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Law. Human. Environment

Scientific and practical journal
Volume 14, No. 1

Editorial Board

Law. Human. Environment

Scientific and practical journal
Volume 14, No. 1

Editorial Board

ЗМІСТ

CONTENTS

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Judicial protection of intellectual property rights to animal breeds in civil proceedings (comparative legal aspect)

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Abstract

The relevance of this study is conditioned upon the lack of specialized legal regulation concerning the breed of animals as an object of intellectual property, which considerably complicates the judicial protection of property and personal non-property rights. The purpose of this study was to investigate the civil legal protection of intellectual property rights for animal breeds in Ukraine, considering foreign practices. For the systematic study of Ukrainian and foreign legislation, formal-legal, logical-legal, comparative-legal, and other special methods were used. Through the analysis of the Ukrainian regulatory framework, it was found that the provisions of the patent legislation must be considered for the implementation of judicial protection of rights to animal breeds. The results of the study of the provisions of the specialized laws of Ukraine from the standpoint of civil legal protection of intellectual property rights were presented and the following methods of protection were highlighted, which by analogy can be applied to the animal breed: recognition of the right, change, or termination of the legal relationship, restoration of the position that existed before the violation of the right, recognition of the deed invalid, termination of infringing actions, compensation for damages and moral damage, forced performance of the obligation in kind. It was established

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that a special method of judicial protection of animal breed rights is the application of a one-time penalty in the form of a certain amount of money instead of compensation for damages. Using a comparative legal analysis of foreign practices, namely in the Czech Republic, Bulgaria, and Kyrgyzstan, it was discovered that the legal protection of animal breed rights is primarily determined by the presence of a protective legal document, such as a patent or certificate. The theoretical value of this paper is that this study is the first to analyse the issue of judicial civil law protection of animal breeds as an object of intellectual property law in Ukraine, while also factoring in the foreign practices. The practical value is that the study results can be used to eliminate gaps and conflicts in the legal regulation of animal breeds as objects of intellectual property. The proposals expressed in this paper can be considered in the legislative initiatives

Keywords: civil protection; methods of protection of civil right and interest; selective achievement; violation of law; patent; foreign practices

Introduction

Judicial protection of rights, specifically intellectual property, is the most effective jurisdictional form of protection. In Ukraine, it is implemented by courts of general jurisdiction in various forms of proceedings (civil, economic, administrative, criminal). Judicial protection of the right is a guiding constitutional principle. Article 55 of the Constitution of Ukraine guarantees the protection of rights and freedoms in court (Constitution of Ukraine, 1996). This article focuses on the civil law aspect of the protection of intellectual property rights for animal breeds, as such a narrow approach allows for a more qualitative and complete disclosure of the issue.

Effective legal protection is impossible without a correctly chosen civil law method of protecting intellectual property rights, the non-exhaustive list of which is specified in Article 16 of the Civil Code of Ukraine (the CCU) (2003). Presently, there is a need to improve the system of protection of intellectual property rights in civil proceedings. The choice of the method of protection in this area should be approached especially carefully, since the judicial protection of rights to various objects of intellectual property law differs, which is caused primarily by the different legal nature of the objects of intellectual and creative activity.

Such a non-conventional object of intellectual property law as an animal breed is left out of due consideration in Ukrainian legislation, namely in the aspect of protectionability, turnover, rights, and obligations of subjects, legal document, etc. This, admittedly, prevents the right owners of the animal breed from implementing judicial protection of the violated or contested non-property and/or property right. To fully cover this issue, it is necessary to analyse and consider foreign, primarily European, practices, since there is a critical lack of national practice of statutory regulation of the issue. All the above determines the relevance of this study.

The studies of many scientists cover the issue of protection of intellectual property rights, as well as its definitional understanding. O. Drozdov and M. Pototskyi (2022) are optimistic for the newly created Supreme Court on Intellectual Property, whose activities should solve the problem of considering the specific features of legal

relations in the field when applying methods of protection, as well as unifying the practice of applying intellectual property legislation by courts property. For this, however, more than one year of well-established functioning of the court is needed. O.P. Orliuk (2016) emphasizes the urgent task of Ukraine, which has chosen an innovative European integration path of development, to create proper and effective conditions for the protection of intellectual property rights. One of the tools for fulfilling this task should be the comprehensive development of national special legislation, factoring in the European norms.

A.O. Kodynets (2018) emphasizes the absence of a unified judicial approach to resolving disputes in the field of intellectual property in many instances, which certainly adversely affects the legal protection of owners of property and personal non-property rights of intellectual property. He also considers the effective activity of a specialized court on intellectual property issues as one of the possible ways to solve the issue. O.M. Korotun (2019) also points to insufficient attention paid to the protection of intellectual property in Ukraine, specifically rights to animal breeds. He, as well as O. Svetlichnyj (2017), emphasizes the importance of improving primarily procedural legislation (Korotun, 2019).

V.O. Tokareva (2020) fairly points out that the subjective right to civil protection is determined through the "triad" of the following powers: the ability to behave in a particular way; the right to demand particular behaviour from third parties and the possibility to obtain legal protection; A.V. Shabalin (2020) emphasizes that under the civil law judicial protection of intellectual property rights, it is appropriate to consider the active behaviour of the subject of intellectual property rights, which is implemented by applying to the court, aimed at protecting and restoring rights, stopping the offence, and obtaining compensation for the damage and losses.

At the dissertation level, the aspects of judicial protection of intellectual property rights were considered by: G.V. Lebedeva (2021), who investigated various aspects of the protection of the rights and interests of individuals that are violated as a result of the use of objects of intellectual property law. However, the species of animals also stayed outside the focus of scientists; H.Ye. Mydzhyn (2021) focused her attention on the administrative legal protection of intellectual property rights in Ukraine; G.A. Ulianova (2015) indicates that civil law protection of intellectual property should be aimed not only at stopping the violation and restoring rights, but also at detecting it and making it impossible to commit it in the future.

All the doctrinal provisions mentioned above are certainly important. However, the subject of the civil law aspect of judicial protection of intellectual property rights specifically for the breed of animals is still unexplored. The foreign practices of regulation of this issue are also ignored. Considering this, the study of the issues of civil legal judicial protection of intellectual property rights for animal breeds in Ukraine, factoring in the foreign practices of regulating this issue, became the purpose of this study.

Fulfilling the set purpose is impossible without completing the following tasks:

1) to cover the specific features of judicial protection of rights to objects of intellectual property rights in civil proceedings;

2) to determine the current state and real ability to exercise the right to judicial protection for authors and owners of property rights to animal breeds;

3) to outline methods of civil law protection of intellectual property rights for animal breeds;

4) to investigate the foreign practices of regulating the issue of civil law protection of intellectual property rights to animal breeds in court.

The scientific originality of this study lies in a comprehensive analysis of the issues of judicial protection of intellectual property rights to animal breeds within the framework of civil proceedings, as well as a comparative legal analysis of this issue considering the foreign practices of those countries where the issue of intellectual property rights to animal breeds, namely its protection, is governed by separate specialized laws.

Materials and Methods

Apart from legal doctrine, the author of this study analysed both Ukrainian and foreign legal acts: the Civil Code of Ukraine (2003), Laws of Ukraine "On Copyright and Related Rights" (2022), "On Protection of Rights to Inventions and Utility Models" (1993), "On Breeding in Livestock Breeding" (1993), "On the Protection of Rights to Plant Varieties" (1993), the Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" (1996), the Law of the Czech Republic "On Protection of New Varieties of Plants and Breeds of Animals" (1989), the Law of the Republic of Kyrgyzstan "On Legal Protection of Breeding Achievements" (1998).

The study is based on several theoretical general scientific and special research methods. The formal-legal method was used for the systematic analysis of the Ukrainian and foreign legal framework, research of legal facts, unambiguous and correct understanding of legal constructions. The logical-legal method was also used to work with legal texts (codes, laws), review doctrinal provisions, i.e., various literature on the subject under study, to avoid putting forward contradictory hypotheses and drawing false conclusions. The hermeneutic method also helped interpret legal texts correctly. The formulation of the hypothesis helped make assumptions about the state of certain legal phenomena, e.g., the fact that a patent can serve as a protective document for a breed of animals. The application of the method of analogies helped in establishing equivalence between different and similar legal phenomena, institutions (this allowed, for instance, to express the assumption that in terms of judicial protection, animal breeds and objects of patent law may be subject to the same legal regulation). When comparing the Ukrainian and foreign (Bulgarian, Czech, Kyrgyz) practices of regulating the issue of judicial protection of animal breeds as objects of intellectual property law, as well as for comparing objects of intellectual property law that are similar in their legal nature (for instance, animal breeds and varieties of plants), the comparative legal method prevailed. Such logical methods of cognition as induction (a method of reasoning from a particular judgment to a general one) and deduction (the flow of thought from a general to a particular judgment) enabled an in-depth analysis of the animal breed as a constituent part of objects of intellectual property law. At the stage of the initial, superficial acquaintance with the object of the study – the civil legal judicial protection of the breed of animals as an object of intellectual property law – direct or empirical analysis and synthesis was applied. Elementary theoretical analysis and synthesis were used to penetrate its essence. The comparative legal method also helped in finding various approaches to solving the problem. For instance, it helped to put forward several options for considering the breed of animals as an object of intellectual property law, specifically in the aspect of legal protection in civil proceedings.

Results and Discussion

Judicial protection of civil law and interest is considered one of the branch principles of civil law, it is a basic principle, the absence of which makes it impossible to effectively achieve the contractual legal purpose (Kolos, 2019).

Analysis of the provisions of special legislation in the field of intellectual property allows tracing the difference between the methods of protection prescribed for various objects of intellectual property rights (copyright and related rights, patent rights, rights to means that individualize goods and services, non-conventional objects). The diverse legal nature of the results of intellectual and creative activity, objective forms of expression of such objects, etc. are the reason for this (Torremans, 2019). The possibility of applying the general methods of protection prescribed in Article 16 of the CCU (2003) is excluded to the same extent and in the same way to all objects of intellectual property law because each of them has a separate specificity in terms of legal protection (Moore & Frederickson, 2020). That is why, in the opinion of the author of this study, it is worth considering in detail the specific features of judicial protection of each of the objects of intellectual property law, especially those whose current legal regulation is neglected. First of all, civil proceedings are of the greatest interest, within the framework of which legal disputes arise most often.

Identifying the main methods of civil law protection of intellectual property rights, specifically for animal breeds, will ensure uniformity in the implementation of civil law protection of violated property and personal non-property rights. This is one of the tasks of the codification of legislation in the field of intellectual property (Mykytyn, 2016). Such a position is correct, but it seems appropriate that the adoption of a separate specialized legal act is not critically necessary for its implementation. It is sufficient to single out these provisions in the laws already in force, e.g., the Law of Ukraine "On Animal Breeding in Livestock Breeding" (1993). This will help avoid the dispersion of legal regulation and the predominance of the number of regulations over their quality.

To protect intellectual property rights, the court is entitled to apply any methods established in civil legislation. The current CCU (2003) in Article 16 prescribes ten non-exhaustive options for the protection of property and non-property rights and legal interests that can be applied by the court. However, not all the listed methods have the same application for different objects of intellectual property law. Thus, patent rights and trademark rights or other means of individualization of goods and services are valid from the moment of state registration. That is why a common way of contesting the rights to these objects is the demand to declare the issued security document (patent or certificate) invalid. To protect the rights of this group, it will not be common, for instance, to require compulsory performance of the obligation in kind. This thesis is correct and corresponds to the legal nature of objects of intellectual property rights, where legal protection is not subject to the object of the material world itself, but to property and personal non-property rights to it. That is why, the choice of the method of legal protection depends on such factors as the nature of the violated or contested right, as well as the type and nature of the offence committed (Kodynets, 2018). The protection of intellectual property rights to animal breeds is interesting and rather problematic from the perspective of legal protection, since Ukrainian legislation, considering this object as one of the possible non-conventional objects of intellectual property law, does not prescribe criteria for its protectionability and does not establish a legal protection

document for it. Considering this, it is advisable to analyse the specific features of legal protection of other objects of intellectual property law, primarily inventions, since the animal breed gravitates to the objects of patent law (Smulders *et al*., 2021). Thus, according to the provisions of Article 25 of the Law of Ukraine "On Animal Breeding in Livestock Breeding", a breeding achievement in the field of breeding livestock breeding is recognized as an invention (1993). It is also necessary to consider the specific features of judicial protection of plant varieties, since these non-conventional objects of intellectual property law are similar in their legal nature.

Paragraph 2, Part 1, Article 52 of the Law of Ukraine "On Copyright and Related Rights" (2022) prescribes the right of a person whose rights have been violated to apply to the court for recognition and renewal of their rights. A person is entitled to apply to the court with a claim for the restoration of their violated rights or the termination of actions that violate their rights or create a threat of such violation; to file claims for moral damages; on compensation for damages, including lost profit, or recovery of income received as a result of infringement of rights, or payment of compensation, etc.

Therefore, the law contains a rather wide list of actions that can be taken by the court to protect an unrecognized, infringed, or contested copyright or related rights.

Part 2 of Article 36 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (1993) states that courts, pursuant to their competence, resolve disputes about the authorship of an invention (utility model); violation of the rights of the patent holder; conclusion and execution of licence agreements; the right of the previous user; compensation. Here, unlike the previous law in the field of copyright and related rights, there is no list of actions that a court can take to protect intellectual property rights to an invention/utility model.

Article 55 of the Law of Ukraine "On Protection of Rights to Plant Varieties" (1993) covers the issue of judicial protection in considerable detail. Thus, according to Part 1 of this Article, the court is entitled to make any of the following decisions:

a) make the violator compensate for moral (non-property) damage caused by the violation of rights to the variety;

b) make the violator compensate for damages caused by the violation of exclusive property rights to the plant variety;

c) collect from the violator the income received as a result of the violation of rights, including the lost profit;

d) collect compensation from the violator in the amount of 10 to 50,000 minimum wages (considering the form of guilt of the violator) instead of compensation for damages or collection of income;

e) stop the action that creates a real threat of violation of the rights of the owner of the variety (such a requirement can be implemented, e.g., by imposing a ban on the sale or other introduction of the plant variety into civil circulation) (Law of Ukraine No. 3116-XII…, 1993).

The specified provisions of special laws are the embodiment of the detailing of the general prescriptions of judicial protection of civil law and interest, prescribed in Articles 3 and 16 of the CCU (2003).

At the same time, not all special laws clearly outline the protection of non-property and exclusive property rights in court. The breed of animals, as a non-conventional, atypical object of intellectual property law, does not have a legally established legal mechanism for legal protection and security. The Law of Ukraine "On Animal Breeding in Livestock Breeding" (1993) does not

say anything about judicial protection of breeding achievements. This, admittedly, makes it impossible to properly protect the rights in court regarding this object.

As long as there is no specialized legal regulation in the field of protection of intellectual property rights for animal breeds, by analogy, it is advisable to apply the provisions of the Law of Ukraine "On Protection of Rights to Plant Varieties" (1993) and "On Protection of Rights to Inventions and Useful Models" (1993). Proceeding from the general provisions of the CCU (2003), owners of animal breed certificates have the following exclusive property rights: to use animal breeds invented by them; allow third parties to use animal breeds; to prevent illegal use of animal breeds, as well as to impose a ban on such use. Accordingly, if there is a violation or dispute of these, as well as non-property rights of the author of the animal breed, the person is entitled to demand legal protection and the court to perform any of the actions prescribed in Part 1 of Article 55 of the Law of Ukraine "On Protection of Rights to Plant Varieties" (1993).

Particular attention should be paid to such a method of legal protection as the application of a one-time monetary penalty instead of compensation for damages in case of improper use of an object of intellectual property rights. Article 432 of the CCU (2003) indicates that its amount is determined pursuant to the provisions of the law, considering the fault of the person and other circumstances that are important. That is, a one-time monetary penalty can be applied only when a special law on the protection of a particular object of intellectual property rights allows for such a possibility. An example is the already mentioned norms of Article 52 of the Law of Ukraine "On Copyright and Related Rights" (2022) and Article 55 of the Law of Ukraine "On Protection of Rights to Plant Varieties" (1993). As for other objects of intellectual property law, this method cannot be applied given the fact that there are no special legal provisions.

Analysing all the methods of protection of intellectual property rights mentioned in the special laws, the following of them can be applied to the animal breed:

1) recognition of the right – when there is confirmation of a disputed or unrecognized right in court, e.g., recognition of authorship of an animal breed;

2) change or termination of legal relations, e.g., cancellation of a licence to use an animal breed;

3) restoration of the situation that existed prior to the violation of the right can be applied when the subjective right of the person, which was violated, still exists (Dyachenko & Likhtanska, 2017), e.g., the ban on advertising and offers for sale of an animal breed. Furthermore, such a method of protection can take place only if the violation causes the loss of the real ability of the subject of intellectual property to freely use the right belonging to it (Shtefan, 2014);

4) recognition of the transaction as invalid, e.g., recognition of the invalidity of the licence agreement;

5) termination of actions that violate the right, e.g., withdrawal of the object of selection achievement from civil turnover;

6) compensation for damages and moral damage;

7) forced performance of a duty, e.g., forced performance of a duty under a licence agreement.

Notably, not only subjective rights, but also legal interests, are subject to legal protection in the field of intellectual property. The main difference between these categories is that the subjective right is ensured by the presence of a corresponding duty to exercise the possibility of a person to act in a certain way. An interest protected by law does

not have such security. To protect the intellectual property rights of the animal breed, it is necessary to distinguish between subjective rights and legally protected interests. This is of great practical importance because, for instance, only the person whose rights or interests are infringed by the corresponding patent or certificate is entitled to file a lawsuit to declare a patent or certificate invalid (Kodynets, 2018). Such a conclusion of A. Kodynets is absolutely logical and convincing. On its basis, it can be argued that, if we consider the fact that usually the exclusive intellectual property rights for an animal breed belong to the patent owner, then the plaintiff must justify and prove precisely how their legitimate interests are violated due to the existence of a conflicting patent or certificate. In the case of failure to prove it, there are grounds for refusing to satisfy the claim.

The possibility of filing a lawsuit to protect the rights to the animal breed, however, is considerably complicated, according to some researchers, by the impossibility of obtaining a patent for this object of intellectual property rights. Without patent protection, according to I.L. Lytvynchuk (2018), breeders are in an almost defenceless position when dishonest use of the animal breed they bred occurs.

German scientist C. Schreider (2018) also emphasizes the need to patent an animal breed as an important prerequisite for legal protection of intellectual property rights to it. Patent protection is becoming increasingly critical for animal breeding as it becomes significantly more "technical" (e.g., in reproductive technology). Technological advance also helps include genes in animal breeds with special characteristics. That is, there are strong prerequisites for the protection of animal breeds precisely within the limits of patent law. The researcher claims that the current absence of the term "animal breed" in the patent legislation means in fact uncertainty regarding the special judicial mechanism for the protection of this object. Presently, for instance, in Germany, it is theoretically possible within the limits of patent law to exercise the right to judicial protection of animal breeds exclusively as innovations that meet the criteria of an invention (Schreider, 2018), although the animal breed itself as a product of conventional breeding cannot be recognized as an invention (European Patent Convention, 2000).

This emphasis on patent protection is correct because within the limits of patent law, in connection with the existence of a protective document – a patent assigned to a particular subject (the owner of property and/or personal non-property rights), it is much easier to realize the right to judicial protection. However, this does not mean that another law enforcement document – authorization or certificate – will be ineffective in this aspect. There is, for instance, a position regarding the judicial protection of animal breeds through a separate Sui generis mechanism, where an animal breed is considered as an independent object of intellectual property law, and not an invention or other object of intellectual property law (Ischebeck, 2015), which actually corresponds to the state of affairs in Ukraine, where the breed of animals is recognized as a separate object, but not yet regulated at all.

In the context of the subject of the right to judicial protection, the Chinese researcher Y. Hou (2019) expresses an interesting opinion. He proposes to introduce the so-called rights of farmers. Thus, in cases of protection of rights to animal breeds, the plaintiff holds intellectual property rights to this object. After the breeding of the animal breed, the latter can be sold to the farmer/farm without transferring to them the intellectual property right to this object. After the use of animal breeds in production and business activities, the interested party in case of a tort against a

given animal breed is also the farmer who purchased such a breed. That is why, in the case of infringement of intellectual property rights on an animal breed that is physically owned by a particular farmer, the latter should be a joint plaintiff with the owner of intellectual property rights (breeder, inventor, etc.). In the opinion of the author of this article, to avoid such complications, it is advisable to immediately alienate a certain amount of property rights, which allows the farmer, who has been harmed, to independently file a lawsuit in court with a demand for the protection of their right.

Notably, the already mentioned sui generis intellectual property system for animal breeds exists only in Bulgaria (Law of the Republic of Bulgaria…, 1996) and the Czech Republic (Law of the Czech Republic…, 1989). Outside the European continent, such a system also exists in the Republic of Kyrgyzstan (Law of the Kyrgyz Republic…, 1998). It is appropriate to analyse how the principle of judicial protection of intellectual property rights for animal breeds is implemented at the legislative level in these countries.

The Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" (1996) does not contain a list of actions that can be taken by the court to protect the rights of the author of the animal breed (which in the Law is called "the author of the animal breed" or "the breeder") or the owner of the certificate (authorizing document for the animal breed). Article 46 generally prescribes that cases relating to the creation, protection, and rights arising from the animal breed certificate shall be decided administratively or by court. While Article 47 of the mentioned law contains an exhaustive list of cases when the case should be resolved not in court, but in an administrative procedure, e.g., appeals against decisions on refusal to issue a certificate for an animal breed.

Furthermore, separate articles outline situations when the author of an animal breed (or breeder) is entitled to legal protection of their right. For instance, Part 2 of Article 25 states that the breeder is entitled to fair compensation in case the breed of animals created by them is used by another person, e.g., under the licence agreement prescribed by Article 22 of this Law. Without the agreement, the amount of compensation is determined by the court.

Part 1 of Article 51 of the Law of the Republic of Bulgaria "On the Protection of New Varieties of Plants and Animal Breeds" describes which disputes regarding the protection of intellectual property rights on animal breeds are considered by the court. For instance: disputes about authorship (co-authorship); disputes about the right to a certificate; disputes about the violation of the rights of the applicant and the exclusive rights of the owner of the certificate; disputes related to the conclusion of licence agreements, their execution, and termination; disputes regarding the official nature of the animal breed and the amount of remuneration paid to the author of the official bred variety; disputes related to the amount of compensation due to the certificate holder in the event of the issuance of a compulsory licence.

The following provision of the Law is interesting: any person who violates the exclusive property rights of the owner of the certificate, i.e., exercises any of the latter's exclusive rights without their consent, is punished by a fine in a fixed amount (Part 2 of Article 51). Moreover, reproductive material illegally possessed by such a person is subject to confiscation. Such a fine is an administrative penalty, which does not exclude other civil sanctions and criminal liability.

Therefore, Bulgarian legislation outlines the issue of judicial protection of intellectual property rights for animal breeds in quite detailed terms

but does not make provision for an extended list of protection methods and actions that the court can take to protect the rights of the certificate owner.

If we turn to the practices of the Czech Republic, the Law of the Czech Republic "On the Protection of New Varieties of Plants and Animal Breeds" (1989) also covers the issue of judicial protection of intellectual property rights on animal breeds, but in less detail. Article 26 states that in cases of violation of the rights to the animal breed, the owner of the certificate, which is the legal document for the animal breed, or the author, if they are not the owner of the certificate, may demand the termination of the violation and elimination of the consequences of such violation. These prescriptions reflect the following methods of protection: cessation of infringing actions and restoration of the situation that existed before the violation of the right.

Furthermore, if damages are caused by the violation, then the person to whom they were caused is entitled to compensation. In cases of damage, apart from damage to property, the injured person is entitled to adequate satisfaction, which may also take the form of monetary compensation. That is, this refers to compensation for moral damage.

By analogy with the Bulgarian legal regulation, Article 28 of the Czech Law also contains provisions on the imposition of a fine on a person who has violated the rights of the owner of the certificate, specifically if the person, without having the right to do so, commercially uses the breed. Such actions of the violator are considered an administrative offence. Whereas Article 27 of the specified Law prescribes fines for legal entities in case they violate the rights of the owner of the certificate.

Thus, in the context of judicial protection of intellectual property rights to animal breeds, the Law of the Czech Republic emphasizes the possibility of imposing fines on the violator (which is an administrative penalty), and also mentions two more methods of judicial protection. The Law does not prescribe an extended list of the latter.

The Law of the Republic of Kyrgyzstan "On Legal Protection of Breeding Achievements" (1998) specifies that a patent is the legal document for an animal breed. The patent owner, pursuant to Article 23, can be not only the author of a breeding achievement, but also the employer in the case of creating a breed of animals within the scope of official duties or their legal successor.

Article 28 of this Law contains a non-exhaustive list of ways to protect intellectual property rights to animal breeds by the court. Thus, the patent owner is entitled to demand the following from the infringer:

a) recognition of the patent owner's rights;

b) restoration of the status quo and termination of actions that violate rights or threaten to violate them, as well as elimination of the consequences of such actions;

c) compensation for losses, specifically lost profit;

d) recovery of the income received by the infringer for violating the rights of the patent owner, instead of compensation for damages;

e) apply any other means of protection prescribed by regulations on the protection of the rights of the patent owner.

This list is extensive and analogous to the general methods of protection contained in the Civil Code of Ukraine (2003).

In general, using evidence from the specialized legislation of the Republic of Bulgaria, the Czech Republic and the Republic of Kyrgyzstan in the field of judicial protection of intellectual property rights for animal breeds, it can be observed that judicial protection is primarily determined by the existence of a protective legal document that certifies the authorship of the animal

breed and secures intellectual property rights. In the Czech Republic and Bulgaria, the legal document is a certificate, in Kyrgyzstan – a patent. Such a document can also be a licence under which exclusive property rights are transferred. A person whose intellectual property right has been violated or is not recognized can demand the protection of their right both in civil proceedings and within the framework of administrative or criminal proceedings (if there are grounds for this). In the Czech Republic and Bulgaria, the violator of the intellectual property rights of an animal breed must pay a fine, which is considered an administrative sanction.

Conclusions

Thus, summarizing the analysis of the issues of civil legal protection of animal breeds as objects of intellectual property law in a comparative legal aspect, it is possible to reach conclusions that answer the questions posed in the tasks of this study.

1. The specific features of judicial protection of rights to objects of intellectual property rights in civil proceedings are as follows: due to the different legal nature of the results of intellectual and creative activity, as well as objective forms of expression of such objects, not all methods of protection of civil law and interest can be equally applied to various objects of intellectual property law; the nature of the violated or contested right, as well as the type and nature of the offence committed, affect the choice of the method of legal protection.

2. Presently, in Ukraine, even though the breed of animals is envisaged as a possible object of intellectual property rights, there is no legal and practical basis for the judicial protection of property and personal non-property rights to this object during civil proceedings, while abroad, statutory regulation is available in only a few countries. For the implementation of judicial protection of rights to animal breeds under such conditions, it is necessary to consider the provisions of patent legislation because animal breeds are subject to the objects of patent law, as well as the Law of Ukraine "On the Protection of Rights to Plant Varieties", where the issue of judicial protection is covered in considerable detail. In general, the patenting of an animal breed is considered in the scientific community as the most convincing prerequisite for applying to court for the protection of rights to this object. However, judicial protection within, e.g., the Sui generis system should not be excluded.

3. The study of the provisions of specialized laws of Ukraine from the standpoint of civil legal protection of intellectual property rights helped identify methods of protection that can be applied by analogy to the breed of animals, namely: recognition of the right, change, or termination of the legal relationship, restoration of the situation that existed before the violation of the right, recognition of the deed as invalid, termination of actions that violate the right, compensation for damages and moral damage, forced performance of the obligation in kind. A special method of judicial protection of animal breed rights is the application of a one-time penalty in the form of a certain amount of money instead of compensation for damages.

4. It is critical to consider foreign practices in the field of judicial protection of rights to animal breeds. The analysis of the relevant regulatory framework, which has been formed in the Czech Republic, Bulgaria, and Kyrgyzstan, suggests that the judicial protection of animal breed rights, specifically in civil proceedings, is determined primarily by the existence of a protective legal document that certifies the authorship of the animal breed and secures intellectual property rights (e.g., a patent or certificate). The legislation of

Bulgaria outlines the issue of judicial protection of intellectual property rights for animal breeds in detail but does not make provision for an extended list of methods of protection and actions that the court can take to protect the rights of the owner of the law enforcement document.

In general, the purpose set at the beginning of this study can be considered fulfilled. The prospect of further research is the search and analysis of court practice on the chosen subject, as well as consideration of the features of judicial protection of intellectual property rights on animal breeds within the framework of administrative and criminal proceedings.

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Conflict of Interests

None.

