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Administrative liability of juveniles for smoking

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Abstract

The research relevance is determined by the prevalence of smoking among minors, as well as by the insufficient effectiveness of administrative liability measures taken against minors if they have committed an administrative offence – smoking in prohibited places. The research aims to determine the theoretical and legal features of administrative liability and to analyse the measures taken against juvenile offenders. The research aim was achieved by a comprehensive and in-depth analysis of Ukrainian and foreign scientific sources and provisions of current legislation. The author examines the peculiarities of administrative liability of minors for smoking. It is established that, according to the current Ukrainian legislation, administrative liability of minors for smoking may be imposed on persons aged 16-18 years, and the main measure is an administrative penalty (fine) paid by parents. The author provides arguments in favour of lowering the age limit for administrative liability of minors to 13-15 years. The author substantiates the expediency of educational influence on minors through pedagogical and social training aimed at solving the problem of tobacco use among minors. It is noted that such measures will be preventive in nature and will help to reduce the number of cases when minors smoke in prohibited places and will also contribute to solving the problem of smoking among minors in general. It is emphasised

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that the issue raised in this paper is not only legal but also pedagogical, social, and medical in nature. The practical significance of the results obtained is that they identify gaps in Ukrainian legislation and provide recommendations for improving approaches to the administrative liability of minors for smoking and addressing the problem of smoking among minors

Keywords: administrative penalty; administrative offence; fine; educational measures; preventive and punitive actions

Introduction

The current state of Ukrainian society is characterised by a crisis that is only getting worse. All the events taking place in Ukraine, both social, economic, and political, have a significant impact on the behaviour of citizens, causing certain disruptions in their activities. It is instability and uncertainty that in most cases causes an increase in the number of offences among people of all ages. Administrative offences by minors have become more frequent, and they may become involved in more serious violations of the law in the future. As a result, over the years, Ukraine has been developing effective ways for the state and other bodies to respond to administrative offences committed by minors, which are generally defined as administrative liability. One of these phenomena is smoking, namely smoking in places not designated for this purpose, for which underage offenders are held administratively liable.

Smoking among minors in Ukraine is indeed a problem, and trends in recent years have been negative: one in five adolescents aged 13 to 15 smokes daily, and one in two adolescents has tried smoking at least once in their lives. Although the proportion of smokers among minors has been decreasing over the past 20 years, with 86% in 2003 and 50% in 2019 (Balakirieva *et al.*, 2019), smoking among minors is a serious educational and social problem. Given the proportion of adolescents who smoke daily, their smoking often

leads to administrative violations related to smoking in non-designated places (Law of Ukraine No. 2899-IV "On Measures...", 2005). However, the age of administrative responsibility for minors is 16-18 years (Code of Ukraine on Administrative Offences, 1984). Therefore, Ukrainian legislation has several shortcomings related to the imperfect system of punishment of minors for committing administrative offences in the context of smoking, as the age of minors who smoke is 13-18 years. This age group accounts for the majority of minors who smoke and commit administrative offences.

R. Minchenko *et al.* (2021) considered the issue of legal liability as one of the main areas of legal regulation of social relations. N. Bortnyk *et al.* (2019) note that administrative liability is a type of legal liability. The issue of legal liability of minors was considered by O. Soloviova (2022), as well as Yu. Tripak and A. Krakovska (2019). The researchers note that administrative liability is applied to persons aged 16-18 and is mainly educational in nature. The issue of administrative liability of minors for smoking has not been sufficiently studied in Ukrainian scientific sources, but some studies are available in foreign sources. P.A.W. Nuyts *et al.* (2018) examined the issue of administrative liability of minors in the context of smoking bans. R. Abouk and S. Adams (2017) highlighted the prohibition of sales of e-cigarettes to minors as a way to prevent future administrative liability.

In turn, T. Leão *et al.* (2019) explored the issue of insufficient control over adolescent smoking in Portugal and pointed out the shortcomings of Portuguese legislation. Smoking is widespread in other countries, including Australia and New Zealand, and is also associated with e-cigarette smoking, which is becoming increasingly popular among minors (Scully *et al.*, 2023). The experience of foreign scientists shows that state legislation is not always effective in the context of administrative responsibility and smoking cessation (Lidon-Moyano *et al.*, 2018). Accordingly, analysing the research of scientists, it is possible say that today this topic is not sufficiently researched, which requires updating existing works and more detailed development. The purpose of the study is to update the existing theoretical and regulatory features of administrative liability of minors for smoking, and also to establish the effectiveness of the application of measures of administrative liability of minors for smoking at the present stage.

Materials and Methods

A comprehensive analysis of the chosen topic was made possible by a detailed study of existing scientific works by Ukrainians, in particular I. Chaplia (2021), O. Soloviova (2022), and foreign authors, including P.A.W. Nuyts *et al.* (2022), M. Scully *et al.* (2023), and others. In the course of the research, the author studied in detail the modern works of scholars who served as a source of up-to-date information on the issue of administrative liability of minors. Foreign sources served as the basis for obtaining relevant information on underage smoking, measures of influence and health consequences of this harmful habit. The main methods used in the study are formal logical method, formal legal method, method of analysis and synthesis. The formal logical method was used to study in detail the issues of administrative

liability of minors for smoking by identifying the following key components: “legal liability”, “administrative liability”, “administrative liability of minors”, and “administrative liability for smoking”. Given the insufficient research on the issue of administrative liability of minors for smoking, the study used the synthesis method, which allowed identifying the most important provisions of the above concepts which served as the basis for establishing the specific features of the concept under study. The method of analysis was used to update the existing scientific research which identifies the main provisions of administrative liability and administrative liability of minors. In addition, this method was useful in analysing the existing approaches to determining the methods of administrative influence applied to minors and which can be applied in the event of an administrative offence related to smoking. The method of analysis was also used in the course of the study of the current Ukrainian legislation on the administrative liability of minors, as well as the current anti-tobacco legislation. The method of synthesis combined with the formal legal method allowed us to identify existing gaps in Ukrainian legislation regarding administrative measures applied to minors for smoking.

An important component of the study was the review of current Ukrainian legislation on administrative liability, as well as anti-tobacco legislation. The study was based primarily on the Code of Ukraine on Administrative Offences (1984). The analysis of the Code allowed us to identify the main provisions of administrative liability of minors, measures of influence that can be applied to them in case of smoking, etc. In addition, the Law of Ukraine “On Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on the Health of the Population” (2005) was analysed, which identified the

existing restrictions on smoking in public places, the violation of which is the basis for bringing minors to administrative responsibility. The provisions of the Law of Ukraine "On Amendments to Some Laws of Ukraine Regarding Public Health Protection from the Harmful Effects of Tobacco" (2021) were also studied, which allowed to establishment of updated conditions for administrative liability for smoking, both for adults and minors. The conclusions of the study are based on legal acts (Code of Ukraine on Administrative Offences, 1984) and research by Ukrainian scholars on the administrative liability of minors for smoking.

Results and Discussion

Juvenile delinquency of various kinds is quite widespread in Ukraine. Juveniles with certain deviations in social norms of behaviour, juveniles prone to deviance, those from dysfunctional families, etc. all have a significant tendency to commit illegal acts. Delinquency among children and adolescents is a real social and legal problem not only for Ukraine but also for the whole world, so an important legal issue is to bring minors to justice for illegal actions of various kinds that they have committed, including administrative liability.

In the context of administrative liability research, scholars consider the issue of legal liability. Legal liability is an important element of legal regulation of public relations, which consists of exercising a targeted influence on the behaviour of individuals through certain legal measures. The purpose of such regulation is to protect public relations from any unlawful violations, which are carried out through coercive measures and thus lead to the ordering of public relations (Minchenko *et al.*, 2021). Therefore, legal liability is applied when a person commits a certain non-criminal offence, which results in the application of measures of influence of a different nature to the person.

According to N. Bortnyk *et al.* (2019), administrative liability is the most common type of legal liability. Administrative liability is important in terms of ensuring the stability of public life and enhancing the guarantees of protection of citizens' rights, becoming a significant effective legal means of influencing social relations. In the context of administrative liability of minors, it should be noted that O. Soloviova (2022) defines this concept as "a form of state response to administrative offences committed by persons under the age of majority, expressed in the application of specific administrative penalties to them, provided for by the sanctions of the violated norms, and at the same time as a specific obligation of minors to bear the adverse consequences determined by law associated with the application of these legal measures". Thus, administrative liability is one of the most effective methods of influencing a minor who has committed an administrative offence, which results in legal measures being applied, depending on the offence committed.

In general, administrative liability is one of the most common types of legal liability used as a state response to an administrative offence committed by a person, which is the application of administrative coercive measures to the offender (Chaplia, 2021). V. Opryshko (Opryshko & Shulzhenko, 2003) notes that administrative liability is the application of an administrative penalty by an authorised body or official to a person who has committed an offence. However, by its very nature, this offence does not entail criminal liability under the applicable law. At the same time, administrative liability is the responsibility for committing an administrative offence. Such liability is a negative reaction of the state to the unlawful behaviour of individuals (and in some cases legal entities), which occurs through the

establishment of appropriate rules, prohibitions, and sanctions against violators adequate to the violation (Mikhrovska, 2023).

The issue of administrative liability was also addressed by I. Hrytsenko (2008). According to the author, administrative liability is a type of legal liability that implies a negative response of the state, represented by its competent authorities, to a certain category of offences, in particular administrative misdemeanours. According to the researcher, the perpetrators of the offence must answer to the competent state authorities for their unlawful actions and be subject to administrative penalties following the established procedure.

According to O. Shchukin (2014), administrative liability is a special type of legal liability. It is also a specific form of adequate state response to

unlawful acts committed by individuals or legal entities. The features used to classify administrative liability are as follows:

- 1) the basis for administrative liability is a certain administrative offence that is not particularly socially dangerous;
- 2) special means of administrative influence - administrative penalties;
- 3) the existence of systems of administrative jurisdiction bodies that can apply penalties and, accordingly, bring offenders to justice;
- 4) a special procedure for the implementation of administrative liability (Levenets, 2012).

Moreover, in addition to the definitions and features of administrative liability, it is necessary to note that in academic circles, its principles are also mentioned (Fig. 1).

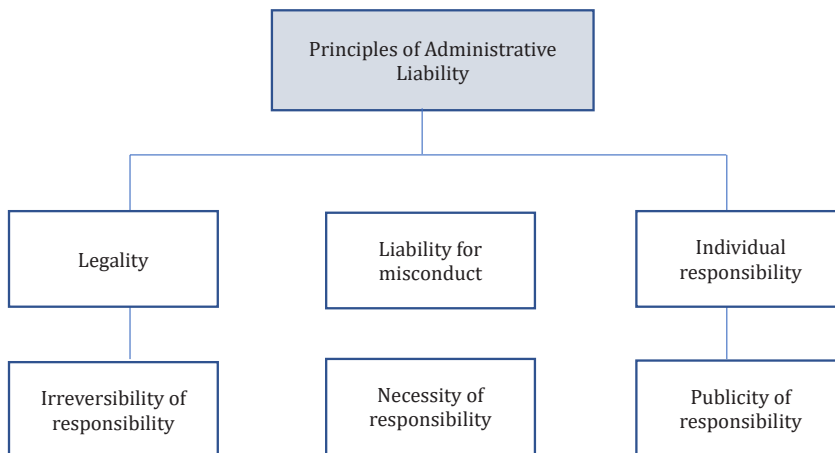


Figure 1. Principles of Administrative Liability

Source: compiled by the author based on the Code of Ukraine on Administrative Offenses (1984)

According to some sources, administrative liability of minors is a measure aimed at administrative penalties imposed by a court, as well as certain types of educational influence used in the context of administrative offences committed by minors (Kovalchuk, 2003; Chernetskyi, 2008). It

can be concluded that administrative liability of minors is a system of administrative penalties and special measures of influence applied to minors aged 16 to 18 years in case of committing an administrative offence. The purpose of the application is to punish the offence, prevent new offences

and educate a person in the spirit of legality and intolerance of unlawful behaviour. It is from the age of 16 that a citizen in Ukraine can be held liable for administrative or criminal offences, even though a person is considered a minor from the age of 14 (Soloviova, 2022).

