results of the examination as answers to the questions in the sequence indicated in the introductory part of the expert's opinion, or it is necessary to specify for what reasons it is impossible to solve, as well as answers to the questions that were solved by the forensic veterinary expert on their personal initiative, pursuant to the requirements of paragraph 6 of Item 2.2 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998).

The numbering of answers in the conclusions should correspond to the numbering of questions specified in the introductory part of the expert opinion, as well as the numbering of questions set out in the procedural document on the appointment of a forensic veterinary examination. Conclusions must be formulated in a way that is understandable to all participants in the process, fully, concisely, clearly, concretely, expressively, without repetitions, unambiguously, without overloading with special veterinary terminology, substantiated, based on objectively established data, without phrases and linguistic expressions that may imply their different interpretation, in categorical and, as an exception, in probable forms.

If the forensic veterinary expert submitted a request to provide them with additional materials, but did not receive a response within forty-five calendar days, they notify the authority (person) that appointed the examination (involved the expert) in written form

regarding the impossibility of providing an opinion that corresponds to Item 4.10 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998).

If there is a need to use special veterinary terms in the expert's opinion, they must be explained. Questions similar in content can be combined, and their sequence altered without altering the content of the task itself.

In the conclusions, the forensic-veterinary expert states the factual data or their absence, proceeding from the results that follow from the presented objective forensic veterinary examination, and shows the causality between the injury and the damage inflicted on the animal's health.

The scheme of drafting conclusions based on the results of the forensic veterinary examination depends on the nature and sequence of questions raised to solve it.

E.g.: "1. It is impossible to establish the severity of the injuries caused to the dog named Barsyk, since the clinical signs of the injuries are at the stage of acute inflammation and the healing process is ongoing at the time of the forensic veterinary examination. This will become possible after the injuries are completely healed, or due to other consequences of the post-traumatic process. At the time of the forensic veterinary examination, the injuries caused to the dog named Barsyk are non-lethal. The clinical condition of the subject animal is characterized by moderate severity.

2. The mechanism of causing the injuries found in the dog named Barsyk is friction, sliding, and stretching, which is morphologically manifested by traumatic baldness, skin abrasions, wounds of the thoracic and pelvic limbs, a wound in the neck area from overstretching the skin, tears and lacerations caused by tension tissues from direct, oblique, and tangential impact.

3. The statute of limitations for infliction of bodily injuries discovered in a dog named Barsyk at the time of the forensic veterinary examination is defined as four days.

4. It is impossible to answer the question about health complications arising from the effects of the injuries in full, as well as about the mutilation of the dog named Barsyk at the time of the forensic veterinary examination. This will be possible only after the completion of treatment of the animal and its complete recovery or in the aftermath of other consequences of the post-traumatic process, which must be confirmed by an extract from the medical history from the veterinary medicine institution where the animal was treated.

The nature of the injuries (traumas) inflicted on the dog named Barsyk, their localization (neck, limbs) and pathological morphology characteristics indicate that

they are non-lethal but inflicted with particular cruelty.

Upon the infliction of physical injuries on the dog named Barsyk, as well as in the post-traumatic period, the animal felt physical pain, experienced suffering and torment from the caused traumas (bodily injuries); the animal has a traumatic and pain-induced shock.

5. The damage caused to the dog named Barsyk could not have occurred independently during the life of the animal.

6. All the injuries found in the dog named Barsyk were caused by the action of a blunt instrument of trauma with an extensive, uneven, monolithic, rough surface, such that does not break down and does not change its shape. Such an instrument of injury could be an asphalt or dirt road. The movement of the body of the dog named Barsyk towards the blunt instrument of injury was at an angle of less than 90° both in the lower parts of the body and along the sides (left and right)."

At the stage of conducting an additional forensic veterinary examination in this criminal proceeding, the response of the forensic veterinary expert to the first question regarding the degree of severity of bodily injuries and the presence of signs of mutilation is as follows: "The identified bodily injuries after their complete healing in the dog named Barsyk belong to the medium degree of severity with a long-term health disorder, i.e., over 21 days. There are no signs of mutilation."