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Судовий захист прав інтелектуальної власності на породу тварин у цивільному провадженні (порівняльно-правовий аспект)

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Анотація

Актуальність дослідження зумовлено відсутністю спеціалізованого нормативно-правового регулювання стосовно породи тварин як об'єкта інтелектуальної власності, що значно ускладнює судовий захист майнових та особистих немайнових прав. Мета статті – дослідити цивільно-правовий судовий захист прав інтелектуальної власності на породу тварин в Україні з урахуванням закордонного досвіду. Для систематичного вивчення українського та зарубіжного законодавства застосовано формально-юридичний, логіко-юридичний, порівняльно-правовий та інші спеціальні методи. Шляхом аналізу української нормативно-правової бази виявлено, що для реалізації судового захисту прав на породу тварин необхідно враховувати положення патентного законодавства. Представлено результати дослідження положень спеціалізованих законів України з погляду цивільно-правового судового захисту прав інтелектуальної власності та виділено такі способи захисту, що за аналогією можуть бути застосовані до породи тварин: визнання права, зміна чи припинення правовідношення, відновлення становища, яке було до порушення права, визнання правочину недійсним, припинення дій, що порушують право, відшкодування збитків та моральної шкоди, примусове виконання обов'язку в натурі. З'ясовано, що особливим способом судового захисту прав на породу тварин є застосування одноразового стягнення у вигляді певної грошової суми замість відшкодування збитків. За допомогою порівняльно-правового аналізу зарубіжного досвіду, а саме Чехії, Болгарії та Киргизстану прослідковано, що судовий захист прав на породу тварин зумовлюється передусім наявністю охоронного правовстановлювального документа, наприклад патенту чи сертифіката. Теоретична цінність дослідження полягає в тому, що вперше проаналізовано питання судового цивільно-правового захисту порід тварин як об'єкта права інтелектуальної власності в Україні з урахуванням зарубіжного досвіду. Практична цінність – у тому, що отримані результати можна використати для усунення прогалин та колізій у правовому регулюванні порід тварин як об'єктів інтелектуальної власності. Висловлені в роботі пропозиції можуть бути взяті до уваги в процесі законотворчої ініціативи

Ключові слова: цивільно-правовий захист; способи захисту цивільного права та інтересу; селекційне досягнення; порушення права; патент; закордонний досвід

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Correlation of mediation as an alternative way to protect civil rights and interests and tort liability

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Abstract

The trends and challenges of modern society stimulate a review of the features and characteristics that define law as a set of social norms and shape its image through the provision of legal norms either with means of coercion, or by encouraging the use of other, alternative methods. Changes of a global nature, which are connected not only with the war in Ukraine, are accompanied by alternative methods of protecting the rights of participants in civil relations. The purpose of this study was to establish the legal and scientific and practical principles of the mediation procedure as one of the alternative ways of protecting civil rights and interests. Philosophical, specifically hermeneutic, and general scientific methods of scientific cognition (generalization, logical, praxeological, prognostic and modelling, as well as bibliographic) were used in this study. Special legal methods were also applied: formal legal and comparative legal. Modern positions in the understanding of legal categories, such as civil protection and civil liability and the influence of modern conditions of society on them, have been established. Various approaches to the mediation procedure were presented, and the prerequisites for its occurrence in Ukraine and the world were revealed. The study investigated how the categories "protection of civil rights and interests", "tort liability", and

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"mediation" interact. The modern trends of the civil doctrine regarding the protection of civil rights and interests were examined, the specific features of tortious liability and the possibility of introducing the principles of restorative justice regarding the protection of violated property rights were covered. The legal and practical bases of the application of mediation were determined, the advantages of its application in various spheres of social relations were established. The study analysed the judicial practice regarding the procedure for stopping proceedings in a case due to transfer of the dispute to mediation. The given materials and research results can be used in practical activities by participants in civil legal relations for further scientific research, as well as mediators, teachers, students of various educational degrees, representatives of state authorities and local self-government bodies

Keywords: civil procedure; civil liability; property rights; dispute, restorative justice; mediator

Introduction

Contradictions and disputes are a part of human existence, inherent in any society. Ways to overcome them are mediated both by the level of development of an individual and society in general, and by the form of its organization. Out-of-court methods of resolving disputes are gaining increasingly more supporters. At the same time, the question of a collaborative lawyer arises, which helps choose the most favourable way of protecting violated rights and interests for a person who has suffered or may suffer a corresponding violation. Among the most priority topics for legal research is the question of the formation of the rule of law and the development of civil society, which is directly related to the equally important topic of protecting human rights and interests. Effective protection of human rights and interests is impossible without the "immersion" of civil society in all areas of state building, without balancing the institutions of civil society and the state, with the education of a socially active personality. Among the signs of civil society, the theory of the state and law mentions the provision of self-organization and structuring of the population into the people as a sovereign and integral subject of law thanks to a complex of communicative legal institutions (Topolevskyi & Fedina, 2020). The degree of implementation and protection of rights and interests is the criterion that determines the category "state of civil society". The legal system of the state includes the full list of rights defined in international treaties.

Modern mediation is an alternative way to resolve disputes, specifically to protect civil rights and interests, since the Pound Conference in 1976, when Harvard Law School professor Frank Sander presented criteria for dividing disputes into judicial and procedural disputes, and such that can be regulated through facilitation, mediation, and arbitration (Farkas & Traum, 2017). According to the latest figures (for the year before March 31, 2020) from the Centre for Effective Dispute Resolution (CEDR), the civil and commercial mediation market in England and Wales was around 16,500 cases a year, which is 38% (or 12,000 cases) more than in 2018 (Massie, 2021).

The scientific output of Ukrainian and foreign scientists had a considerable impact on the current state of the implementation of the mediation procedure and the solution of various theoretical and practical tasks related to the

implementation of mechanisms for the protection of civil rights and interests. R.A. Maidanyk (2019) explored the nature of civil liability and the unification of tort provisions; determined the essence of such responsibility in the deprivation of a subjective civil right or the imposition of a new added property obligation on the debtor. And "the unification of general provisions on civil liability for damage compensation by extending the general grounds and conditions for damage compensation according to the rules of tort liability to all cases regarding damage compensation, unless otherwise provided by sanctions for non-performance of a contractual obligation; in case of violation of civil law, tortious liability is applied". O.O. Kot (2019) investigated the issue of the correlation between the protection of rights and civil liability; of interest is the position that "civil law embodies the spirit of individual freedom and creativity in the broadest sense of the word as the ability to create, while law (through the instrument of deeds) is mediated directly in the method of civil law regulation and the principles of civil law through the categories of "freedom", "dispositivity", "free judgment", etc. The issue of pre-contractual liability as a type of civil liability is currently relevant. The mechanisms and principles of negotiations play a decisive role at this stage of the formation of civil rights and interests. M.D. Pleniuk (2020) expressed an interesting position regarding this type of liability: "by its essence, pre-contractual liability arises from the general obligation to conduct negotiations in good faith and is aimed at compensating the damages incurred by a party as a result of the dishonest behaviour of the other party at the negotiation stage, if the injured party acted, relying on such good faith". S.Ya. Fursa *et al*. (2021) carried out a comprehensive study of the legal phenomenon "dispute about the law" in the civil procedure and covered the essential features of disputes arising in notarial, civil, and executive processes. Scientific positions on restorative justice deserve special attention, moreover, within the limits of tortious liability, their number is insignificant. Mostly, this issue is dealt with within the framework of criminal proceedings. M. Sirotkina (2020) notes that "achieving a reconciliation agreement between the victim and the suspect (accused) is an effective compromise way of resolving a legal dispute". L. García-Raga *et al*. (2017) investigated the purpose of mediation not only as conflict resolution, its "prevention", but also personal strengthening and an impetus to social cohesion; mediation promotes free decision-making and one's obligations, which leads to the democratization of society in general. B.H. Brummans *et al*. (2022) reviewed mediation as a widely used form of third-party conflict management, mostly focusing on the role and status of the mediator.

The purpose of this study was to investigate the theoretical and legal foundations of the application of mediation as an alternative way of protecting civil rights and interests and its relationship with the categories "protection of civil rights and interests" and "tort liability".

Materials and Methods

The sources of the study primarily included the norms of Ukrainian legislation, namely the Civil Code of Ukraine (2003), the Civil Procedural Code of Ukraine (2004), the Labour Code of Ukraine (1971), the Code of Administrative Procedure of Ukraine (2005), the Laws of Ukraine "On Mediation" (2021), "On International Commercial Arbitration" (1994), "On Arbitration Courts" (2004), "On Social Work with Families, Children, and Youth" (2001), "On Social Services" (2019); Decree of the President of Ukraine "On the Strategy

for the Development of the Justice System and Constitutional Justice for 2021-2023" (2021). The methodological framework also included international legal acts: Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (2008), United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (2019). The provisions of sub-legislative regulations were also investigated, including the Order of the National Agency of Ukraine on Civil Service "On Approval of the Methodological Recommendations on Conflict Management in State Bodies" (2022), the Order of the National Agency of Ukraine on Civil Service "On Approval of the Methodological Recommendations on Conflict Management in State Bodies" (2022), the Order of the Coordination Centre for Legal Aid Provision "On Approval of the Methodological Recommendations on the Organization of Free Legal Aid Provision by Local Centres for the Provision of Free Secondary Legal Aid" (2023), and the Order of the Ministry of Social Policy of Ukraine "On Approval of the State Standard of Social Service of Mediation" (2016). Information from the official websites of Ukrainian Mediation Centre, UMC (n.d.), National Association of Mediators of Ukraine, NAMU (n.d.), Civil Mediation Council in England and Wales, CMC (n.d.), UK Centre for Effective Dispute Resolution, CEDR (2023).

The application of the method of analysis and generalization made helped cover the legal categories under study and concepts in the field of protection of civil rights and interests. As a result, conclusions were formed using the synthesis method. The formal-legal method was used to analyse Ukrainian legislation, international regulations that govern the issue of alternative protection of civil rights and interests. A comprehensive analysis of areas for the application of mediation according to the national legislation was carried out. This method was helpful for establishing the content of the norms of the relevant codes, legislative and sub-legislative regulations, regarding the grounds for applying the mediation procedure, its principles and standards of provision. The formal-legal method helped establish the inconsistency of the concepts used in the contractual forms of providing mediation services within the framework of the implementation of the legislation on social services.

The comparative legal method was used to investigate, compare, and review relevant scientific positions, sources of law that were aimed at solving the tasks of this study, establishing the content of legislation on the protection of civil rights and interests. The hermeneutic method was used to analyse the categories of tort, civil liability, and ways of protecting civil rights and interests. The hermeneutic method also helped cover the mediator's functions, its role in the implementation of alternative ways of protecting civil rights and interests and established their correlation with the category "tort liability". The praxeological, prognostic, and modelling methods were used to outline further ways and prospects for the use of mediation as a method of reconciliation between the victim and the offender in various areas, specifically for the introduction of the principles of restorative justice to individuals who caused property damage. The method of generalization helped formulate conclusions and proposals based on the results of the relevant research, establish prospects for further scientific research. The bibliographic method was used to establish and form a bibliographic description of laws, sub-legislative regulations, international standards and directives that govern mediation as an alternative way of protecting civil rights and interests.

Results and Discussion

Nature of civil liability and protection of rights and interests

Protection of civil rights and interests is a category that is still being discussed today. Of particular importance is the investigation of questions concerning the correlation between ways of protecting civil rights and interests, specifically alternative ones, such as mediation, with civil liability. The conditions in which the entire Ukrainian society, the state itself, and the limited level of protection of the rights and interests of citizens are all the result of a large-scale war. The civilistic doctrine distinguishes between the concepts of protection and security: the principle of ensuring the implementation of civil rights is the basis of legal protection, while protection is aimed at restoring a particular subjective right and removing obstacles to its implementation (Spasibo-Fatieieva *et al*., 2014). The very methods of protection in civil studies mean the application of sanctions in civil legal relations, which can create adverse consequences for a person, but are not related to the condemnation of their behaviour (Bezklubyi, 2014).

"The right to defence (not only judicial, but also extrajudicial, including the right to self-defence of the violated right and interest) in the general theory of law and in the science of civil law is considered by the majority of scientists as one of the powers that is part of subjective law" (Bodnar, 2020). The dynamics of the development of society also determines changes in concepts, specifically civil protection must be considered as a set of measures (Kot, 2017), carried out both by the subject whose right has been violated, and by bodies representing the state or another body, and which are aimed at eliminating violations of law or interest. The question of the involvement of the subjects of legal relations themselves in the protection of their violated or disputed rights, namely through mediation, negotiations, is gaining increasingly more scientific attention. N. Loizides *et al*. (2022) identify that these procedures "enable negotiators to maximize benefits in related mediations, minimize critical uncertainties, and create reliable commitments for future interactions". K. Beardsley *et al*. (2019) argue that mediation can substantially reduce violence in two ways. Firstly, mediators facilitate the path to a peaceful settlement and by establishing the validity of the appointment of mediation, the probability of resolving the conflict through negotiations increases. At the same time, mediators regulate the flow of information, for instance by facilitating communication and establishing facts, which ultimately overcomes uncertainty and mistrust between the parties. L.H. Grant *et al*. (2022) argue that it is worth considering the fact that "peace negotiations are usually associated with a long and difficult process of de-escalation; in part, this is mediated by the considerable psychological barriers that arise during protracted conflict that justify the continuation of the conflict, as well as hinder its de-escalation and resolution."

The formation of civil society and the general development of law led to the emergence of procedures for the protection of violated rights, which in the scientific literature were called "forms of protection of civil rights". "The form of protection reflects how the authorized person will exercise their right to protection – independently or involving a certain authorized body in this procedure. The first of the two forms of protection given was called the non-jurisdictional form of protection, the second – the jurisdictional form of protection. Therewith, a common feature of both specified forms of protection is that the exercise of the right to protection is initiated by the bearer of the violated subjective right in any case" (Yanchuk, 2016).

The procedure of protecting civil rights and interests is carried out using methods of protection, namely compensation for damage caused by illegal actions, and non-conventional methods of protection, which can be used only with the voluntary agreement of the parties. These are the mechanisms of negotiations, mediation, arbitration, etc. Next, the correlation between tort liability and mediation will be explored.

It is here that the degree of development of civil society and legal culture plays its role. Admittedly, some authors do not include legal culture among the elements of the mechanism of legal regulation, leaving it outside the boundaries (Bandurka *et al*., 2018), but we support the position regarding the definition of law as such that includes the rights and obligations of a person, legal awareness, and legal relations. In contrast to the fragmented study of individual areas of legal activity, a holistic awareness of it is now proposed, specifically "the need to combine systemic, structural-functional approaches to the study of legal reality with a normative-valued, axiological approach" (Baran, 2015).

For the Anglo-American system of law, the role of tort is the adjustment of losses and their final distribution. Tort obligations are established by legislation that is not agreed between the parties. Their functions include compensatory, restraining, and educational. A tort is an act or inaction that results in harm, and is accordingly a civil offence, which results in the imposition of responsibility by the courts on the offender. In tort law, "causing harm" means "intrusion into any legal right", while "harm to another person" means "expenses or actual damage suffered by a person": "A tort is an act or inaction that gives rise to injury or harm to another person and amounts to a civil wrongdoing for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers" (Council of the American Law Institute..., 1959). Basic to the tort law of this legal system is the provision of aid to injured parties, the imposition of responsibility on guilty individuals, and the prevention of others from committing harmful acts. According to the Principles of European Tort Law (the Principles), "a person who is legally found to have caused damage to another person shall be obliged to compensate for this damage" (European Group on Tort Law, 2005). The Civil Code of Ukraine (2003) establishes the general tort rule: "Property damage caused by wrongful decisions, actions, or inaction to the personal non-property rights of an individual or legal entity, as well as damage caused to the property of an individual or legal entity, shall be compensated in full by the person who inflicted such damage". These provisions are implemented through the civil procedure – as a legally regulated activity of the courts regarding the resolution of civil cases, and "the task of the civil judiciary is the fair, impartial, and timely consideration and resolution of civil cases for effective protection of violated, unrecognized, or contested rights, freedoms, or interests of individuals, rights and interests of legal entities, interests of the state" (Civil Procedural Code of Ukraine (2004)). At the same time, a norm has been established that prescribes the possibility of reconciliation between the parties through mediation at any stage of the court procedure (Part 7 of Article 49 of the Civil Procedural Code).

Theoretical and legal principles of mediation

According to the Law of Ukraine "On Mediation" (2021), mediation is "an out-of-court voluntary, confidential, structured procedure, during which the parties through a mediator(s) try to

prevent the occurrence or settle a conflict (dispute) through negotiations". It is also introduced at the level of several regulations, namely Article 2221 of the Labour Code of Ukraine (1971), Article 1581 of the Land Code of Ukraine (2001), Part 7 of Article 46 of the Commercial Code of Ukraine (2003), Part 7 of Article 49, Part 5 of Article 198, Part 1 of Article 253 of the Civil Procedural Code of Ukraine (2004), Part 5 of Article 47 of the Code of Administrative Procedure of Ukraine (2005), as well as some laws of Ukraine: Part 1 of Article 30 "On International Commercial Arbitration" (1994), Article 33 "On Arbitration Courts" (2004), Part 1 of Article 13 "On Social Work with Families, Children, and Youth" (2001), Article 16 "On Social Services" (2019).

Back in the early 2000s, the Council of the European Parliament adopted conclusions "on alternative dispute resolution methods governed by civil and economic legislation, noting that establishing basic principles in this area is a necessary step towards ensuring the proper development and functioning of out-of-court procedures for resolving disputes in civil and commercial legal relations, with the purpose of simplifying and improving access to justice. Mediation can provide a cost-effective and speedy out-of-court settlement of disputes in civil and commercial matters based on procedures that factor in the needs of the parties" (Directive 2008/52/EC…, 2008). A key point is that mediation should not be considered as a weaker alternative to litigation for the enforcement of mediation agreements, depending on the consent of the parties. Evidently, the member states must provide the parties with the opportunity to implement the agreements reached.

The above-mentioned position (Bezklubyi, 2014) on the understanding of the correlation between the methods of protection in civil law and civil liability lies in the imposition (in case of application of liability) for the guilty person not only of sanctions, but also of condemnation of their behaviour; helps to single out the common features of these legal categories as well. Specifically, the following are common to the methods of protection and civil liability: all civil law means of influence (coercion) are related to the concept of sanction; coercion is not a mandatory feature of the sanction (it can be implemented voluntarily); protection and responsibility are aimed at legal restoration and are implemented within the framework of protective legal relations. However, in contrast to the methods of protection, responsibility involves the limitation of rights or the establishment of other duties.

Still, the question arises, whether the person who has suffered material damage always interested in the subjective side of the issue – the condemnation of the person who caused the damage. Value judgments are usually complex and ambiguous, they do not provide full-fledged "correction" of the person who acted illegally. This position is confirmed by the provisions of the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023 (Decree of the President of Ukraine…, 2021) on the development of alternative (out-of-court) and pre-trial settlement of disputes by introducing for certain categories of cases the obligation mandatory pre-trial settlement procedure using mediation and other practices. Analysis of the latest judicial practice indicates that the number of decisions on the implementation of the obligation to stop proceedings by courts has increased considerably after the adoption of the Law of Ukraine "On Mediation" (2021), for instance: Decision of the Economic Court of Odesa Region in Case no. 916/647/21 (2022), Decision of the Zhydachiv District Court of Lviv Region in Case no. 443/650/17 (2022). Yu.D. Prytika uses

conciliation procedures as an approach to resolving legal conflicts from the standpoint of interests (Bozhuk & Diachenko, 2019). Accordingly, this method is based on establishing and considering the mutual interests of the parties and, most importantly, is aimed at reaching an agreement beneficial to all parties, according to which there is no "losing" party ("win-win" concept).

The United Nations Convention on International Settlement Agreements Resulting from Mediation (2019) defines mediation as a procedure, "regardless of the expression used or the basis on which it is carried out, by which the parties attempt to reach an amicable settlement of their dispute through a third person(s) ("mediator"), who does not have the authority to impose a certain decision on the parties to the dispute".

Currently, a major area is the introduction of restorative justice, which is a way of ensuring gradual acceptance by society of the institutionalization of the practice of mediation between victims and offenders. The relevant project "Implementation of restorative justice in Ukraine" has been implemented under the aegis of the United Nations Democracy Fund (UNDEF) since May 1, 2019 (Implementation of restorative justice…, n.d.). The founders of this field laid a broader understanding of restorative justice, "bad actions or gaps in human interaction create needs and obligations for the immediate participants of the action, as well as for the wider society where the action(s) takes place" (Menkel-Meadow, 2007). Creative is the position of C. Menkel-Meadow (2018), who defines mediation as a "meme" or "sensibility" that can transform the way people resolve disputes and conflicts with each other.

The dispositivity of civil legal relations and their diversity is decisive in the widespread use of mediation. However, opinions are expressed regarding "the problem of a clear understanding of mediation, which is directly related to the legal model that is reflected in the law or can become a means of constructing the law" (Shishka, 2021). According to the conclusions of the European Commission on the Efficiency of Justice, it is judges who have a decisive role in the formation of a culture of peaceful conflict resolution and should have the authority to recommend alternative methods to the parties to court proceedings, specifically mediation (Maan *et al*., 2020). There are normative examples of the use of mediation not only in the private sphere, but also in the civil service and in local self-government bodies as "an auxiliary tool in dealing with conflicts that arise within a state body, including for the prevention, detection, and resolution of conflicts, can be used to reduce and/or eliminate conflict tension between civil servants, other employees of the state body … before, during, and after disciplinary proceedings" (Order of the National Agency…, 2022; Order of the Coordination Centre…, 2023).

The spread of mediation as an alternative way of protecting rights and interests, the adoption of the Law of Ukraine "On Mediation" (2021) cause the need to improve the rules of the State Standard of Social Services of Mediation (Order of the Ministry of Social Policy…, 2016), which regulates one of the types of social services prescribed by the Law of Ukraine "On Social Services" (2019). The standard was adopted even before the law on mediation, so it does not distinguish between the categories of "intervention" and "mediation"; has an incorrect wording of the types of contractual structures used in the mediation procedure.

In recent years, the concept has become widespread in the doctrine of civil law, according to which the methods of protection of civil rights and interests are divided into liability and other means. Evidently, liability, including tort liability, is a narrower concept compared to other

methods (Guyvan, 2021). The position of T.S. Kivalova (2008) is that civil liability for causing damage is a type of protected legal relationship where one party (the causer of damage) must bear the adverse consequences prescribed by the norms for the offence committed by them in the form of compensation at their own expense for the damage caused to another person, and, accordingly, the other party is entitled to compensation for such damage.

The positions of scientists regarding the institution of protection of civil rights and interests are common regarding its importance and priority in building a legal state and civil society because without proper and effective protection, all these rights turn into a fiction. The position of O.O. Kot (2019) is expedient, who states that "the idea of a functional-purpose criterion for distinguishing measures of responsibility and other measures of protection of subjective civil rights is promising, considering that the purpose of responsibility is not to punish the offender", it may refer to the compensatory function of civil liability, which is directed only towards the victim's property. The opinion expressed in the monograph edited by I.A. Bezklubyi (2014) appears to be well-founded. He states that responsibility for violation of civil rights, although it does not cover all coercive measures, occupies a decisive place in the system, performs the function of a method of protection of violated rights and plays a significant role in the procedure of legal regulation of civil relations in general. Worthy of attention is the opinion of B.H. Brummans *et al*. (2022) that mediators are generally considered as central mediators or intermediate links through which disputants can find ways to resolve their differences "on their own". Accordingly, to avoid more adverse consequences that will necessarily "appear" in case of the application of civil liability, primarily tort liability. According to the Centre for Effective Dispute Resolution (CEDR) (2023) and the Civil Mediation Council in England and Wales, CMC (Official website of the Civil Mediation Council… n.d.), there has been an increase in special appeals and mediation activities supported by leading employers, the Court of Appeal, and other courts of Great Britain, and the number of decisions contained in the court register of Ukraine on the suspension of cases based on the parties' transition to the mediation procedure. This indicates a substantial spread of mediation as a way of alternative protection of civil rights and interests. Prospects for the use of this method of conflict resolution between participants in civil legal relations can be extrapolated to a wide range of social relations. This will enable a more effective implementation of not only the protection of civil rights and interests, but also an opportunity to act on the prejudice of many disputed situations, using mediation to resolve pre-contractual relations, pre-partnership relations, and many others.

Conclusions

Thus, Ukrainian private legislation contains a sufficient legal basis for the application and development of mediation as an alternative way of protecting civil rights and interests. According to the results of the research, the category "responsibility" is established as a subjective legal obligation, which can arise both forcibly and within the scope of protective legal relations in addition to what existed before (specifically, was established by contractual constructions) or the perpetrator of a tort. The legal principles of mediation as an alternative way of protecting civil rights and interests are established through the analysis of legislation and the practice of applying mediation procedures, court practice. The relationship between the principles of mediation, which fully

embody and at the same time relay the vectors of civil society, and the "broad" understanding of law inherent in the natural-law school of law is established. The study showed the effectiveness of mediation both as a method of protecting already violated civil rights and interests (arising from contractual constructions and from tortious legal relations), as well as a method of protection that will serve as a prevention of disputes and conflicts. The effectiveness of the legal regulation of mediation is determined by the fact that it was formed over a long period of time and absorbed a considerable number of international practices. The issue of legal regulation and the application of restorative justice requires further scientific research through detailing and expanding the scope of legal relations where it can be applied, specifically in civil legal relations for causing damage. This will enhance involvement in restorative justice procedures, both individual and societal perceptions of empowerment, fairness, legitimacy, satisfaction, and social justice. An important area of further research should be the results of the execution of court decisions on the suspension of proceedings in cases due to the application of the mediation procedure, in terms of its effectiveness. Another subject of further scientific research may be the search for ways to eliminate contradictions in the application of methods of protection of civil rights and interests, which will directly affect the level of enjoyment of the rights and interests of all participants in civil legal relations.

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Conflict of Interests

None.

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Співвідношення медіації як альтернативного способу захисту цивільних прав та інтересів і деліктної відповідальності

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Анотація

Тренди та виклики сучасного суспільства стимулюють до перегляду особливостей та ознак, що визначають право як сукупність соціальних норм та формують його образ через забезпеченість правових норм або засобами примусу, або спонукаючи застосовувати інші, альтернативні способи. Зміни глобального характеру, що пов'язані не лише з війною в Україні, супроводжуються застосуванням альтернативних способів захисту прав учасників цивільних відносин. Мета статті – установити правові та науково-практичні засади процедури медіації як одного з альтернативних способів захисту цивільних прав та інтересів. У дослідженні використано філософські, зокрема герменевтичний, та загальнонаукові методи наукового пізнання (узагальнення, логічний, праксеологічний, прогностичний та моделювання, а також бібліографічний). Застосовано й спеціально-юридичні методи: формально-юридичний та порівняльно-правовий. Встановлено сучасні позиції в розумінні правових категорій, як-от цивільно-правовий захист та цивільно-правова відповідальність і вплив на них сучасних умов існування суспільства. Наведено різні підходи до процедури медіації і розкрито передумови її виникнення в Україні та світі. Досліджено, як взаємодіють категорії «захист цивільних прав та інтересів», «деліктна відповідальність» та «медіація». Вивчено сучасні тенденції цивілістичної доктрини щодо захисту цивільних прав та інтересів, розкрито особливості деліктної відповідальності та можливості запровадження принципів відновного правосуддя щодо захисту порушених майнових прав. Визначено правові та практичні основи застосування медіації, установлено переваги її застосування в різних сферах суспільних відносин. Здійснено аналіз судової практики щодо процедури зупинення провадження у справі через передачу спору на медіацію. Наведені матеріали та результати дослідження можуть використати в практичній діяльності учасники цивільних правовідносин для подальшого наукового пошуку, а також медіатори, викладачі, слухачі різних освітніх ступенів, представники органів державної влади та місцевого самоврядування

Ключові слова: цивілістичний процес; цивільно-правова відповідальність; майнові права; спір; відновне правосуддя; медіатор

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Current issues of antimonopoly policy in the market of agricultural products of Ukraine

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Abstract

This study investigated the prospects for the development of antimonopoly policy concerning the regulation of the market of agricultural products. The relevance of this study is determined by the need to update the legal framework of Ukraine on antimonopoly regulation of agricultural product markets, considering the current challenges and international standards. The purpose of this study was to analyse the features of antimonopoly policy as a leading area of the economic policy of Ukraine, to analyse the features of antimonopoly policy in the field of agricultural product markets and to identify the prospects for their development. To fulfil the purpose, the following scientific methods were used: dialectic, analysis, formal-legal, comparative-legal. The result of the conducted study was the determination of the following measures to improve the antimonopoly regulation of agricultural product markets in Ukraine: to

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adopt the Draft Law of Ukraine "On the Association of Agricultural Producers" No. 8149, after finalizing it; to supplement the current legislation of Ukraine in the field of antimonopoly policy concerning the regulation of the market of agricultural products with a norm according to which the most vulnerable category of agricultural producers (small producers) will be able to unite to solve problems related to the full-scale invasion of the russian federation on the territory of Ukraine and response to wartime challenges; in the development of the project of such changes regarding the regulation of the relevant monopoly exceptions, to consider the available international practices. The practical significance of the present study is that the results can be used to develop draft laws on the antimonopoly regulation of agricultural product markets in Ukraine, as well as to prepare studies on the legal regulation of the antimonopoly policy of Ukraine

Keywords: restriction of monopolies; antimonopoly regulation; agricultural market; international standards; development of Ukrainian legislation

Introduction

A prominent place in the development of the economy of Ukraine is occupied by the development of agriculture, which is one of the main branches of the national economy from the standpoint of the formation of the gross domestic product and ensuring the food security of the country (Olshanska *et al*., 2022). Ukraine is one of the largest producers of the main types of products of the agro-industrial sector. Ukraine ranks first in sunflower and barley exports, second in grain crops and rapeseed, eighth in chicken, and ninth in soybeans (Kruglyak, 2021). Therewith, Ukraine continues to strive to expand agricultural production both for the needs of its population and to develop exports (Nikitchenko, 2022). This explains the urgency of improving the activities of the Antimonopoly Committee in the market of agricultural products.

At the same time, rising prices, new and ongoing issues with the supply chain, considerable destruction of agricultural infrastructure, mining of cultivated areas and reduced production, and much more due to russia's unprovoked war against Ukraine and the COVID-19 pandemic are making questions about markets, competition, antitrust law, and agriculture very relevant. And not only at the Ukrainian level, but also at the world level. The main purpose of the general norms of antimonopoly legislation in the area under study is to promote the development of agriculture (Nikitchenko, 2022). In turn, influencing the development of the agricultural market, antimonopoly regulation is an essential factor in ensuring stable economic growth (Nie, 2018) and food security (Okhrimenko, 2019), competitiveness of the economy (White, 2022) of any state.

The above causes the need to review the antimonopoly policy of Ukraine.

The issues of antimonopoly policy are actively investigated in scientific circles. Among the most recent studies devoted to this issue, one can note the works of K.S. Okhrimenko (2019), who examines the activities of the Antimonopoly Committee of Ukraine in the agricultural sector and suggests areas for its activation to improve the working conditions for agricultural producers; I. Kravtsova (2020) examines the influence of the state in general, as well as individual executive bodies on the market and relations in the field of

competition, examines the activities of the Antimonopoly Committee of Ukraine.

M.V. Zakhodym (2022) investigates the concept and current state of the country's food security and determines its role in the structure of Ukraine's economic security. The author emphasizes that to maintain the level of food security, the state must establish parity inter-sectoral relations of agriculture with other spheres of the economy; to maintain the profitability of the agrarian sector of the economy at the level of the average rate of profit of the economy of Ukraine by effective limitation of monopoly, to ensure the regulation of prices for the products of natural monopolies, as well as the introduction of the mechanism of minimum guaranteed prices, and the introduction of state investments, including the financing of targeted programs of the state, etc.

Works related to foreign practices of antimonopoly regulation of agricultural product markets are also valuable for this study. These are the studies of M.M. Csirszki (2022a) on a comparison of the sectoral antitrust exemption for agriculture that exists in the United States (US) and the European Union (EU), as well as an analysis of the legal history of the antitrust and trade regulation provisions that apply exclusively to the agricultural sector of the United States of America (Csirszki, 2022b). And also, such authors as A. Bradford *et al*. (2019), comparing US and EU antitrust laws. The authors found that EU competition law is followed considerably more often than US antitrust law. They attribute the attractiveness of the EU competition regime to the fact that the EU actively promotes its model through preferential trade agreements and has an administrative template that is easy to follow.

J.-R. Borrell *et al*. (2022) assess the impact of competition authority reform on the effectiveness of antitrust laws using causal inference methods. They examine the reform of antitrust authorities in 1995-2020 using the example of 20 countries and its impact on the effectiveness of competition policy and emphasize that reforms, paradoxically, do not always increase the effectiveness of antitrust legislation.