Administrative liability concerning minors has certain peculiarities, which are specified in the regulations and current legislation. First of all, they are related to the age of minors at which they can be held liable, as well as to the measures that can be used in a particular case. In general, the features and signs of administrative liability of minors, according to O. Rieznik (2019), are as follows:

1) the age of administrative liability is 16 years. This practice is acceptable under Ukrainian law, but a person is considered a minor from the age of 14. All of this means that from the age of 14, a person may be punished with a certain type of administrative liability for committing an offence, but, according to the law, he or she cannot bear this punishment on his or her own. Although the number of offences committed by persons aged 14 and over is increasing every year, the age of administrative liability has not yet been changed;

2) predominance of the educational nature of administrative liability. Administrative liability is the liability for minor offences that do not pose a particular threat or harm to society. Therefore, in the case of an administrative offence, certain areas of educational influence are mainly applied to a minor: an obligation to apologise to the victim publicly or otherwise; a warning; a reprimand or a severe reprimand; placing the minor under the supervision of parents or persons in loco parentis, or under the supervision of a teaching or labour collective with their consent, as well as to individuals at their request. These measures are preventive in nature and are not aimed at directly

punishing the minor who committed the administrative offence, but at re-educating him or her and forming an appropriate attitude to such offences, which is preventive and allows for the prevention of such actions.

The use of educational influence is fully justified, as an administrative offence is often a precursor to more serious crimes committed by minors. At the same time, it is possible to develop a sense of administrative responsibility in a minor, which will have a positive impact on his or her upbringing.

3) in the case of administrative liability of minors, severe methods of deprivation or restriction of freedom and rights are not applied, unlike to persons who have already reached the age of 18. For example, administrative arrest is not applied to minors. Such rules are in line with international norms that prohibit or minimise the isolation of minors, i.e., the temporary restriction of their freedom and rights in case of violation of the law;

4) in certain cases, minors may be punished for committing an administrative offence on the general grounds specified in the current legislation;

5) administrative liability is judicial in nature, and cases can be heard only at the place of residence of the minor who committed the offence;

6) in some cases, parents/guardians are also responsible for the commission of the offence, in which case a fine is imposed and paid by them;

7) if the offender is unable to defend the rights in the case of an offence due to physical and/or mental disability, parents/guardians may participate in the representation of the offender's interests;

8) in case of detention of a minor for committing an administrative offence, it is mandatory to notify parents/guardians. However, in general, the detention of such a person in the absence of a representative is not acceptable in law;

9) administrative penalties cannot be used as a substitute for criminal liability, so a minor aged 16 to 18 should be punished accordingly for committing serious crimes.

Table 1 shows the sanctions applied to minors aged 16 to 18 who have committed administrative offences under Article 24-1 of the Code of Administrative Offences (1984).

Table 1. Measures of influence used in the context of administrative liability of minors

Measures of influence applied to minors	Measure peculiarities
An obligation to publicly or otherwise apologise to the victim	The least severe measure of influence. It is applied if the minor has acknowledged the unlawfulness of the behaviour, and its social harm and repented. In this case, the publicity of the apology implies that it is made in the presence of other persons, and not in personal communication with the victim. It can be applied if the smoking of a minor caused direct harm to another person who witnessed this action.
Warn	It is a more severe measure. It is an oral announcement by an administrative jurisdiction body of an official conviction on behalf of the state of a minor offender and his or her behaviour, which was manifested in the commission of an administrative offence that does not pose a significant public danger. However, given the lack of punitive and preventive impact, the effectiveness of this measure is not sufficient in terms of preventing smoking and smoking in public places.
Reprimand or severe reprimand	Measures of moral and psychological influence are applied in case of systematic failure by minors to comply with the established rules of conduct and commit offences that indicate the formation of anti-social attitudes. This type of penalty is the most severe, in which case the state severely condemns the actions of the minor who committed the administrative offence.
Placement of a minor under the supervision of parents or persons in loco parentis, or the supervision of a teaching or labour collective with their consent, as well as to individuals at their request	Responsibility for a minor is assumed by persons who exercise a certain educational influence. The effectiveness of this measure of influence depends on the relationship of the juvenile offender with these persons, their influence in these relationships, etc.

Source: compiled by the author based on the Code of Ukraine on Administrative Offenses (1984)

Measures of influence on minors have the following characteristics: a) the main purpose of the application is education (correction) of the offender; 6) the ground is committing an administrative offence; c) they are applied only to a person with legal capacity; d) a common procedural procedure for application (established by administrative jurisdiction bodies in the procedure for proceedings on administrative offences) (Prodaievych, 2006). These measures should cover all available ways of influencing the

offender in the person of a minor: educational, punitive, restorative, compensatory, preventive, and warning (Kryzhanovska, 2016).

For committing administrative offences, including smoking in an inappropriate place, minors may be subject to the following penalties: an obligation to compensate for the damage caused; imposition of a fine on a minor who works independently; placement of a minor in a special medical and educational institution, except for a dispensary for drug addicts; placement of a minor

in a special educational institution in case of committing socially dangerous acts or malicious and systematic violation of the rules of social behaviour (She The application of these measures depends on the nature of the offence committed by the minor. For administrative offences, including smoking in non-designated places, measures that are a type of administrative penalty are often

applied. In general, administrative penalties are a measure of responsibility applied to educate a person who has committed an administrative offence, as well as to prevent the commission of new offences by the offender and other persons (Code of Ukraine on Administrative Offences, 1984). The types of administrative penalties that can be imposed on minors are shown in Figure 2.

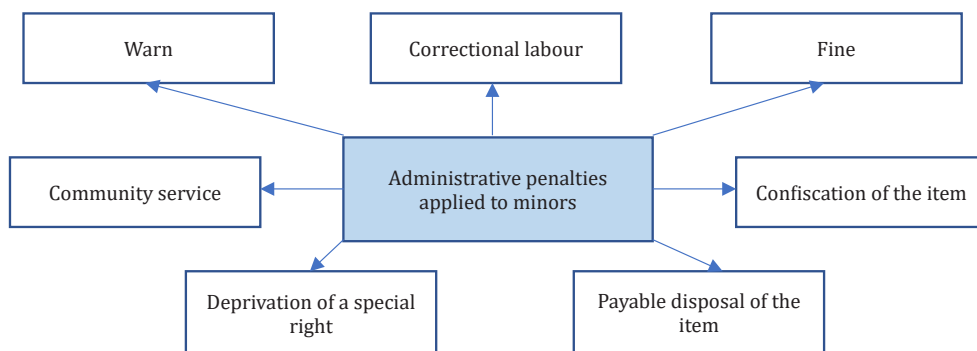


Figure 2. Administrative penalties applied to minors

Source: compiled by the author based on the Code of Ukraine on Administrative Offences (1984)

These measures, like others provided for in the case of administrative liability, are also educational in nature, as they are aimed at correcting and educating the person who committed the administrative offence. Their use is also appropriate when minors commit smoking-related offences. In the context of adults and minors, administrative penalties may be different: an adult will have the status of a person who has been held administratively liable within a year, but the application of penalties to minors does not generate such legal consequences. In addition, the researchers believe that the measures of educational influence applied to minors do not have the form of administrative penalties. Instead, these measures are preventive and educational in nature, serve as a substitute for administrative penalties and make

it possible to prevent future commission of more serious offences. In addition, these measures provide an opportunity to promote the formation of high moral qualities and strengthen the educational impact on the immediate environment (Zahumennyk, 2008).

Administrative liability of minors for smoking can be applied only in certain cases, the main one being smoking in places prohibited for this purpose. According to Article 13 (2) of the Law of Ukraine "On Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on the Health of the Population" (2005), the smoking ban applies to the following places: elevators and payphones; premises and territories of healthcare facilities; playgrounds; premises and territories of sports and fitness facilities, etc.

Accordingly, smoking is prohibited in many public places, and if minors commit an administrative offence in the context of smoking, they should be held administratively liable. In addition, it should be noted that smoking is prohibited in the premises of enterprises, institutions, and organisations of all forms of ownership; in hotels and other places of residence; in dormitories, airport stations, etc. Smoking in such places is permitted if there are specially designated smoking areas.

Accordingly, smoking by adolescents in such places may result in administrative liability. In this case, administrative liability will take the form of an administrative penalty (fine). The amount of the fine is set depending on the offence committed: if it is committed for the first time, the fine will be 1000 UAH, for a repeated offence, a fine of 10000 UAH will be imposed. In addition, according to Article 175 of the Code of Ukraine on Administrative Offences (1984), the fine for smoking in a non-designated place (committed for the first time) should be in the amount of three to ten tax-free minimum income. If the offence is committed repeatedly, the fine should be in the amount of ten to twenty tax-free minimum incomes.

According to the updated anti-tobacco legislation (Law of Ukraine "On Amendments to Some Laws of Ukraine Regarding Public Health Protection from the Harmful Effects of Tobacco", 2021), administrative liability for smoking applies not only to tobacco products in the form of cigarettes but also to the following: e-cigarettes; smokeless tobacco products (sticks for IQOS or glo); hookahs; herbal smoking products. In addition, administrative liability should be imposed in case of smoking tobacco and herbal products in any public place. Minors who have committed such offences should be held administratively liable on a general basis, but Ukrainian legislation does not specify that these measures can be applied specifically to minors.

Scientific research that focuses on the issue of administrative liability for smoking does not specify the grounds for bringing an underage person to administrative responsibility. However, part 2 of Article 307 of the Code of Ukraine on Administrative Offences (1984) states that if a minor aged sixteen to eighteen who has committed an administrative offence has no official income, the fine should be collected from the parents or persons in loco parentis. Thus, if a minor offender has no official income, the fine should be paid by the parents, which, in turn, makes it impossible for the minor to bear full responsibility from a moral point of view since he or she will not feel fully guilty.

The age of administrative responsibility for minors, including for smoking, is 16-18 years. Given that adolescents start smoking at the age of 13-15, the age of administrative responsibility should be changed. This will make it possible not only to punish minors for committing an administrative offence but also to use educational influence. Underage smoking is not only a legal issue, but also a pedagogical and social problem, so there is a need to apply educational measures first and foremost. However, O. Chernetskyi (2008) notes that the measures of educational influence applied to minors are insufficient, so there is a need to change them to other, more effective ones:

1) disclosure of information about an administrative offence committed by a minor for external condemnation of his/her illegal activity by the society. As a result, the minor will be under moral pressure from society, which will help to avoid committing an administrative offence in the future;

2) limiting the leisure activities of minors and establishing certain requirements and prohibitions on their behaviour, such as visiting entertainment venues, participating in certain

types of leisure activities, including driving a motor vehicle, limiting their stay outside the place of residence during certain times of the day, travelling to other settlements without the permission of a special state body, and the obligation to report for registration to the responsible law enforcement officers. In this case, the restriction of the minor's actions will also become part of the psychological pressure that will influence the minor and be used as a preventive and punitive measure.