Conclusions in the final part are signed by a forensic veterinary expert(s), if a commission forensic veterinary examination was conducted, indicating their position, scientific degree, academic title, and their signatures, certified by the imprint of the seal of the state expert institution. Furthermore, the signatures of forensic veterinary experts and a seal impression are placed on each page of the text of the final opinion, pursuant to Item 4.15 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998).

The photo plates attached to the expert's opinion are signed by the forensic expert(s), and their signatures are certified by an impression of the seal of the expert institution, pursuant to Item 4.15 of the Departmental Instruction. A forensic veterinary expert, who works on a professional basis independently and is not an employee of a state expert institution, certifies the opinion provided by them with their signature and seal indicating the registration number of the taxpayer's registration card (identification number), pursuant to paragraph 4 of Item 14 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 2011). An example of a photo table is presented in Figure 2.

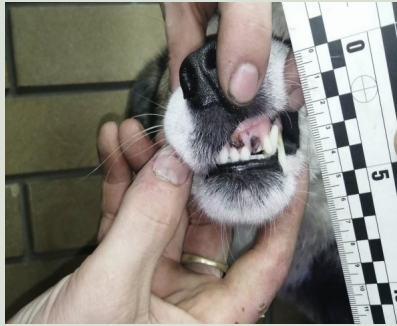
Photo table to the Expert opinion No. __ dated __ (date)		
		
Photo No. 1. Appearance of a dog named Barsyk during a forensic veterinary study. As of __ (date). Macro photo.	Photo No. 2. Traumatic chipping of the crown of the second and third incisors on the left on the upper dental arch in a dog named Barsyk. As of __ (date). Macro photo.	
		
Photo No. 3. General appearance of injuries to the left thoracic limb of a dog named Barsyk	Photo No. 4. General type of damage to the left pelvic limb of a dog named Barsyk	Photo No. 5. Wounds in the left foot of a dog named Barsyk
Macro photo. As of __ (date)		
Forensic expert: leading researcher of the sector of biological, veterinary, and soil science research of the laboratory of physical, chemical, biological, and molecular genetic research, Doctor of Veterinary Sciences, professor	signature	I.V. Yatsenko

Figure 2. Example of a photo table for an expert opinion

Source: archive of the NSC "Ex. Prof. M.S. Bokarius Institute of Forensic Examinations", 2020

The structure of expert opinions during a commission or comprehensive expert examination is stipulated in Item 4.18 of the Departmental Instruction (Order of the Ministry of Justice of Ukraine, 1998). Its features are that the introductory part additionally specifies data on the chairperson of the commission of forensic experts and information on forensic veterinary examinations, the results of which are set by the body or authorized person who appointed a forensic veterinary examination or involved an expert as initial data. Furthermore, the corresponding sections of the examination part contain the results of examination performed by individual forensic experts, signed by these experts with their surnames specified.

If the forensic veterinary expert can give an answer to certain questions raised in the document on conducting a forensic veterinary examination, and there are grounds for drafting a notice on the impossibility of providing an opinion concerning others, one document is drafted – the expert's opinion. In this case, the expert specifies that they are warned (aware) of criminal liability under Articles 384 and 385 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001).

Discussion of examination results

The proposed approach to formulating the content of the structural elements of a forensic expert's opinion based on the results of a forensic veterinary examination

of a live animal, considering the specifics of the subject, tasks, object, and examination methods, allows optimizing the work of a forensic expert at the stage of formulating and directly drafting an opinion consistent with the results of the study by M.P. Klymchuk and S.I. Marko (2011), who proved the informative value of an expert's opinion as a source of evidence in a criminal case; M. Hetmantsev (2018), who covered the legal nature of the expert opinion; Yu.Yu. Yaroslav (2019) and V.Yu. Shepitko (2018), who substantiated the evaluation of the expert's opinion using special knowledge; B.V. Shabarovskiy (2019), who argued ways to verify the expert opinion in the criminal procedure of Ukraine. Despite the multi-vector nature of the scientific studies of these and other researchers, their findings do not solve the issue of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal and do not outline ways to solve it.