The purpose of this study was to find and analyse ways to improve Ukraine's antimonopoly policy on agricultural markets. According to the defined purpose, the following tasks were set: to investigate the current legislation, scientific works and international practices regarding antimonopoly policy on the market of agricultural products; to determine the features of the antimonopoly policy, favourable for the development of small agricultural enterprises, which are the most vulnerable in current conditions; to develop proposals for improving the legal regulation of the antimonopoly policy of Ukraine, aimed at the development of the agricultural sphere of Ukraine.

Materials and Methods

To fulfil the specified purpose and perform the tasks, three groups of scientific methods were used: dialectical, general scientific (method of analysis) and special legal methods (formal legal method and comparative legal method). The application of the dialectical method helped identify the trends in the development of legislation in the field of antimonopoly policy. The analysis methodology is based on the investigation of scientific approaches to antimonopoly policy in general and antimonopoly regulation of the market of agricultural products in particular. A comparison of the antimonopoly policy of the USA and the EU was made using the comparative legal method. In the end, the content of legal norms in the field of antimonopoly policy was clarified using the formal legal method and proposals were developed to improve the antimonopoly regulation of the market of agricultural products in Ukraine.

The regulatory framework of the study was based on Ukrainian and international regulations. These include the Law of Ukraine "On the Protection of Economic Competition" (2001), Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), Treaty on the Functioning of the European Union (Consolidated version of the Treaty..., 2012), Regulation (EU) No. 1308/2013 (2013), Regulation (EU) 2020/593 (Commission Implementing Regulation (EU) 2020/593..., 2020), Regulation (EU) 2020/594 (Commission Implementing Regulation (EU) 2020/594..., 2020), Regulation (EU) 2020/599 (Commission Implementing Regulation (EU) 2020/599..., 2020).

Special attention was also paid to the Draft Law of Ukraine No. 8149 "On the Association of Agricultural Producers" (2022).

Summary information about Ukraine's place in the ranking of large producers of the main types of agricultural products is based on official data of the State Statistics Service of Ukraine (Kruglyak, 2021).

Results and Discussion

Providing the population with safe and high-quality food products is a strategically important priority of the national agrarian policy, which determines the area of ensuring the country's food security. In this context, apart from the direct producers of agricultural products, the basic principles of the organization and functioning of the agricultural market, where the situation in Ukraine has become critical due to the large-scale invasion of the russian federation on the territory of Ukraine, are also critical. The destruction of infrastructure facilities throughout the state, the blocking of exports and imports, changes in the structure of food consumption by the population due to a decrease in purchasing power, and the destruction of established logistical connections led to many obstacles in the functioning of the agricultural market. It is obvious that the specified conditions determine the need to develop adequate mechanisms for adapting the functioning of the agrarian market in war conditions to overcome the adverse impact of growing challenges and threats (Boiko, 2022).

At the same time, to ensure equal rights of all subjects of market relations and create favourable conditions for economic development, it is necessary to control the market and competition. The market of agricultural products is no exception. One of the mechanisms of the state's implementation of its powers is the issuance of regulations (Gutiérrez & Suárez, 2023), the control of compliance with which belongs to the competence of specially authorized entities. Factoring this in, a discussion in scientific circles regarding the principal factors influencing the effectiveness of the implementation of antimonopoly policy seems quite logical.

Antimonopoly regulation currently exists in more than 110 countries and territories around the world (Stylianou & Iacovides, 2022). J.-R. Borrell *et al.* (2022) analysed 24 reforms of national competition authorities in 20 different countries to determine the causal effect of the reforms by comparing the performance of these countries' competition policies with a control group. The results indicated that the reforms had mixed effects: most of them had the expected positive significant effect (10 reforms out of 24), but also many had an unexpected significant adverse effect (7 reforms out of 24) or had no significant effect at all in the long run. At the same time, the authors found that there are cases where reforms are used to undo the progress made by previous reforms, sometimes even in a game that results in politicians covering up their true intentions by

claiming that their reforms are also beneficial and receive negative results. Thus, in one case we see a pro-reform (Spain, 2007) and a genuine counter-reform (Spain, 2013) that partially reverses the improvements achieved by the effectiveness of the antimonopoly legislation in the long run (Borrell *et al*., 2022). That is, outcomes are uncertain and at best consistent with expected progressive outcomes, but this is not guaranteed because sometimes reforms are outcome-neutral and do not live up to expectations.

The given data give grounds for assumptions that the priority factor influencing the effectiveness of the antimonopoly policy of any state can be considered not so much antimonopoly bodies as proper statutory regulation. Although antimonopoly law may be unable to solve all the problems in this area, enforcement of competition law can play a key role in solving the fundamental issues that underlie unfair trade practices between businesses. Furthermore, it is still indispensable for ensuring the proper performance of the internal market (Boiko, 2022). Therefore, the priority of legal regulation in the aspect of ensuring the effectiveness of Ukraine's antimonopoly policy is indisputable.

Considering the realities that have developed in Ukraine in the field of the development of the agricultural products market, in connection with the full-scale invasion of the russian federation on the territory of Ukraine, the antimonopoly legislation of Ukraine must necessarily consider the importance of creating conditions that will be favourable in the aspect of ensuring, first of all, the viability of small agricultural producers. Although P. Watson and J. Winfree (2021) point out that using antitrust laws to break up large agricultural companies and/or protect small farms can lead to higher food prices. Such a claim seems controversial, given that there is no evidence that the breakup of large agricultural companies is among the reasons for the increase in food prices.

The expediency of using some methods of antitrust regulation to protect small agricultural producers seems evident. These include the relaxation of certain antimonopoly requirements.

An essential step on the way in this area can be recognized as the basis for the adoption of Draft Law No. 8149. This is a draft of the Law of Ukraine "On the Association of Agricultural Producers" (2022), introduced by People's Deputies of Ukraine O.V. Haydu, O.V. Saliychuk and others. According to the explanatory note to Draft Law No. 8149, it was developed "to perform the European integration obligations of Ukraine in terms of determining the legal and organizational framework for state recognition of associations of agricultural producers (producers' organizations, associations of producer organizations and inter-branch organizations), granting such associations representative status, creation of conditions for self-regulation of the agricultural activities of their members by such associations, as well as conditions for delegation to representative associations of agricultural commodity producers of certain powers of state authorities to regulate agricultural activity" (Draft Law of Ukraine No. 8149…, 2022). However, this draft law needs to be revised. As a result of the implementation of Draft Law No. 8149, representative associations of agricultural producers will be able to establish rules and conditions that reduce the intensity of competition, as well as the motivation of economic entities to compete vigorously on the market, create obstacles in the market access of other economic entities. The greatest danger in this case is the possibility of a conspiracy with the support of the relevant association. Representative associations of commodity producers of agricultural products can abuse this status by carrying out

anticompetitive concerted actions or creating cartels. Therewith, giving representative associations the right to establish mandatory rules and requirements for producers of agricultural products who are not members of such associations may result in a violation of the principle of equality before the law, as well as discrimination of business entities, which may result in advantages to individual business entities (members of the relevant association) and harm the interests of other business entities that are not members of such associations. At the same time, this provision is inconsistent with the Part 1 of Article 3 of Draft Law No. 8149. It refers that prohibits the association of agricultural producers to make decisions and take other concerted actions, provided that such decisions and actions distort competition in the agricultural market and/or discriminate against individual agricultural producers. Furthermore, some provisions of Draft Law No. 8149 have signs of legitimizing anticompetitive concerted actions of business entities. That is, they violate the provisions of Article 17 of the Law of Ukraine "On the Protection of Economic Competition" (2021), and are also inconsistent with Ukraine's international obligations pursuant to Article 254 and the Part 1 of Article 255 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014). Such conclusions can be reached by analysing the relevant provisions of the specified legal acts.

Therewith, it is advisable to consider relevant international practices, the experience of the world's largest consumer markets, the US, and the EU, which adopted different approaches to regulating competition (Bradford *et al*., 2019). Since the modern stage of the formation of antimonopoly regulation is counted from the moment of the adoption of the Acts of Sherman, 1890 (Daskalova, 2020; Brown, 2022), and Clayton, 1914 (Brawley, 2022), it is worth starting with the antimonopoly policy of the United States.

The United States has always played a pioneering role in competition policy. To regulate competition, not only general rules applicable to all economic sectors, but also provisions for individual industries were adopted. The United States was the first jurisdiction to adopt an agricultural exception under antimonopoly legislation to the prohibition of anticompetitive agreements and was a leader in regulating markets from an industry perspective (Csirszki, 2022b).

At the same time, the beginning of antimonopoly legislation was not in favour of the agricultural sector, even though the vulnerability of farmers played not the least role on the way to modern antimonopoly legislation. The analysis shows that the first 25 years of US antimonopoly legislation – from 1890 to 1914 – lacked legal means to distinguish agricultural producers from other market participants. This led to the fact that agricultural cooperatives, created for mutual aid, were often prosecuted for violations of antimonopoly legislation. That changed with the adoption of Section 6 of the Clayton Act, followed eight years later by the Capper-Volstead Act. Together, these laws formed the Great Charter of agricultural producers, who can join forces in cooperatives to sell their products. The legislative decision regarding the privileging of the agricultural sector was implemented by exempting agricultural cooperatives from the prohibition of anticompetitive agreements. Since then, US competition policy has established a privileged position for agricultural producers (and cooperatives) (Csirszki, 2022b). This policy persists in the USA until now.

Later, other countries joined this initiative. The active phase of the spread of competition law enforcement began in the second half of the 20th century, specifically since the formation of

the EU. In turn, the European Union has influenced the strategy of antimonopoly regulation worldwide (Daskalova, 2020). Traditionally, the European Union has placed relatively less faith in the self-regulating powers of markets, favouring regulators instead. The European Union is also considered to be more hostile towards dominant companies and therefore more inclined to limit mergers that could lead to greater dominance (Bradford *et al*., 2019). Therewith, Article 102 of the Treaty on the Functioning of the European Union is interpreted to "ensure that the exercise of market power does not impair competitors' possibilities to succeed or prevail on the market based on superior business performance" (Brown, 2022). Apart from economic considerations, the European Union is also concerned with the agricultural policy objectives to be achieved through the antimonopoly exception. The European Union (and its predecessor, the European Economic Community) has long been committed to a value judgment that prioritizes agricultural policy objectives over competition rules.

Furthermore, the relaxation of monopoly rules aimed at supporting the agricultural sector to mitigate the consequences of the COVID-19 outbreak deserves attention. On April 30, 2020, the European Commission (the Commission) issued three implementing regulations (Commission Implementing Regulation (EU) 2020/593…, 2020; Commission Implementing Regulation (EU) 2020/594…, 2020: Commission Implementing Regulation (EU) 2020/ 599…, 2020), which temporarily soften the scope of application of competition legislation in three agricultural sectors that have been seriously affected by the COVID-19 pandemic.

According to the context, Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No 1234/2007 encourages cooperation between agricultural producers, but clarifies that EU competition rules remain applicable to the production and trade of agricultural products. However, according to Article 222 of the Regulation, the Commission may apply temporary derogations from Article 101(1) Treaty on the Functioning of the European Union (Consolidated version of the Treaty…, 2012) to certain categories of agreements to eliminate serious imbalances in the market. But such concessions do not apply to serious violations.

Thus, to help potato producers strike a balance during this period of serious market imbalance, agreements, and decisions of farmers, associations of farmers or associations of such associations, or recognized producer organizations, associations of recognized producer organizations and recognized inter-branch organizations regarding potatoes for processing on a temporary basis were allowed for 6 months. These measures include withdrawal from the market and free distribution; conversion and processing; storage; joint promotion; temporary production planning. At the same time, such agreements and decisions regarding potatoes for processing may include removing potatoes from the market for orderly destruction of the product or for free distribution to food banks or government agencies; processing potatoes for other purposes, such as animal feed; creation and search of storage facilities and preparation of potatoes for longer storage; promoting the consumption of processed potato products; planning measures to reduce the volume of future plantations and adjust current potato contracts. Therewith, according to the first paragraph of Article 222(1) of Regulation (EU) No. 1308/2013, permission is granted if it does not interfere with

the functioning of the internal market, and agreements and decisions are strictly aimed at stabilizing the sector. These special conditions exclude agreements and decisions that directly or indirectly result in the division of markets, discrimination based on nationality or price fixing. If agreements and decisions do not comply with these conditions or no longer comply with these conditions, Article 101(1) of the Treaty (Consolidated version of the Treaty..., 2012) shall apply to these agreements and decisions. Such practice can be valuable for Ukraine. The specified measures can be applied to other agricultural products, depending on the situation on the agricultural market.

Furthermore, farmers and producers and their recognized organizations were temporarily allowed to:

- conclude agreements and take joint decisions on withdrawal from the market and free distribution, joint promotion, and temporary planning of production of live plants and flowers (Commission Implementing Regulation (EU) 2020/594..., 2020);
- conclude agreements and make joint decisions regarding the planning of raw milk production volumes (Commission Implementing Regulation (EU) 2020/599..., 2020).

Some considered antimonopoly relaxations of the EU, introduced in connection with the impact of the pandemic on the development of the agricultural market, have value in the context of their implementation in Ukrainian legislation, with the establishment of their temporary effect during the martial law and the post-war period in Ukraine. Specifically, it would be expedient to introduce relaxations in the form of temporary permits to conclude agreements and make joint decisions regarding withdrawal from the market and free distribution, joint promotion, and temporary planning of the production of agricultural products in relation to which a deficit is experienced at a certain stage of the wartime and post-war period.

Conclusions

It was found that there is currently a need to improve Ukraine's antimonopoly policy in the field of agricultural products. The principal vector of development of antimonopoly regulation should be the agri-food sector, and not its restrictions. Competition in the agricultural market today has already substantially decreased due to the losses that the agricultural industry suffered and continues to suffer in connection with the war in Ukraine. At the same time, the priority area of the further development of antimonopoly legislation during the war period, as well as in the post-war period during the recovery of the agri-food sector, should be ensuring the viability of small producers.

It was proved that antimonopoly regulation should be guided not only by objective realities and inherent features of the economy of Ukraine, but also by international standards. Therefore, it can be concluded on the need to legislate an exception to the general rules of antimonopoly regulation in the form of the possibility of uniting small agricultural producers to solve the issues associated with the full-scale invasion of the russian federation on the territory of Ukraine and responding to the challenges of wartime.

At the same time, within the framework of antimonopoly regulation, considerations should proceed from the fact that fair competition of agricultural companies is useful for society, as it leads to an increase in the supply of agricultural products, their affordability and improved properties, which is directly related to ensuring the rights of consumers of such products. Therefore, it is important to control activities that could potentially restrict competition. It is necessary to

limit the manifestations of monopoly in the field of material and technical support of the work of agricultural enterprises, in the field of trade in agricultural products, etc.

As a result of the study, the current and prospective legislation, scientific works and international practices regarding antimonopoly policy on the market of agricultural products were analysed, the features of antimonopoly policy favourable for the development of small agricultural enterprises, which are the most vulnerable in current conditions, were determined; proposals were developed to improve legal regulation of the antimonopoly policy of Ukraine aimed at the development of the agricultural sphere. Based on which, the prospects for the further development of the antimonopoly policy of Ukraine were clarified, by determining the main areas of improvement of the antimonopoly regulation of the market of agricultural products in Ukraine.

The obtained results can become the basis for the development of the content of laws on antimonopoly regulation of the market of agricultural products and can be used in theoretical studies. Finally, the discussed subject requires further scientific research. Specifically, this refers to a more detailed analysis of the legislation of Ukraine in the field of antimonopoly regulation of the market of agricultural products, as well as the study of foreign practices in this area.

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Conflict of Interests

None.

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Актуальні питання антимонопольної політики на ринку сільськогосподарської продукції України

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Анотація

Дослідження присвячено перспективам розвитку антимонопольної політики щодо регулювання ринку сільськогосподарської продукції. Актуальність дослідження зумовлено необхідністю оновлення нормативно-правової бази України з питань антимонопольного регулювання ринків сільськогосподарської продукції, з урахуванням викликів сьогодення та міжнародних стандартів. Метою дослідження став аналіз особливостей антимонопольної політики як провідного напряму економічної політики України, аналіз особливостей антимонопольної політики у сфері ринків сільськогосподарської продукції та визначення перспектив їхнього розвитку. Для досягнення поставленої мети використано такі наукові методи: діалектичний, аналіз, формально-юридичний, порівняльно-правовий. Результатом проведеного наукового дослідження стало визначення таких заходів для вдосконалення антимонопольного регулювання ринків сільськогосподарської продукції в Україні: прийняти проєкт Закону України «Про об'єднання сільськогосподарських товаровиробників» № 8149, попередньо його допрацювавши; доповнити нині чинне законодавство України у сфері антимонопольної політики щодо регулювання ринку сільськогосподарської продукції нормою, відповідно до якої найбільш вразлива категорія сільськогосподарських товаровиробників (малі товаровиробники) матимуть змогу об'єднуватися для розв'язання проблем, пов'язаних з повномасштабним вторгненням рф на територію України та реагування на виклики воєнного часу; у розробці проєкту таких змін стосовно регулювання відповідних монопольних виключень урахувати наявний міжнародний досвід. Практичне значення проведеного дослідження полягає в тому, що результати можуть бути використані під час розробки проєктів нормативно-правових актів щодо антимонопольного регулювання ринків сільськогосподарської продукції в Україні, а також для підготовки досліджень з правового регулювання антимонопольної політики України

Ключові слова: обмеження діяльності монополій; антимонопольне регулювання; аграрний ринок; міжнародні стандарти; розвиток законодавства України

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Cursus honorum – selected aspects of Roman public law

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Abstract

The *cursus honorum* is a Latin phrase which translates to "course of honour". It refers to the sequential order of public offices that were held by aspiring politicians in the Roman Republic and Empire. It was the Roman idea about the order of public offices which were held by citizens. One of the requirements for taking office was the age of the candidate to hold it. Over the centuries, Roman law changed the age limits required to take up a specific office. Starting from republican times, there were regulations in Rome that required candidates for office to reach a certain age. The aim of this paper is to present the importance of the age criterion for holding offices in ancient Rome. For this purpose, the available source texts were analysed and the existing literature on the subject was examined and presented. The research used the historical method, which includes the analysis of source texts, and the dogmatic and empirical research method, which includes the critical analysis of legal sources and literature on the subject. Thanks to the research conducted, the available sources and literature on the age limits used in the *cursus honorum* were discovered and unified. As a result of the conducted research, the results were presented, which made it possible to identify the age limits required for a civil servant career in ancient Rome. Research in this area is of theoretical importance. Secondly, such an analysis is important for further comparative legal research.

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In modern legal systems, each country sets certain age requirements for participation in public life in the broadest sense (e.g., the age at which one may vote or run for office). Thanks to the ongoing research on Roman law, it will be possible to make comparative analyses and thus search for the Roman sources of contemporary laws. In this part, the research has a practical (comparative law) meaning

Keywords: ancient Rome; Roman administration; offices; age; political career

Introduction

The *cursus honorum* was a sequential order of public offices that were held by aspiring politicians in the Roman Republic and Empire. The *cursus honorum* was a path of political advancement that started with the lowest position of quaestor and ended with the highest position of consul. To be eligible for each office, a candidate had to meet certain age and experience requirements. The *cursus honorum* was an important part of Roman political culture, and successful completion of the course was a mark of prestige and honour. However, it was also a highly competitive and demanding system that required significant financial and social resources. Only a select few could afford to pursue a career in politics, and the *cursus honorum* often favoured those who came from privileged backgrounds and had access to powerful political networks. Despite these limitations, the *cursus honorum* played a crucial role in shaping Roman politics and society. It provided a framework for political advancement and helped to maintain stability and continuity in the Roman state. It also created a sense of obligation among those who held political power, as they were expected to use their positions to serve the public good and to uphold the values of the Republic.

As H. Beck (2013) stated, *cursus honorum* refers to the order in which Roman politicians were expected to rise through the ranks of public offices (honours). More generally, the term became synonymous with the hierarchy of magistracies at Rome. Although it was praised as a normative force of politics and society by late republican authors, the *cursus honorum* was never static. Its evolution is marked by a series of laws on: (a) age requirements; (b) intervals between magistracies; (c) iterations of office; and (d) sequences of certain offices. The cursus was a patchwork of rules, requirements, and restrictions. The steady increase in offices, with or without imperium and extraordinary commands, added to the flexible nature of the system.

This term should also be understood as the path of promotion in the Roman Empire, i.e. the rules determining the order in which individual functions were taken up and ranking them according to importance into a kind of "ladder". As D. Okoń (2016) pointed out, this term is usually used in relation to Roman senators, whose career was formalized, especially in the era of the republic it was determined by tradition and legal acts, and in the era of the empire, additionally by the will of the princeps.

During the royal period, the *cursus honorum* did not exist due to the lack of formalized offices, even though there were officials attached to the king who performed the tasks assigned to them by the ruler (Broughton, 1951). After the overthrow of the monarchy, consuls, praetors, and quaestors were appointed, entrusting them primarily with administrative, judicial and fiscal duties – this is how the hierarchy of republican Senate offices

began to take shape (Pina Polo, 2020). In the following years, the following offices were added to the set of magistracies: plebeian tribune, plebeian aedile, curial aedile, and censor (always chosen from the group of former consuls) (Hölkeskamp, 2022).

Recent research on the *cursus honorum* (from 2017 to 2023) has focused on its evolution over time, the impact of political and social changes on the system, and the role of the *cursus honorum* in the broader context of Roman society and politics. Additionally, some scholars have explored the ways in which the *cursus honorum* reflected broader societal trends, such as shifts in social and economic structures, changes in political ideologies and beliefs, and the influence of external factors such as war and conquest (Wyrwińska, 2015). Recent studies, among the many publications in this area include, for example: Á. del Río García (2017), *El Cursus Honorumen la República Romana: Estructura, Características y Acceso* and A. Trisciuoglio (2017), *Lights and Shadows, Steps and Leaps: Moving up in Roman Public Careers in Late Antiquity (Criminal Law Aspects)*. The results of this research show what role the *cursus honorum* played in ancient Rome and in Roman law – in a broader social, political, and legal context.

Some scholars have also examined the ways in which the *cursus honorum* shaped the careers of individual politicians, and how it affected their political strategies and ambitions. Research in this area has been conducted mainly on epigraphic sources, and among the many publications, the following are worth pointing out. The examples of recent research results are L. Maurizi (2013), *Il cursus honorum senatorio da Augusto a Traiano. Sviluppi formali e stilistici nell'epigrafia latina e greca* and N. Sharankov (2021), *Five Official Inscriptions from Heraclea Sintica Including a Record of the Complete cursus honorum of D. Terentius Gentianus*. The results of this research show the practical application of the requirements operating in the *cursus honorum* using specific historical figures as examples.

The issue of the meaning of age at the *cursus honorum* has not been frequently addressed by researchers in recent times. In recent years, in fact, only two publications related to this topic have been published. The first is: S.H. Ngoh (2017), *A new Cursus Honorum? Leadership and maturity in the late Roman empire* while the second is only one chapter in a monograph by F. Pina Polo and A. Díaz Fernández (2019), *The Quaestorship in the Roman Republic* (Chapter 3: The quaestorship within the political career: Age requirements and the *cursus honorum*).

However, none of these recent publications addresses the problem of age in the *cursus honorum* in a comprehensive manner. The first of these argues that the erosion of age restrictions in Roman political offices occurred as a result of the rise to power of the *cursus honorum* and the growing disconnect between the legal concepts of maturity and politics. The second publication deals only with a specific category of official (quaestor) and does not cover the entire official hierarchy in Rome.

Therefore, the need for a comprehensive study is still open. This research will make it possible to reconstruct precise age limits at the *cursus honorum*. Thus, the presentation of the present research is justified. The *cursus honorum* is still an important area of research in the study of ancient Rome, and new discoveries and insights continue to shed light on this system of political advancement.

Materials and Methods

There are no exact sources that would directly allow for precise determination of all age limits in force at that time (Germerodt, 2020). Reconstructing these borders is possible by analysing the biographies of individual Roman officials. On

their basis, the course of a civil servant's career is reconstructed and, in this way, the approximate age required to hold a specific office is determined.

The research methods used in the work basically imposed the nature of the presented topic. In this article, the issue of developing age categories and age limits was faced in such a way that, firstly, it was needed to collect all source texts in which such boundaries and categories appeared and then to analyse them in order to determine their legal meaning, and secondly, to determine why such and not other age limits and categories were adapted by Roman law and how they developed over the centuries, i.e. whether a given limit was adopted in its form from the beginning, or maybe it underwent transformations in different periods of Roman law.

The consequence of the above was the use of, firstly, the dogmatic method, which assumes a logical and linguistic analysis of the source text, considering the principles of interpretation, and secondly, the historical and legal method, which shows the origins and development of a given institution. The analysis of the legal (dogmatic) nature of the categories and age limits was carried out while considering the historical development of Roman law, mainly based on legal sources, which was supplemented to a small extent by non-legal (narrative) sources and the literature on the subject. With the use of the dogmatic method, strictly legal considerations were conducted, regarding the legal analysis of age itself and the importance of reaching a specific limit or entering a given category, with particular emphasis on rights and obligations related to age. The use of the historical method was justified by the need to consider the historical background and the economic and social changes taking place in the Roman state.

For this article, the largest surviving collections of juridical texts of all epochs were researched, that is: archaic, pre-classical, classical and post-classical law, including Justinian law. In terms of literature, the latest editions of works devoted to the discussed issue were used.

Results and Discussion

The age requirements for the *cursus honorum* in ancient Rome evolved over time. The earliest age requirements are not well documented, but by the 4th century BC, there were minimum age requirements for certain offices. For example, to hold the position of quaestor, a candidate had to be at least 30 years old. In the 3rd century BC, the age requirement for the position of aedile was set at 36 years old, and for the praetor, it was set at 39 years old. These age requirements were designed to ensure that candidates had enough life experience and maturity to handle the responsibilities of these positions. During the late Republic, the age requirements for the *cursus honorum* became more rigid and formalized. To hold the position of consul, a candidate had to be at least 42 years old and have previously held the positions of quaestor, aedile, and praetor. This age requirement for the consulship was set in the *lex Villia Annalis*, a law passed in 180 BC. Under the early Empire, age requirements for the *cursus honorum* stayed the same, although there were some modifications. For example, the age requirement for the position of quaestor was lowered to 25 years old, and the age requirement for the position of consul was raised to 43 years old. The age requirements for the *cursus honorum* in ancient Rome were intended to ensure that candidates were mature and experienced enough to handle the responsibilities of public office. While these requirements evolved over time, they stayed an important aspect of the Roman political system throughout its history.

It is true that it can certainly talked about rigidly established age limits for the *cursus honorum* along with the career path from 180 BCE. However,

according to T. Parkin (2003), even before that date, in ancient Rome it was customary to observe the age census with a distinction on patricians and plebeians, since the latter won the right of access to public office. During this period, the age limits for holding office were as follows:

Table 1. *Cursus honorum* before 180 BCE

Office	Age limit	
	Patricians Plebeians	Patricians Plebeians
Quaestor	25	30
Aedile	33	35
Praetor	33-37	36-40
Consul	37-40	40

Due to the growing importance of a senatorial career in public life, in 180 BC, by virtue of *lex Villia Annalis*, a rigid order of heavy office (*cursus honorum*, *certus ordo magistratuum*) was introduced, and the rules that rule it were specified and unified (Chantraine, 1955; Rögler, 1962). This act regulated the order of exercising offices as follows: quaestor, plebeian tribunate (plebeian or curial aedile), praetor, consul (Tarwacka, 2012). Censors recruited only among those who had previously held the office of consul. In addition to the very course of the career path, *lex Villia Annalis* also introduced a requirement to reach a specific age to perform individual offices (Wanitschek, 2003). The table below presents the statutory age requirements set for individual offices, along with differences occurring in the literature on this issue.

Table 2. *Cursus Honorum – Lex Villia Annalis* (180 BC)

Office	Age limit		
Quaestor	28	27	25
Aedile	31	36	37
Praetor	34	39	
Consul	37	42	

The principles introduced under *lex Villia Annalis* functioned in conditions of state stability, and in case of a threat or a long war, they were temporarily suspended. T. Parkin examined whether the borders adopted in the act were actually used in practice. Based on the analysis of the inscription and preserved sources, he determined that persons between 29 and 30 years old were appointed to the post of quaestor; on aedile between 36 and 37; praetor in the range of 39-40 years, and the consulate was usually included between 42 and 44 years of age.

The main changes were introduced on the initiative of Sulla, when in 81 BCE *lex Cornelia de magistratibus* was adopted, which modified the original age boundaries required to fulfill the quaestor, praetor and consulate office (Astin, 1958).

Table 3. *Cursus Honorum – Lex Cornelia de magistratibus* (81 BCE)

Office	Age limit	
Quaestor	30	
Praetor	40	39
Consul	43	42

The reason for the increase in age boundaries by Sulla was the fact that he decided to increase the number of senators from three hundred to six hundred, which meant that the number of people willing to office increased significantly. This growth was partly leveled by the shift of the age limit of achieving offices, because as the years passed, the number of people who live to the required age decreased (Sáry, 2004).

The period of subsequent civil wars related to the struggle for the authorities of Julius Caesar and his successor Oktavian August did not conducive to stability, and thus when referring to specific offices, established age limits were often not taken into account (Harlow & Laurence, 2001). Only after August's final victory, he undertook to normalize the rules of taking off offices and modified the previously adopted age boundaries. And so, during the Principate period, the senator began his career with the newly introduced level – the *viginti viri* (Lendering, 2002). This level was intended for people planning to start public service and consisted of twenty officials operating in four colleges, each of whom had their own property. The execution was supervised by the College of Threetres (III) *viri capitales*, court cases belonged to the jurisdiction of *decem viri* (X) *stilitibus iudicandis*, knocking coins belonged to the College of Tres tres (III) *viri monetales*, and supervision over public roads was in the participation of *quattuor viri* (IV) *viarum curandarum*. It should also be noted that the possibility of starting a public career from the *viginti viri* level was associated with the 17-year limit, which in the classical period meant the granting of men *ius postulandi*, i.e. the right to public speaking. After passing this stage, the senator became a military tribun (*tribunus militium laticlavius*). The next career levels were a question and later editions or plebeian tribun. The further degree was praetor. Then the senator went to the province first as the Legion Legate (*legatus legionis*), and then as a province's governor: if he was to manage the Senate province he had the rank of proconsul, and if the imperial – *legatus Augusti pro praetore*. After returning to Rome, he could become a consul. The crowning of a career was the achievement of African or Asia's governance as *legatus Augusti pro praetore* or the governance of the city's prefecture (*praefectura urbis*) (Tarwacka & Zabłocki, 2021). In the era of the early Empire, the republican censor office disappeared, whose competence was taken over by Princeps (Lintott, 1999). To such a normalized career path, Octavian August also introduced specific age boundaries that candidates for individual positions should have achieved (Schiller, 1949). These boundaries are presented in the table below:

Table 4. *Cursus honorum* – according to the reforms of Octavian August (27 BCE)

Office	Age limit
Viginti viri	17
Military tribun	20

Table 4, Continued

Office	Age limit
Quaestor	25
Aedile	27
Praetor	30
Consul	32

In the eras of the Republic and the Principate, the structure and hierarchy of senatorial offices forming the obligatory *cursus honorum* remained essentially (except for censorship) unchanging. The constant shortcomings of qualified senatorial staff forced subsequent emperors to entrust an increasing number of public functions of public equitias, as a result of which the division into strictly senatorial and equal functions disappeared in the era of the dominant. Thus, *cursus honorum* in the shape of inherited from the Republic ceased to exist. A new, three-stage hierarchy of offices appointed with the titles: clarissimi (the brightest), spectabiles (great) and illustres (excellent) appeared in the era of the dominant (Kolbe, 1972). At that time, when the republican structure of offices was replaced by a centralized state apparatus, the age of candidates for specific positions was not regulated anywhere, because the decisions about entrusting higher positions were made by the emperor or his supporters, and the cast of further positions was decided by the supervisor at individual levels (Kamińska, 2013).