3) the obligation to attend law enforcement training programmes, which are regulated. Such training programmes are aimed at forming the legal culture of the juvenile offender, which is intended to prevent the commission of offences of this nature in the future.

Such measures consist of preventive and punitive actions, i.e., in the case of systematic commission of administrative offences by a minor, it is possible to fully prevent more serious measures – not only through educational influence but also by restricting their activities and leisure time. Nevertheless, educational measures in the case of underage smoking are quite effective. Their advantages are that adolescents not only receive information about the unlawful nature of their actions but also change their attitude to smoking as a phenomenon that is harmful not only to society but also, above all, to their health. Special anti-smoking programmes developed by medical professionals can be preventive measures to prevent smoking among minors (Ilchenko & Fialkovska, 2018). In addition, it is necessary to use elements of medical care to help treat nicotine dependence in minors. However, such measures cannot be compulsory and should be used only as recommendations (Chapliak *et al.*, 2018).

One of the possible ways to improve administrative liability of minors for smoking is not only

to introduce changes in the process of applying administrative penalties (fines) but also to make educational measures mandatory in the form of attending special trainings and groups where specialists in the field of psychology and social work will influence the tobacco addiction of minors. Such measures should be included in the list of measures to be applied in case of administrative liability of minors for smoking.

It should be noted that the results obtained in this study prove the insufficient effectiveness of Ukrainian legislation in terms of administrative measures applied to minors as a result of smoking. Domestic researchers do not consider the issue of administrative liability for minors in this case. However, paying attention to the available research that addresses the issue of administrative liability of minors in general, the following can be determined:

✓ The age of administrative responsibility under Ukrainian law is 16-18 years. However, a large proportion of minors smoke at the age of 13-15, so there is a need to amend Ukrainian legislation to reduce the age of administrative responsibility. This opinion is shared by O. Soloviova (2022), who emphasises the need to reduce the age of administrative responsibility to 14 years. Such changes will have a positive impact on reducing smoking and reducing the number of administrative offences committed by minors as a result of their smoking. In this case, it is necessary to agree with O. Rieznik (2019), who notes that it is necessary to pay attention not only to the age of the offender but also to the nature of the administrative offence committed;

✓ Legislation and research do not define measures that are applied in case of administrative liability for smoking to minors. Thus, there is no clear definition of measures in case of which general measures of influence provided for by the

Code of Ukraine on Administrative Offences are applied for the commission of such an administrative offence. In this case, there is a need to create a system of measures that can be used in case of administrative liability of minors for smoking. These measures should be primarily educational in nature, and it is important to involve teachers and psychologists who will work with minors in groups and individually, thus forming a proper attitude towards smoking, administrative offences and lifestyle in general;

✓ Smoking is not a serious administrative offence, so minors cannot be subjected to harsh administrative measures that will have the opposite effect, thus leading to personal injury and in no way affecting the further commission of an administrative offence.

Thus, this and previous studies are important for identifying the shortcomings of Ukrainian legislation and providing recommendations for improving approaches to imposing administrative liability on minors for smoking.

Conclusions

Considering the aforesaid, the following conclusions can be drawn. Administrative liability of minors for smoking applies to minors aged 16-18 who have committed an administrative offence, in particular, smoking in public places not designated for this purpose. In this case, minors are subject to measures of influence determined considering the specifics of the administrative offence committed by them. It is determined that, given the prevalence of smoking among minors, the age of administrative liability should be reduced to 13-15 years, since about 50% of adolescents aged 13-15 have tried smoking and, therefore, may potentially commit such an administrative offence. It was found that there is a need to amend Ukrainian legislation in the

context of lowering the age of administrative responsibility for minors.

Administrative liability measures applied to minors for smoking should be educational in nature. Paying a fine is ineffective, as adolescents do not pay it on their own and, as a result, feel innocent of committing an administrative offence. Alternative measures may include mandatory psychological, educational, and social measures aimed at addressing the problem of smoking among minors and, accordingly, be preventive.

The research objective was fully achieved. The author identifies the existing peculiarities of Ukrainian legislation in the context of administrative liability for smoking, updates the existing scientific research, and points out the need to amend the legal regulation of administrative liability of minors for smoking and changes in the context of administrative measures applied in this case.

The results obtained serve as a basis for further improvement of Ukrainian legislation in the area of administrative liability of minors for smoking. There is a need to reduce the age of administrative liability and increase the educational nature of the administrative liability measures applied, which will reduce the proportion of minors who smoke and reduce the number of cases of violations of the law by minors in the context of smoking. Given the insufficient development of this topic in the scientific community, it is necessary to further develop an effective system of administrative measures to be applied in case of bringing minors to administrative responsibility for smoking.

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Conflict of Interest

None.

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Адміністративна відповідальність неповнолітніх за куріння

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Анотація

Актуальність роботи зумовлено поширенням куріння серед неповнолітніх, а також недостатня ефективність заходів адміністративної відповідальності, що вживаються стосовно неповнолітніх у разі, якщо вони вчинили адміністративне правопорушення – куріння в заборонених місцях. Мета дослідження – визначити теоретико-правові особливості адміністративної відповідальності та проаналізувати заходи, що вживаються щодо неповнолітніх порушників. Досягнення поставленої мети стало можливим завдяки комплексному та всебічному аналізу українських та закордонних наукових джерел та норм чинного законодавства. Розглянуто особливості адміністративної відповідальності неповнолітніх за куріння. Встановлено, що згідно з нормами українського чинного законодавства, адміністративна відповідальність неповнолітніх за куріння може бути застосована до осіб 16-18 років, а основним заходом виступає адміністративне стягнення (штраф), який сплачують батьки. Надано аргументи на користь зниження вікових меж настання адміністративної відповідальності неповнолітніх до 13-15 років. Обґрунтовано доцільність виховного впливу на неповнолітніх шляхом проведення педагогічних та соціальних тренінгів, спрямованих на вирішення проблеми тютюнопаління серед неповнолітніх. Зазначено, що такі заходи матимуть превентивний характер та допоможуть зменшити кількість випадків, коли неповнолітні курять у недозволених місцях, а також сприятимуть вирішенню проблеми куріння серед неповнолітніх загалом. Наголошено, що порушене в роботі питання має не лише правовий, але й педагогічний, соціальний та медичний характер. Практичне значення отриманих результатів полягає в тому, що вони виявляють прогалини українського законодавства та надають рекомендації щодо вдосконалення підходів до настання адміністративної відповідальності неповнолітніх за куріння та розв'язання проблеми тютюнокуріння серед неповнолітніх осіб

Ключові слова: адміністративне стягнення; адміністративне правопорушення; штраф; заходи виховного характеру; превентивно-каральні дії



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Role of intellectual property in the development of the state's innovation potential

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Abstract

The war poses serious challenges to the economy, national security, and development of the country as a whole, and innovation can be an important tool in overcoming these challenges. The research aims to study the impact of intellectual property on stimulating and promoting innovative development in the context of technological progress. The methods of scientific cognition used include analysis, synthesis, deduction, comparison, generalisation, and systematisation; a systematic approach was applied to create a comprehensive methodology for analysing the situation in the intellectual property market. The study investigates how intellectual property can stimulate scientific research, promote the development of new technologies, increase competitiveness within the state and contribute to economic growth. The study analyses the works of Ukrainian scientists that have a positive impact on the development of Ukraine's innovation potential. The author presents an opinion on the need to develop and improve the protection of intellectual property rights, as this will facilitate the discovery of new technologies and the involvement of scientists in their development. The author discusses the issue of establishing the High Court of Intellectual Property and identifies the advantages and disadvantages that may arise with the introduction of such a body. The author

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substantiates the position on encouraging and conducting outreach to the public to involve scientists and specialists in the discovery and development of new technologies, and exchange of experience, and also emphasises the need for open educational and scientific events that will contribute to the development of Ukraine's innovation potential. The author considers various methods of encouraging the population to discover new technologies and work in this direction, such as legal mechanisms that protect intellectual property rights holders from unfair competition, namely administrative and criminal liability. The practical value of the results obtained is that they reveal in detail the problematic issues of the innovation potential of the state, as well as identify areas for improvement and provide recommendations for the productive development of the digital state

Keywords: digital age; technology; development of legal regulation; protection of rights holders; innovations; rights protection

Introduction

The role of intellectual property in the development of technological progress is an important and relevant topic in a rapidly moving world, where innovation plays a key role in improving the quality of life and stimulating economic development. Intellectual property is a key factor that helps to stimulate the innovation process and development in the field of technology. Ensuring the effective protection and use of intellectual property can contribute to the creation of new technologies, products and services that will address the challenges posed by martial law. In addition, innovative development can support various sectors of the economy and stimulate economic growth in a resource-constrained environment. It is especially important to engage scientists, researchers, creators, and entrepreneurs in cooperation to develop new innovative solutions. This may include creating new technologies to improve the effectiveness of defence forces, developing new medical technologies to help the wounded, developing innovative methods of resource management, etc. A strong innovation base can help Ukraine preserve its capabilities and resources in times of war, build a sustainable economy, and maintain national

security. Intellectual property covers the legal protection of intellectual works and innovative products, including literary, scientific, musical, artistic, inventions, designs, trademarks, etc. This concept includes rights granted to authors, inventors and innovators that allow them to control the use and commercialisation of their creative intellectual achievements. According to the World Intellectual Property Organisation (n.d.), intellectual property includes copyrights, patents, industrial designs, trademarks, geographical indications, and other forms of protection. These rights provide inventors with legal protection for their creative intellectual products, which help to stimulate the innovation process and technological development.

E. Kokhanovska and A. Kodynets (2021) note that the right to information and other non-property information rights of individuals are not only developing rapidly but also, since the late 2000s, have become extremely relevant in the context of problems associated with the expansion of information technology and artificial intelligence. The authors also focus on the inability to ensure effective protection of intellectual property in the current information environment solely through

the strengthening of liability measures and determine that a possible paradigm for the model of legalisation of the use of intellectual property objects in information networks and systems may be the model of free paid use, which is already successfully used by various media organisations, radio and television companies and other users.

A. Kodynets (2018) examined the aspects of intellectual property rights protection, in particular by the Ukrainian legislative and judicial authorities, intending to establish a specialised institution for the consideration and resolution of intellectual property disputes. The author proposed to establish the High Court of Intellectual Property, which should be a specialised court exclusively dedicated to intellectual property cases. S. Kolos (2019) analyses the current regulatory legal acts of Ukraine that define the procedures and mechanisms for the protection of intellectual property rights. Particular attention is paid to the peculiarities of protecting such rights in the context of updating the judicial system.

There are cases of infringement of intellectual property rights, and they require certain penalties from the legislator, which were analysed by V. Maryniv and M. Demura (2021). The article indicates when exactly the owner acquires the right to protect intellectual property and also indicates in which area of law this possibility arises. The author identifies specific guarantees for ensuring the rights of a victim of a criminal offence related to the infringement of intellectual property rights. H. Androshchuk (2021) examined the process of forming the theoretical, methodological, and methodological foundations for the effective protection of the rights of intellectual property owners and paid special attention to improving the efficiency of experts from intellectual property offices, law enforcement agencies and the development of digital search tools and the use of

artificial intelligence to support the institution of individualisation means.