The sequence of the presentation of the results of the forensic veterinary examination of a subject animal is determined by the forensic veterinary expert considering the particular circumstances of the case, the condition of the subject animal and the content of the questions raised in the procedural document on the appointment of the forensic examination.

The issues of conducting forensic veterinary expert examination and processing their results were considered by scientists on the pages of foreign scientific publications, namely: A. Rebollada-Merino *et al.* (2020), who described the instances of dog and cat cruelty cases in Spain between 2014 and 2019, for which the source of evidence was the expert opinion; M. Smith-Blackmore and J.D. Bethard (2020) showed the possibility of cooperation between forensic veterinary experts and forensic medical anthropologists when solving common issues; I. Babinska *et al.* (2018) investigated the issue of trends in the development of forensic veterinary examination of live animals; K. Barington and H.E. Jensen (2013) showed the mechanism of the formation of bruises in pigs during their transportation and the importance of forensic veterinary diagnostics for formulating a well-founded and objective forensic expert's opinion and others. However, both the procedure for conducting and processing the results of a forensic veterinary examination varies in different countries of the world. At the same time, some effective methods of concluding an expert opinion based on the results of a forensic veterinary examination can be borrowed to improve Ukrainian legislation, and therefore the study of foreign practices in this area of forensic expert activity is a relevant issue.

The results of these studies can serve as the basis for amending the "Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations", a list of issues regarding the appointment of a forensic veterinary expert of a live

animal by an authorized person, in the author's wording, set out in the scientific paper "Problems of drafting a resolution by an authorized person on the appointment of a forensic veterinary examination and ways to solve them" (Yatsenko, 2022).

Problematic and controversial issues, inconsistencies and gaps in the legislation that arise during the preparation of an expert's opinion, specifically those based on the results of a forensic veterinary examination, were resolved by the author of this paper and have been integrated into the forensic practice for the past few years. Within the scope of the present paper, the problematic issues of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal were highlighted, and their solutions were outlined and substantiated using particular examples from the author's personal long-term forensic veterinary practice.

Conclusions

The present study fulfilled its purpose: certain problematic issues of drafting an expert's opinion based on the results of a forensic veterinary examination of a live animal were identified, and their solutions were outlined, which will positively affect the conduct and registration of the results of forensic veterinary examination in particular and forensic expert activity in general.

The sequence of the presentation of the results of the forensic veterinary examination of an animal subject to expert examination is determined by the forensic veterinary expert, considering the specific features of the examination, the state of the object of examination and the questions put to the forensic expert for resolution by the authorized body or the person who appointed the forensic veterinary examination or involved the forensic expert, and indicate the specific object of examination, which in case under study is a living animal.

The introductory part of the forensic expert's opinion, along with other necessary elements stipulated by the Instruction on the Appointment and Conduct of Forensic Examinations and Expert Studies, reflects within the scope of the study a specific list of issues raised for resolution by the authorized body or person who appointed a forensic veterinary examination or involved a forensic expert, as well as a specific object of examination, which is a living animal.

The innovation of the examination part of the forensic expert's opinion is the algorithm proposed for the first time for describing the results of the examination of the subject animal according to the systemic principle of the organism structure, as well as the description of individual veterinary documents contained in the case materials and related to the subject of proof. These documents include extracts from the medical history, outpatient card of the sick animal, description of the results of individual clinical, instrumental,

imaging, or laboratory examinations of the animal, as well as a protocol for examining the scene of the accident. At the final stage of the examination, the forensic expert formulates a forensic veterinary diagnosis and makes a synthesizing section of the examination part of the expert opinion.