The departure from the established age boundaries at *cursus honorum* in imperial law is well illustrated by the following juridical texts regarding quaestors and praetors (Pharr *et al.*, 2001):

> **CTh. 6, 4, 1, Imp. Constantinus a. Aeliano praefecto Urbi;** *Religiosis vocibus senatus amplissimi persuasi decernimus, ut quaestores ea praerogativa utantur, qua consules et praetores, ita ut, si quis intra annum sextum decimum nominatus fuerit absens, cum editio muneris celebratur, condemnationis frumentariae nexibus minime teneatur, quoniam memoratae aetati placet hoc privilegium suffragari.*
>
> *(Since we have been persuaded by the reverent voices of the Most August Senate, We decree that quaestors shall enjoy the same prerogative as do the consuls and praetors, so that if any person before the sixteenth year of his age should be nominated in his absence, when the exhibition of games is formally givenm he shall in no wise be held by the obligation of the fine payable in grain, since it is Our pleasure that this privilege shall be of assistance to the aforesaid age)*.
>
> **CTh. 6, 4, 2, Idem a. Iuliano praefecto Urbi;** *Minores xx annis aetatis contemplatione infirmae hoc etiam remedio sublevamus, ut eius necessitudinis titulo minime teneantur, cuius laqueis vinciuntur ii, qui post vicensimum aetatis suae annum trans mare positi et in provinciis commorantes nequaquam ludis circensibus ac scaenicis exhibendis sui copiam faciunt et ideo certo generi multationis obiecti sunt.*
>
> *(In consideration of their tender years We relieve minors less than twenty years old by this remedy, also namely, that they shall in no wise be held liable on the ground of that*

compulsory service by whose toils those persons are bound who after the twentieth year of their age have established themselves beyond the sea and sojourn in the provinces, and thus do not make themselves available for the production of the amusements of the circus and the theater, and who for the reason have become subject to a definite kind of fine).

Both above texts touched on issues related to the preparation of public games (*ludi publici*) (Marco Simón, 2022). The organization of these attractions for the Roman proletariat was originally dealt with by consul, and from the time of Octavian Augustus, the praetors were to deal with this (Kamińska, 2013). Over time, they were obliged to partially finance these games from their own funds (Svyantek, 1999). Pursuant to the imperial constitution of 329 – cited in the first of the above texts – the task of organizing *ludi publici* was also imposed on quaestors. Organizing such holidays and related games belonged to compulsory benefits *(munera)* imposed on officials (Eck, 1974). Importantly, from the point of view of conducted research, this text indicates that the quaestors who were less than 16 years old who were appointed to prepare these games should not have had negative consequences if they did not manage their organization (Kamińska, 2017). In the justification of this rescript, it was indicated that this privilege concerned people of this age. The second of the quoted texts contains the content of the constitution of 327, under which persons who are less than 20 years old and holding the office of praetor were not burdened with financial sanction (Bernstein, 1998) for the lack of organizations of public games, because such an obligation combined with the risk of punishment came only after the age of 20 (Poynton, 1938).

When analysing the above texts, it is necessary to pay attention to the combination of age boundaries listed there with specific offices. Namely, the content of these acts indicated *anquaestor* under 16 years of age and a praetor under 20 years of age. This, therefore, shows that already in the 4th century CE. Age requirements put in the original *cursus honorum* have ceased to apply (Dunning, 2020).

Turning to the results of the study, they can be separately presented in three aspects. First, it can be presented how the age boundaries were shaped during the Republic. Second, the results can be presented in relation to the Imperial period. Finally, thirdly, the results of the research can be used to present conclusions for further comparative research with contemporary law.

During the Roman Republic, the age requirements for the *cursus honorum* were established to ensure that candidates had enough experience and maturity to handle the responsibilities of public office (Robinson, 1994). This shows that age and life experience were of significant importance to the Romans (Jurewicz & Winniczuk, 1968). The earliest age requirements are not well documented, but by the 4th century BC, there were minimum age requirements for certain offices. To hold the position of quaestor, a candidate had to be at least 30 years old. To hold the position of aedile, the age requirement was set at 36 years old, and for the praetor, it was set at 39 years old. These age requirements were intended to ensure that candidates had enough life experience and maturity to handle the responsibilities of these positions. To hold the position of consul, the highest elected office, a candidate had to be at least 42 years old and have previously held the positions of quaestor, aedile, and praetor. This age requirement for the consulship was set in the *lex Villia Annalis*, a law passed in 180 BC. Notably, these age

requirements were not set in stone and could be altered by the Roman Senate or the Roman people through legislation or decree (Harries, 2012). Additionally, candidates who were considered particularly talented or well-connected could be granted exceptions to these age requirements. The age requirements for the *cursus honorum* in the Roman Republic were designed to ensure that candidates were mature and experienced enough to handle the responsibilities of public office. People who were too young in popular opinion were unsuitable for office (Laes, 2011). They were an important aspect of the Roman political system and helped to support stability and continuity in the Republic (Wolff, 1987).

During the Roman Empire, the age requirements for the *cursus honorum* remained largely the same as they were during the Republic, although there were some modifications (Calliess & Renner, 2020). To hold the position of quaestor, a candidate had to be at least 25 years old. The age requirement for the position of aedile remained at 36 years old, and for the praetor, it was set at 31 years old. To hold the position of consul, a candidate had to be at least 43 years old and have previously held the positions of quaestor, aedile, and praetor. Under the Empire, there were some exceptions to these age requirements. For example, the emperor could waive the age requirements for individuals who were considered exceptionally talented or well-connected. Additionally, some individuals were appointed directly to higher offices without having to work their way up through the *cursus honorum*. Despite these exceptions, the age requirements for the *cursus honorum* stayed an important aspect of the Roman political system during the Empire. They ensured that candidates had enough experience and maturity to handle the responsibilities of public office, and they helped to maintain stability and continuity in the Roman state. Significantly, neither during the Republic nor during the Empire was there a stipulated age requirement for applying for the position of senator (Talbert, 2022).

While the *cursus honorum* is a historical concept, there are still important lessons that can be drawn from it for contemporary law and politics. One important lesson from the *cursus honorum* is the value of experience in public office. In ancient Rome, candidates had to work their way up through a series of lower offices before being eligible for higher positions. This ensured that they had the necessary experience and skills to handle the responsibilities of higher office. This concept of experience is relevant in contemporary law and politics as well. It is important to consider a candidate's experience and track record when evaluating their fitness for public office. This can help to ensure that the candidate has the necessary skills and knowledge to effectively perform the duties of the office. Another lesson from the *cursus honorum* is the importance of merit-based advancement. In ancient Rome, candidates were selected for higher offices based on their qualifications, experience, and performance in lower offices. This ensured that the most capable and qualified individuals were selected for leadership positions. In contemporary law and politics, merit-based advancement is also important. Candidates should be evaluated based on their qualifications and achievements rather than on factors such as their social status, wealth, or political connections. Finally, the *cursus honorum* also emphasizes the importance of a clear and structured path to advancement in public office. In ancient Rome, the *cursus honorum* provided a clear path for individuals to work their way up through a series of offices (Dillon & Garland, 2021). This helped to ensure that individuals with ambition and talent could pursue a career in public service. In contemporary

law and politics, providing a clear and structured path for public office can help to encourage more individuals to pursue careers in public service. This can also help to ensure that the most qualified and capable individuals are selected for leadership positions. While the *cursus honorum* is a historical concept, it provides important lessons for contemporary law and politics. By emphasizing the value of experience, merit-based advancement, and a clear path to public service, the *cursus honorum* can inform the development of effective and fair systems for selecting and promoting public officials (DeSilva, 2022).

At this point, that is, having presented the above considerations, it is expedient to discuss the results of recent research on the subject. As indicated earlier, the issue of the importance of age in *cursus honorum* has not often been addressed in recent literature. In fact, the only case is *A new Cursus Honorum? Leadership and maturity in the late Roman empire* by S.H. Ngoh (2017). As it was indicated in the abstract of the aforementioned issue, there has been a wide variety of literature which deals with the topic of childhood studies in the Late Roman Empire and Leadership studies, there has been a lack of works that synthesize these two areas of research. More importantly, there is currently no major work produced in English that deals with the Cursus Honorum in the late Roman empire. Yet the late imperial era was a period that experienced a wide variety of change to the structure of Roman politics, including the apparent end of age restriction in Roman political offices. To understand these changes in context, a new narrative is needed to address these topics collectively. The paper of S.H. Ngoh argues that the erosion of age restriction in Roman political offices occurred as a result of equestrians rising to power and an increasing disconnect between the legal notions of maturity and politics. This, in turn, resulted in many of the traditional offices becoming ceremonial positions that were held by those that were considered underage by Roman standards. Comparing the results of the research presented by S. H. Ngoh with the results presented in this article, one must agree that the rules formally adopted in the legal acts that formed the Roman *cursus honorum* were not followed. While it is true that there was a sequence of offices and minimum age limits for eligibility for a given office, practice shows that these requirements were not followed.

The conducted research can be used for further comparative research. In modern law, there are provisions introducing specific age limits for holding specific offices. For example, in Polish law, the minimum age to take up the office of the president of the country is 35 years old. One can consider – reaching for solutions from Roman law – why such an age limit was established in this case.

Conclusions

The analysis of the Roman *cursus honorum* shows that Roman law approached the issue of promotions in a very comprehensive way. The establishment of a specific ladder and hierarchy of Roman offices entailed the introduction of specific criteria for gaining successive degrees in a career. The age of the candidate was the basic determinant and criterion to hold a particular office. As the presented analysis showed, a certain age was required to hold various offices.

The conducted research on the age limits required to reach the next stages in the Roman civil service career is important for further scientific research. First of all, the conducted research allows us to learn about the principles of Roman public law and their social background. Based on the analysis, it can be shown what age was appropriate in ancient Rome to start a political career.

To sum up – conducting scientific research on the importance of age in the *cursus honorum* has a twofold meaning. On the one hand, it allows you to recreate the image of the functioning of the legal and social system in ancient Rome. Secondly, it is the basis for further comparative research. Such research may be important for further comparative legal studies. In modern legal systems, each country sets certain age requirements for participation in public life in the broadest sense (e.g., the age at which one may vote or run for office). Thanks to the ongoing research on Roman law, it will be possible to make comparative analyses and thus search for the Roman sources of contemporary laws. In this part, the research has a practical (comparative law) meaning.

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Conflict of Interests

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Cursus honorum – окремі аспекти римського публічного права

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Анотація

Cursus honorum – латинська фраза, що перекладається як «курс честі». Це стосується послідовного порядку державних посад, які обіймали політики-початківці в Римській республіці та імперії. Це була римська ідея про порядок державних посад, які займали громадяни. Однією з вимог до призначення на посаду був вік кандидата. Протягом століть римське право змінювало вікові обмеження, необхідні для того, щоб обіймати певну посаду. Починаючи з часів республіки, у Римі існували правила, які вимагали від кандидатів досягнення певного віку. Мета дослідження – вивчити точні вікові обмеження, передбачені римським правом і представити важливість вікового критерію для призначення на певну посаду. Для цього проаналізовано наявні першоджерела та досліджено наявну літературу з порушеної теми. У дослідженні використано історичний метод для аналізу джерельних текстів та догматично-емпіричний метод дослідження для критичного аналіз правових джерел і наукової літератури. Завдяки проведеним дослідженням виявлено та уніфіковано наявні джерела та літературу щодо вікових обмежень, що використовувалися в *cursus honorum*. У результаті проведеного дослідження виявлено вікові межі, необхідні для кар'єри державного службовця в Стародавньому Римі. Дослідження в цій галузі мають теоретичне значення. Такий аналіз важливий для подальших порівняльно-правових досліджень. У сучасних правових системах кожна країна встановлює певні вікові вимоги для участі в суспільному житті в найширшому розумінні (наприклад, вік, з якого можна голосувати або балотуватися). Завдяки дослідженням римського права стане можливим здійснити порівняльний аналіз і в такий спосіб шукати римські джерела тогочасного права. У цій частині дослідження має практичне (порівняльно-правове) значення

Ключові слова: Стародавній Рим; римська адміністрація; посади; вік; політична кар'єра

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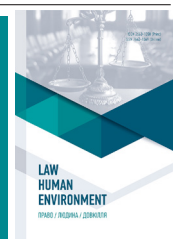

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Judicial practice of Ukraine on consideration of public procurement disputes from the perspective of European Union standards

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Abstract

Within the framework of harmonization of national legislation with EU standards and compliance with the requirements of the Association Agreement with the EU in the field of public procurement, there are still many problematic issues that arise at the level of law enforcement practice and are illustrated in the judicial practice of national courts. Judicial practice is a living law, the analysis of which helps establish the quality of legislation in this area and offer a further map of reforms. The purpose of this study was to analyse judicial practice in the field of public procurement after the adoption of the new version of the Law of Ukraine "On Public Procurement", as well as to assess the national approach to the standards of the European Court of Human Rights. The methodological framework of this study included both philosophical, ideological, and general scientific methods, as well as a number of special scientific ones. The terminology was analysed primarily through the lens of the dialectical method; the method of document analysis served as the basis for investigating the legal practice of the Supreme Court of Ukraine. At the same time, the method of analysis, synthesis, and comparative method were also applied. The paper presents and examines the dynamics of harmonization of national legislation with European Union standards for the period from 2015 to the present. By analysing the law enforcement practice of the Supreme Court on the most high-profile court cases in Ukraine in the field of public procurement, practical conclusions were drawn and an appropriate legal assessment was given. The conclusion was substantiated that the harmonization of national legislation in the field of public procurement pursuant to the requirements of the European Union has not yet been completed in Ukraine. Attention was focused on numerous regulatory shortcomings of the law enforcement process, specifically at the sub-legislative level. The practical value of this study lies in the fact that it examines both doctrinal approaches and theories regarding ideal concepts of public procurement, and judicial law enforcement practice as a living example that can show the real state of legal regulation, as well as gaps in regulatory application

Keywords: public procurement; public interest; European Court of Human Rights; harmonization of national legislation; law enforcement procedure; legal regulation

Introduction

The procedure for purchasing works, goods, and services to meet the needs of both the state and communities is governed by the Law of Ukraine "On Public Procurement" (2015). As a rule, public procurement customers are public authorities, including both state and local self-government bodies, budget organizations, and municipal enterprises. The main idea of the Law is that the category of subjects of public administration is covered by managers/recipients of budget and/or municipal funds, whether they have a state/municipal share in their own authorized capital, which exceeds 50%.

With this in mind, public procurement is always closely correlated with the public interest of society, since the procurement is carried out at the

expense of taxpayers in the public interest. The quality of legal regulation of public procurement directly affects the well-being of the population, the level of the economy, as well as opportunities for development or prevention of embezzlement of public funds.

Judicial law enforcement practice is the most reliable source of checking the quality of regulation of the relevant sphere of public relations. It is at the level of application of the norms of the law on public procurement that the shortcomings and conflicts of legislation are manifested. The quality of legislation is illustrated not by the dynamics of reforms and constant changes on the part of the Verkhovna Rada of Ukraine and central executive authorities, but by the constancy of regulation and legal certainty and predictability.

In countries with low economies, corruption in public procurement is a central issue. Scientists and reformist practitioners do everything possible to explore the best practices of developed countries of the world and implement them in their national system, considering the political, economic, and social situation. Thus, the weight is the heritage of foreign scientists, which is useful for application within the framework of national legislation and the organization of public procurement. P. Sewpersadh and J.C. Mubangizi (2017) analysed the evolution of public procurement reform in Hong Kong and proposed specific measures to combat corruption in the national procurement system of South Africa; J.K. Achua (2011) investigated the reforms implemented in the Nigerian public sector, and also analysed its corruption risks and shortcomings in public procurement procedures. Given the extremely low economic level in Ukraine and the still high level of corruption, such developments are relevant at the present stage.

Z. Hessami (2014), using empirical figures from government agencies, conducted a systematic study of the correlation between corruption risks in the political establishment and the structure of budget expenditures in public procurement. J. Ferwerda *et al*. (2017) also highlighted hidden corruption in public procurement in developed European countries, and also suggests measures to prevent corruption risks in public procurement.

Public procurement issues have become, to a certain extent, the subject of investigation by many Ukrainian scientists, including: Yu. Gorbatiuk (2016) carried out a legal characterization of public procurement according to the relevant Law of Ukraine; M. Dovhan (2013) analysed the administrative liability for violation of the rules of public procurement of property and services; Ya. Petrunenko (2013) analysed the economic and legal foundations of public procurement in Ukraine; A. Olefir (2012) analysed the theoretical and practical foundations of economic and legal support for public procurement in the healthcare sector; A. Soshnykov (2019) conducted a similar study, namely on the economic and legal support of the public procurement system as a whole; N. Tkachenko (2016) analysed the practices of EU countries and their implementation in Ukraine regarding electronic public procurement; O. Ivanova and G. Sevostjanova (2018) conducted a comparative analysis of the organization of public procurement in Ukraine and the EU countries; O. Krytenko (2014) defined theoretical approaches to determining the appropriate categorical apparatus; Yu. Ovramets (2017) analysed the relevant categories through the lens of administrative law; O. Vasiuk *et al*. (2020) analysed the legal framework for organizing social work in rural communities of Ukraine; O.O. Gulac *et al*. (2021) focused on the problems of overcoming corruption in Ukraine; V. Ladychenko *et al*. (2021) analysed the successful foreign practices in the development of local self-government.

At the same time, these scientists did not investigate the national judicial practice regarding the consideration of public procurement disputes from the perspective of European Union standards.

The purpose of this study was to analyse the judicial practice in the field of public procurement after the adoption of the new version of the Law of Ukraine "On Public Procurement" (2015), as well as to assess the national approach to the standards of the European Court of Human Rights.

The authors of the present study believe that it is necessary to investigate more than just doctrinal approaches and theories regarding ideal public procurement concepts. First, it is necessary to study judicial law enforcement practices, since they are a "living law" and can show the real state of legal regulation and its gaps. With this in mind, it is necessary to analyse the most high-profile court cases in the field of public procurement after the harmonization of legislation with the standards of the European Union.

Since 2015, systematic work has been carried out in Ukraine to harmonize legislation in the field of public procurement. The latter is aimed at introducing European principles and standards so that there is mirror access of goods, works, and services both from the side of Ukraine to the European Union and from the side of the EU countries to Ukraine. In other words, this refers to the free circulation of goods, works, and services without added customs and administrative barriers.

First of all, it is necessary to bring the dynamics of harmonization of national legislation to the standards of the European Union for the period from 2015 until now.

Thus, on February 12, 2015, for the first time, a presentation of the project system of electronic public procurement was held, called "ProZorro" (Official website..., n.d.). At the test stage, the system carried out "pre-threshold" public procurements of goods in the amount of no more than UAH 100,000 and services, respectively, of no more than UAH 1 million. Soon after, in March 2015, the Verkhovna Rada of Ukraine considered and approved a new version of the Law of Ukraine "On Public Procurement" (2015).

Notably, the progressive stage of harmonization of national legislation to EU standards was the Decree of the Cabinet of Ministers of Ukraine (2015), which was the first to approve the "Strategy for reforming the public procurement system" at the state level, the so-called road map for ratification.

Materials and Methods

The methodological framework of this study included the classical methods of scientific cognition: dialectical – in close connection with such methods of environmental cognition as system-structural method, formal-logical, historical, comparative-legal, analytical and formal-legal methods of scientific research. The principles of objectivity and evidence were implemented from the standpoint of the dialectical method of cognition of relevant processes and phenomena, their causality, analysis of the interaction of the general and particular, abstract and concrete, essence and phenomenon, form and content. The paper widely applies the method of system analysis, which was used as the main one in the study of public procurement, through the lens of European Union standards. In turn, the use of such methods as analysis and synthesis, abstraction and generalization helped in processing numerous precedent decisions of the Supreme Court and the European Court of Human Rights, which directly or indirectly affect the field of public procurement as a whole. At the same time, the use of comparative legal and analytical methods within the framework of scientific research has played a significant role in this aspect.

Using the formal-logical method, the study analysed the norms of Ukrainian and European legislation in the sphere of regulation of public procurement and the set of measures of the anti-corruption mechanism, aimed at minimizing relevant risks in the investigated sphere of public relations. When analysing judicial practice within the Ukrainian judicial system, considering the effectiveness of the application of the principle of "legal certainty", the unity and unanimity of the legal positions of both the Supreme Court of Ukraine and the European Court of Human Rights, the use of the predictive method helped investigate the consequences for further law enforcement activities of the current system Ukrainian legislation and court decisions, which in a certain way shape judicial practice in terms of the issues under study.

The method of comparative analysis helped cover certain disagreements and contradictions in the issues of unification of approaches to the categorical apparatus. At the same time, the formal-logical method contributed to the generalization that different approaches of scientists do not fundamentally contradict each other, but only enrich and complement some important features and attributes of the terminology in terms of scientific development. And the methods of analysis and synthesis, in turn, allowed forming the author's vision of the most controversial positions.

The theoretical framework of this study included the fundamental scientific and analytical research of national and foreign scientists. Among the main materials of the study are the judicial practices of the Supreme Court of Ukraine, as well as the European Court of Human Rights as the direct subject of this study. The uniqueness of the methodology of this study lies in the fact that the authors outline the "living law" of public procurement through the lens of the practices of the European Court of Human Rights, which is constantly changing and evolving and which today is referred to in any decision on the merits of the case of the Ukrainian courts, considering the updated legal norms, judicial reform and significant European integration aspirations of Ukraine as a whole.

Results and Discussion

Government procurement in foreign legal sources and legal acts is usually called "public procurement". The developed countries of the world, namely the EU member states, have their individual national models of public procurement, which become exemplary for emulation by other less developed countries of the world. Despite this, even the EU recognizes that the budget loses enormous sums every year from corruption schemes in the field of public procurement.

It is hard not to agree with S.M. Kierkegaard (2006), who concluded that the sphere of public procurement is very controversial and contradictory, if compared with other legal relations. This depends primarily on the level of public procurement decisions – supranational or national, the form in which these decisions are combined – regulations, directives or recommendations, and their implementation. Secondly, as the researcher noted, state influence on the economy can indirectly lead to protectionist phenomena through a state order. Therefore, the state, represented by its public institutions, must ensure the adequate balance between "non-interference" and "necessary influence", specifically in terms of the issues under study. For instance, J.M. Fernandez Martin (1996) addressed the fact that public institutions cannot be considered ordinary buyers looking for the lowest price, since they have a certain strategy, ideology, and therefore can "invent" special conditions. In fact, this is precisely what poses certain corruption risks at the same time.

It is worth paying attention to the approaches of scientists to the categorical issue in the context of the subject under study. Specifically, there are different approaches to defining the terms "government procurement" or "public procurement". Procurement, in turn, is interpreted as a set of practical methods and techniques that contribute to maximizing the interests of the customer in the implementation of procurement activities through competitive bidding. In such cases, since the client acts primarily in the national interest and/or for the satisfaction of society, particular social groups or relevant territorial communities (Tkachenko & Umantsiv, 2009). The concept of a procurement contract does not correspond to the concept of a civil contract. The procedure for concluding a procurement contract also does not correspond to the procedure for concluding a civil contract. As for the form of concluding a procurement contract, it partially corresponds to the form of concluding a civil contract. The moment of emergence of legal relations that arise based on a procurement contract does not correspond to the moment of emergence of legal relations under a civil contract (Zaitsev *et al*., 2021).

In terms of the specified above, Ya. Petrunenko (2013) pointed out that "public procurement is a market operation that leaves the 'decision-making' process to the market, maximizing competitive advantage among all interested suppliers of goods or services". O. Krytenko (2014) emphasized that "public procurement is a specific, legally regulated procedure for the purchase of goods, works, and services by budgetary organizations according to the principle of the highest efficiency, when a quality item of procurement is purchased at a lower price to ensure the state's activities and its performance of its social functions in various sectors of the national economy and strengthening of social policy". A. Olefir (2012) noted that public procurement is procurement by customers based on the principles of concreteness of works, goods, and services for public funds pursuant to the planned procurement plan and with the purpose of fulfilling urgent public needs due to the allocation of funds to cover and ensure the resolution of other national socio-economic issues. According to Yu. Ovramets (2017), public procurement should be considered as a legally approved legal mechanism that enables the state to transparently choose a supplier of goods, works, and services on an electronic platform available for public control, which will ultimately satisfy the needs of state customers on the most profitable market conditions. The latter is possible only if the procurement process is impartial and competitive and the winners are selected according to the established criteria. The main purpose of public procurement is to clearly identify participants who meet the requirements of the competition and set the lowest prices for goods, works, and services. According to Yu. Falko (2012), public procurement is the acquisition of goods/works/services with the best "efficiency – costs" ratio in the context of ensuring public activity and influencing the private sector of the economy and its performance.

Analysing the problem in general, the researcher determines the basic characteristics of the impact of public procurement on the national economy:

1) public needs for certain goods, works, and services are financed with state funds, and the state acts as an intermediary between consumers and producers of material goods;

2) public procurement is not aimed at increasing the revenue side of the budget by generating considerable profit;

3) production (distribution) of goods, works, and services, considering national needs, is aimed at meeting public needs and fulfilling national tasks;

4) an increase in government procurement costs will indirectly strengthen the state's position as a full participant in economic relations. The state acts as a customer before the private sector and is a reliable source for organizations and institutions representing various sectors of the economy (Falko, 2012).

Therefore, public procurement should be considered as an economic legal mechanism for the procurement of socially significant goods, works, and services, through which the legislator, in fact, strikes the balance between public and private interests, the solution of social issues and the implementation of the strategic task of effective development of budget funds through the use electronic procurement system, while implementing socially important functions. Despite different scientific approaches and the use of the basic terminology of both "public" and "government" procurement, scientists see their essence as relatively the same. Therewith, the authors of this study note that the term "public procurement" is more correct, since it applies to both subjects of state administration and local self-government bodies, which is critical at the stage of administrative and territorial reform.

An analysis of the compliance of the Law of Ukraine "On Public Procurement" (2015) with the EU Directive 2014/24/EU on public procurement (2014), as well as with the Directive 2014/23/EU on the award of concession contracts (2014) suggests that the directives make provision for a differentiated approach to socially significant goods, as well as to goods of national security and defence capability. As of today, the issue of public procurement in the defence sector is still problematic, which should become a separate subject of further scientific research in Ukraine.

At the same time, the authors of this study emphasize that the current e-procurement model has shortcomings that hinder its proper practical implementation. The investigation of the current legislation of Ukraine on public procurement allows asserting the regulation of the law enforcement process, since there are many gaps and conflicts at the level of sub-legislative acts, as evidenced by national judicial practice.

The analysis of the most high-profile court cases in Ukraine in the field of public procurement should begin with case No. 902/347/20 (Resolution of the Supreme Court…, 2021), where the prosecutor on behalf of the state and to protect its interests appealed to the court to invalidate certain procurement contracts, namely, for school furniture, for budget funds and the application of the legal regime of restitution with the obligation to return the specified property, which is connected with a gross violation of the legislation specifically on procurement with state funds. At the same time, the Supreme Court of Ukraine, having overturned the decision of the previous instance court, issued a new one – on the sufficiency of the claims. The Supreme Court of Ukraine agreed with the prosecution's contentions in the annulment complaint, according to which, pursuant to the prohibition on the purchase of property, without exercising the appropriate procedures/concluding the appropriate contracts, the Ministry of Education purchased furniture (tables and chairs) for the elementary school classrooms under two procurement contracts with different codes from the Unified State Register of Procurements. There are outlined conditions, defined in Item 4, Part 2, Article 35 of the Law "On Public Procurement" (2015). The latter violates the principles of budget procurement regarding the implementation of transparent procurement procedures, the formation of a competitive environment in this area, the prevention of corruption and the development of open competition.

Reviewing court decisions in case No. 905/1562/20 (2021) in the cassation procedure, the Supreme Court concluded regarding the application of paragraph 3 of Part 1 of Article 25 of the Law of Ukraine "On Public Procurement" (2015) and noted that the overestimation of the amount of security in the tender offer is not an unconditional basis for invalidating transactions made as a result of such auctions.

Another high-profile dispute in Ukraine was court case No. 826/7945/18 (Resolution of the Supreme Court..., 2021), where the plaintiff stated that the customer violated the legislation in the field of public procurement by establishing discriminatory requirements for technical documentation. The essence of the discriminatory requirements came down to the fact that in the tender documentation of the state customer, particular brands of polyurethane foam and particular methods of foaming (cyclopentane, water, etc.) were established, which allows obtaining them using other technologies (forms) that meet the above characteristics.

The European Court of Human Rights (ECHR) in the case "Seryavin and others v. Ukraine" indicated that the decisions of the courts, in fact, must be properly motivated pursuant to their established practice, which reflects the principles of the proper administration of justice (Judgment of the European Court..., 2021). Even though Item 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms (1950) obliges the judicial institutions, upon ruling a decision, to substantiate them, this cannot be considered a requirement for detailing each argument. The extent to which a court must comply with its duty of reasoning depends on the type of ruling.

When adopting this resolution, the Supreme Court of Ukraine was guided by the "res judicata" principle, the understanding of which is contained in several ECHR decisions, including the case of Ryabykh v. russia (2003), the case of Svetlana Naumenko v. Ukraine (2004), Pravednaya v. russia (2004), where it is interpreted as part of the principle of legal certainty. This principle states that a final court decision must be respected, and the review of a final court decision should not be implemented for the sole purpose of re-examining it. New decisions on cases and reviews by higher courts (including the Court of Cassation) should be made only to correct judicial errors, etc. Deviation from the specified "res judicata" principle should be possible only in cases of serious and convincing circumstances, and in this case, its existence is not noted and not justified by the plaintiff.