Besides the issue of guarantees for the protection of intellectual property rights, it is necessary to focus on what steps the state is taking to improve the development of intellectual property rights and how to encourage citizens to create new intellectual property rights. N.M. Parkhomenko *et al.* (2021) examined not only the activities of the state's scientific institutions, but also the educational process of higher education institutions, and pointed out that this is receiving considerable attention, by organisations such as European Union and the World Intellectual Property Organisation. The authors also examine the regulatory requirements and scientific approaches to the formation of intellectual property policy for higher education and research institutions in Ukraine, to propose measures aimed at improving the effectiveness of such policy.

O. Zaikivskiy and O. Onistrat (2021) studied the impact of intellectual property on the system of threats to the national security and defence capability of Ukraine and noted that intellectual property is of great importance for the national security and defence capability of the country and requires a systematic approach. The authors highlight the need to define the intellectual property protection system as a component of the national security and defence capability of Ukraine. The emphasis is placed on the introduction of effective mechanisms for the protection of intellectual property, which is an important task for maintaining national security and protecting important innovative developments and technologies.

Despite the existence of numerous studies in this area, it is still important to analyse the impact of intellectual property on supporting and promoting innovative development within the framework of technological progress. It is also worth analysing

the role of legal regulation in ensuring the effective protection of intellectual property and supporting the innovation environment. Additional study is needed to identify factors that may hinder or facilitate the development of innovation potential within the framework of technological progress.

The research aims to review the existing legislation of Ukraine and study its existing gaps, as well as to consider relevant works of Ukrainian and foreign scholars who study the impact of intellectual property on stimulating innovation and technological development and offer an in-depth analysis of this topic.

Materials and Methods

An analysis method is used in the study to reveal and investigate the relationship between intellectual property and innovative development of technological progress. By analysing data, statistical indicators, scientific research and Ukrainian legislation, the impact of intellectual property on stimulating and promoting technological progress is considered. This method helped to reveal positive and negative aspects, identify trends, and analyse the impact on the economy and society, which ultimately allowed the author to formulate conclusions and recommendations on the role of intellectual property in the innovative development of technological progress. The synthesis method was used to combine various aspects and conclusions from different sources and studies. The paper analyses different views on the relationship between intellectual property and innovative development and considers various aspects of the impact of intellectual property on technological progress. After that, the synthesis method was used to combine these aspects into a single concept, to put forward our theses and recommendations on the role of intellectual property in the innovative development of technological

progress. Synthesis helped to understand how the different elements of the study interact with each other and contribute to the conclusions aimed at supporting innovative development. The deduction was used to formulate general statements and conclusions based on the analysis of specific facts and data. It allowed for the use of information from different sources and studies to identify general patterns and principles that emerge from this specific information.

The comparison method is used to identify similarities and differences between different approaches and practices related to intellectual property. This method is used to compare different approaches to the use of intellectual property in different industries, areas, or countries. This comparative approach was employed to highlight the advantages and limitations of different approaches, as well as to identify the most effective strategies for stimulating innovation development in the context of intellectual property. The method of generalisation was used to draw general conclusions based on the analysis of specific data, facts, or studies. It helped to summarise the results of research on the impact of intellectual property on innovative technology development, highlighting the main trends or patterns. The method allowed us to draw general conclusions about which types of intellectual property are most effective in stimulating innovation, as well as which strategies for protecting it help to achieve better results. The method of generalisation helped to highlight the main views and support the conclusions with general concepts and trends, which contributed to a deeper understanding of the role of intellectual property in the development of the innovative potential of technological progress. The method of systematisation was used in the article to organise and classify various information, data, and concepts to identify

the main patterns and relationships. It is used to group various aspects of the impact of intellectual property on innovation development according to certain criteria. This method allowed us to show a structured picture of the relationships between different aspects of intellectual property and their impact on the development of the innovative potential of technological progress, which contributed to a clearer understanding of this role.

The study employs such statistical materials as the annual Global Innovation Index (Dutta *et al.*, 2022), which analyses the trend in the development of Ukraine's technological potential until 2019 and its gradual lagging behind its closest competitors due to the factors of the coronavirus epidemic and the beginning of Russia's full-scale invasion of Ukraine. The article also uses data from the Ukrainian Institute of Intellectual Property (2022), which shows an increase in the number of registered industrial property objects compared to 2021, which confirms the sustainable development of intellectual property even under difficult martial law conditions. Scientific articles by Ukrainian and foreign scientists who make a significant contribution to the development of intellectual property and the growth of Ukraine's technological potential are used.

Results and Discussion

The importance of intellectual property in today's world is crucial and is recognised as one of the key factors in the development of economy, technology, science, and culture. Intellectual property covers various ideas, inventions, technologies, works of art, designs and much more that are the result of people's intellectual activity. Regarding the main aspects of the importance of intellectual property in the modern world, the main ones are as follows: first, it stimulates innovation and scientific research, as intellectual property protection

provides creators and inventors with legal protection and remuneration for their work, which stimulates their motivation to develop new ideas, technologies, and products. Secondly, intellectual property contributes to economic development, as new technologies and innovative products help to increase the productivity and competitiveness of enterprises and create new jobs. Thirdly, it is attracting investment, both from Ukrainian businesses and from abroad. Protected intellectual property becomes an attractive asset for investors, which increases the country's investment potential. It is also the protection of cultural heritage, as intellectual property copyright protection preserves and protects the cultural heritage of the nation, including language, literature, music, traditions, and customs. It is also worth talking about ensuring the quality of products and services. It is intellectual property that helps to set quality standards and conformity of products and services, which contributes to consumer protection. This is followed by a healthy competitiveness of the country in the international market, so that the export of intellectual property, such as technology, knowledge, and brands, helps to increase the country's international visibility. In general, intellectual property plays a crucial role in creating an innovative, creative, and sustainable society that contributes to the development of the national economy and ensures the country's prosperity. These are the theses of the papers that influence the development of intellectual property in the country, as well as encourage entrepreneurs to create new products and thus develop technologies through fair competition and the desire to contribute to the development of technological progress.

China plays an important role in the development of intellectual property, which is explored by H. Androshchuk (2019) in a study, where, based

on the data of the World Intellectual Property Organisation (2018), it is indicated that the growth in the number of patent applications continues for the eighth consecutive year and amounted to 5.8. The number of trademarks filed for registration worldwide totalled 12.39 million, and industrial designs – 1.24 million. For each of these types of intellectual property rights, the largest volume of applications was received in China. Many innovators and creators in China, as well as foreign

entities, are seeking to protect and promote their work in one of the world's fastest-growing economies. Due to the high level of activity in China, the number of applications for patents, trademarks and industrial designs has reached new record levels. It is worth noting that the growth in the number of patent applications continues to grow steadily, as can be seen from the World Intellectual Property Organisation (2022), which is summarised in the following table.

Table 1. Number of patent applications filed to IP5

Country/year	2019	2020	2021
China (CNIPA)	1 400 661	1 497 159	1 585 663
USA (USPTO)	621453	597172	591473
Japan (JPO)	307969	288472	289200
South Korea (KIPO)	218975	226759	237998
Europe (EPO)	181479	180346	188778

Source: compiled by the author based on World Intellectual Property Organization (2022)

To explain the presented table, it is worth noting that the IP5 is the name of the forum of the five largest intellectual property offices in the world, which was established to improve the efficiency of the patent examination process worldwide. Together, the IP5 offices process about 80% of the world's patent applications and 95% of all work performed under the Patent Cooperation Treaty. The five patent offices are the United States Patent and Trademark Office (USPTO), the European Patent Office (EPO), the Japan Patent Office (JPO), the Korea Intellectual Property Office (KIPO) and the China National Intellectual Property Administration (CNIPA, formerly SIPO). Analysing the WIPO report (2022), it is possible to state that in 2021, inventors from around the world filed 3.4 million patent applications, which is an increase of 3.6% compared to 2020. Asian offices received 67.6% of the total number of patent applications

worldwide. China, the Republic of Korea, and India saw strong growth in national patent filings, which contributed to the increase in global patent volume and raised Asia's share of this indicator to over 2/3. The PRC became the leader in patent filings, with 1.59 million applications. This number of patents is similar to the total number of applications filed by the 12 offices ranked second to thirteenth in the ranking. Other leaders in patent filings include the United States, Japan, the Republic of Korea, and the European Patent Office, which together accounted for 85.1% of the total number of applications. This information demonstrates the significant contribution of Asia, and China in particular, to global innovation and patent activity. It also points to the importance of intellectual property and patents in the modern world, where countries are actively competing for leadership in technological innovation. In 2017,

amidst a significant increase in the number of applications for registration of patents, trademarks, industrial designs, and other intellectual property objects that play a central role in the global economy, the global demand for intellectual property rights protection instruments reached a new record level and continues to grow today. The paper provides a detailed analysis of filings for intellectual property rights and indicates that from 2009 to the early 2020s, the number of applications for such rights has been steadily increasing by more than 5% annually worldwide, which in turn means that our world is steadily moving towards the development of technology, and research by scientists only confirms the fact of growing innovation and encourages other innovators to develop and strive for discoveries. Based on the study by H. Androshchuk (2019), it can be understood that China is one of the countries that is the driving force behind the development of new inventions, i.e., it is one of the world's trendsetters in the field of technology. L. Fang *et al.* (2016) aimed to examine the impact of intellectual property on innovation and technological development in China. The researchers focused on the role of intellectual property as a stimulating factor for the development of new ideas, technologies, and products, and also found out how intellectual property rights can affect the activities of enterprises, innovative start-ups, and industries. The study analysed data on the number of patent, copyright and other intellectual property applications filed in China over some time. The researchers also assessed the level of innovation of Chinese companies and the country's innovative achievements in various industries. The results of the study showed a positive impact of intellectual property on innovation activity in China. In particular, companies and organisations with a significant number of patents and other forms of

intellectual property were more creative and actively developed new products and technologies. Thus, intellectual property has stimulated innovation and contributed to China's technological development. The study by L. Fang *et al.* (2016) is of great importance for understanding the role of intellectual property in economic development and promoting innovation in the country. Its results can be used to formulate policies and strategies to support the innovation environment and promote the protection of intellectual property in other countries, including Ukraine.

It is worth noting that on 1 December 2022, the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Liability for Copyright Infringement and (or) Related Rights" (2022) was adopted. The amendments are aimed at regulating infringement of copyright and related rights. This Law is important and related to other legislation, in particular, the Law of Ukraine "On Copyright and Related Rights" (2022). It provides for significant changes in the provisions relating to intellectual property and liability for its infringement, and considers international standards, in particular the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014). Under the provisions of this Law, fines for infringement of intellectual property rights under Article 52-2 of the Code of Ukraine on Administrative Offences (1984) have been significantly increased. Now, this type of offence is punishable by a fine in the amount of fifty to three hundred tax-free minimum income, as well as confiscation of illegally manufactured products. In addition, the penalties for infringement of copyright and related rights under Article 176 of the Criminal Code of Ukraine (2001) were increased. Such acts are now punishable by a fine of

three hundred to one thousand tax-free minimum income, the possibility of correctional labour for up to two years, or imprisonment for the same period. The law will also introduce significant changes to the Criminal Code of Ukraine regarding infringement of copyright and related rights. A new article will be added – 176-1 “Financing of infringement of copyright and related rights”, Article 216 “Illegal manufacture, counterfeiting, use or sale of illegally manufactured, obtained or counterfeit control marks” will be deleted, and the criminalisation of this type of offence will be expanded within Article 176 of the Criminal Code of Ukraine (2001). Analysing this law, it can be concluded that the main changes include:

- ✓ cancellation of the provisions on administrative and criminal liability relating to the marking of copies of audiovisual works, phonograms, videograms, computer programs and databases with control marks;
- ✓ strengthening administrative and criminal liability for infringement of copyright and related rights;
- ✓ introducing articles to the Criminal Code criminalising new forms of copyright and related rights infringement.