The final part of the forensic expert opinion contains answers to the questions raised in the sequence as they are set out in the introductory part of the expert opinion.

Appendices to the conclusion of the forensic expert based on the results of the conducted forensic veterinary examination usually contain photo tables compiled according to the rules of forensic photography, including photo illustrations of discovered bodily injuries, as well as other summarized results of the forensic veterinary examination, which make the conclusion of the forensic expert demonstrative.

The results of the forensic veterinary examination of a subject animal are drafted in a procedural document – an expert opinion. If for certain reasons it is impossible to conduct an examination, the forensic expert drafts another document – a notice on the impossibility of providing an expert opinion.

The proposed approach to formulating the content of the structural elements of a forensic expert's opinion based on the results of a forensic veterinary

examination of a live animal, considering the specifics of the subject, tasks, object, and examination methods, allows optimizing the forensic expert's work at the stage of formulating and directly drafting the opinion. The sequence of the presentation of the results of the forensic veterinary examination of a subject animal is determined by the forensic veterinary expert considering the particular circumstances of the case, the condition of the subject animal and the content of the questions raised in the procedural document on the appointment of the forensic examination.

Prospects for further research consist in the development of the methodology of forensic veterinary examination of a live subject animal and its implementation in practical forensic veterinary activity.

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Проблеми укладання висновку експерта за результатами проведеної судово-ветеринарної експертизи живої тварини та шляхи їх вирішення

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Анотація

Судово-ветеринарна експертиза – новий вид судової експертизи, що активно розвивається в установах судових експертиз Міністерства юстиції України. Оскільки її теорія та методологія перебуває на стадії становлення, то існує потреба в розробленні її категорійного апарату, методів, способів та засобів проведення і оформлення результатів дослідження. Мета роботи – виокремити проблемні питання укладання висновку експерта за результатами проведеної судово-ветеринарної експертизи живої тварини та окреслити шляхи їх вирішення. У роботі використані різні наукові методи, зокрема: діалектичний, методи логіки (формально-юридичний, системно-структурного аналізу, моделювання, аналіз, синтез, індукція, дедукція), загальнопізнавальні методи (описування, спостереження), спеціальні методи, функції яких виконують методи прижиттєвої клінічної судово-ветеринарної діагностики тварин. У статті акцентовано увагу на тому, що особливістю вступної частини висновку судового експерта є те, що в ній зазначається об'єкт дослідження – жива тварина. Розроблено перелік питань, які повинен вирішити уповноважений орган чи особа, що призначила судово-ветеринарну експертизу. Розкрито й уперше обґрунтовано структуру дослідницької частини висновку судового експерта, в основі якої – судово-ветеринарне дослідження підекспертної тварини за принципом аналізу стану окремих систем організму, зокрема кровообігу, дихання, сечовиділення, статевої, нервової, чуття. Аргументовано описання у висновку експерта результатів аналізу окремих ветеринарних документів, що стосуються предмета доказування. Показано, що за результатами клінічного судово-ветеринарного дослідження живої підекспертної тварини судовий експерт окреслює судово-ветеринарний діагноз, а в розділі дослідницької частини висновку, який синтезує результати, – узагальнює отримані дані. Стверджується, що заключна частина висновку судового експерта містить повні, науково обґрунтовані, послідовно викладені, чіткі, конкретні, виразні, зрозумілі відповіді на поставлені питання, перелік яких зазначено у вступній частині висновку. Окреслено структуру додатків до висновку судового експерта, яким найчастіше є фотоілюстрації тілесних ушкоджень, виявлених у підекспертної тварини. Розроблені в цій статті шляхи вирішення проблем укладання висновку експерта за результатами проведеної судово-ветеринарної експертизи живої тварини гарантовано відобразяться на проведенні та укладанні результатів судово-ветеринарних досліджень

Ключові слова: судово-ветеринарне дослідження, судово-ветеринарний експерт, підекспертна тварина, судово-експертна діяльність, оформлення результатів судово-ветеринарної експертизи

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