Notably, the legal position outlined above is represented by Item 8.3 of the Resolution of the Plenum of the Higher Economic Court of Ukraine (2011), where it is stated that analogous signs in the behaviour of the economic entities themselves cannot be sufficient evidence regarding the presence/lack of prior collusion, the so-called "anticompetitive concerted actions". Anticompetitive and concerted actions are defined and proven in the decisions of the Antimonopoly Committee of Ukraine, with reference to relevant evidence. At the same time, this similarity is the result of the consistency of some competitive actions and does not look like a simple coincidence of the organization's behaviour dictated by the corresponding product feature. The Antimonopoly Committee of Ukraine is obliged to eliminate the groundlessness of the interested party's references to other factors that may influence the subject's behaviour.

The ruling of the Supreme Court of Ukraine in case No. 925/1525/19 (2021), where a legal assessment was given to the unilateral refusal of the contracting authority to enter into a contract with the tender winner, became textbook. Notably, at one time, economic courts in previous cases

investigated the circumstances that indicate the reality of the plaintiff's intention to conclude a contract. The plaintiff took all necessary measures to conclude a contract for the purchase of works and sent the defendant the signed purchase contract and certificates together with the necessary appendices to the tender documentation. However, due to the malicious and illegal behaviour of the defendant, the purpose of bidding – the conclusion of a contract for the purchase of electricity and the performance of its terms – was not achieved. This means that the plaintiff, as the winner of the auction, was legally deprived of the benefits of supplying electricity to the defendant, which he legitimately anticipated, surmising that the contract with the customer was properly executed.

The plaintiff's reference to the fact that he agrees that the contract for the purchase and sale of electric energy has no legal consequences for the defendant, since there was no claim itself to the judicial authority, is erroneous. Submission or inaction regarding the recognition of the concluded contract cannot have particular legal consequences for the defendant.

Therewith, the Supreme Court of Ukraine used the relevant practice of the ECHR. In its decision in the case of Cossey v. The United Kingdom (1990), the ECHR noted that deviations from past decisions may be justified, for instance, to reflect changes in society and ensure the interpretation of the convention according to the current situation.

Deviation from the legal position is the presence of a sufficient number of legal grounds that justify and explain the objective need to depart from the previous legal position of the court, specifically to completely/partially abandon the conclusion regarding a particular issue of a certain plot of the case, adopted the day before. Departure from the legal position can also be in the form of concretization of the previous conclusion, during which legally permissible methods of interpretation of legal norms are applied, which has the goal of eliminating shortcomings and conflicts of previous decisions.

In its decision in the case Chapman v. The United Kingdom (2001), the ECHR also emphasized that, for certainty and equality of all parties before the law, no deviations from previously adopted court decisions can be allowed, if there are no proper grounds for such. Since the Convention is foremost a system for the protection of human rights, the ECHR must monitor developments in the respondent States and other member states and assess their achievement of the standards aimed at by the Convention.

Consequently, a deviation from the legal positions of the Supreme Court is permissible if there are objective and sufficient grounds, a real basis. Courts cannot depart from previous decisions unless there is a convincing and sufficient system of objective factors.

Conclusions

This paper, pursuant to the purpose of this study, analysed the state of Ukrainian legislation in the field of public procurement after the adoption of a new relevant law. The law is considered in the context of European standards in this area and living judicial practice. The analysis of the judicial law enforcement practice of the Supreme Court of Ukraine on disputes in the field of public procurement allowed concluding as follows.

Firstly, as of today, the full harmonization of Ukrainian legislation on public procurement with the requirements/standards of the EU within the framework of the Association Agreement has not yet been completed.

Secondly, during the period from 2015 to 2022, the legislation of Ukraine on public procurement had been undergoing constant changes

and reforms. The latter causes the fact that until now, a single stable judicial practice has not been formed regarding consideration of typical controversial issues in the field of public procurement, and in numerous instances the principle of "legal certainty" is impossible.

Thirdly, it is necessary to note the positive trend of the Supreme Court of Ukraine, which almost always uses the standards and principles of the European Court of Human Rights when resolving public procurement disputes.

It can also be stated that it is necessary to continue the investigation of the compliance of the enforced Law of Ukraine "On Public Procurement" with the European Union Directive 2014/24/EU on public procurement, as well as the Directive 2014/23/EU on the award of concession contracts, implementation of which is necessary for the performance of the Association Agreement, and also are a condition for Ukraine's accession to the EU. It is also necessary to analyse the dynamics of the development of judicial practice in the field of public procurement, which identifies gaps and conflicts of legislation.

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Conflict of Interests

None.

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Судова практика України щодо розгляду спорів про публічні закупівлі крізь призму стандартів Європейського Союзу

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Анотація

У межах гармонізації національного законодавства до стандартів ЄС та виконання вимог Угоди про асоціацію з ЄС у сфері публічних закупівель залишилося багато проблемних моментів, які виникають на рівні правозастосовної практики та проілюстровані в судовій практиці національних судів. Адже судова практика – це живе право, аналіз якого дає можливість встановить якість законодавства в означеній сфері та запропонувати подальшу карту реформ. Мета статті – проаналізувати судову практику у сфері публічних закупівель після ухвалення нової редакції Закону України «Про публічні закупівлі», а також проведення оцінки

національного підходу до стандартів Європейського суду з прав людини. Методологічною основою наукового доробку стали як філософсько-світоглядні й загальнонаукові методи, так і низка спеціально-наукових. Категоріально-понятійний апарат піддано науковому аналізу насамперед через призму діалектичного методу; метод аналізу документів послугував основою для дослідження юридичної практики Верховного Суду. Водночас застосовано й метод аналізу, синтезу та порівняльний метод. У статті наведено та досліджено динаміку гармонізації національного законодавства до стандартів Європейського Союзу за період з 2015 р. й дотепер. Шляхом аналізу правозастосовної практики Верховного Суду щодо найбільш резонансних в Україні судових справ у сфері публічних закупівель здійснено практичні висновки та надано відповідну правову оцінку. Обґрунтовано висновок, що дотепер в Україні не завершено гармонізацію національного законодавства у сфері публічних закупівель відповідно до вимог Європейського Союзу. Акцентовано увагу на численні нормативні недоліки правозастосовного процесу, зокрема на підзаконному рівні. Практична цінність статті полягає в тому, що в ній досліджено як доктринальні підходи та теорії щодо ідеальних концепцій публічних закупівель, так і судову правозастосовну практику як живий приклад, що може показати реальний стан правового регулювання, а також прогалини нормативно-правового застосування

Ключові слова: державні закупівлі; публічний інтерес; Європейський суд з прав людини; гармонізація національного законодавства; правозастосовний процес; правове регулювання

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Guaranteeing biological safety as a basis for limiting the patent-protected rights of intellectual property subjects

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Abstract

The relevance of the subject under study is conditioned upon the rapid and active development of the biotechnological area. This segment of the economy and science requires not only comprehensive preliminary work, but also further legal protection of the interests of inventors and society. The development of biotechnologies regulates not only the present, but also the prospects for the future. But it is important to harmonize the use of biological processes to avoid a biological catastrophe. The purpose of this study was to investigate the possible legal instruments for limiting the patent-protected powers of subjects of intellectual property law to guarantee biological safety. The following methods were used to collect, process, and present information in this paper: general scientific (formal-logical, analysis and synthesis, comparison, induction and deduction, systematization) and special-

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legal methods (formal-legal, comparative-legal). This study considered the possibility of limiting the rights granted to the subjects of patenting to guarantee biological safety. International and Ukrainian legislation was analysed in the aspect of patenting biotechnological achievements, compulsory patenting and restrictions on the rights of patenting subjects. The legal nature of biotechnologies as objects of intellectual property rights was identified. Legal measures to restrict the patent-protected powers of subjects of intellectual property rights were highlighted. Attention was drawn to the legal consolidation of the resolution of controversial issues in the field of patenting of biotechnological inventions according to the criteria of ethics and morality. The need to improve the national legislation governing issues of biotechnological research considering the principle of sustainable development, according to which social and ecological aspects should be recognized as a priority, was substantiated. The importance of this study is reinforced by the increased demand for biotechnologies, which leads to certain legal actions related to their protection. The present paper will be useful for scientists in the field of law, medicine, and bioengineering

Keywords: biotechnology; intellectual law; bioresources; patent law; limitation of rights

Introduction

In modern realities, biotechnologies leave the purely scientific sphere and play an important role in the everyday life of a person. The latest research covers increasingly more industries and continues to diversify. Genetic engineering generates crops by applying genetic modification. Notably, biotechnology is an important tool for ensuring that there are enough products intended for nutrition. It is worth paying attention to the emergence of the latest methods of treatment, where embryonic tissues and stem cells are produced through exposure to the human genome. Hence, the interest in the possibility of improving the animal genome and even human cloning. But it is worth realizing the fine line between the perception of biotechnology as a "panacea" for humanity and a destructive force, the use of which can lead to irreversible consequences. Therefore, this study highlights the issue of opportunities to limit the rights of the subjects of patenting biotechnological inventions to satisfy public and individual interests. This issue was raised in the works of scientists – representatives of various branches of science. For instance, I.I. Kuzmich (2019) investigated and evaluated the legal approach to regulating the creation of an intellectual field to ensure the mechanism of civil protection of rights to biotechnologies. A. Barragán-Ocaña *et al*. (2020) covers the issue of the use of all assets of biotechnology in various fields of social activity, namely in therapy, processes of increasing immunity, agriculture, production of consumer and non-consumer products, etc. T.N. Kharatian (2018) highlighted the problem of correlation between ethical norms and the impact of biotechnologies on the fundamental human right – the right to life; specifically, the author investigated the prospects for the development of legal regulation of this issue against the background of the practices of foreign countries. H. Xia and Z. Yuan (2022) focused on the characterization of highly protected objects (biological agents) and their role in global biosafety. The authors point out that scientific research on such objects should be transparent and not cause

any potential threats to biosafety. T.V. Komarova (2020) analysed trends in the development of intellectual property rights in the field of bioengineering. The scientist is engaged in research in areas where it is forbidden to patent the results of medical research and, as a result, there is no legal protection for such biotechnological inventions. N.O. Petrova *et al*. (2017) investigated biosafety issues related to food safety. Scientists present ways to improve national legislation according to EU requirements in the field of food safety.

Despite a considerable number of studies in the field of biological safety, including publications by representatives of various sciences, the problems of legal regulation of intellectual property in the field of biotechnological achievements are still understudied. In this regard, the purpose of this study was to cover the biotechnology as an object of intellectual property law, as well as to analyse the legal principles of restrictions on the rights of patenting subjects in the field of biotechnology to guarantee biological safety.

Materials and Methods

To properly process a considerable number of materials and sources, the authors used the following general scientific methods: the method of analysis and synthesis, induction and deduction, abstraction, concretization, and analogy. Such intersectoral techniques and tools help organize information for further presentation. The statistical method of research, which refers to special scientific methods, is used during the collection, processing, and establishment of certain patterns in the material. An important role is played by special legal methods, such as comparative law and the method of interpretation of legal norms, through which the article is supplemented with legal definitions and the content of legal norms in the field of intellectual rights protection is clarified.

When collecting information for the preparation of a scientific article, the authors used both Ukrainian literary resources and foreign ones. The materials included not only scientific achievements of Ukrainian scientists, but also scientific articles in foreign branch publications. During the study, international and European documents regulating the implementation of intellectual property rights were analysed, namely: Paris Convention for the Protection of Industrial Property (1883), Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions (1998), as well as regulations of national legislation on the violated issues: Civil Code of Ukraine (2003), Law of Ukraine "On Protection of Rights to Industrial Designs" (1993), Law of Ukraine "On Medicines" (1996), Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Granting by the Cabinet of Ministers of Ukraine a Permit for the Use of a Patented Invention (Utility Model) Related to a Medicinal Product" (2013). The authors also used the materials of court practice on the subject under study.

Results and Discussion

Biotechnology as an object of intellectual property rights

Modern trends of globalization and the processes of European integration of Ukraine necessitate the creation of an effective mechanism of legal regulation of intellectual property rights in the field of biotechnology (Fedotova & Fyl, 2021), conditioned by constitutional provisions, according to which human life and health are the highest value in the state. Biotechnology is one of the priorities in the development of the economy of the world's leading countries (Poliakova *et al*., 2019). Biotechnology is included in the list of advanced

production technologies of the European Union, the United States, and China, and is also an integral component of the most promising components of convergent technologies for international business (Poliakova & Shlykova, 2017).

As a science, biotechnology involves the creation and practical application of living and non-living systems of biological origin in the technological sphere, with the aim of industrial use of the characteristics of microorganisms, cell cultures and subcellular components in the manufacture of agricultural products and the provision of medical services, and therefore it is classified as one of the key industries of the 21st century (Kuzmych, 2019). Regulatory consolidation of the term "biotechnology", which is used in the Convention on Biological Diversity (1992) as "any type of technology related to the use of biological systems, living organisms or their derivatives for the creation or improvement of products or processes for their further use", refers biotechnology to objects of intellectual property law. But an innovative, cutting-edge, or brilliant discovery will not refute the fact that the laws of nature, its phenomena, or abstract ideas go far beyond patent protection. Although biotechnology has demonstrated unprecedented progress, it is also true that the design of bioprocesses must be oriented towards sustainability criteria, where social impact must be a priority. It is necessary to give comprehensive attention to all aspects to guarantee the successful development of future biotechnology programs in the interests of economic development, environmental protection and social security of the country (Barragán-Ocaña *et al*., 2020).

The fundamental constitutional norm, which regulates the right of each subject "to own, use and dispose of their property, the results of their intellectual and creative activity" (Constitution of Ukraine, 1996), gives a clear understanding that biotechnology is the result of the specified activity, and therefore is the object of intellectual property rights. Therefore, such products undoubtedly require legal security and protection.

The specific feature of the legal protection of biotechnology is revealed in the fact that patenting is not a mandatory element of biotechnology, since biotechnology can consist of several objects of intellectual property, which will be presented in materialized and intangible forms (biological material separated from its environment by a certain technological process; a product containing biological material; biological mechanisms of creation, processing of such material, etc.) (Komarova, 2020).

Patent law itself enables the inventor to exclusively use the result of their intellectual activity for a certain period of time and opens access to a technical achievement to a wide range of people. That is, patents for inventions, which include biotechnology, grant their owners a monopoly right to use such technologies under patent protection (Petrova *et al*., 2017). Accordingly, a patent is a document that certifies authorship and rights to biotechnology and the exclusive right to use it within a specified period.

Furthermore, the conditions for obtaining a patent for biotechnological inventions differ from the conditions for patenting in other areas, considering that all inventions in the field of biotechnology are directly or indirectly a product of nature (Andreychenko *et al*., 2020).

According to the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (1993), legal protection of an invention is provided under conditions, if it "does not contradict public order, generally recognized principles of morality and meets the conditions of patentability". Therewith, compliance with the conditions of patentability means that an invention (utility

model), including biotechnology, must be characterized by originality, have an inventive level and be industrially applicable. And the definition of an invention (utility model) as a new one is characterized by the fact that it should not be part of the technical level because objects included in the elements of the technical level, to establish the originality of the invention (utility model), should be considered only separately. The right to register such an object of intellectual property rights belongs to the inventor, unless otherwise prescribed by law. This right may also be granted to the inventor's employer (Law of Ukraine "On Protection of Rights…", 1993).

Therefore, it is possible to determine the following conditions for granting legal protection of an invention (utility model): compliance with public order; compliance with the principles of humanism and morality; compliance with patentability conditions. Therewith, as scientists emphasize (Mills, 2016; Ponomarova, 2021), ethics, morality, and law are interrelated components and are critical for society to accept the invention.

Special attention should be paid to the ethical component of patenting biotechnologies. The EU has taken measures (both organizational and institutional) to develop legal and ethical standards for biotechnology. In 1998, the European Parliament and the Council of the EU adopted Directive 98/44/EC on the legal protection of biotechnological inventions (1998). The need for such a Directive was conditioned upon the extraordinary growth of bioengineering research in the EU and, at the same time, the uncertainty of researchers regarding the possibility of patent protection of their scientific results, since the international documents adopted until now did not provide clear answers to some questions.

Article 5 of Directive 98/44/EU stipulates that "the human organism at various stages of its formation and development, as well as the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot be patentable inventions" (Directive 98/ 44/EC…, 1998). Furthermore, Article 6 of the Directive establishes that inventions are considered unpatentable if their commercial use would be contrary to public order or morality. This rule is generally accepted. The following are not patentable: processes of human cloning, processes of genetic modification of the human germline, use of human embryos for industrial or commercial purposes, processes of changing the genetic identity of animals that may cause them suffering without any essential medical benefit to humans or animals, and also the animals that result from such processes.

Based on the analysis of international legal acts, I.M. Shyshko (2021) established two criteria for compliance of biotechnological inventions with norms of public morality and public order, namely: primary (non-injury to human life and health) and secondary (respect for human dignity). In this case, A. McMahon (2017) draws special attention to the need for a correct and uniform interpretation of these categories (non-harm to human life and health, respect for human dignity), since the lack of a clear definition of terms and an elevated degree of their assessment substantially complicate the establishment of compliance of inventions with patentability conditions.

National legislation also contains outlined provisions. Pursuant to the norms of public morality, Article 6 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (1993) lists the following objects as unpatentable: cloning processes of human beings; transformation of the germline to change the genetic identity of people; use of human embryos for industrial or commercial gain; changing the genetic identity of animals, etc.

In this regard, the World Intellectual Property Organization emphasizes that the life and health of people, as well as safety, should be more important than the patent rights of inventors (The ethics of patenting…, n.d.). Ethics and innovation in today's world must always go hand in hand.

Legal basis for restricting the rights of patenting entities in the field of biotechnologies

In the context of scientific and technological progress, humanity has recognized the importance of public control in the field of scientific achievements, the use of which may pose a danger to its life and existence in general. Therefore, apart from precautionary measures outlined in the Convention on Biological Diversity (1992) and the Cartagena Protocol on Biosafety (2000), there is an active discussion of the main international standards that can provide a comprehensive assessment of the risk arising from the use of biologically hazardous technologies (Association Agreement…, 2014). Investigating the issue of ensuring the human right to life in the conditions of the development of biotechnology, T.N. Kharatian (2018) pays considerable attention to the international practices regarding the organization of legal regulation of achievements in the field of bioscience. The scientist draws attention to the preventive norms, which make impossible the occurrence of catastrophic consequences of high-tech activities, in which biotechnological discoveries are used.

The use of biohazardous modern technologies and methods is accompanied by the creation of biological weapons of mass destruction in the form of dangerous genetically modified viruses and bacteria, and therefore, in the legislation of countries such as Colombia and Spain, the use of genetic engineering for the creation of biological weapons is a qualifying feature. Therefore, Ukraine needs immediate criminalization of potential socially dangerous activities in the use of biotechnologies. It is proposed to add qualified clauses to the Criminal Code of Ukraine (2001), namely: Article 439 "Use of weapons of mass destruction", Article 440 "Development, production, acquisition, storage, sale, transportation of weapons of mass destruction", Article 442 "Genocide" regarding the use and/or application of biotechnology to commit the specified criminal offences (Piddubny, 2014). In the fields of scientific research, healthcare, and product development, highly secure facilities play a critical role in preventing, detecting, and quickly and effectively responding to threats to global health security (Xia & Yuan, 2022).

Despite the inviolability of property rights, which is stipulated by the norm of Article 41 of the Constitution of Ukraine (1996), the legislation establishes cases that make provision for the forced alienation of such rights. These are cases when the object of property rights is important for public needs, but forced alienation provides for a legal basis and full compensation for the owner. In addition, forced alienation takes place in conditions of martial law and a state of emergency. If the issue concerns confiscation of property, then the only basis for such an act is a court decision, and confiscation is carried out only in the amount and according to the procedure prescribed by law. In general, the property is used on principles that do not violate the rights, freedoms, and dignity of citizens, the interests of society, do not adversely affect the environment and natural properties of the land (Constitution of Ukraine, 1996).

The Civil Code of Ukraine (2003), based on the Constitution of Ukraine, regulates an expanded list of intellectual property rights to the result of creative and intellectual activity, which means exclusive rights determined by the possession, use, and disposal of such rights, but they do not

have absolute nature and legally prescribed restrictions on them. That is, the restriction of public rights occurs in the presence of public, state and public interests.

The term "restriction of property rights of natural persons" is characterized by (Michurin, 2009), understanding it as a system of civil law instruments implemented in the process of legal regulation, embodied through legal norms, normative documents, acts of law application, the main purpose of which is the complication of subjective rights regarding the implementation of security measures for the interests of the state, society, and the public.

The Civil Code of Ukraine, namely part two of Article 424, regulates restrictions on intellectual property rights, provided that these restrictions will not prevent the use of intellectual property rights and the realization of the legitimate interests of relevant entities (Civil Code of Ukraine, 2003). Thus, the Law of Ukraine "On Protection of Rights to Industrial Designs" (1993), prescribes the possibility of consent granted by the Cabinet of Ministers of Ukraine regarding the use of an industrial design, the right to which is certified by a patent, without the consent of the owner, but under the condition that the use of such a patent arises from public interests or national security.

In the author's theses, R. Yurkiv addresses the fact that the above-mentioned procedure does not regulate the relationship of granting a compulsory patent for medicinal products. The scientist draws attention to the Law of Ukraine "On Medicinal Products" dated April 4, 1996, which contains a provision on the possibility of using a patented invention (utility model) in the field of medicinal products without the patent owner's consent. Considering the subject matter of the mentioned law, such permission is granted by the Cabinet of Ministers of Ukraine solely to ensure the health of citizens during the procedure for registering a medicinal product. Accordingly, the Resolution of the Cabinet of Ministers of Ukraine No. 877 "On approval of the Procedure for granting by the Cabinet of Ministers of Ukraine a permit for the use of a patented invention (utility model) relating to a medicinal product" dated December 4, 2013 was developed, which clearly regulated the procedure for issuing a permit for a compulsory patent for use of the medicinal product (Yurkiv, 2019).

International documents also define the possibility of compulsory patenting. Such acts are the Agreement on Commercial Aspects of Intellectual Property Rights (1994), the Paris Convention for the Protection of Industrial Property (1883). In them, it is considered appropriate to use a patent without the consent of the patent holder by the government of the country taking part in the agreement. Furthermore, it can also be applied to third parties, but only in an emergency or circumstances of extreme necessity.

The problems of the development of biotechnology and the use of its results have now become extremely relevant in connection with powerful technological advances, and the modern world patent system has a favourable effect on innovation and development (Feeney *et al*., 2018; Guerrini *et al*., 2017). However, if earlier scientific research in the field of biotechnology was based on the openness and access of the entire scientific community to their progress and results, now it has become a commercialized and monetized field. Moreover, there is currently a tendency to increase the adverse impact of biological factors on the population and the environment, the possibility of threats of biological origin associated with the development of modern biotechnologies, manifestations of bioterrorism, etc.

To ensure biological safety, the progress of modern biotechnological achievements should

set new ethical and social challenges for society. And the national policy in the field of biotechnology should primarily be based on the principle of maintaining a balance between ethics and intellectual property rights for biotechnological research. In this part, EU law as a whole is based on ethical principles. In the field of biotechnology, e.g., Directive 98/44/EC (1998) directly prescribes the possibility of regulating controversial issues of patenting biotechnological inventions by criteria of ethics and morality. Since ethics, morality, and law are interrelated components and are crucial for the adoption of the invention by society and ensuring biological safety at the same time.

Conclusions

Thus, according to the study results, the content of biotechnologies as an object of intellectual property rights is revealed. It is established that biotechnological scientific discoveries can considerably improve the health and life of people, improve the state of the environment, but the use of such technical processes also carries a potential danger. Despite the positive factors, the activity of the use of biotechnology has the ability, including destructive actions, and, as a result, can be a threat to the biological safety of humankind. Biotechnology is a tool of the future, which solves the problems of humanity already now, so there is an urgent need for high-quality legal regulation of such activity.

The analysis of international and national legislation helped characterize the legal bases of restrictions on the rights of patenting subjects in the field of biotechnology and identify areas in which it is prohibited to patent the results of biotechnological research, as well as existing limitations of the patent-protected powers of subjects of intellectual property law. The conditions for patenting inventions in the field of biotechnologies are regulated by legal norms, which consolidate the fundamental principle of compliance of inventions with ethical principles. And although biotechnologies demonstrate unprecedented progress and have a considerable impact on economic development, the legal regulation of biotechnological research should be focused on sustainability criteria, where social and environmental impacts should be prioritized. That is, the main aspect that needs to be considered to guarantee biological safety and the successful development of biotechnologies is the improvement of relevant national legislation in favour of economic development, environmental protection, and social well-being. In this regard, further scientific developments will be aimed at identifying trends in the development of legislation in the field of intellectual property based on the results of biotechnological research.

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Conflict of Interests

None.

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Анотація

Актуальність досліджуваної теми зумовлено стрімким та активним розвитком біотехнологічного напряму. Цей сегмент економіки та науки потребує не тільки комплексної попередньої роботи, а й подальшого правового захисту інтересів винахідників та суспільства. Розвиток біотехнологій регламентує не тільки сьогодення, а й перспективи майбутнього. Але важливо гармонізувати застосування біопроцесів, щоб уникнути біологічної катастрофи. Мета проведеної роботи – вивчити можливі правові інструменти обмеження захищених патентом повноважень суб'єктів права інтелектуальної власності задля гарантування біологічної безпеки. Для збирання, обробки та викладення інформації в роботі використано такі методи: загальнонаукові (формально-логічний, аналізу та синтезу, порівняння, індукції та дедукції, систематизування) і спеціально-юридичні методи (формально-юридичний, порівняльно-правовий). У статті розглянуто питання можливостей обмежити права, надані суб'єктам патентування, задля гарантування біологічної безпеки. Здійснено аналіз міжнародного й українського законодавства в аспекті патентування біотехнологічних досягнень, примусового патентування та обмежень прав суб'єктів патентування. Визначено юридичну природу біотехнологій як об'єктів права інтелектуальної власності. Висвітлено правові заходи обмеження захищених патентом повноважень суб'єктів права інтелектуальної власності. Звернуто увагу на правове закріплення вирішення суперечливих питань у сфері патентування біотехнологічних винаходів критеріями етики й моралі. Обґрунтовано необхідність удосконалити національне законодавство, що регламентує питання біотехнологічних досліджень з урахуванням принципу сталого розвитку, за яким пріоритетними мають визнаватися соціальні та екологічні аспекти. Значення наукової роботи посилено підвищеним попитом на біотехнології, що має наслідком певні правничі дії, пов'язані з їхньою охороною. Стаття стане в пригоді науковцям у сфері права, медицини, біоінженерії

Ключові слова: біотехнології; інтелектуальне право; біоресурси; патентне право; обмеження прав

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Legal aspects of gender equality and their legislative consolidation

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Abstract

Presently, not only the equality of rights and freedoms is vital, but also the legal consolidation of equality between men and women in the ability to fully use all those rights and freedoms in various spheres of social life, which are guaranteed and ensured by the state. The purpose of this study was to investigate the terms "gender" and "gender equality" in the context of international regulatory documents and Ukrainian legislation on ensuring equal rights and opportunities for women and men as an integral part of the general rights of a person and a citizen. Among the key research methods were dialectical, logical-legal, and hermeneutic, which helped analyse the terms "gender" and "gender equality" and determine the regulatory framework of documents on ensuring and guaranteeing gender equality of both sexes. Using the comparative method, the compliance of Ukrainian legislation with international standards of gender policy was compared and analysed. This paper presents the results of the characterization and interpretation of the norms of legal documents and legislation regarding their compliance with the principles of gender equality. The essence of terms "gender" and "gender equality" was covered. The main areas of ensuring the equality of men and women, which are guaranteed by Ukrainian and international legislation,

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were outlined. The need to include in all state programs some measures that ensure gender equality and meet the Sustainable Development Goals was substantiated. It was proved that both at the state and regional levels, it is expedient to conduct various trainings that cover gender aspects and raise awareness among employees to develop a professional gender-sensitive culture of the working environment. Emphasis was placed on the importance of measures to prevent violations of human and citizen rights and freedoms, as well as to ensure gender equality between men and women under martial law. The importance of mandatory prosecution and punishment of the Russian military, guilty of violence against Ukrainian women and men, was emphasized. The results of the study can be used both by scientists who investigate issues of gender equality and discrimination based on gender, and by representatives of state bodies whose sphere of competence includes the implementation of gender equality policy, as well as by students and teachers of law schools, everyone who is interested in issues of gender and equality

Keywords: gender; social roles; gender equality; the principle of equality; human rights

Introduction

The key features of a developed society and a legal democratic state include the elimination of various forms of discrimination and overcoming any manifestations of gender inequality. In Ukraine, as in many other countries, gender imbalance continues to exist in various spheres of life. The lack of gender equality is an obstacle on the way towards social unity, leads to the emergence of destructive processes and stops sustainable development. Considering this, the regulatory consolidation of the principle of equality and non-discrimination of men and women will contribute to ensuring gender equality, as one of the key issues of the formation of the Ukrainian state.

In recent decades, the idea of gender equality has attracted the attention of various international organizations and most democratic legal states. Its legal regulation is at the stage of formation and development. Formation and consolidation of standards of gender equality, along with non-discrimination and parity democracy, takes place at the domestic and international levels. The legal consolidation of the principles of gender equality in the regulatory and legal documents of international organizations and state legislation contributes to ensuring equal rights and opportunities for men and women in all spheres of human activity, the state and the international community.

Scientific literature, which examines the issues of gender equality and gender discrimination, shows that the problem of gender equality has become relevant since the middle of the 17th century, from the time when human and citizen rights began to be considered as values. This issue was investigated in sufficient detail by the author of this paper in previous scientific publications (Protosavitska, 2022). The modern scientific assessment of gender equality dates to the middle of the last century. Considering global achievements in gender issues by Ukrainian scientists began in the late 1980s.

The theoretical scientist O. Vasylchenko (2017) is engaged in studies of the content of the principle of gender equality from the standpoint of the theory of the state and law. N. Anishchuk (2019), apart from highlighting the principles

of gender law, examines various gender aspects both in the European Union and in such countries as Switzerland, Turkey, India, Great Britain, Lithuania, and Hungary. A scientific study by I. Hrytsai (2018) covers the mechanism of ensuring gender equality in the parliament, in the army and in other areas. Researcher O. Kharytonova (2018) investigates gender policy in criminal law.

A. Kolodii (2013) studied the phenomena of equality and equality of the sexes in law, who noted in the study of civil society that the observance of the principle of equality, namely the equality of the sexes, is critical in ensuring and guaranteeing the rights and freedoms of a person and a citizen. This opinion was also supported by the authors of the textbook on the theory of the state and law (Tsvik & Petryshyn, 2009).

In the second half of the 20th century, many scientists were engaged in researching the concept of gender abroad. Among them are R.J. Stoller (1994), who highlighted the concepts of masculinity and feminism, and S. de Beauvoir (2015), who describes the differences between men and women, emphasizes the need for equality and equality between the sexes.