The drafters of the Law argue that it is necessary to adopt it since, first of all, the system of marking copies of audiovisual works, phonograms, videotapes, computer programs and databases with control marks has lost its relevance today. Secondly, the effectiveness of sanctions for copyright and related rights infringement needs to be strengthened, which will help to reduce the number of relevant infringements due to stricter liability. As for the legislator’s justification for the need to strengthen sanctions for copyright and related rights infringement, it is important to note that although there is an intention to improve the system of protection of these rights in Ukraine,

the effectiveness of this approach remains questionable. In its conclusion to the draft law, the Main Scientific and Expert Department cites some questionable statistics. According to the report of the courts of first instance for 2020, only ten cases of administrative offences under Article 51-2 of the Code of Ukraine on Administrative Offences were registered in Ukraine. Of these cases, only seven were considered, four resulted in administrative penalties, and three cases were closed (Conclusion of the Main Scientific and Expert Administration..., 2021). The number of copyright infringements is much higher, but statistics show that very few offenders are brought to justice. Instead of improving the methods of detecting and preventing infringement, the legislator chooses to increase criminal liability.

Ukraine is committed to joining the EU, and therefore, one of the obligations assumed by our country is the integration of national legislation into the standards of the European Union under the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), and regulatory changes in the field of intellectual property are no exception and are also part of this process. Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Protection of Intellectual Property Rights” (2023), which took effect on 15.04.2023, regulates certain aspects relating to Directive 2004/48/EC of the European Parliament and the Council on the Enforcement of Intellectual Property Rights (2004). This Law also amends several other legislative acts of Ukraine, namely: The Commercial Procedure Code of Ukraine, the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Laws of Ukraine “On Copyright and Related Rights”, “On Effective Management of Property Rights of Right Holders in the Field of Copyright and (or) Related

Rights”, “On Protection of Rights to Industrial Designs”, “On Protection of Rights to Trademarks and Service Marks”, “On Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Semiconductor Product Layouts”, “On Legal Protection of Geographical Indications” (Law of Ukraine No. 2974-IX..., 2023).

After analysing the amendments to the above legislation, the following changes are noted:

- ✓ seizure of goods manufactured or introduced into civil circulation in violation of intellectual property rights, as well as materials and tools used primarily for the manufacture of such goods, is now carried out at the expense of the person who infringed on these rights;

- ✓ the law provides for the possibility of using a one-time financial settlement as a means of protecting intellectual property rights in cases where the infringement of this right occurred unintentionally and without negligence, and the use of other remedies is disproportionate to the damage already caused;

- ✓ the law provides for the possibility of additional disclosure of infringement of intellectual property rights in the media or informing through other methods established by the court of the fact of infringement of intellectual property rights and the content of the court decision regarding this infringement at the expense of the person who infringed;

- ✓ the procedural legislation has been expanded with articles that more specifically define the procedure for obtaining evidence, such as information on the origin and distribution network of goods or services that may infringe intellectual property rights or are sufficient grounds to believe that such goods or services infringe intellectual property rights.

It should be noted that the constant change of legislation in the field of intellectual property

affects the need to reform the state bodies responsible for the implementation of state policy in this area. In Ukraine, the responsible body in the field of intellectual property is the National Intellectual Property Authority, which after 28 October 2022 will perform its functions through the state organisation “Ukrainian National Office of Intellectual Property and Innovations”. The new law also amended the regulations governing the work of this body. Thus, the amendments not only brought Ukrainian IP legislation closer to EU standards but also significantly strengthened measures to protect the rights of IP owners.

M. del C. Gutierrez Pla and L. Burtchaell (2021) concluded that intellectual property protection is crucial for fostering innovation, as a company that owns intellectual property rights will have a higher competitive advantage and legal protection against counterfeiting. Such legal protection is critical, in particular, for companies wishing to export to new markets. In addition, companies with IP rights can license or sell their IP rights, thus reducing operational risks and facilitating knowledge sharing in open innovation scenarios. This view reflects the importance and benefits of licensing or selling intellectual property rights for companies. Indeed, companies can use this approach as a strategic tool to reduce risks and facilitate knowledge sharing in innovation processes. Licensing allows companies to allow other businesses to use their technology or intellectual products for a fee. This can be beneficial for both parties: the licensee gains access to new technologies without the need for large research and development expenditures, and the licensor receives income from licence fees. The sale of intellectual property rights can also be beneficial, especially if a company decides to cease a certain type of activity or redirect its resources to other areas. It can bring financial benefits and allow the

company to focus on its core business. This approach also facilitates the exchange of knowledge and innovative ideas, as licensees or buyers have the opportunity to explore and use new technologies or developments. Hence, licensing or selling intellectual property rights can indeed be an important tool for companies to reduce risk, secure finance and facilitate knowledge sharing in innovative scenarios.

Among the existing shortcomings in the field of intellectual property, it is worth noting the conceptual problems of protecting intellectual property rights in the scientific and technical activities of teachers in various educational institutions, which were very well studied by M. Savvitskyi and H. Evseeva (2019). The authors note that due to the rapid development of information technology, information on the Internet is disseminated instantly. Information protected by copyright and/or related rights is often disseminated in this way. However, social relations related to the dissemination of information on the Ukrainian Internet segment are not legally defined, and there is no mechanism for the restoration of infringed rights. An important step towards improving the intellectual property rights of scientific and technical activities of educators is the provision that higher education institutions have the right to dispose of the funds they earn for scientific, technical, and other economic activities directly through bank accounts and without limiting their distribution by article. It is also urgent to simplify the mechanism for establishing business entities by state higher education institutions to use intellectual property rights. Agreeing with the authors' views, it is possible to add that this is important for the future education and economy of Ukraine. Education in the field of intellectual property should be close to innovations that can improve the Ukrainian economy. The rules

governing intellectual property rights should be up-to-date and meet modern standards for a developed economy. The state should also invest in leading universities, especially those engaged in research, to maintain their potential. Overall, this will promote innovation and growth in Ukraine's economy.

Analysing the problems and prospects of intellectual property rights protection, it is worth noting the material of E. Kokhanovska and A. Kodynets (2021). The opinion expressed by the authors in this article has its logic and considers important aspects of intellectual property in the context of modern information technology and the challenges associated with the expansion of artificial intelligence. According to scholars, the rights to information and other non-property information rights are important and relevant, especially in the era of rapid technological development. It is worth agreeing with this, as the availability of information is growing, and, accordingly, the need to regulate its distribution and use. As the study and development of information technology and artificial intelligence deepens, it becomes important to ensure the protection of intellectual property. It can be stated that the widespread distribution of digital content and the ease of copying may lead to copyright infringement. As for the free-to-use model, this concept can be effective, especially if it is complemented by proper organisation and control. However, this model can also have its limitations and requires a balanced approach to ensure both income for authors and access to information for the general public. In general, it is worthwhile to agree with the authors and note that there is a need to improve the protection of intellectual property in the information technology era, but there is also a need for a balanced approach to this issue, considering various interests and parties.

A study by A. Kodynets (2018) is of no less importance for the protection of intellectual property rights. The author's opinion on the establishment of a specialised court for intellectual property is reasonable, as it may have several positive aspects. First of all, intellectual property is becoming increasingly important in the modern world, especially in the context of technological development and globalisation. A specialised court may be more competent in dealing with complex intellectual property cases, as judges will have specialised expertise in this area. Such a court may contribute to more consistent and predictable justice in intellectual property matters. This may reduce the risk of inconsistent decisions in similar cases and contribute to the development of stable legal practice. In addition, a specialised court may ensure more efficient consideration of intellectual property cases due to the judge's familiarity with the specific aspects of this area. However, it is also important to consider possible disadvantages. Establishing a separate court could lead to increased costs for the judiciary and bureaucratic workload. There is also a risk that it may create a certain isolated judiciary that will not always be connected to general legal practice. In general, the creation of a High Court of Intellectual Property has its advantages and disadvantages, and before its implementation, all aspects should be carefully weighed and the practice of similar courts in other countries should be considered.

An important study on legal support for the protection and enforcement of intellectual property rights in Ukraine was written by K. Dobrovolska (2021). The author concludes that the list of violations of intellectual property rights should be supplemented. While the traditional violations included plagiarism, piracy, importation (exportation) of counterfeit copies of works, programmes, phonograms, copies of works, etc. into

the customs territory, the creation of new intellectual property objects whose legal status is not protected will result in new offences. The author's opinion points to the importance of balancing intellectual property in legislation. The current legislation in Ukraine focuses mainly on the rules and obligations related to intellectual property rights but does not pay sufficient attention to the processes and procedures for their implementation and protection. Ensuring not only substantive rights but also an effective mechanism for their enforcement and conflict resolution is critical to creating a favourable environment for innovation and development. Therefore, consideration should be given to improving the procedural aspects of the legislation to make it more efficient and accessible to citizens and businesses. This could include improving the system of adjudicating IP cases, simplifying the procedures for registering rights, and reducing bureaucratic barriers. Such an approach would facilitate more effective protection of intellectual property rights and promote innovation in Ukraine. The article also examines the correlation between the concepts of "protection" and "enforcement" of rights. Having analysed the author's materials, it is worth noting that legal protection is the first step in establishing rules with laws. It determines which areas of society are subject to the rules of law. Legal protection is a mechanism that ensures the restoration of violated rights if they have been violated. It provides tools to restore broken legal relations.

Based on a detailed analysis of the article by S. Kolos (2019) on the current regulatory legal acts of Ukraine defining the procedures and mechanisms for the protection of intellectual property rights, it is possible to agree that the judicial process in the field of intellectual property can be long and complex due to the lack of uniform judicial approaches and the length of time

for consideration of cases. This may harm the level of protection of intellectual property rights holders. The importance of special legislation detailing the methods of protection of rights to various intellectual property objects, considering their specifics, is also worthy of attention. Agreeing with the scholar's opinion, it should be noted that this court can ensure greater efficiency of judicial protection of intellectual property rights by speeding up the consideration of cases, unifying practice and ensuring higher quality of decisions. It is worth supporting the views of S. Kolos and noting that they coincide with the position of A. Kodynets (2018), so the idea of creating a High Specialised Court for Intellectual Property deserves attention from the state.

Regarding innovations, it should be noted that this term is an integral part of the concept of innovation activity, which is revealed in the works of Ukrainian scientists, for example, P. Tsybulov (2018), who considers innovation activity as maximising the socio-economic effect through the use of the results of intellectual labour, the so-called intellectual capital, an important component of which is intellectual property. Agreeing with the opinion of P. Tsybulov, it should be noted that his position emphasises that intellectual property is an important tool in maximising positive socio-economic results from innovation, and also contributes to the creation of sustainable and competitive development.

V. Babenko (2019) suggests that a national innovation system is a comprehensive means for creating and developing intellectual property and transforming it into innovative products. In other words, by stimulating the development of intellectual property, the country contributes to strengthening the innovation potential and supports cooperation between different participants in the innovation process through the transfer of

intellectual products. The development of intellectual property is becoming an important step in stimulating innovation and promoting partnerships for the further development of innovative solutions and products. One cannot but agree with the author of this article and note that to ensure the growth of the Ukrainian economy, significant changes are needed in incentivising the developers of intellectual products, and their legal protection, and creating favourable conditions for the successful introduction of new ideas to the market and their commercialisation. In this context, it is important to promote an innovative environment that will lead to the creation of innovative products and technologies, as well as ensure their effective protection at the legal level. In addition, the state should facilitate the promotion of these ideas to the market by simplifying the procedures for commercialisation and development of innovative enterprises. Only such fundamental changes will create a powerful innovation sector that will contribute to economic development and ensure Ukraine's successful competitive positioning in the global market. Based on the study by V. Babenko (2019), as well as the annual Global Innovation Index by the World Intellectual Property Organisation (Dutta *et al.*, 2022), it is worth noting that Ukraine's position in most rankings that assess the country's level of development, innovation potential and technological capabilities does not meet the requirements and expectations at this stage of the country's development. Until 2019, Ukraine's position in various rankings was slightly increasing, and at the moment the country ranks 57th in the WIPO Innovation Scorecard, which is 10 positions lower than it was in 2018. This is hard to accept if the state is striving for active development and an increase of innovation potential, but since 2019 there have been several objective reasons that have influenced

this, as described in a study by V. Babenko and M. Hlivetska (2018). The main reasons that impede the qualitative growth of innovation in Ukraine are high social tension and the low living standards of the majority of the population. These factors also include the uncertain political situation with certain territories, conflicts with other states over Ukraine's European course and its position in domestic reforms, and the effects of the global financial crisis. A combination of objective circumstances also contributes to the situation, including the transition to a post-industrial development path and the weakness of the economy. Political instability due to the low level of trust in the government and the upcoming elections also adds to the unfavourable conditions for innovative progress in the country.

It is safe to assume that the coronavirus pandemic was a major threat not only to Ukraine but also to the entire world, but after Russia's full-scale invasion, there was a need to respond to the challenges as soon as possible, because, with the outbreak of war, completely different problems began to arise. O. Kronda and O. Zosymenko (2022) considered the importance of intellectual property in the context of martial law in Ukraine. The authors of the article emphasise that intellectual property is a key area that contributes to the economic development of the state, even in an extremely difficult period, and allows it to pass the tests step by step. The effective management of the intellectual property portfolio during martial law is particularly relevant, as it helps to avoid potential litigation in the future. It is also worth noting that data storage for the protection and enforcement of intellectual property rights in Ukraine after the transition to a post-war economy is an extremely urgent task. The article emphasises the importance of the role of the Ukrainian Institute of Intellectual Property (Ukrpatent) as

the national intellectual property authority in ensuring the necessary functions and continuous operation of the state system of intellectual property legal protection even in difficult conditions of martial law. According to an analysis of data from the Ukrainian Institute of Intellectual Property (2022), the number of registered industrial property rights in the first half of 2022 increased significantly compared to 2021, which confirms the continued development of intellectual property even under martial law. O. Kronda and O. Zosymenko (2022) also analysed the latest changes in intellectual property legislation during martial law, which show that intellectual property continues to develop actively and that European integration processes in this area are being strengthened and implemented in Ukraine. The study emphasises the need for further development of intellectual property even under martial law, and the provision of an effective mechanism for the protection of intellectual property rights and their gradual improvement is supported by friendly countries and the international community to implement European integration processes in Ukraine.

To encourage innovators and inventors to make discoveries in the field of technology, there must be factors that facilitate the inflow of interested scientists. One of the most important factors is the protection of intellectual property rights. Given the peculiarities of the current legal regime and the specifics of conflicts in the field of intellectual property, it can be concluded that changing territorial jurisdiction and remote consideration of cases is not the most effective means of ensuring the protection of intellectual property rights. For more information on the peculiarities of judicial protection of intellectual property rights during martial law and the peculiarities of using alternative dispute resolution methods, see L. Halupova (2022). The author notes

that military actions in certain territories of the country may complicate the exercise of the right to protect the results of intellectual and creative activity, and therefore the issue of using alternative dispute resolution methods for disputes and conflicts arising in the field of intellectual property rights is relevant. At present, such methods can justify the purpose of their emergence, namely, to help the judicial system effectively protect intellectual property rights. This article offers alternative dispute resolution methods, namely negotiation, mediation, dispute resolution with the participation of a judge, arbitration, settlement agreement and other possible options. Any meeting can be held online on a variety of different platforms, and these dispute resolution methods are no exception, and can also be settled without the need for personal meetings. It is also worth noting that alternative dispute resolution methods have both advantages and disadvantages. Among the advantages are their versatility and flexibility, as there is a choice among many types of dispute resolution, and decisions made using one of the alternative methods can achieve benefits for both parties, while reducing financial and emotional costs. This approach promotes mutual satisfaction of the parties and ensures their joint responsibility for the implementation of the decision. Among the disadvantages are the delay in the process and the postponement of liability, as well as the contractual nature of decisions that can be used by an unscrupulous party to the conflict. At the same time, each party freely chooses how to protect its rights and interests. In the context of martial law, the choice of a method of protecting intellectual property rights requires careful consideration of various criteria, such as the object and subject matter of the conflict, national or cross-border nature of the violation, security of the venue, threats to life and health, and the parties' desire

to maintain good business relations and establish legal cooperation. The state should ensure the availability of both judicial protection and protection of intellectual property rights through alternative means, as well as inform the public about the variety of ways to protect the rights to the results of intellectual and creative activity.

One of the key factors affecting the development of innovation potential is security, namely the protection of intellectual property rights and its objects. According to I. Malinovska (2018), the following system of current trends in the legal protection of intellectual property would be the most correct: 1) scientific discussions on the consistency between the doctrine of human rights and the protection of intellectual property rights, in particular in the field of protection of human life and health; 2) expansion of the scope of influence of the public element in the system of legal protection of intellectual property, in particular, expansion of the rights of the patent holder to protect the public interest from the monopoly of patent rights in the field of pharmacy; 3) dependence of the regime of legal protection of intellectual property in national legislation on the established regime provided for by the Agreement on Trade-Related Matters. These trends are aimed at ensuring more effective protection of intellectual property rights, as well as at adapting the legal system to modern challenges and technological changes. O. Korotun (2019) notes that due to the numerous articles of the Code of Ukraine on Administrative Offences (1984) providing for liability for violations of legislation in the field of intellectual property, as well as the diversity and specificity of the objects of administrative and legal protection, the Supreme Court can generalise the application of legislation by courts in cases of administrative offences in the field of intellectual property, in particular in cases of violations

on the Internet. The author also notes the importance of the fact that today intellectual property plays an important role in the socio-economic development of the state, and therefore the protection of intellectual property rights, including their effective enforcement, must meet modern requirements. This may require improvement of legislation, in particular procedural legislation, to improve legal mechanisms for the protection of intellectual property rights holders.

Regarding administrative offences in the field of intellectual property, this issue is addressed in the study of O. Gerasimenko (2022), where the author notes that the most reasonable concept is the one that considers the general object of administrative offences in the field of intellectual property at the highest level of generalisation and covers all social relations that are subject to protection under administrative and tort law. This concept addresses the actual infringement of intellectual property, i.e., the actual violation of the owners' rights to intellectual results and creative activity. This approach is aimed at a broad understanding of intellectual property and covers various aspects of its protection, including liability for infringement of intellectual property rights, in particular on the Internet. Consideration of all aspects of public relations in the field of intellectual property allows for more effective control and response to infringement of intellectual property rights and ensures fuller protection of their interests. Furthermore, the author comes to a definition of the general object of an administrative offence in the field of intellectual property and believes that this is the entirety of legal relations protected by administrative and tort law and which is negatively affected by a specific actual infringement. This definition can be considered correct and consistent with the essence of the object of an administrative offence in the field of intellectual property.

It clearly describes what constitutes the subject matter of the infringement, namely the totality of legal relations protected in this area. In addition, it considers that an administrative offence can only occur if there is a specific negative impact on these legal relations.

After considering the urgent issues of administrative liability in the field of intellectual property, it should be noted that there are situations in which stricter liability for violations of intellectual property legislation should be applied, as disclosed by V. Maryniv and M. Demura (2021). While exercising the right to protection of intellectual property in the context of criminal law and criminal procedure, it is necessary to ensure guarantees of individual rights. The authors identify the following specific guarantees to ensure the rights of the victim of a criminal offence related to the infringement of intellectual property rights:

1. The right of the victim to file a report or notice of a criminal offence, as well as to file a civil action for compensation for damage. The victim also has the right to enter into a reconciliation agreement.

2. The exercise by a victim of the right to file a complaint or report a criminal offence committed leads to the initiation of criminal proceedings.

3. The investigator and prosecutor are obliged to enter the relevant information into the Unified Register of Pre-trial Investigations and initiate an investigation of a criminal offence, while the court is obliged to consider a civil claim decide on the matter and provide other duties that guarantee the realisation of the victim's rights.

4. The Criminal Procedure Law provides for liability for failure to fulfil obligations to ensure the rights and legitimate interests of participants in criminal proceedings.

To develop the innovation potential of Ukraine, it is necessary not only to ensure the

protection of the rights of intellectual property rights holders, but also to encourage and stimulate scientists to work, and to promote the desire of citizens to develop in the field of technology. T. Hrachak (2019) suggested that the realisation of the social purpose of libraries aimed at preserving, organising, and broadcasting knowledge can be enhanced by introducing gaming technologies into library practice. This is a truly innovative knowledge management tool that has great potential for improving the efficiency of library services and engaging the audience. Gaming technologies in libraries can help to attract the attention of readers, especially young people, to educational and cultural resources. They store and transmit knowledge through engaging and interactive games. The introduction of gaming technologies in libraries will allow to creation of interactive learning programmes, virtual tours, game tasks and entertainment that will promote a more active and interesting perception of knowledge. This can improve audience engagement in the library's cultural and educational activities and increase interest in reading and self-education. The use of gaming technologies will also help to create interaction between librarians and users and facilitate the exchange of experience and knowledge. Given the potential of gaming technologies for preserving, accumulating, organising, and broadcasting knowledge, their introduction into library practice may be an appropriate step to increase the efficiency and social significance of libraries in modern society.

When considering the development of innovation potential, it is worth mentioning the positive impact of the article by N. Parkhomenko *et al.* (2021). It should be noted that the position of scientists is considered an important aspect of intellectual property management in research and higher education institutions. It indicates that the

commercialisation of intellectual property created in the course of the activities of such institutions is becoming one of the key functions, along with educational and research activities. An important step is the development and approval of appropriate intellectual property policies or rules that could regulate intellectual property issues in these institutions. This includes aspects of the acquisition and distribution of intellectual property rights to the objects created, mechanisms for commercialisation of these rights, as well as the distribution of revenues from such commercialisation. This view reflects real trends in the scientific and educational spheres, where the importance of maximising the use of intellectual property to support the financial sustainability and development of institutions is growing. Another important aspect is to ensure transparent and fair distribution of benefits among all parties involved in the creation and commercialisation of intellectual products.