Today, the issue of gender and gender equality and non-discrimination has reached a new level. This is due to social development, which does not stand still. K. Rummery *et al*. (2021) raise quite relevant issues in their scientific works, trying to answer the question of what issues are related to care policy and gender equality. V. Kostyuchenko and L. Khoinatska (2021) investigated the economic and legal dimension of gender equality in Ukraine in their study. In times of digitization, when the world uses digital technologies increasingly more, cybersecurity and protection of different gender groups have become relevant. The study by G. Haciyakupoglu and Y. Wong (2021) also covers these questions.

The COVID-19 pandemic has had a rather adverse impact on the position of women at work, affecting wages and increasing unemployment (UN Women, 2021). M. Haupt and V. Lind (2021) consider these and other issues of the impact of the pandemic on gender equality in their research.

A separate selection consists of research reports of various international organizations on gender in our time. Among such studies, we can name "The UN Policy and Program on Sexual Orientation, Self-Expression, Gender Identity and Sexual Characteristics" by A. Trithart (2021). The Institute for Women's Policy Research (2022) has also conducted its research on the gender pay gap and published its findings. The Council on Foreign Relations (2020) explored how gender equality in foreign policy is being promoted and published the findings.

Every year, the World Economic Forum takes place, which conducts a permanent collection of information about each country regarding politics, economy, culture, various social issues, including gender issues. According to the results of the forum's latest research on gender policy, in 2022 Ukraine ranked 81st (World Economic Forum, 2022).

Gender equality is one of the prominent issues of legal and social development of the country, it affects the level of democracy and national security of the state. That is why the study of legal aspects of gender equality, as well as the coverage and analysis of the regulatory component of gender policy at the international and domestic national levels, became the purpose of this study.

Materials and Methods

The study of gender and gender equality requires the use of a wide range of methods of scientific cognition. Among them, first of all, it is worth mentioning a group of theoretical methods that helped systematize knowledge about gender.

The leading among the methods was the general dialectical method, which covered the scientific cognition of legal phenomena, as well as their connection with the establishment of the main provisions of gender equality in international regulatory documents and in Ukrainian legislation. The logical-legal method helped characterize the provision of the principle of gender equality. The use of a hermeneutic approach helped objectively interpret international and Ukrainian legislation in the field of gender equality. The method of hermeneutics was also used to characterize and interpret the provisions of regulations regarding their compliance with the modern requirements of the principle of gender equality. The axiological approach helped determine the role and place of gender equality in the development of a democratic, legal state. Using a complex of empirical methods, both positive and negative experiences of gender activities were determined.

The use of an interdisciplinary approach in this study revealed that gender issues go far beyond law. Some aspects of gender relate to psychology, sociology, philosophy, etc. The method of generalization was used in the preparation of the conclusions of the conducted scientific research. The study of legal aspects of gender equality is impossible without a comprehensive approach, which allows applying the entire range of methods when considering issues related to equality and non-discrimination between men and women. Through the application of this approach, it is possible to consider gender relations as socially organized relations and review many legal approaches to equality and non-discrimination of both women and men.

Results and Discussion

Gender equality and equal rights as one of the key manifestations of democracy

Equality between people is the source of ensuring the fair distribution and use of public goods. Affirmation of social equality is the principal condition for the development of the rule of law and civil society. One of the types of equality is gender equality as the provision of equal rights and opportunities for men and women in all spheres of life.

Achieving gender equality is one of the most time-critical issues in the development of a democratic state and is considered one of the key issues in the protection of human rights and the establishment of the rule of law. The concept of gender equality currently has several definitions. Most of these concepts confirm the thesis that gender equality is based not only on the assertion of equal rights and equal opportunities for both men and women in all spheres of life. This equality implies the possibility for both men and women to enjoy the same social status; equal opportunities to make a personal contribution to the economic, political, or social development of the state and to fully and equally enjoy the results of this development; the opportunity to have the same conditions for the realization of all human and citizen rights.

Gender equality is a part of the concepts of equality and equal opportunities. A democratic state governed by the rule of law must provide equal opportunities for all men and women to participate in all spheres of life.

Since the 1980s, "gender" has been considered as an independent, culturally, and socially constructed characteristic of a person that is not determined by biological sex. People demonstrate this characteristic when interacting with other people in various life situations. Sexual orientation, gender identification, sexual characteristics, and self-expression are only a small part of the components that characterize gender (Trithart, 2021).

Thus, it is worth noting that gender and biological sex are different constructed characteristics that can be combined in a person arbitrarily, independently of each other. In the modern scientific world, it has long been customary to distinguish between transgender, gender-expansive, and intersex people (Davy, 2021).

Considering the above, we note that the term "gender" refers to the division of roles between the sexes in society. Gender is also an organized pattern of social relations between men and women. Gender relations are constantly changing, and with them the social, economic, political, and cultural environment at the international, national and local levels. The UN-Women structural unit understands the concept of "gender" as the attributes and opportunities associated with belonging to a woman and a man, as well as relations between women and men, boys and girls (Labadi, 2022).

As modern gender theories prove, social differences between women and men are acquired and not eternal prescriptions of society. Being a man now and two hundred years ago are entirely different things. Today, men and women can choose patterns of their behaviour depending on their capabilities and desires. Considering this, gender identity is constantly in construction (Martsenyuk, 2014).

When discussing gender, it is appropriate to address the differences between men and women, as well as the inequality and hierarchy of gender relations (Council on Foreign Relations, 2020).

Ensuring gender equality is one of the key tasks of both Ukrainian and international legislation and is inextricably linked to the provision and guarantee of basic human and citizen rights and freedoms (Constitution of Ukraine, 1996; Universal Declaration of Human Rights, 1948).

Human rights are a concept that defines the legal status of a person in relation to the state. Human rights are an integral part of general human rights, and ensuring equal rights and opportunities for men and women is an important component of the legislative process (Kremliova, n.d.). A gender approach in the legislative process is a manifestation of democracy. To ensure social development, it is necessary for the gender approach to become an integral part of all strategically significant components of state policy. Gender equality is the subject of consideration of the most essential state programs and strategic vectors of the development of society, and the inclusion of the gender factor in the main principles of national policy contributes to considering the interests of both men and women as equal participants in the development process.

Therefore, ensuring gender equality and equal opportunities for women and men in the sphere of economic and social activity, in politics, as well as in the decision-making, in the sphere of employment, training and education, in matters of overcoming discrimination in all forms is closely related to the improvement of quality of human life. The issue of gender equality is vital for Ukraine's cooperation with international organizations.

Analysis of international acts on the implementation of gender equality and non-discrimination between men and women

The development and implementation of gender policy as a basis for the formation of gender culture is a vital component of the formation and development of Ukraine as a democratic state. Gender policy affects not only the state, but also the entire civil society, the performance of Ukraine's international obligations, according to which a suitable regulatory framework is formed with the purpose of the country entering the European and world community as an equal. Legal regulation of gender equality is at the stage of formation

and development. This happens both at the state and international levels.

Today, the concept of gender is interpreted as a social model of relations between women and men, which determines social relations in various spheres and in the main institutions of society. For women and men to be in the same conditions, for inequality to be eradicated, gender aspects are introduced in the formation of state legislation. Legal consolidation of the principle of gender equality is important, along with the creation of effective mechanisms for the implementation of these standards in all spheres of human activity, the state, and the world community. Among them, the issue of social justice, which ensures equal and sustainable human development, can be mentioned in the first place. The interests and experience of women and men are a criterion for developing a general concept and evaluating the directions of national gender policy in the social, economic, and political spheres.

The legislative process for ensuring equal rights and opportunities for women and men is an integral part of the general rights of a person and a citizen. Pursuant to the fundamental law of Ukraine – the Constitution (1996), the equality of rights and freedoms of a person and a citizen is guaranteed. Furthermore, the Constitution of Ukraine defined the main standards in the field of gender equality. All of them are indicated in such acts of international legislation as the Universal Declaration of Human Rights (1948), the Convention on the Elimination of All Forms of Discrimination against Women (1979) and a number of other international documents.

Notably, the idea of equality arose earlier than the term itself and the corresponding legal standards. Thus, Article 2 of the Universal Declaration of Human Rights (1948) prescribed the provision on the equality of all people regardless of race, colour, language, religion, sex, political beliefs, national or social origin, property or other status. It is indicated that despite all the differences, specifically based on gender, people are equal in their rights and dignity.

In contrast to the general declaration on the rights of humans and citizens, such an international act as the Charter of the United Nations (1945) clearly established the principle of equality of men and women, equality of small and large nations. The Charter declares that there can be no restrictions on the rights of women and men to take part in any capacity and on equal parity terms in the main and auxiliary bodies of the organization. Statutory consolidation of the principle of gender equality of men and women was accompanied by the creation of a mechanism for implementing the ideas of gender equality in international legal practice. In 1946, a subcommission on the status of women began to function in the UN Economic and Social Council (ECOSOC) within the Commission on Human Rights. In 1979, the UN adopted the Convention on the Elimination of All Forms of Discrimination against Women (1979), which Ukraine ratified in 1980. This Convention is considered an international bill on women's rights. Countries that have ratified this convention are obliged to provide women with equal access to all the country's resources; the state is entrusted with the duty to ensure that there are no obstacles in the exercise of women's rights; measures taken by the state to protect the rights of women and men should ensure equality of results and strengthening of the position of women; the state reports every four years to the UN Committee on the Elimination of Discrimination on the implementation of this Convention in policy and practice in such areas as the political representation of women; the position of women in rural areas; eradication of sexism in the media;

changes in the legislation on ensuring the equality of men and women.

Another international document aimed at ensuring gender equality and improving the position of women was the Beijing Declaration and Platform for Action (1995). According to the norms of this convention, women should be actively involved in all spheres of public and private life. They are guaranteed comprehensive and equal participation in decision-making on economic, political, social, and cultural issues.

The position of women was further strengthened after women were involved in peace and security issues. The corresponding decision is contained in the United Nations Security Council Resolution 1325 (2000) "Women. Peace. Security" dated October 31, 2000. From that moment on, women began to take part equally and fully, on a par with men, in matters of peace and security, in the prevention and resolution of conflicts. Gender mainstreaming is implemented. The specific needs of girls and women, as well as their experiences and perspectives, began to be considered when making legal, political, and social decisions. This Decision called for measures to ensure protection for women and girls from sexual violence or other forms of violence during conflicts.

Since the adoption of Resolution 1325 (2000), some similar resolutions related to women, peace, and security have been adopted. Among them, it is worth mentioning United Nations Security Council Resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015).

Some provisions relating to gender equality are contained in the conventions of the International Labor Organization. These are conventions such as: Equal Remuneration Convention (No. 100) (1951), Maternity Protection Convention (No. 103) (1952), Discrimination (Employment and Occupation) Convention (No. 111) (1958), Workers with Family Responsibilities Convention (No. 156) (1981).

Furthermore, Ukraine has joined the implementation of the obligations of Sustainable Development Goals for the period up to 2030 (Decree of the President of Ukraine…, 2019), goal No. 5 of which is to achieve gender equality.

Examining the issue of legislative provision of gender equality at the international level, it is worth noting that an organization such as the North Atlantic Treaty Organization (NATO), which was created with the purpose of promoting stable and durable peace, seeks to include the gender aspect in all stages of the operational process. In 2014, the "NATO Women's Professional Network" (NWPN) and "Mentoring" began to operate to promote the creation of a special corporate culture and provide women with opportunities for development, training and mentoring. After the implementation of this Program in NATO member countries, the number of women in the armed forces of these countries has increased considerably (Kaminska *et al*., 2020).

The update of the Policy and Action Plans on Women, Peace, and Security took place in 1918, according to which gender equality of men and women is considered as an integral component of NATO policies, projects, and programs; NATO contributes to increasing the number of women both in the national Armed Forces of the member countries of the alliance and in NATO itself (Kaminska *et al*., 2020).

Such an international body as the Organization for Security and Cooperation in Europe (OSCE) considers a number of economic, political, environmental, military issues related to security. The OSCE's tasks include confidence-building and security measures, arms control, human rights, national minorities, policing strategies, democratization, the fight against terrorism, and various

economic and environmental measures. The OSCE emphasizes that equal rights for men and women are important for ensuring peace, stable democracy and economic development. With this in mind, the OSCE is taking measures to ensure gender equality between men and women, as well as the integration of equal opportunities for women and men into the policies and practices of member states and into the OSCE organization itself. In particular, projects are being developed and implemented with the aim of expanding the opportunities of women. The OSCE cooperates with the authorities on legislative amendments and assists in the creation of national mechanisms for ensuring gender equality.

Implementation of gender equality in Ukrainian legislation

Characterizing Ukrainian legislation, starting with the Fundamental Law – the Constitution of Ukraine, some regulatory documents contain provisions related to gender equality. Article 24 of the Constitution of Ukraine (1996) states: "… the equality of the rights of men and women is ensured by providing women with opportunities equal to men in political, social, cultural activities, in obtaining education, professional training, work and remuneration for it…". Furthermore, Articles 3, 21, 51 of the Constitution of Ukraine establish and guarantee the equality of men and women in various spheres of life.

Some documents of Ukrainian legislation, which prescribe the fundamental principles of human rights security, also contain provisions that in a certain way ensure and guarantee gender equality and non-discrimination. Among them, apart from the Constitution of Ukraine, are the Criminal Code (2001) and Civil Code of Ukraine (2003), Family Code (2002) and Labour Code (1971), Laws of Ukraine "On Education" (2017), "On Pension Provision" (1991), "On National Support to Families with Children" (1992), "On Labour Protection" (1992), Declaration on General Principles of the National Policy of Ukraine in Relation to Family and Women (Resolution of the Verkhovna Rada No. 475-XIV…, 1999), Fundamentals of the Legislation of Ukraine on Health Care (Law of Ukraine No. 2801-XII, 1992), "On the Concept of National Family Policy" (Resolution of the Verkhovna Rada of Ukraine No. 1063-XIV…, 1999).

Ukraine has developed an entire mechanism for analysing current legislation for compliance with international legal documents on the protection of human rights regarding the observance and realization of the rights of both women and men (Resolution of the Cabinet of Ministers of Ukraine No. 997 "Issues of Gender Legal Expertise", 2018). This task is assigned to the structural subdivisions of the Ministry of Justice.

Among the regulations that govern the issue of equality between men and women are the Decree of the President of Ukraine "On Improving the Work of Central and Local Executive Authorities to Ensure Equal Rights and Opportunities for Women and Men" (2005) and the Law of Ukraine No. 2866-IV "On Ensuring Equal Rights and Opportunities for Women and Men" (2005). This law aims to achieve parity for both men and women in various spheres of society. According to the provisions of the law, all current laws and even draft regulations must be subject to a gender-legal examination. The law defines the principal areas of gender policy of Ukraine, establishes which bodies are entrusted with the obligation to implement gender policy and which bodies are authorized to monitor gender policy in the state. The law states that all enterprises, institutions and organizations, as well as executive bodies, must have a gender coordinator. The Cabinet of Ministers is tasked with ensuring the implementation of the

national action plan for the implementation of gender equality. In cases of discrimination based on gender, complaints are sent to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine. It was based on this law that Ukraine began to build a mechanism systematically for establishing gender equality between men and women.

The acts of Ukrainian legislation listed above, as well as the norms of international legislation, forbid, for instance, in job advertisements to make requirements regarding the age, gender, and appearance of the employee. This is prohibited except in cases of specific work that can only be performed by people of a certain gender. Furthermore, employers are not allowed to request information about the personal life and plans for having a child from potential employees. Employers must pay equal wages to men and women if they have the same qualifications under equal working conditions. However, according to Ukrainian law, mandatory conscription, as well as the difference in the retirement age for men and women, are not considered discrimination based on gender (Kremliova, n.d.).

The aforementioned law "On Ensuring Equal Rights and Opportunities for Women and Men" (2005) also regulates the gender issue in educational institutions. According to the provisions of the law, it is stipulated that every educational institution must provide support to those who study, and textbooks and teaching aids must not contain any stereotypical ideas about the role of men and women.

The law prescribes the creation of national gender policy structures. One of the considerable shortcomings of this law is that it does not contain sanctions for gender policy violations, without which the law is declarative.

Some other laws of Ukraine are also important in this area. Among them, it is worth mentioning the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" (2012), which prohibits discrimination, specifically based on sex. Another law – the Law of Ukraine "On Preventing and Combating Domestic Violence" (2017) defines all types of domestic violence, including violence against women and girls.

The adoption of a number of sectoral, regional, and national plans has a powerful influence on state legislation. Thus, the National Action Plan for the Implementation of UN Security Council Resolution 1325 "Women, Peace and Security" for the period up to 2025 (Order of the Cabinet of Ministers of Ukraine No. 1544-r..., 2020) aims to comply with the principle of ensuring gender equality for women and men. The National Plan is one of the main documents for implementing and ensuring equal rights and opportunities for women and men in the security and defence sector.

Strategy for the Implementation of Gender Equality in Education until 2030 and Approval of the Operational Action Plan for 2022-2024 for its Implementation (Order of the Cabinet of Ministers of Ukraine No. 1163-r...) is of significant importance for the implementation of gender policy in Ukraine 2022). This program is aimed at strengthening the existing mechanisms for ensuring gender equality.

The National Action Plan for the Implementation of the Recommendations Set forth in the Concluding Remarks of the UN Committee on the Elimination of Discrimination Against Women to the Eighth Periodic Report of Ukraine on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women for the period until 2021 (Order of the Cabinet of Ministers of Ukraine No. 634-r..., 2018). According to this plan, the main purpose is to overcome all forms of discrimination against women and girls; reduction and prevention of all forms of gen-

der-based violence; timely assistance to victims of gender-based violence; raising legal awareness and improving girls' and women's access to medical, educational, social and legal services.

Based on the above, we can summarize and note that the formation of the Ukrainian national gender policy is formed based on international legal acts that Ukraine has ratified. In addition, the gender policy of Ukraine is regulated by national legal acts that ensure and guarantee equality between men and women. The development of gender policy is entrusted to civil servants. Such civil servants are appointed in their structural unit for submitting proposals related to gender development, or they perform these duties on behalf of the leadership of the structural unit (Kremliova, n.d.).

Apart from the legislative consolidation of some regulatory documents aimed at ensuring equal rights and opportunities for men and women, several regulations that legally affirmed gender inequality between men and women were cancelled in Ukraine. An example is the Order of the Ministry of Health of Ukraine No. 256 "On Approval of the List of Hard Work and Work with Harmful and Dangerous Working Conditions, Which Prohibits the Use of Women's Labour" (1993). This Order defined 450 professions that were prohibited for women. According to the provisions of this Order, women were prohibited from working as firefighters, bus drivers, and subway drivers. Women were not allowed to work in the engine room of the ship, in underground works. It was not possible to be a driver of some types of cargo and passenger transport. Revoking the provisions of this Order is an important stage in ensuring women's rights and non-discrimination based on gender in employment.

Quite interesting is the research done by E.L. Doran *et al*. (2019) on gender in the labour market and the role of equal opportunities, and a scientific study by L. Samilyk *et al*. (2021), in which an analysis of the gender gap between men and women in Ukraine was carried out according to three indicators: accessibility, salary, and work experience. L. Samilyk *et al*. (2021) stated that Ukraine has very low indicators of women's economic and political activity among European countries. The number of women in local authorities and in the parliament, in executive positions, does not exceed 12%. E.L. Doran *et al*. (2019), based on a scientific study that highlighted the issue of gender in the labour market, established that graduates of the University of Chicago start their work with the same salary regardless of gender, but after 5 years the difference in salary between these individuals is 30 log points in favour of men. 10-16 years after graduation, this difference is 60 log points. Scientists prove that the difference in wages is caused by breaks in women's careers. This is mostly because it is women who most often go on parental leave to take care of a child. Furthermore, when accepting a certain job, women prefer the job where the employers implement a more loyal family policy. Women agree to lower wages in exchange for social benefits and various guarantees. Thus, the difference in pay between men and women is not due to gender discrimination.

In 2018, the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men during Military Service in the Armed Forces of Ukraine and Other Military Formations" was adopted (Law of Ukraine No. 2523-VIII…, 2018).

This law allowed women to have equal opportunities with men in military service. Women gained equal access to military ranks and positions, as well as an equal amount of responsibility during military service. It is worth emphasizing that the provisions of this law are vital today,

when there is a war on the territory of Ukraine and women are defending our independence on an equal footing with men.

To implement the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2005), the Government of Ukraine approved a draft law, which makes provision for amendments to some legislative acts. Pursuant to this law, amendments were made to the Labour Code of Ukraine (1971), specifically, a clause was added to Article 13, which deals with the collective agreement, guaranteeing equal rights and opportunities for men and women. An analogous amendment was made to the Law of Ukraine "On Collective Agreements" (1993), which states that the collective agreement or agreement contains provisions ensuring equal rights for men and women (Articles 7, 8); amendments were made to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" (1997), which gave the commissioner the right to monitor the observance of equal rights and opportunities for men and women (Articles 13, 18).

As of the end of 2022, according to the World Economic Forum (2022), Ukraine ranks 81st among the countries of the world in terms of the Global Gap. In 2021, Ukraine ranked 74th. Thus, during 2022, the rating of Ukraine decreased by 7 positions. The problem of gender inequality is not unique to Ukraine. The presence of women in public space is limited in many countries of the world. Therefore, state programs, which make provision for taking gender issues under special control, are aimed at ensuring equal rights, opportunities, and non-discrimination of both women and men. Every person regardless of gender has the same rights and freedoms (Constitution of Ukraine, 1996; Universal Declaration of Human Rights, 1948; Convention on the Elimination..., 1979).

Mechanisms for the implementation of the national gender policy, and along with it, the means of resolving contradictions that may occur in society, by resolving these contradictions and implementing consistent actions using effective management methods and resources, ensure the existence of an effective state system capable of effectively implementing the gender strategy. Among the main mechanisms capable of ensuring the implementation of the national gender policy, it is worth mentioning the economic, legal, political, infrastructural, and organizational ones (Zadoienko, 2019).

The main tasks of the mechanism for ensuring equal rights and opportunities in Ukraine include: forming legislation on gender equality and non-discrimination of men and women, as well as monitoring its implementation; effective provision of the activities of state institutions that monitor the implementation of the national gender policy; development and provision of various social programs and projects related to the implementation of gender equality and gender non-discrimination; conducting research and publishing the results of these studies to ensure equal rights and opportunities for both men and women. Measures related to informing about the implementation of gender programs in various spheres of social life should indicate which actions to ensure gender equality require greater efforts, and show in which spheres significant progress has been made in ensuring equal rights and freedoms for both men and for women, and if possible, apply the practices gained in those areas that require intervention and support either from the side of state bodies or other structures that aim to ensure gender equality.

One of the shortcomings of the Ukrainian legislation regarding the integration of equality is that, despite the clear establishment of the principles

of equality and non-discrimination of articles, institutional mechanisms do not control the practical application of the norms established by law.

Based on the analysis of international and Ukrainian legislation aimed at ensuring gender equality between men and women, it is necessary to expand cooperation aimed at ensuring the equality of both sexes.

All state programs, as well as national policies in general, should include measures to ensure gender equality.

Personnel of diverse types of state institutions, enterprises, institutions, and organizations should be provided with means and trainings that include gender aspects.

It is necessary to develop a professional, gender-sensitive culture of the working environment and management;

The efforts of states that achieve success in terms of gender equality should be recognized at the international level after monitoring by the relevant structural units, either the UN or the OSCE on gender issues. Such states should be supported by the world public and international organizations, whose task is to ensure the equality of men and women.

Priorities promoting gender equality between men and women should be officially recognized at the state level. These priorities and measures of action to ensure gender equality should be in line with the Sustainable Development Goals and the commitments that Ukraine undertook as a candidate for membership of the European Union. To achieve the sustainable development of society, it is necessary to conduct a gender analysis of the existing conditions, since society consists of men and women. The methods of the gender approach should be an integral part of all parts and directions of the policy, which ensures the sustainable development of society. The thesis "no one can be discriminated against because of their gender" should become an axiom. Today, the gender dimension is becoming a part of all important areas of national policy. The inclusion of the gender factor in all areas of national policy is designed to consider the interests of both women and men, who are full participants in social development. Considering gender aspects in the formation of the legislation of our country aims to solve the problems of state administration bodies. Based on the above, it should be noted that the integration of gender issues into legislation should be ensured by a strategy that guarantees equal rights and opportunities for both sexes. Carrying out constant monitoring of the implementation of tasks defined by international organizations and states to ensure gender equality and promote the role of women in conflict prevention and peace restoration processes.

Since 2014, active hostilities have been taking place on the territory of Ukraine, and since 2022, a full-scale war has been ongoing, which is accompanied not only by mass murders, but also by the violation of human and civil rights by the Russian Federation. Considering this, it is necessary to take measures to prevent the violation of human and citizen rights and freedoms in general and to ensure gender equality among men and women in particular.

It is necessary to promote the implementation of the Istanbul Convention – Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) because during the war, many Ukrainian women and girls suffered violence from the side of the Russian military. The culprits should be brought to justice and punished. Furthermore, it is necessary to take some measures to prevent and eradicate violence and prevent similar incidents in the future.

Development and renewal of the modern concept of gender must necessarily consider such aspects as the social roles of women and men; special social status of each gender group; a system of control over the behaviour of men and women.

Summarizing the above, we note that the results of the implementation of gender equality should be to consider the distinctive and special physical, economic, social characteristics, and life experience of different socio-demographic groups of boys and girls, men and women in all spheres of life as soon as possible. Implementation of gender equality should ensure equal treatment of all citizens regardless of gender or other characteristics, social, or other circumstances, equal access to state guarantees should be ensured. It is necessary to strive for gender equality to become a priority vector of politics, just like social or economic spheres. Its integration into all areas of activity of the authorities will strengthen the position of Ukraine as a democratic state governed by the rule of law.

However, it is also necessary to realize that legal mechanisms alone are not enough to implement gender policy. There is a tangible need for some measures aimed at overcoming the existing low level of gender culture of the population in society. It is necessary to create sufficient information and consultation network in all regions of the state, which would contribute to the implementation of national policy better and more oriented towards the creation of equal opportunities for both men and women. The national gender policy on ensuring equal rights and opportunities for men and women operates based on considering various international treaties in the agreements ratified by the Verkhovna Rada of Ukraine. Being a member of the United Nations and the Council of Europe, Ukraine is taking certain steps of gender transformation, recognizing certain areas of the establishment of gender democracy and recognizing its place in the system of social democracy, entering the system of world gender technologies. Furthermore, we can add here the noticeable activation of the women's social movement, and along with it the creation of public organizations of male parents. In the economic sphere, we observe steady trends towards a decrease in the percentage of unemployed women and an increase in the number of women entrepreneurs. In general, state policy has become more oriented towards ensuring equal opportunities for men and women. It is worth striving for gender equality to become a priority direction, both economically and socially. It should be integrated into all areas of activity of authorities and strengthen the position of Ukraine as a social legal state. For this, state strategies should not only provide for, but also create a strong legal framework to ensure actual equality for men and women, and a mechanism for protection against discriminatory treatment regardless of gender should be implemented at the appropriate level. Gender activism of women and men, and with it, adaptation to the global conditions of gender democracy, is vital for Ukraine.

Conclusions

Therefore, the gender policy conducted both at the national and global levels is aimed at ensuring gender equality and non-discrimination of both women and men and establishing their equal status. The purpose that was set when authoring this scientific paper was achieved. The study analysed both the concepts of gender and gender equality and based on a thorough analysis of international and Ukrainian legislation, it was established which legal acts of Ukrainian and international legislation establish and guarantee gender equality and gender non-discrimination. Based on the conducted

research, it can be stated that thanks to the European and Ukrainian (state) legislation, it was possible to lay the foundations of the main legal opportunities of gender transformations; it was possible to considerably expand the gender component in various spheres of social life; it is observed that important gender approaches were implemented in law-making, law enforcement, and legal protection. Among such approaches, it is worth mentioning equality and non-discrimination based on gender; it has been established that the study of mutual practices in the adoption of various legal acts aimed at the formation and implementation of gender policy, as well as the generalization of various gender transformations and the expansion of various measures designed to ensure gender balance, has a positive effect not only on gender policy, and the level of legal culture of society.

The most effective tools for the implementation of gender policy include the legislative establishment of gender equality and non-discrimination at the state and global levels. However, it is necessary to emphasize the need to constantly conduct gender data statistics, as these data will allow identifying gaps, issues that require intervention. Today, there is a paucity of statistical research on gender politics in some areas, so bridging this gap is worth further research and could be the subject of the next scholarly study. A detailed study of statistical data provided by the results of the World Economic Forum can shed light on the most pressing issues of gender equality and non-discrimination based on sex. Furthermore, the problem of gender discrimination, prevention, and eradication of gender-based violence in the conditions of war requires a separate scientific study. During the last year, active hostilities have been taking place in Ukraine, there is a full-scale war, as a result of which the rights and freedoms of a person and a citizen of a large part of the Ukrainian population, including both women and men, and sometimes children, are violated. It is worth investigating the most common cases of rights violations to develop measures aimed at preventing and not violating rights and freedoms in general and ensuring gender equality in particular.

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Conflict of Interests

None.