T. Granchak and V. Bondarenko (2021) point out that the use of immersive technologies in the library and information sphere can be a powerful tool for stimulating the innovative development of science and education. The introduction of such technologies in libraries will help to unlock their potential and ensure a more efficient organisation of information services and resources. This approach will help increase the availability of knowledge, attract new audiences, and improve the quality of information and library services. In addition, immersive technologies can stimulate innovative approaches to research, training, and development, which will contribute to progress and increase the level of knowledge in the scientific and educational spheres.

O. Ulitina and D. Pyliuchenko (2021) investigated the legal regulation of creative industries, which are a key element in the economic system of modern countries. These industries, which are

characterised by significant creative potential, have a significant resource for the development of the country and strengthening its international relations. Since creative industries actively operate with intellectual property, especially copyright, legal regulation in this area is of great importance.

The legal regulation of creative industries is mainly based on intellectual property law, as they are responsible for the creation and use of various intellectual products. However, each industry also requires its specialised legislation that considers its specifics. In Ukraine, the creative industries became a priority in the early 2010s, so the legal regulation in this area is loose and needs to be further developed and clarified. In particular, it is important to bring regulations into sync and harmonise the conceptual framework for more precise and systematic regulation of creative industries. Such a process of development and improvement of legal governance in this area will further strengthen these industries, and ensure their more efficient functioning while promoting innovation, cultural development, and economic growth of the country.

O. Izbash (2021) notes that, despite its shortcomings, a new future for digital art is beginning, one that promises to help reduce the distortions of the first internet wave and provide greater compensation for artists around the world. With OpenLaw and NFT, content developers are empowered and should help create a fair and creative landscape in the spirit of Web 3.0. The author's conclusions are not entirely true as more and more new technologies are being created in the world, but not every one of them remains relevant for a long time and may not last long. Speaking specifically about NFT, the technology gained popularity as quickly as it lost it. Following the works in the digital dimension, you can find a lot of works that have risen in price very sharply and were desired by many people, and people paid

a lot of money for them. But over time, some of these works have lost a lot of value, which means that they are no longer popular. This indicates a decrease in people's interest in NFT technology, which means that it is necessary to improve legislation not for each new technology but to make it more systematic and flexible so that certain rules can be quickly developed to regulate new technologies that are gaining popularity.

Regarding the protection of intellectual property rights on the Internet, I. Kovalenko (2018) points out that the problem of protecting copyright and related rights on the Internet is of increasing interest, as no unambiguous position has been developed for all states. The researcher cites such ways of preventing violations of intellectual property rights on the Internet as digital signatures, digital marks, limited functionality, through which the author of a work provides a particular user with access to his or her property, and other methods. The researcher gives useful advice on how to improve the protection of intellectual property rights, but not all of them can be used for any object because the number of types is very large. Therefore, it is necessary to prevent new gaps created by the development of technology as soon as possible and to improve the development of intellectual property legislation.

Based on the article by H. Sytnyk *et al.* (2022), it is reasonable to agree with the authors who believe that to solve the problems of innovative development of the state, it is necessary to apply an approach that involves overcoming institutional weakness and consider instability and uncertainty in its functioning. As part of such development, it is important to introduce new political and administrative processes, models and technologies that will contribute to achieving an acceptable level of national security. The article also notes that political technologies can influence the

public consciousness when choosing priorities in innovative development, and the dynamics of this process are non-linear, which necessitates changing the goals, methods, and technologies in the activities of management entities and ensuring a balance between the political and administrative components. An effective solution to the challenges of innovative development involves the introduction of flexible and adaptive approaches to governance, ensuring the sustainability and security of the state, as well as considering the complexity and dynamics of the modern world.

Thus, this study highlights the need to develop and implement effective mechanisms for the protection of intellectual property. This may include fair and speedy judicial practice, rigorous mechanisms for detecting and stopping infringements of intellectual property rights, as well as promoting innovative developments and creating an ecosystem for their implementation. This view suggests that intellectual property protection can be a broader platform for enhancing national security and sustainable development, both in the technology sector and in the economic and geopolitical context.

Analysing the material of N. Kapitanenko (2022), it can be said that the proposal to adopt the Code of Ukraine on Intellectual Property may be a step forward in the development of legal regulation of the intellectual property sector in Ukraine. Harmonisation and updating of the legislation in this area with international norms and standards can contribute to better protection of intellectual property rights and stimulate innovation and development of the sector. However, it is important to consider the diverse interests of participants in intellectual property relations and to strike a balance between public and private interests. The Code should clearly define the procedures for registration of intellectual property

rights, management, and control in this area, ensuring the protection of the rights of intellectual property owners and promoting innovation and creativity. The main task will be to develop the text of the Code with due regard to important details and to consult with all stakeholders to ensure transparency, fairness, and effectiveness of the new legislation.

Ukraine receives support from its Western partners, which was considered by H. Androshchuk (2022). The author writes that before Russia's invasion, Ukraine was a regional science and technology centre. The technology sector accounted for 4% of GDP, employing about 5,000 IT companies and 285,000 IT professionals. From international financial support in cryptocurrencies to platforms for companies that help those fleeing war, such as Uber and AirBnB, science and technology are essential to the country's defence capabilities. The sector will also be important for Ukraine's long-term aid and recovery. It will be a platform on which to provide jobs, attract investment and create the latest technologies. I agree with the author that this is the right approach. The crisis may cause unfavourable circumstances, but it also opens up new opportunities. Supporting and developing the innovation and creative sector, as well as the intellectual property system can be key to stimulating technological development and economic recovery. By fostering the development of an intellectual property infrastructure and supporting innovation, Ukraine can create favourable conditions for the development of new technologies and increase competitiveness in the global market. This could also lead to the creation of new jobs and increased economic growth.

Conclusions

Summing up the material presented, it is worth noting that it is difficult to overestimate the

impact of intellectual property on the formation and development of the state because, in today's progressive world, it is extremely important to rely on innovation and encourage citizens to new scientific achievements. The article examines the role of intellectual property in stimulating innovation and technological development, as well as how it affects the innovation potential of organisations. The article analyses Ukrainian legislation, the country's performance at the international level, and data on domestic development. The scientific works of Ukrainian and foreign scientists who study the impact of intellectual property on innovation processes and results in various industries are studied. It can be stated that scientists who consider quite different issues in their works believe that Ukraine is in the process of its formation in the field of technology development. The article examines the role of legal regulation in ensuring the effective protection of intellectual property and identifies factors that can facilitate or delay the development of innovation potential in the context of technological development.

It is worth emphasising the need to create a High Court of Intellectual Property, as it will be more competent than others in hearing intellectual property cases and will contribute to the development of legal practice. However, the creation of such a body may lead to increased costs and isolation of this judicial body, which will be very separate from other legal practices. Therefore, it is necessary to study the experience of other countries and to consult and share experiences with foreign partners in this area. The impact of technological progress on intellectual property

should be further studied, as there are many unexplored or not fully disclosed issues, such as the creation of the High Court of Intellectual Property, legal regulation of artificial intelligence, blockchain technology, and many others.

The state's reliance on the development of new technologies can be regarded as one of the key factors in the progress of the economy, technology, science and culture. In the area of intellectual property, as a driving force for innovation, it is necessary to improve protection and take all possible steps to develop new and improve existing legislation, because those citizens who decide to engage in technology should be aware of their protection from unfair competition. It is also important to improve cooperation and hold as many educational events as possible, for example, to exchange experience in various technology fields, from military to medical and educational, which will certainly lead to the development of Ukrainian society and the state as a whole.

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Conflict of Interest

None.

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Роль інтелектуальної власності в розвитку інноваційного потенціалу держави

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Анотація

Війна створює серйозні виклики для економіки, національної безпеки та розвитку країни загалом, а інновації можуть стати важливим інструментом в роботі над подоланням цих викликів. Мета дослідження – вивчити вплив інтелектуальної власності на стимулювання та сприяння інноваційному розвитку в контексті технологічного прогресу. Серед використаних методів наукового пізнання – аналіз, синтез, дедукція, порівняння, узагальнення та систематизація; застосовано системний підхід для створення комплексної методології аналізу ситуації на ринку інтелектуальної власності. У матеріалі досліджено, як саме інтелектуальна власність може стимулювати наукові пошуки, сприяти розробці нових технологій, підвищувати конкурентоспроможність усередині держави та сприяти економічному зростанню. Проаналізовано праці українських вчених, які позитивно впливають на розвиток інноваційного потенціалу України. Представлено думку про необхідність розвивати та вдосконалювати захист прав інтелектуальної власності, адже це сприятиме відкриттю нових технологій та залученню науковців до їх розробки. Розкрито питання створення Вищого суду з питань інтелектуальної власності, виявлено переваги та недоліки, що можуть виникнути із запровадженням такого органу. Обґрунтовано позицію щодо заохочення та проведення роботи з населенням, для того щоб залучати науковців та фахівців до відкриття та розробки нових технологій, обміну досвідом, а також акцентовано на необхідності проведення навчальних та освітньо-наукових відкритих заходів, що сприятиме розвитку інноваційного потенціалу України. Розглянуто різні методи заохочення населення до відкриття нових технологій і роботи в цьому напрямі, як-от правові механізми, що захищають власників прав інтелектуальної власності від недобросовісної конкуренції, а саме адміністративна та кримінальна відповідальності. Практична цінність отриманих результатів полягає в тому, що вони детально розкривають проблемні питання інноваційного потенціалу держави, а також виявляють напрями, що потребують вдосконалення, і надають рекомендації щодо продуктивного розвитку цифрової держави

Ключові слова: цифрова епоха; технології; розвиток правового регулювання; захист правовласників; інновації; охорона прав



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International experience in the use of alternative energy sources (within the European Union)

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Abstract

The relevance of the chosen subject is due to the problem of the lack of conventional energy resources in the global and Ukrainian energy sectors. This problem is caused by a combination of external factors (outdated technologies, lack of oil, coal, and gas reserves) and internal factors, such as Russia's military aggression against Ukraine, and its manipulative policy towards other countries, which encourages the European community to look for other options to ensure energy security. This gave a new urgency to the issue of activating the development of alternative energy. The purpose of the study is to analyse international experience in the use of alternative (renewable) energy and formulate conceptual methods and approaches to solving global energy problems. A combination of general scientific methods was used, primarily dialectical, analytical, concrete-sociological, and from special legal methods – comparative legal. The results obtained indicate that the use of alternative energy sources in the European Union countries will continue to develop in the future. Based on data from Regulatory Indicators for Sustainable Energy, it is confirmed that Denmark, Germany, and the Republic of Poland are currently the leaders in the use of renewable energy sources in the EU countries. The study analyses the successful experience of these countries in the use of renewable energy sources. It is concluded that there is a dynamic in the development of alternative energy sources in European countries, but in order for alternative energy sources to fully compete with conventional energy sources, it is necessary to maintain and regulate incentives for increasing the use of renewable energy sources at the national level. The practical value of the study lies in the fact that its results can serve as recommendations for increasing the share of alternative energy sources in Ukraine

Keywords: energy; renewable resources; green energy; energy system; energy crisis; solar, wind, hydro, and bioelectric power plants; European countries

Introduction

Alternative energy is a special energy industry, the role of which in the countries of the European Union is becoming more and more relevant every year. This is due to the fact that conventional energy sources (oil, gas, and coal) are gradually decreasing in volume, and non-conventional natural sources (hydropower, solar, wind and thermal energy) are becoming relevant and widely available due to the latest technical achievements (Kucheriava & Sorokina, 2019). In most European countries, the development of alternative energy is supported at the level of national policy, which is aimed at reducing the consumption and

production of conventional energy sources and improving the level of state energy security (International Energy Agency, 2019).