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Правові аспекти гендерної рівності та їх законодавче закріплення

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Анотація

Сьогодні дуже важлива не лише рівність прав та свобод, а також юридичне закріплення рівності між чоловіками й жінками в можливості повною мірою скористатися всіма тими правами й свободами в різних сферах суспільного життя, які гарантує і забезпечує держава. Мета статті – дослідити поняття «гендер» та «гендерна рівність» в контексті міжнародних нормативно-правових документів й українського законодавства щодо забезпечення рівних прав та можливостей жінок і чоловіків як невід'ємної частини загальних прав людини і громадянина. Серед ключових методів дослідження – діалектичний, логіко-юридичний та герменевтичний, які дали змогу здійснити аналіз понять «гендер» та «гендерна рівність» і визначити нормативну базу документів щодо забезпечення та гарантії гендерної рівності обох статей. За допомогою порівняльного методу здійснено зіставлення та аналіз відповідності українського законодавства міжнародним стандартам гендерної політики. У статті представлено результати характеристики та тлумачень норм правових документів і законодавства щодо їх відповідності принципам гендерної рівності. Розкрито суть понять «гендер» та «гендерна рівність». Визначено основні напрями забезпечення рівноправності чоловіків і жінок, які гарантуються українським і міжнародним законодавством. Обґрунтовано необхідність включити до всіх державних програм низку заходів, які забезпечують гендерну рівність і відповідають Цілям сталого розвитку. Доведено, що як на державному, так і на регіональному рівнях доцільно проводити різноманітні тренінги, які розкривають гендерні аспекти та підвищують обізнаність серед працівників з метою розвитку професійної гендерно чутливої культури робочого середовища. Акцентовано на важливості проведення заходів щодо запобігання порушенню прав і свобод людини та громадянина, а також щодо забезпечення гендерної рівності між чоловіками та жінками в умовах воєнного стану. Наголошено на важливості обов'язкового притягнення до відповідальності й покарання російських військових, винних у завданні насилля українським жінкам та чоловікам. Результати дослідження можуть використати як науковці, які досліджують питання рівноправності статей і дискримінації за гендерною ознакою, так і представники державних органів, до сфери компетенції яких входить реалізація політики гендерної рівності, а також студенти й викладачі юридичних вузів, усі, хто цікавиться проблемами гендеру та рівноправності

Ключові слова: гендер; соціальні ролі; рівноправність статей; принцип рівності; права людини

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Theoretical justification and praxeological significance of the stages of expert research of a living animal

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Abstract

The relevance of this study is determined by the need to develop the theoretical foundations of forensic veterinary medicine as a science and educational discipline, namely, to justify, test and put into practice the methods, means, and methodology of expert research of specific objects. The purpose of this study was to argue the meaning and outline the functions of each of the stages of expert examination of live animals in forensic veterinary examination. The methodological framework of this study included a systematic approach determined by the specific features of the subject under study and associated with the use of general scientific and special scientific methods, including analysis, synthesis, induction, deduction, analogy, formal-logical, comparative-legal, system-structural methods, modelling, observation, description, analysis of the practice of forensic veterinary examination, special methods, the functions of which are performed by methods of intravital clinical forensic veterinary diagnostics of animals. Based on the conducted research and generalization of the practice of forensic veterinary examination of live animals, it is argued in the work that this process consists of four stages: preparatory, analytical, comparative and synthesis stage. The separation of

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certain stages was substantiated, due to the diverse nature of the tasks that the forensic expert solves, the application of algorithms and methods of forensic examination of animals of different complexity, and the involvement of various technical techniques and equipment at each particular stage. The study proved that the sequence of applying the stages of the forensic veterinary examination of a live animal contributes to the correct assessment of the detected signs of injury or health disorder of the animal based on their comprehensive assessment, is designed to solve intermediate expert tasks, trace the process of conducting the examination and evaluate the obtained results for the justified establishment of a forensic veterinary diagnosis and formation of an expert's opinion. It was proved that the rules (methodical recommendations) of the forensic veterinary determination of the degree of severity of damage caused to the animal's health, the method of forensic veterinary examination of animals to establish their mutilation, and the method of forensic veterinary examination of animal corpses are the basis of the conducted research. The theoretical substantiation of the stages of the expert examination of a live animal and the coverage of their praxeological significance will be positively reflected in the conduct of a forensic veterinary examination and compilation of the results of forensic veterinary examinations

Keywords: forensic veterinary examination; forensic expert; injuries; diseases; research algorithm; effective activity

Introduction

One of the types of forensic examination is forensic veterinary examination, which, starting from 2019, has been actively developing at the National Research Centre "Ex. Prof. M.S. Bokarius Institute of Forensic Examinations" of the Ministry of Justice of Ukraine (NRC IFE) (Kliuiev, 2019; Derecha, 2021). One of the most difficult problems in the theory and practice of forensic veterinary examination is the development of rational approaches to the organization of the procedure for carrying out an expert examination, specifically a live examinee animal because of the objectivity, reasonableness, correctness, and truthfulness of the forensic expert's conclusion depend on this, as a source of evidence for judicial proceedings (Brownlie & Munro, 2016). Such issues are now raised on the pages of scientific publications not only in Ukraine, but also in other countries (Listos *et al.*, 2015; Munro *et al.*, 2020; Rebollada-Merino *et al.*, 2020).

Since the forensic veterinary examination in the forensic examination institutions of the Ministry of Justice of Ukraine was started only a few years ago, its conceptual theoretical provisions are currently at the stage of development and approval, and therefore, they require experimental and practical substantiation, including the stages of expert examination of live animals animal under examination and their use in forensic veterinary examination.

Forensic expert activity both in Ukraine and abroad is a clearly regulated activity (Simakova-Efremian, 2017; Order of the Ministry of Justice…, 1998; Law of Ukraine "On Forensic Examination", 1994). However, the process of developing expert methods, methodical recommendations, and reference literature on forensic veterinary examination has only just begun in Ukraine, specifically at the NRC IFE, since this class of forensic examination was introduced in the system of

specialized expert institutions of Ukraine only in 2019. In a relatively short time, the arsenal of forensic veterinary examination has been replenished with the latest scientific research, including on the forensic veterinary examination of live examinee animals. In co-authorship, the author of this paper was the first to develop the rules of forensic veterinary determination of the degree of severity of damage caused to the health of the examinee animal; the preparation of the methodology of the forensic veterinary examination of a live examinee animal is underway. Cases of forensic veterinary examination of live animals with signs of mutilation are analysed in detail. For the first time in world practice, the concept "animal mutilation" was defined, its signs were outlined and distinguished, and its classification was developed, the degrees of restriction of the animal's vital activity due to mutilation were substantiated; the order of forensic veterinary examination was developed to establish mutilation of animals (Yatsenko & Parilovsky, 2022).

A step-by-step solution to the problem of forensic veterinary examination of live examinee animals will enrich forensic expertise with new data, increase the requests of law enforcement agencies and courts and their opportunities for justified qualification of crimes and misdemeanours against the health and life of animals, and society will receive a fair trial (Lockwood *et al.*, 2019; Munro, 2022).

Considering the stages of forensic veterinary research during the implementation of a specific expert task is conditioned upon the need to use certain research methods, methods, and tools that belong to the competence of a forensic expert (Shcherbakovskyi, 2015).

The outlined specificity of the subject and objects of the forensic veterinary examination determines the specific features of the stages of expert research. At each stage, objective patterns for acquiring new knowledge are revealed. The basis of any stage is the corresponding tested expert procedures, the nature of the properties of the object of forensic examination, the practice of solving analogous expert tasks, etc. are considered. Compliance with the algorithm for conducting forensic veterinary research at each stage allows obtaining reliable, objective, and effective research results, which are expressed in their effectiveness, verification, and admissibility from the standpoint of the law.

Notably, the stages of expert research and their application in the forensic veterinary examination of animal corpses are comprehensively substantiated by the author of this paper (Yatsenko, 2022). However, currently Ukrainian scientific sources lack a sufficient theoretical framework for forensic veterinary examination, specifically a systematic analysis and clear differentiation of stages research of live examinee animals with an outline of individual expert operations at particular stages, which determines the relevance of this study.

Expert research is a cognitive activity of a forensic expert, which is based on the latest achievements of science and technology, their familiarity with modern Ukrainian and foreign effective research methods, and personal skills.

During a forensic veterinary expert examination of a live examinee animal, similarly to an animal cadaver (Yatsenko, 2022), it is appropriate to distinguish four stages: preparatory (preliminary examination), analytical (separate examination), comparative, and synthesizing (evaluation).

The purpose of this study was to cover the essence, argue the meaning, outline the functions of the stages of expert examination of live examinee animals in forensic veterinary examination.

Various scientific methods were used in this study, considering the specifics of the subject, the

purpose, and tasks of the study, namely: dialectical, logic methods (formal-legal, system-structural analysis, modelling, analysis, synthesis, induction, deduction), general cognitive methods (description, observation, comparison, measurement), special methods, the functions of which are performed by methodologies (methods of intravital clinical forensic veterinary diagnostics of animals), and forensic expert methods. The indicated research methods were used during forensic veterinary examinations on animal cruelty during 2010-2021 at the National Research Centre "Ex. Prof. M.S. Bokarius Institute of Forensic Expertise" of the Ministry of Justice of Ukraine (Kharkiv).

Preparatory stage of expert research

At the preparatory, first stage of the expert research, the forensic expert performs the following actions:

- reads the document on the appointment of a forensic veterinary examination or the involvement of a forensic expert, received by the state expert institution;
- clarifies the category of the case for which a forensic veterinary examination is prescribed;
- establishes the object to be investigated (a living examinee animal);
- studies the provided materials: their type, name, paying special attention to veterinary documents;
- establishes the method of delivery of the examinee animal;
- determines the compliance of the materials and objects received by the expert institution (forensic expert) with the information specified in the procedural document on the appointment of the forensic expert (recruitment of the forensic expert);
- determines the list of issues to be resolved by the forensic veterinary expert;
- verifies the presence of information in the case materials that may provide an opportunity to exercise the right to expert initiative during a forensic veterinary examination of an animal examinee to expert examination;
- outlines the subject of the forensic veterinary examination, proceeding from the content of the questions raised in the procedural document on the appointment of this examination;
- verifies the connection of the object with the subject of the forensic veterinary examination;
- selects regulations, methods, and sources of special literature to be used during the forensic veterinary examination;
- creates an algorithm for solving the tasks set, which includes the correct, substantiated, and appropriate sequence and content of actions to achieve the result of expert research. A block diagram can be used to visualize the algorithm.

At the preparatory stage of an expert examination of a live animal, pursuant to Item 5.5 of the Rules for the Forensic-Veterinary Determination of the Degree of Severity of Damage to the Animal's Health (Methodological Recommendations) (hereinafter – the Rules) (Yatsenko & Parilovsky, 2021), if for objective forensic veterinary examination or an expert study the forensic expert is not provided with the necessary veterinary or other documents essential for determining the damage caused to the health of the animal, the forensic expert submits a request for the provision of the relevant documents within the period prescribed by the Departmental Instruction (Order of the Ministry of Justice..., 1998).

Example: "On xx.xx.20xx, G.O.P., the investigator of the investigative department of the I……yi police department of the Main Directorate of the National Police in My…… region, the senior lieutenant of the police, was sent a request to provide additional materials, including a dog of the Spaniel

breed"; or: "On xx.xx.20xx, to the address of T.P.Sh., the prosecutor of the K.... City Prosecutor's Office of the V... region, the request of the expert was sent regarding the need to conduct additional examination on a dog named Rex".

Analytical stage of expert research (separate research)

At this stage, the forensic expert conducts a clinical forensic-veterinary examination of each living examinee animal separately, if there are several of them, separate parts of the body, body systems to effectively solve the expert tasks set in the procedural document on the appointment of a forensic veterinary examination by an authorized person or body. As a result of a separate study, two groups of signs are distinguished: those that characterize the physiological norm, and those that characterize damage or disease. The latter will be analysed by a forensic-veterinary expert and used to make a forensic-veterinary diagnosis and draft an expert's opinion.

During the expert examination, an analysis of the registration and anamnestic data of the examinee animal, research of veterinary documents available in the materials of the criminal proceedings or case (if before the forensic veterinary examination the examinee animal was provided with veterinary care in veterinary medicine institutions, etc.), a clinical forensic-veterinary examination is carried out, instrumental, imaging, and laboratory studies are performed (Fig. 1)

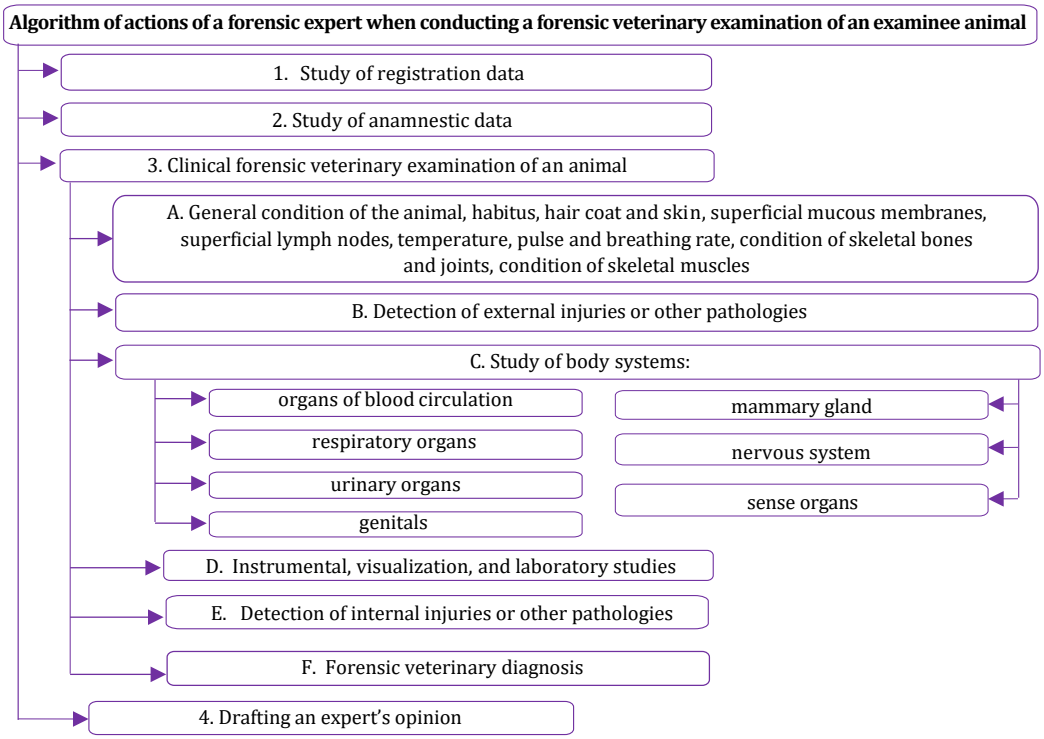

Figure 1. Block diagram "Algorithm of the forensic veterinary examination of a living examinee animal"

Source: Author's development

Before the start of the direct clinical forensic veterinary examination of a live examinee animal, the forensic expert examines the veterinary documents provided as part of the criminal proceedings. The object of the study can be the results of haematological studies, ultrasound examination protocol, radiographs, and their description, computer or magnetic resonance imaging protocol, intraocular pressure measurement results, ophthalmological examination results, conclusions of specialized veterinary medicine specialists, an extract from an outpatient journal or history diseases from the clinic of veterinary medicine, etc. Researched veterinary documents drafted by veterinary medicine specialists at the time of injury to the animal or in the early post-traumatic period can serve as auxiliary material for clarifying the clinical condition of the animal (mild, moderate, or severe), if a forensic veterinary examination of a live examinee animal is conducted directly by a forensic expert and the main one, if a forensic veterinary examination is conducted based on the materials of a criminal proceeding or case.

According to Item 5.6 of the Rules (Yatsenko & Parilovsky, 2021), during a forensic veterinary examination or expert examination, a forensic expert must examine the originals of veterinary or other documents related to the subject of the forensic veterinary examination. In exceptional cases, it is possible to use duly certified copies of veterinary documents with the signature of the veterinarian who provided veterinary care to the animal, made according to the originals, if the latter comprehensively reflect information on the nature, localization and clinical picture of the course of injuries, as well as other necessary information, which is essential for examination.

At the same time, pursuant to Item 5.7 of the Rules (Yatsenko & Parilovsky, 2021), under certain circumstances, a forensic veterinary expert may use the results of research conducted with the involvement of specialized veterinary medicine specialists who specialize in a certain field of veterinary medicine: internal medicine, surgery, reproductology, cardiology, traumatology, endocrinology, neurology, etc., without examining the affected animal personally. In this case, such information about the results of research should be presented in the form of a written advisory opinion of a specialist with their personal signature, duly certified. Such veterinary documents must state where, when, and by whom the examinee animal was examined; what objective data were established therewith; what conclusions the involved veterinary medicine specialist reached.

Pursuant to the requirements of Item 5.36 of the Rules (Yatsenko & Parilovsky, 2021), the phenomena of deformation of parts of the animal's body as a result of injury can be assessed by a forensic veterinary expert 21-30 days after the injury after the regression of traumatic oedema of soft tissues, therefore, in the specified period, it is necessary to carry out a repeated clinical examination of the examinee animal with the preparation of relevant veterinary documents, which will outline the results of these examinations and the duration of regression of injuries in the post-traumatic period.

In addition, pursuant to the requirements of Item 5.36 of the Rules (Yatsenko & Parilovsky, 2021), the issue of repairability or irreparability of damage to the animal's exterior can only be resolved based on the results determined over time and having the final appearance of post-traumatic damage without surgical intervention, after as the injured soft tissues or skeletal bone fractures have completely healed, but not earlier than 60-90 days after the injury, and therefore, after the indicated period, it is necessary to conduct a repeated forensic veterinary examination of the examinee animal.

Pursuant to the requirements of Item 7.31 of the Methods of forensic veterinary examination of animals to establish its mutilation, the duration of the forensic veterinary examination of an examinee animal to establish its mutilation should not exceed 90 calendar days (Yatsenko, 2021).

According to veterinary documents, high-quality photographs with their detailed description, a forensic veterinary examination of a live animal is carried out to establish its mutilation, if such an animal cannot be delivered to a forensic expert for its direct examination, but only in cases where the signs of mutilation are evident, which is consistent with Item 7.10 of the Methods of forensic veterinary examination of animals to establish their mutilation (Yatsenko, 2021).

By studying the registration data of a live examinee animal, its identification features are established, noting its species, nickname, or individual number; the date of the clinical forensic examination, the number, and content of the animal's passport, age, sex, body weight, breed (cross or poultry line), coat or feather 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.).

Example: "The type of animal is a domestic cat. The nickname is Victoria. Gender – female. Age – 7 months. The colour of the fur is brown grey. Special signs – absent. Belongs to _____ (*indicate the name and initials, address of the owner or guardian*). The date of injury is xx.xx.202x. During the forensic veterinary examination of the European cat, the owner of the animal, N.T.M., was present. Date and place of forensic veterinary examination – CE "Treatment of animals" (358 Haharina Avenue, Kharkiv). _____ (*date*)".

To analyse the anamnestic data and the circumstances under which the animal suffered health damage in the form of injury or illness, the forensic veterinary expert uses information from the procedural document on the appointment of a forensic veterinary examination (resolution or decision), the protocol of the inspection of the scene of the incident or data from other veterinary documents (extract from the medical history, card of an ambulatory sick animal, etc.), which is consistent with Item 2.1 of the Departmental Instruction.

If necessary, the forensic expert can petition the authorized person or body that appointed the forensic veterinary examination to clarify certain issues related to the subject or object of the examination during the interrogation of any participant in the process, pursuant to paragraph 5 of Item 2.1 of the Departmental Instruction (Order of the Ministry of Justice…, 1998).

Example: "From the resolution of the inquirer – F.V.S., the inspector of the investigative department of the L…….th District Police Department of the Main Department of the National Police in the P……..th region on the appointment of a forensic veterinary examination dated xx.xx.202x, it is known that "on xx.xx.202x at approximately 3 p.m. 45 min., Sh.E.V., staying at his place of residence, at the address: 59 V....y Ave., L....y, treated the kitten cruelly, hung it from the window of the house, tied with a rope by the neck".

During the clinical forensic-veterinary examination of a live examinee animal, the forensic expert must establish objective data obtained using clinical, instrumental, imaging, laboratory research, which is consistent with the requirements of paragraph 4, Item 2.2 of the Departmental Instruction (Order of the Ministry of Justice…, 1998), as well as with Item 5.1 of the Rules (Yatsenko & Parilovsky, 2021). At this stage of the expert examination, the nature of the damage (wound, abrasion, bruise, etc.), painful changes in organs or parts of the body, if any, are diagnosed. Organs

without morpho-functional changes are noted separately. The algorithm of the clinical forensic veterinary examination of a live animal is not permanent, it can be adjusted, depending on the injured area or organs (*Status localis*), the nature of the damage, the age of its occurrence, as well as considering the circumstances of causing damage to the animal's health, its species affiliation, age, sex, physiological state of the issues raised for the decision of the forensic expert in the procedural document on the appointment of a forensic veterinary examination. Obtaining an objective and correct forensic veterinary diagnosis is influenced by a correctly constructed research algorithm.

During a clinical forensic veterinary examination of a live examinee animal to determine the degree of severity of damage caused to its health, it is mandatory and a priority to examine the general condition of the animal, its habitus, skin and hair coat, visible mucous membranes, superficially located lymph nodes, bones of the skeleton, joints, skeletal muscles, temperature parameters, pulse and breathing rate, and also indicates whether the animal has clinical signs of infectious diseases.

As an example, we will cite the algorithm of clinical forensic veterinary research of the habitus of an examinee animal, which helps distinguish a sick animal from a healthy one. For this, the forensic veterinary expert determines the general state of the animal: satisfactory, depressed (apathy, stupor, sopor, coma), agitated (fear, nervousness, fury, aggressiveness); position of the body in space: physiological, unnatural (forced standing or forced lying down), pose: natural or unnatural ("observer", "pendulum-like oscillation", "sitting or lying dog", "Egyptian sphinx", "astronomer", etc.); movements: natural or forced (aimless wandering, manege, roller-like and rotational, back-and-forth, etc.); constitution (tender, dense, rough, loose), as well as the animal's reaction to manipulation.

Example: "The general condition of the cat named Victoria is satisfactory. The position of the animal in space is physiological, natural. The pose is natural. The cat carefully changes it in space. The movements of the auricles and the tail are active. The body structure of the animal is correct, symmetrical. Fatness is average; the constitution is dense; temperament – good; coordination of movements – preserved, natural, careful. During the forensic veterinary examination, the animal is socialized and shows no aggression. The animal observes the environment with interest and fear (in the premises of the veterinary clinic)".

Analogous algorithms of clinical forensic veterinary research are developed to determine the condition of skin and hair, visible mucous membranes, superficially located lymph nodes, bones of the skeleton, joints, skeletal muscles.

Next, the forensic veterinary expert determines the parameters of the temperature, pulse rate and respiration of the examinee animal, as well as indicates whether it has clinical signs of infectious diseases.

Example: "Rectal body temperature is 39.0°C (physiological norm – 38.0…39.5°C). Pulse on a. femoralis: 125 bpm (physiological norm – 110-130 bpm). The frequency of breathing is 25 breaths/min (physiological norm – 20-30 breaths/min). No clinical signs of infectious diseases were found".

After completing the examination of the general condition of the animal, its habitus, skin and hair cover, visible mucous membranes, superficially located lymph nodes, bones of the skeleton, joints and skeletal muscles, the forensic veterinary expert directs attention to the examination of injuries found on the animal's body, noting their localization, quantity, nature.

Example: "Post-traumatic surgical removal of the right eyeball" or "the wound in the area of the

dorsal surface of the left wrist is an open, clogged, not deep, non-penetrating wound. The bottom of the wound channel is the bones of the wrist, the edges of the wound and the walls of the wound channel 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", or "complete loss of the right eye, and therefore permanent loss of visual function in the right eye", or "traumatic atrophy of the right temporal muscle".

Next, at the stage of the analytical (separate) expert examination, the forensic veterinary expert proceeds to the clinical forensic examination of the state of organ systems, specifically: blood circulation, breathing, urination, genitals, mammary gland, nervous system, sense. A complete examination of all body systems is necessary because the animal cannot indicate pain sensations in the body, so they must be detected by a forensic veterinary expert using special methods, as well as an examination of the body systems will make it possible to detect complications of the main injury or disease, accompanying and background pathologies. Thus, when examining the internal organs, the expert establishes their position in the body (natural or displaced), the limits of the percussive field (not increased, increased, decreased), features of organ sensitivity (painful or painless), size (not increased, increased, decreased), mobility (moderately mobile, not mobile, markedly mobile), consistency (moderately dense, dense, loose), symmetry (symmetric, asymmetric – for paired organs), as well as skin temperature in the projection of the location of the organ (moderately warm, hot, cold).

Each internal organ of the subject animal is examined according to the procedure established in forensic veterinary practice. As an example, we will give the algorithm of a clinical forensic veterinary examination of the heart. For this, the forensic veterinary expert determines the general condition of the animal: natural or depressed, detects forced postures (extended neck, lowered head, widely spaced thoracic limbs), animal behaviour (groaning when lying down, standing up and defecating, avoiding sudden movements and turns); the presence of cold, painless, spilled, dough-like swellings in the area of the intermaxillary space, under the chest, abdomen, lower parts of the pelvic limbs; bluish skin, decreased skeletal muscle tone; heartbeat (moderate in strength or increased); percussive borders of the heart (unchanged or shifted), percussive sound (dull or dull, tympanic), area of relative cardiac dullness (reduced or increased); sensitivity of the heart area (painful or painless). When examining heart tones, the expert determines their rhythmicity, clarity, the presence of extraneous noises, timbre, strength (intensification or weakening of the first and second tones, as well as their lengthening, splitting, bifurcation or accentuation), the presence of heart sounds.

Example: "The field of percussive blunting of the heart has not changed. There is no pain reaction of the cat during percussion of the heart area. Heart sounds are moderately sonorous and clear. There are no extraneous sounds in the heart, as well as extracardiac (murmurs)". Analogous algorithms of clinical forensic and veterinary research are developed to determine the condition of other organs of the body systems, specifically the organs of respiration, urination, genitals, mammary gland, nervous system, sense organs.

Example: "During the clinical forensic examination of the respiratory organs, it was established that respiratory movements are calm, symmetrical, rhythmic. A thoracic type of breathing is observed. There are no coughs, wheezing, and runny nose. The contours of the nostrils are clear, even, unchanged. Nostrils and nasal passages are

free. Nasal cavity without extraneous contents, oedemas, swellings, wounds, erosions, haemorrhages. The trachea and larynx occupy a natural anatomical position, the skin in the projection of these organs is moderately warm, they are painless during palpation. A laryngeal type of breathing is registered in the larynx. The chest is round, symmetrical, the skin in its projection is moderately warm, not painful upon palpation, there are no oedemas and emphysema in the subcutaneous tissue. A clear atympanic (pulmonary) sound and only basic bronchopulmonary respiratory sounds are revealed in the projection of the lungs. There are no pathological breathing noises".

Under certain circumstances, there is a need to use instrumental x-ray, ultrasonographic, tomographic, and other imaging methods to study a living examinee animal (Boysen *et al.*, 2004). As a visual example, we can illustrate the results of a computer tomography study of the head of a dog named Rex, which was deliberately hit by a car (Fig. 2): "A series of computer tomography of the head of a dog named Rex reveals a consolidating fracture of the dorsal plate of the frontal sinus on the left, up to 13.0 mm long. Pneumaticity of the left frontal sinus is not reduced. Pneumaticity of the sphenoid sinus is partially reduced by the soft-tissue component, with a density of up to ±146 HU. The pneumaticity of the cells of the lattice labyrinth has not changed, except for the rostral (front) sections, where hypertrophy of the parietal mucous membrane is established. Fluid in the paranasal sinuses and signs of distortion of the bony part of the nasal septum were not detected. Temporomandibular joints are symmetrical, there are no bone-destructive changes. The area of the sella turcica and the chiasmatic area are unchanged. The external and internal auditory canals are symmetrical, no tumours were found in them. The pneumaticity of the tympanic membranes is preserved. Auditory ossicles (hammer, stirrup, and anvil) are traced on the right and left. The tympanic septum on the left is traced fragmentarily, with signs of its damage, the thickness is up to 1.2 mm on the left, up to 1.0 mm on the right. On a series of computer tomograms of the orbits and facial skeleton in the projection of the orbital cavities, no additional formations are identified, the orbital cavities are symmetrical. Bone-destructive changes were not detected, the bony canals of the optic nerves were symmetrical and not deformed. Eyeballs without deformations. The muscles of the eyeballs are symmetrical, their size and structure are without visible changes. Retrobulbar space without volumetric formations, retrobulbar tissue is homogeneous. *Conclusion*. CT image of a consolidation compression fracture of the frontal bone on the left. Fragmentation of the tympanic septum on the left with signs of damage".

Figure 2. Compressed multifragmentary fracture of the frontal bone of the skull on the left side, with prolapse of the fragments into the left frontal sinus in the dog named Rex. Computed tomography. Screenshot from the disc

Source: archive of the NRC "Ex. Prof. M.S. Bokarius Institute of Forensic Expertise". 2021

Ultrasonography (ultrasound diagnosis) is a fairly widespread method of research, which is an auxiliary, clarifying method of diagnosis during a forensic veterinary examination of a live examinee animal, which allows providing an expert assessment of the state of internal organs, assessing the severity of the animal's bodily injuries, especially in the case of combined trauma, when damage to the organs of the musculoskeletal system and internal organs is registered. As an illustrative example, we can cite the results of an ultrasonographic examination of the same sub-expert dog named Rex, which was deliberately run over by a car and which was the subject of a forensic veterinary examination by the author of this scientific publication: "The borders of the liver are not enlarged, its contours are even, unclear, echogenicity is unchanged, the structure of the parenchyma is heterogeneous; network of blood vessels without specific features. Gallbladder: painless, its dimensions are 4.74×2.91, regular shape; wall thickness – up to 0.10 cm; filled with an anechoic liquid of uniform consistency. Stomach: the structure of the membranes is not disturbed, the echogenicity is unchanged; the thickness of its wall is up to 0.39 cm. Small intestine: the structure of the membranes of the intestinal wall is unchanged; echogenicity is unchanged; wall thickness – up to 0.27 cm; intestinal peristalsis is visualized, it is active. Abdominal lymph nodes without anatomical features. Spleen: contours are uneven, clear, it is enlarged; the structure of the parenchyma is heterogeneous, elevated; splenic veins are not dilated. The pancreas was not examined due to diagnostic difficulties. Right kidney: located anatomically correctly, contours are even, clear; size – 6.65×3.34 cm, the renal pelvis is not expanded; the thickness of the parenchyma is up to 0.60 cm. Left kidney: anatomically correct, its contours are even and clear; cortico-medullary differentiation is pronounced; size – 6.91×3.68 cm; the renal pelvis is not expanded; the thickness of the parenchyma is up to 0.62 cm. Bladder: moderately full, its shape is correct; wall thickness is 0.17 cm; its cavity is anechoic; a small amount of sediment is observed in it. Prostate gland: size 2.66×3.61 cm, capsule preserved, smooth, clear contours; the echo structure is uniform, coarse-grained. *Conclusion*. Signs of diffuse changes in the parenchyma of the liver and spleen, splenomegaly (enlargement of the spleen)".

In most forensic cases, it is impossible to assess the clinical condition of the subject animal and objectively establish the severity of the damage caused to the animal's health without laboratory studies of the biological material of the animal's body (blood, faeces, urine, stomach contents, bile, cerebrospinal fluid, secretions, milk, etc.) using methods: haematological, toxicological, histological, cytological, microbiological, immunological, parasitological, etc. It is advisable to systematize the results of laboratory tests into those that do not deviate from the established norms, and those that differ from the norm towards increase and decrease. The evaluation of the results of the application of instrumental and laboratory methods of forensic veterinary research must be reasoned, complete, motivated, scientifically based, clear, concise, understandable, based on factual data and special veterinary knowledge. Such an approach will provide substantiation of the detected changes in relation to the condition of the already examined organs of the body, and in the aggregate establish the correct forensic veterinary diagnosis.

As a vivid example, we can illustrate the results of the haematological examination of the same examinee dog named Rex, which was deliberately run over by a car and which was the subject of a forensic veterinary examination by the

author of this paper: "*Clinical blood analysis dated xx.xx.20xx*. Among the parameters under study, the number of eosinophils is higher than normal (result – 8%, normal – 0-6%, excess by 33%). Other parameters are within the physiological norm, namely: erythrocytes, average erythrocyte volume, distribution of erythrocytes, haemoglobin content, average haemoglobin content in erythrocytes, average concentration of haemoglobin in erythrocytes, haematocrit, leukocytes, segmented neutrophils, monocytes, lymphocytes, erythrocyte sedimentation rate, platelet content, average platelet volume, platelet distribution, thrombocrit.

Biochemical analysis of blood dated xx.xx .20xx. Among the indicators under study, higher than the norm are alkaline phosphatase (result – 130 units/l, norm – 10.6-76.0 units/l, excess by 71%) and AST (result – 51.0 units/l, norm – 8.9-43.0 units/l, an excess of 19%). Other indicators are within the physiological norm, namely: the content of glucose, creatinine, urea, alpha amylase, albumins, globulins, alanine aminotransferase (ALT), gamma-glutamyltransferase (HGT), cholesterol, triglycerides; the level of total protein, albumin-globulin ratio, total bilirubin".

Images obtained during instrumental, apparatus, or laboratory tests in the form of X-rays, CDs with recording of CT images, images of the results of ultrasonographic research, etc., as well as the results of laboratory tests, must be kept in supervisory expert proceedings and at the request of the body (person) who appointed the forensic veterinary examination, can be provided to them for perusal, and in most cases, their images are placed in photo tables, which are appendices to the forensic expert's opinion.

After carrying out clinical, instrumental, imaging, and laboratory examinations of the examinee animal, the forensic veterinary expert formulates a forensic veterinary diagnosis of the essence of the disease or injury and the condition of the sick (injured) animal, formulated based on the anamnesis data, the results of clinical and laboratory examinations, expressed in nosological terms stipulated by generally accepted classifications and nomenclature of diseases and reflects the cause, mechanism of development, pathomorphological signs and functional manifestations of the disease or injury. It is formulated accurately, fully, clearly, concisely, logically, without any explanations or justifications.

The structure of the diagnosis involves a sequential presentation of nosological forms: the main disease (damage), complications, accompanying and background pathology.

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

As a result of a separate study, two sets of signs are distinguished: general (without morpho-functional changes) and separate (with morpho-functional changes characterizing the organs or parts of the body of a living examinee animal, in an amount sufficient to establish a forensic-veterinary diagnosis).

For instance, in the case of an object with prickly properties, the diagnostic signs are a gaping wound in the area of the mandibular space with penetration into the sublingual space; a gaping wound up to 2 cm in the upper part of the neck in the projection of the middle sagittal line; in the case of a hard object with a limited surface, diagnostic signs can be traumatic fractures of the crowns of teeth 104 (upper right canine), 103 (upper right third incisor), 202 (upper left second incisor), numerous haematomas of soft tissues of the head; in the case of an open craniocerebral injury, the diagnostic signs will be as follows: a

fracture of the branch of the left mandibular bone, a closed wound of the occipital region on the left, a haemorrhage in the skin flap of the head on the left, a bruise on the left auricle; in the case of a closed abdominal injury, the diagnostic signs are haemorrhage in the greater omentum, complete transverse fractures of the 7-10th ribs on the right along the midline of the height of the right costal wall with damage to the intercostal muscles and parietal peritoneum, rupture of the right lateral lobe of the liver.

During the analytical forensic veterinary examination of a living examinee animal, a set of methods is used, namely the general ones: the dialectical method and the methods of logic (analysis, synthesis, induction, deduction, formalization, idealization, abstraction, etc.), observation, measurement, description, construction of hypotheses, planning, modelling, etc., separate methods (instrumental and laboratory, namely radiodiagnostic methods: radiographic, fluoroscopic methods, magnetic resonance tomography, spiral computer tomography, ultrasonographic research, haematological, parasitological and microbiological methods, microscopy, forensic photography, etc.) special methods, the functions of which are performed by methods of solving particular expert tasks, namely the method of clinical forensic-veterinary research, etc. (Yatsenko, 2021).

Conducting a forensic veterinary clinical examination of a living examinee animal at the analytical stage requires the forensic expert to use various technical means. For this purpose, it is possible to use both simple devices (measuring ruler, magnifying glass, microscopes of various functional purposes, scales, a source of ultraviolet and infrared light, a camera, a tape measure with a measuring metal tape, measuring cylinders, glasses made of ordinary glass to protect the eyes) and tools (tweezers; probes, button and grooved; injection syringes; cuvettes; basins; tanks; glassware for placing biological material, glass bottles), as well as complex analytical equipment (plesimeter, percussion hammer, phonendoscope, stethoscope, maximum mercury thermometers, electrothermometers, x-ray machines, ultrasonography machines, endoscopes, sphygmographs, oscillographs, phlebograms, electrocardiographs, electroencephalographs, biochemical blood analysers, microscopes, etc.).

When conducting a forensic veterinary examination of a living animal, a forensic expert removes biopsies for histological, histochemical or cytological analysis, biological fluids of the body, specifically blood, urine, faeces, bile, transudate, exudate, synovium, stomach contents for additional instrumental and laboratory tests, in particular, physical, biochemical, chemical, microscopic, bacteriological, virological, mycological, parasitological, toxicological, immunological, molecular genetic studies, etc. Thus, when examining the damaged area, it is possible to detect foreign inclusions, namely wood particles, soot, gunpowder grains, metal particles, glass fragments, mineral oils, dirt, etc. Various research methods are used to detect them, including luminescence in ultraviolet rays, gas-liquid chromatography, photographing an object in infrared rays, the method of colour prints and emission spectral analysis, histological examination, microscopy, radiography, centrifugation of washings with distilled water, colour test with cresol red, stereomicroscopy, etc.

Often, to solve certain expert tasks, the special knowledge and professional competences of a forensic veterinary expert are insufficient, and therefore a complex forensic examination is appointed, e.g., forensic veterinary biological examination, forensic veterinary ballistic examination, forensic veterinary chemical examination, forensic veterinary toxicological examination, etc.,

which expands cognitive capabilities of forensic examination (Simakova-Efremian, 2017).

After the forensic veterinary examination of the objects (living examinee animal), as well as the study of the case materials, considering the expert tasks set for the judicial expert to solve, specified in the procedural document on the appointment of the forensic veterinary examination, the judicial expert puts forward reasonable assumptions about the state objects provided for research (living examinee animals), primary, intermediate and final circumstances to be established during forensic veterinary research, i.e., expert versions. The latter can be general, e.g., determining the degree of severity of damage caused to the animal's health, and individual, using which intermediate expert tasks are solved, for instance, finding out the nature of the damage or the cause of the disease, localization of damage, their number, mechanism, sequence, sequence, time of occurrence, inherent features in the animal's body, which can be used to establish the nature and features of the object that caused bodily harm, etc.

The detailing of individual expert versions may be related to considering the nosology of the disease or the type of injury, specifically mechanical injuries caused by sharp (de Siqueira *et al.*, 2016) or blunt (Bramati *et al.*, 2012; Gottlieb *et al.*, 2017) objects, by high (Bruchim *et al.*, 2009; King *et al.*, 2021) or low temperature (Gethöffer *et al.*, 2022), poisoning (Sniegocki *et al.*, 2019), electric shock (Feng *et al.*, 2021), gunshot injuries (Li *et al.*, 2015), etc. These versions can be investigated in the form of comprehensive forensic research.

Solving the tasks of the forensic veterinary examination is impossible without putting forward a hypothesis, its verification and clarification, correction and reliable, truthful judgment, which will be put into the formulation of the expert's conclusion based on the results of the conducted forensic veterinary examination. From the proposed versions, it is necessary to focus on the one that is most confirmed in forensic veterinary examination. Thus, upon solving the diagnostic expert task regarding the animal's injuries, the forensic veterinary expert found a wound in the dog's chest area with the following characteristics: the shape is irregular-oval, the edges are uneven, with sedimentation and haemorrhages, the ends are in the form of an obtuse angle, in the depth of its corners, tissue membranes are registered, the bottom of the wound is the underlying tissue. The first version can be a closed wound due to the action of a blunt object, the second – a cut wound due to the action of a cutting object. Based on the condition of the analysed expert case, the correct conclusion is the first version, i.e., a closed wound, which was formed as a result of the action of a blunt object because chopped wounds are characterized by a spindle-shaped shape, the edges are even or slightly jagged, the ends of the wound are sharp or M-shaped, the walls are smooth, in the depth of its corners there are no tissue membranes, the length, and depth of the wound prevail over the width.

At the stage of a separate expert examination, the forensic veterinary expert, considering the proposed expert versions, compiles an algorithm for the examination of the examinee animal (algorithmic method), which makes provision for the outline of the scope and nature of the expert examination, the involvement of the necessary methods, techniques, and means. Solving algorithmic tasks is possible provided that there is a practice of analogous forensic veterinary research, there are developed research methods, methodical recommendations, and the nature of injuries has typical features. In this case, the forensic expert comes to standard decisions based on the results of the forensic veterinary examination.

An example of such a typical method is the method of clinical forensic veterinary examination of a living examinee animal to determine the degree of severity of damage caused to the health of the animal, as well as mutilation. Thus, for instance, according to the results of the study, it was established that the complete loss of the left eye, which led to the permanent loss of the function of vision in the left eye, is a serious bodily injury based on the permanent loss of the organ and its function, as well as mutilation; closed oblique fracture of the right zygomatic bone is an injury of medium severity based on the duration of the health disorder, i.e., more than 21 days; the traumatic removal of the right lower canine (404 according to the odontological map) and caries in the area of the right scapula are minor injuries that did not cause a short-term health disorder or loss of the ability to perform useful work and have insignificant transient consequences lasting no more than 6 days.

The heuristic method is suitable for those expert tasks for which forensic veterinary methods have not been developed at the time of the examination. Such non-typical situations require a forensic expert to solve by analogy, i.e., using analogous methods that have been tested in the clinical practice of veterinary medicine. The lack of methods of forensic veterinary examination of examinee animals creates a basis for their scientific development, approval, and introduction into expert practice. Thus, Part 1 of Article 299 of the Criminal Code of Ukraine (2001) prescribes criminal liability for bodily harm to an animal resulting in mutilation. The mutilation of an animal under examination is established exclusively using a forensic veterinary examination. However, the methods of its determination did not exist until now. In 2021, the author of this scientific publication jointly developed such a technique at the National Research Centre "Ex. Prof. M.S. Bokarius Institute of Forensic Expertise" of the Ministry of Justice of Ukraine (Yatsenko, 2021).

The specifics of the algorithm and methods of solving the diagnostic expert task depend on the clinical condition of the examinee animal, the type of damage, the informativeness of individual signs (informative, uninformative and non-informative) and directly affect the effectiveness of the research and the degree of its use for drawing expert conclusions.

Example: "At the time of the forensic veterinary examination _____ (*date*), the condition of the dog nicknamed Baron is not life-threatening based on clinical signs of medium severity, and the injuries caused to the animal are compatible with life".

After the end of the separate (analytical) study, the forensic veterinary expert analyses and synthesizes the obtained data and proceeds to a comparative study.

Comparative stage of expert research

The stage is necessary for the analysis of pathologies or injuries detected in an examinee animal during a separate examination and comparing them with the generally known normal structure and function of organs and tissues of the body, establishing the nature of such deviations (regular or random, significant or insignificant), as well as comparing individual injuries between itself, for instance, to find out the sequence of their occurrence, the antiquity of their occurrence, etc. At this stage of the expert examination of a living examinee animal, the identified clinical macroscopic pathognomonic (specific for a particular type of injury or disease) signs are first compared with the results of instrumental and laboratory studies.

At the comparative stage of expert research, the method of comparison is used, the methods of mathematical statistics of measurement results

are used, and at the end of this stage, the forensic veterinary expert formulates a forensic veterinary diagnosis.

After analysing all the results of the research (clinical forensic-veterinary examination, instrumental and laboratory studies), the forensic expert formulates a forensic-veterinary diagnosis – a concise and accurate conclusion about the essence of the disease and/or injury and the condition of the sick animal, formulated by the forensic-veterinary expert based on anamnestic data, the results of a clinical forensic veterinary and laboratory examination, reflecting its nosology, aetiology, pathogenesis and mechanism, pursuant to the generally accepted classifications of veterinary nomenclature, the essence of injuries or diseases, as established during the forensic veterinary examination of animal cadavers (Yatsenko, 2022). Forensic veterinary diagnosis reveals the essence of injuries or diseases of an examinee animal. In the practical forensic veterinary examination of living animals, the diagnosis is made according to aetiological or functional principles. For a forensic veterinary diagnosis, its three-member rubrication is generally accepted for recording the main injury or disease, complication of the main injury or disease, combined, concomitant and background injuries or diseases in the form of nosological units, as described in the previous publication of the author of this study (Yatsenko, 2022).

The principal task of the forensic veterinary expert is to establish the main and immediate cause of the health disorder, determine the severity of the damage caused to the animal's health, and confirm or deny the presence of mutilation.

The use of special veterinary knowledge allows the forensic expert to analyse the results of intermediate expert studies, provide them with an expert assessment and formulate conclusions.

Synthesizing stage (stage of evaluation of expert research)

The synthesis stage is the final step in the complex technological process of expert research on a living examinee animal. At this stage, the forensic expert analyses the results obtained at the previous stages, critically evaluates the variation of alternatives, finally evaluates the obtained data, determines the complex and expert significance, i.e., the diagnostic informativeness of the pathognomonic (most characteristic) signs based on a reasonably applied complex of research methods, which is consistent with Item 1.4 of the Departmental Instruction (Order of the Ministry of Justice..., 1998). Thus, the following signs are inherent in a puncture wound: the entrance wound opening is smaller than the diameter of the injuring object, and the shape of the entrance wound opening depends on the shape of the cross-section of the injuring object, the edge of the wound with deposits and rust from the surface of the injuring object, the wall of the wound canal is smooth, the length of the wound canal exceeds its other parameters, hole fractures are formed in the bones.

This process requires the involvement of the dialectical method and methods of formal logic (analysis, synthesis, deduction, induction) and forms the internal conviction of the expert, based on which the expert's conclusions are based (Vorobchak, 2019). The forensic veterinary expert presents the results of the evaluation stage of the expert study in the synthesizing section of the research part of the expert's opinion.

Signs of damage or painful changes found in a live animal under expert examination are evaluated in a certain sequence: first – signs characterizing the main damage or disease that led to the animal's health disorder; next – signs characterizing complications of the main injury or disease;

and finally – features characterizing competing, concomitant and background injuries or diseases.

The expert assessment of injuries or diseases detected in a living examinee animal is based on the scientific justification of their nature and pathogenesis, based on the latest scientific achievements in the field of veterinary medicine, forensic veterinary expertise and other related sciences.

It is advisable to start the expert assessment of the results of the forensic veterinary examination of a living examinee animal by specifying the animal's species, its sex, age, and physiological characteristics. For instance, if the forensic veterinary expert establishes and states in the expert's opinion that the bodily injuries were caused to a female animal in a state of pregnancy, then this may be a qualifying feature when the court passes a sentence in criminal proceedings.

The results of the forensic veterinary examination of living examinee animals can be recorded by objective evaluation criteria specially developed in the forensic veterinary examination. For instance, in diagnostic forensic veterinary examinations of the kidneys, the forensic expert notes their anatomical position (natural, displaced), mobility (mobile or not), sensitivity (painful or painless), size (enlarged or reduced), nature of the surface (smooth or grooved); contours (clear or not clear), differentiation of cortical and brain zones (well expressed, erased, not expressed, homogeneous, echonegative), renal pelvis (not enlarged, enlarged, contains stones or not), swelling in the area of the chest, intermaxillary space, abdomen, external genitalia and other parts of the body (pronounced, absent).

There are criteria for diagnostic forensic evaluation of other organs and body parts. To automate the registration and analysis of individual clinical signs of a living animal, one can use the "Forensic Veterinary Clinic" information and expert system, which the author of this article developed together with R.G. Kazantsev (certificate of copyright registration for the work No. 112129 dated 23.02.2022).

At the evaluation stage of the expert diagnostic forensic veterinary examination of a living examinee animal, the forensic expert formulates a forensic veterinary diagnosis, and when drafting the expert's opinion, they rely on objective judgments about the detected and investigated injuries or diseases with an emphasis on a detailed description of the area of damage or the injured organ. The nature, localization, mechanism, order and sequence, the age of the injury, whether the animal felt pain from the injuries in the post-traumatic period, the cause-and-effect relationship between the nature of the injury and the degree of severity of the damage to the animal's health are substantiated with a mandatory consideration of the main, concomitant, and background damage or disease, which are important for the formulation of reliable conclusions.

One of the important issues to be resolved by a forensic expert at the stage of evaluating the results of a forensic veterinary examination of a living examinee animal is a forensic veterinary determination of the degree of severity of damage caused to the health of the animal, which is carried out according to the veterinary criteria developed in co-authorship by the author of the present paper (Yatsenko *et al.*, 2020). This process begins with the detection of signs of severe damage to the animal's health, according to the criterion of danger to life at the time of their occurrence, revealing at least one of the 32 signs regulated by the Rules (Yatsenko & Parilovsky, 2021). Next, they proceed to the analysis of non-life-threatening injuries, which belong to serious injuries, i.e., complete or partial loss of an organ or its functions. The fact of traumatic

termination of pregnancy and disfigurement (distortion) of the animal's exterior are also being investigated.

If the serious degree of damage caused to the animal's health is not confirmed, then the analysis of injuries of a moderate degree of severity is carried out, which is based on the persistence of the loss of the ability to perform useful work for a period of more than 21 days. However, if the signs of an average degree of damage to the animal's health are not confirmed, then this is an injury of a light degree of severity: without a health disorder with short-term consequences, i.e. a duration of up to 6 days, or such that caused a short-term health disorder for a period of from 6 to 21 days (Parilovsky & Yatsenko, 2021).

At the stage of evaluation of the expert forensic veterinary examination of a living examinee animal, the forensic expert must also resolve the question of the age of injury to the animal. Currently, this issue in forensic veterinary examination is not sufficiently researched and experimentally confirmed. In this regard, the forensic expert can state that it is not possible to establish the age of injury to the animal, if the set of signs for this in the examinee animal is insufficient or there are none. If, during the forensic veterinary examination, a sufficient number of signs characterizing the antiquity of the injury to the animal is established, the forensic expert can state categorically that the damage to the subject animal occurred at the time and under the circumstances specified in the procedural document on the appointment of the forensic veterinary examinations.

One of the key and newest issues that must be resolved by a forensic veterinary expert during a forensic veterinary examination of a living examinee animal is the issue of animal mutilation as a result of severe bodily injuries. The significance of the resolution of the specified issue by a forensic expert for the investigation or the court is that, pursuant to Part 1 of Article 299 of the Criminal Code of Ukraine (2001), "cruel treatment of animals belonging to vertebrates, including homeless animals, … if such actions led to bodily harm, mutilation…" is grounds for bringing to criminal responsibility.

As a vivid example, the algorithm of forensic veterinary detection of animal mutilation can be illustrated: "Resolving the question of the mutilation of an examinee dog nicknamed Zhuk, the forensic veterinary expert states that mutilation is persistent disorders of the animal's health as a result of bodily injury or its consequences, congenital defects development, diseases, an accident, which led to the complete or partial loss of any organ or part of the animal's body or to the complete or partial loss of only the functions of the organ or parts of the animal's body, which, when the animal interacts with the external environment, can lead to a permanent loss or significantly limiting the ability to provide physiological manifestations of vital activity on a level with other animals of the same species (feeding, reproduction, orientation, and movement in space, coordination of movements, leading a natural lifestyle, contact with other animals, self-defence, ability to perform useful work, etc.), and also distorts the appearance of the animal due to the disfigurement of body parts as a result of deformation, as well as their physical absence. Proceeding from the data of the veterinary documents provided for examination based on the materials of criminal proceedings No._____ dated xx.xx.20xx, issued by the Veterinary Clinic "World of Nature" (32 M....py St., M_____), the examinee dog's health disorder did not lead to the complete or partial loss of any organ or part of the animal's body or to the complete or partial loss of only the functions of an organ or part of the animal's body, nor did the

animal experience a permanent loss or considerable limitation of the ability to provide physiological manifestations of vital activity, as well as there is no distortion of the animal's appearance due to disfigurement of body parts as a result of deformation, as well as their physical absence. Therefore, there are no signs of mutilation in the examinee dog nicknamed Zhuk".

Admittedly, such a conclusion about the absence of mutilation of an animal after inflicting an injury on it can be made after investigating the circumstances of the case when the injuries were caused (from the materials of the criminal proceedings, as well as the procedural document on the appointment of a forensic veterinary examination), the results of a clinical forensic veterinary examination of the animal, research instrumental and laboratory systems of the body, sources of literature, etc.

Therefore, for the formation of the expert's final opinion, sufficient expert grounds are necessary, which correspond to the principles of the legality of the expert procedure, the independence, and competence of the forensic expert, comprehensiveness, completeness, scientific validity, verification, and the use of the maximum amount of research tools and methods (Shepitko, 2017).

The relationship between the injury to the animal and the damage caused to its health is confirmed or denied by the forensic expert when determining the causality between them.

When solving the question whether the examinee animal felt pain at the time of the injury, as well as in the post-traumatic period, the forensic veterinary expert relies on the data obtained during the examination of the animal, specifically regarding the nature of the injuries, their number, localization, degree of severity etc. Thus, for instance, in the event of a severe injury to an animal, the forensic expert states that at the time of the injury and in the post-traumatic period, the animal felt unbearable pain and suffered from the inflicted physical injuries. If the damage caused to the health of the animal under expert examination turns out to be medium or light, then the forensic expert can note that the animal at the time of the injury and in the post-traumatic period felt moderate pain and suffered for a short time from the inflicted bodily injuries.

During the assessment of the results of the forensic veterinary examinations of a living examinee animal, the forensic expert must make maximum use of special knowledge and expert experience for the correct and objective formulation of the forensic veterinary diagnosis and provide answers to the questions posed in the procedural document on the appointment of a forensic veterinary examination.

At the stage of evaluation of an expert examination, the formulation of conclusions based on the results of a forensic veterinary examination of a living examinee animal is characterized by stages: firstly, intermediate conclusions are accumulated, and on their basis, final conclusions are formed, which are expert tasks for the forensic expert, are an answer to the questions posed in the procedural a document on the appointment of a forensic veterinary examination, as well as a summary of the conducted research of the examinee animal.

The same requirements apply to the opinion of a forensic expert regarding a living examinee animal as to the opinion of an expert regarding the results of a forensic veterinary examination of an animal cadaver (Yatsenko, 2022), and to comply with the rules of its conclusion prescribed by the Departmental Instruction (Order of the Ministry of Justice…, 1998).

"Conclusions" is the culminating section of the final part of the expert's opinion, where the forensic veterinary expert provided answers to

the questions posed in the procedural document on the appointment of a forensic veterinary examination, namely about the species belonging to the examinee animal and its belonging to vertebrates, as well as about its physiological features; the nature of injuries from a veterinary standpoint and their localization; mechanism, sequence, order of occurrence, age of formation, degree of severity of bodily injuries; the possibility of their occurrence with or without the help of external intervention; the danger of injuries to life at the time of their occurrence and what factors determined their danger; the consequences for the health of the animal, which each of the injuries caused led to; defects in the provision of veterinary care to the injured animal, which caused injuries to it; the causality between the physical injuries caused to the animal under the established circumstances and its health disorder; animal mutilation; traumatic termination of pregnancy; exterior damage; traces indicating the infliction of pain on the examinee animal; the effect of long-term deprivation of heat, feed, water, keeping it in harmful conditions on the state of health; whether the physical injuries found in the subject animal caused physical pain and suffering.

Formation of conclusions is carried out sequentially. Intermediate conclusions are formed at the stage of separate and comparative research, when a forensic expert examines and evaluates each body system separately at various levels of their structural and functional organization, revealed through various research methods, namely clinical examination, instrumental, instrumental, and laboratory. Therewith, the expert must differentiate morphologically and functionally unchanged organs, as well as organs in which such abnormalities are detected. Among the latter, pathognomonic (inherent) changes are necessarily identified, which indicate the nature of the injury or disease and are included in the structure of forensic veterinary diagnosis.

The final conclusions of the forensic expert are formed in the totality of the results of the examination of the entire organism of the examinee animal, considering the intermediate conclusions. They are the answer to the questions posed by the authorized person or body in the procedural document on the appointment of a forensic veterinary examination. These answers should be as clear as possible, well-founded, based on particular pathological changes discovered in the process of researching a living examinee animal. Admittedly, such a conclusion on the absence of mutilation of an animal after inflicting an injury on it can be made after investigating the circumstances of the case in which the injuries were caused (from the materials of the criminal proceedings, as well as the procedural documents on the appointment of a forensic veterinary examination), the results of a clinical forensic veterinary examination of the animal, research instrumental and laboratory systems of the body, sources of literature, etc. Therefore, for the formation of the expert's final opinion, sufficient expert grounds are necessary, which correspond to the principles of the legality of the expert procedure, the independence, and competence of the forensic expert, comprehensiveness, completeness, scientific validity, verification, the use of the maximum possible scope of research tools and methods, as well as admissibility and reliability (Pilyukov, 2018).

The internal conviction of a forensic expert is based on the results of a clinical forensic-veterinary examination of a living examinee animal, which includes an analysis of the morpho-functional state of individual body systems with the involvement of instrumental and laboratory methods, an established forensic-veterinary diagnosis, a study of the materials of criminal

proceedings (cases), an expert assessment of factual data for a particular examination and confidence in the correctness of the expert's conclusion.

In the conclusions of the final part, the forensic expert states the factual data resulting from the results of their own examination obtained at the previous stages of the separate and comparative research, especially emphasizing pathognomonic deviations from the morphological and physiological norm in organs and tissues directly related to bodily injury or disease, states how well-founded, motivated, reasoned, clear, and convincing they are for the perception of the person who appointed a forensic veterinary examination or engaged a forensic veterinary expert to examine a living examinee animal, as well as other participants in the process and confirm the reliability of the formulated conclusions.

In the case of a commission or complex forensic examination, the expert's opinion is formed according to the general rules set out in the Departmental Instruction (Order of the Ministry of Justice…, 1998), considering the same features as during the forensic veterinary examination of an animal cadaver (Yatsenko, 2022).

The solution of diagnostic expert tasks during the forensic-veterinary examination of living examinee animals is based on a set of clinical pathognomonic signs detected in them, the results of laboratory and instrumental studies, and therefore is the basis for a reasonable formulation of answers to the questions posed by an authorized person or body in the document on the appointment of a forensic veterinary examination.

Conclusions

The purpose was achieved in this paper: the essence was covered, the significance was argued, the functions of each stage of the expert examination of living examinee animals in forensic veterinary examination were outlined and substantiated, which will positively affect the conduct and processing of the results of forensic veterinary examinations of living examinee animals, specifically the forensic activity.

Forensic veterinary examination of a living examinee animal is based on general methodological and expert-technological approaches and includes four separate and at the same time interdependent stages: preparatory (preliminary examination), analytical (separate examination), comparative, synthesizing (evaluation). Each previous stage is the basis for the next one, and the effectiveness of the obtained results is enriched with information and acquires greater objectivity.

The stages of a forensic veterinary expert examination of a living examinee animal are determined by various expert tasks, which are solved at each stage by different methods, with which the object is examined, by the specifics of expert technological techniques characteristic of a certain stage.

The significance of the stages of the forensic veterinary expert examination of a living examinee animal is that they: reflect the process of the forensic expert's recognition of the specific state of the object of investigation (the nature of the injuries, their localization, the degree of severity of the damage caused to the animal's health, etc.); affect the solution of intermediate expert tasks; technologically, they help assess the reliability and informativeness of the obtained results of the study of a living examinee animal, depending on the applied set of clinical, instrumental, and laboratory methods and means of conducting the study; affect the logic of generalization of research results and formulation of conclusions; help assess the objectivity, reasonableness, correctness, and veracity of the results obtained during the verification of the expert's opinion.

Considering the fact that the procedures of the forensic veterinary expert examination of a living examinee animal are currently at the stage of development, approval, registration and implementation, for their clear regulation, the author of this scientific work co-authored the methods of forensic veterinary examination of a living examinee animal of the forensic veterinary determination of the degree the severity of the damage caused to the animal's health, the forensic veterinary examination of animals with the purpose of establishing their mutilation.

Scientific-theoretical development of stages of conducting a forensic veterinary examination of a living examinee animal is implemented in practice during a forensic veterinary examination of living animals at the National Research Centre "Ex. Prof. M.S. Bokarius Institute of Forensic Examination", the number of which is constantly increasing.

Prospects for further research lie in the development of a method of forensic veterinary examination of a living examinee animal and established its effectiveness in practical forensic veterinary activity.

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Conflict of interest

The research was carried out on an initiative basis and did not receive any funding. There is no conflict of interest.

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Теоретичне обґрунтування та праксеологічне значення стадій експертного дослідження живої тварини

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Анотація

Актуальність дослідження зумовлено необхідністю розробити теоретичні засади судово-ветеринарної медицини як науки та навчальної дисципліни, зокрема обґрунтувати, апробувати та впровадити в практику способи, засоби та методологію проведення експертного дослідження специфічних об'єктів. Мета роботи – аргументувати значення та окреслити функціїй кожної зі стадій експертного дослідження живих тварин в судово-ветеринарній експертизі. Методологічна основа дослідження – системний підхід, зумовлений специфікою теми роботи й пов'язаний із використанням загальнонаукових і спеціально наукових методів, серед яких: аналіз, синтез, індукція, дедукція, аналогія, формально-логічний, порівняльно-правовий, системно-структурний методи, методи моделювання, спостереження, описування, аналіз практики судово-ветеринарної експертизи, спеціальні методи, функції яких виконують методики прижиттєвої клінічної судово-ветеринарної діагностики тварин. На основі проведених досліджень та узагальнення практики судово-ветеринарної експертизи живих тварин у роботі аргументовано, що цей процес складається із чотирьох стадій: підготовчої, аналітичної, порівняльної та стадії синтезу. Обґрунтовано виокремлення певних стадій, зумовлене різним характером завдань, що вирішує судовий експерт, застосуванням різних за складністю алгоритмів і методів судово-експертного дослідження тварини та залученням різних технічних прийомів і обладнання на кожній конкретній стадії. Доведено, що послідовність застосування стадій судово-ветеринарного дослідження живої тварини сприяє правильній оцінці виявлених ознак ушкодження чи розладу здоров'я тварини на підставі всебічного їх оцінювання, покликана вирішити проміжні експертні завдання, простежити процес проведення експертизи й оцінити здобуті результати для обґрунтованого встановлення судово-ветеринарного діагнозу та формування висновку експерта. Показано, що в основу проведених досліджень закладено правила (методичні рекомендації) судово-ветеринарного визначення ступеня тяжкості шкоди, заподіяної здоров'ю тварини, методику судово-ветеринарного дослідження тварин з метою встановлення їхнього каліцтва, методику судово-ветеринарної експертизи трупів тварин. Теоретичне обгрунтування стадій експертного дослідження живої тварини й розкриття їхнього праксеологічного значення позитивно відобразяться на проведенні судово-ветеринарної експертизи та укладланні результатів судово-ветеринарних досліджень

Ключові слова: судово-ветеринарна експертиза, судовий експерт, ушкодження, захворювання, алгоритм дослідження, ефективна діяльність

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