As for Ukraine, despite a fairly substantial array of regulatory legal acts that control and regulate relations in the use of alternative energy sources, the legal framework in this area continues to form.

A number of authors have examined the use of alternative energy sources. In the dissertation by N. Riazanova (2021), the methodology and implementation principles for determining strategic guidelines for the development of alternative energy in the national economy of Ukraine were

considered. In the study by O. Babyna (2020), the factors of innovation and investment activity in the development of alternative energy are systematised and groups of factors that have a dominant influence on the process of ensuring innovation and investment activity in the development of alternative energy are classified. In addition, in this dissertation, the papers of recent years are considered, which describe the relevance and need for the use of regenerative energy sources.

According to the Law of Ukraine "On Alternative Energy Sources" (2003), which describes the fundamental principles of national policy in the use of alternative (renewable) energy sources, state management of this area, promotion of production and consumption of energy that is produced from alternative sources, indicates green tariffs for all types of renewable energy and state guarantees for entities that use non-conventional (alternative) sources in production.

Investigating the efficiency of using alternative energy sources, S. Rohach (2020) notes: "...considering the energy and environmental situation in the world, almost all countries have an urgent need to switch to alternative energy, which can increase the range of available energy sources, strengthen energy and environmental security."

Ye. Ziabina *et al.* (2019) state: "...the introduction of technologies for generating alternative energy is of an investment nature, so Ukraine needs to encourage internal producers to develop and manufacture biotechnologies to further attract them."

As the analysed experience of using various types of alternative energy in European countries in recent years shows, they are increasing the use of alternative energy sources and completely abandoning the use of conventional energy sources, including CO₂.

The use of renewable energy sources in modern conditions is a particularly urgent scientific

and practical task. The global shortage of conventional energy resources encourages the efficient use of alternative energy sources.

Despite thorough research on this issue and considering modern conditions, regenerative energy is insufficiently examined in the process of use and development on the territory of Ukraine.

The purpose of this study is to review and analyse the international experience of European countries in the use of alternative (renewable) energy and formulate conceptual ways and means of solving global energy problems.

Materials and Methods

The methodological basis of the study is a combination of general scientific methods, primarily, the dialectical method, the method of analysis and the specific-sociological method, and from special legal methods – the comparative-legal one. The use of the comparative legal method allowed comparing national and international legislation in the field of alternative energy sources. Using the dialectical method, trends in the development of regenerative energy in the European Union countries were examined. The method of analysis is used in reviewing papers of researchers according to the study subject and describing international, European, and national legislation in the field of using alternative energy sources. In turn, the specific sociological method is used in the analysis of statistical data of international organisations that assess the development of alternative energy in countries around the world.

The main provisions and results of the study are formulated based on an analysis of the norms of international, and national legislation. In particular, the study used the following provisions: Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997), Law of the Republic of Poland "On Renewable Energy" (2015),

Regulation of the Minister of Economy of the Republic of Poland No. 671 (2014), and national regulatory legal acts, in particular, the law of Ukraine "On Alternative Energy Sources" (2003) with the current version dated January 01, 2023. In addition, statistical data were analysed in this study, such as: International Energy Agency (IEA) data for 2020 (International Energy Agency..., 2020), latest RISE statistics (Regulatory Indicators for Sustainable Energy) for 2021 (World Bank Group, 2022).

Results

Alternative energy sources that can be used: solar, wind, water, and biomass energy. These energy sources are renewable and have unlimited storage potential, unlike conventional ones.

The increase in energy consumption produced from renewable resources accounts for a significant share of the package of measures required to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997). Therefore, the main requirement for resolving the energy crisis is clear coordination of measures and decisions of governments of different countries.

According to the "2020 World Energy Outlook" report (International Energy Agency..., 2020), the main role in helping states achieve climate goals and sustainable development is assigned to renewable hydropower, the services of which will become even more relevant.

The volatility of electricity demand and the rapid increase in solar and wind generation increase the flexibility needs of power systems. Therefore, in the process of increasing these needs, hydropower, due to the ability to provide a large set of system services, ranging from improving the quality of electricity to balancing output and demand, will be of the greatest value to the energy system.

According to the Sustainable Development Scenario of the International Energy Agency, hydroelectric power plants are expected to produce more electricity than thermal power plants by 2030. Accordingly, it is planned to attract almost 850 GW of additional hydropower capacity until 2040, mainly in the Pacific region and Asia (International Energy Agency..., 2020).

In 2021, renewable resources accounted for almost 60% of global electricity production growth. Currently, the share of renewable sources is 25% in the world's energy production. According to RISE data (Fig. 1), Denmark and Germany are leading the way in implementing renewable energy sources in the EU. Thus, in 2021, the share of renewable energy sources in total final energy consumption is 38% and 17%, respectively. Therewith, in the analysed countries in the period 2017-2021, there is a significant increase in alternative energy sources, which is explained by the positive actions of the governments of these countries to encourage the development of alternative energy sources (World Bank Group, 2022).

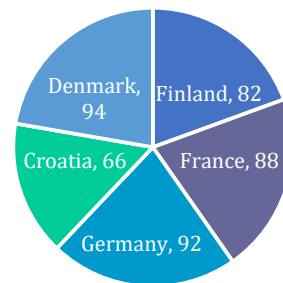


Figure 1. Share of renewable energy sources in EU countries according to RISE estimates as of 2021, %

Source: compiled by the author based on RISE estimates (World Bank Group, 2022)

Denmark has one of the most systematic and long-term energy saving experiences among

all EU countries: 40 years ago, the country was completely dependent on energy imports. Today, it not only provides itself with electricity, but also exports it to neighbouring countries (Dombrovska & Chernikova, 2019).

Denmark earns almost twice as much from exporting energy-efficient technologies as from exporting agricultural products. In the next five years, up to 50%, and by 2025, up to 75% of energy will come from wind energy. Researchers note that it would be possible to fully meet the country's need for wind energy if, for example, somewhere in the north of the country, an area of 1.000 km² of wind turbines was installed (Problems and prospects..., n.d.).

After the Chornobyl nuclear power plant accident, the Danish parliament banned the construction of nuclear power plants, and today 20% of electricity is generated from wind power. According to the International Energy Agency (IEA), European wind farms are already becoming competitive compared to conventional thermal power plants running on coal and heavy oil (International Energy Agency..., 2020).

Denmark's energy policy is being implemented as part of a constantly updated energy programme. Thus, the first programme (1976) was aimed at preventing an energy crisis. In the second programme, special attention was paid to solving socio-economic and environmental problems and reducing dependence on fuel imports. The third programme, Energy 2000, was aimed at expanding the use of environmentally friendly fuels. The fourth programme, Energy 21, aims to increase the share of renewable energy sources in the country to 12-14% by 2005. Denmark currently has an energy strategy until 2025. The programme provides for reducing energy consumption and dependence on petroleum products, in particular in the transport sector, through the

development of efficient technologies and the use of alternative fuels, their development and creating the necessary conditions for their integration into the national energy system by 2035 (National Institute of Strategic Studies, 2010).

Denmark also has a green certificate system. A green certificate is "a document certifying that every MWh of electricity is generated from renewable energy sources." Denmark has a mandatory share of green electricity in total production. Electricity distribution companies accept and pay for it, and consumers are required to buy it in accordance with the established quota. If the electricity supplier does not meet this quota, it must buy green electricity certificates on the market or pay a fine that usually exceeds the cost of the green electricity certificate. In Denmark, certificates are securities that can be bought and sold independently of energy sales. Quota systems and green electricity certificates also apply in countries such as Sweden, Italy, Poland, Romania, the United Kingdom, and Belgium, where quota systems and green electricity certificates have also been introduced (Problems and prospects..., n.d.).

It is also worth considering Germany's experience in using alternative energy. The Act on Granting Priority to Renewable Energy Sources (2000) operates in Germany. Special work was conducted to save energy and improve the energy efficiency of the system. Notably, since 2006, annual investment in renewable energy has increased significantly and now amounts to about 1 billion euros. The German authorities actively attract private capital to take part in new projects, organising and holding competitions for loans to improve energy efficiency and offering tax incentives. Today, Germany produces more electricity from alternative energy sources (wind, solar, and biomass) and less from conventional energy sources (nuclear, natural gas, and petroleum

products). Germany is one of the EU countries where modern energy-saving technologies and alternative energy sources, such as solar and wind energy, are most actively used (National Institute of Strategic Studies, 2010).

In 2020, Germany exceeded its main target of 18% of total final energy consumption, set in accordance with the EU Renewable Energy Directive, by 19.3 %; in 2021, according to the RED (Renewable Energy Directive) calculation specifications, it increased slightly and amounted to 19.7% of total final energy consumption (Working Group on Renewable Energy-Statistics, 2022).

In Germany, wind power industry is one of the largest in the world and a leader in technological development. As a result, a total of 28,230 ground-based turbines with a total capacity of 56 GW were operating nationwide in 2021. Germany's new goal is to increase capacity by 10 GW per year by 2025 and achieve a total installed capacity of 115 GW by 2030 (Official Website of the Federal..., n.d.).

Despite the smallest amount of sunlight, the country is one of the world leaders in solar energy production. According to the International Renewable Energy Agency (IRENA), by 2020, it ranked fifth in the world for the first time in several years. This gives grounds to argue that other countries are creating systems for the proper use of alternative resources in the industrial use of green energy (Wehrmann, 2019). Civil society is actively involved in the development of renewable energy in the country, in particular through the creation of energy cooperatives (Shpykuliak & Ivanchenko, 2018). This contributes to the decentralisation of the industry and, in particular, helps to fight monopolists in this area.

Notably, in 2021 Germany added approximately 5.3 MW of solar photovoltaic capacity, up 10% from 2020. Now an increase in the number of installations in the industrial sector can be

expected, which is due to the country's desire to increase its energy independence after the Russian invasion of Ukraine (Wehrmann, 2022).

The new German government has promised that by 2030, renewable energy sources such as wind and solar will account for between 42% and 80% of electricity production; by 2035, it has stated that electricity production will be carbon-neutral (Rooks, 2022).

The country's bioenergy sector, which accounts for the largest share of renewable energy sources, should also be considered. Ultimately, when using biomass for energy production, no more carbon dioxide is released than was absorbed by plants. In addition, bioenergy is a source of added value for agriculture, forestry, and rural areas in general (Federal Ministry for Economic Affairs and Climate Action, n.d.). However, bioenergy is obtained not only from renewable raw materials but also from biogenic residues and waste: in 2021, biomass with a share of 52% still dominates wind (almost 28%), solar (photovoltaic and solar, thermal) (12%), hydroelectric (4%), and geothermal (4%) energy and continues to make the largest contribution to the production of renewable energy (Electricity imports to France..., 2020).

The expansion of biomass power plants over several years has mainly contributed to increased flexibility in electricity generation. This so-called excess capacity has hardly led to an increase in annual electricity production in recent years, but it has allowed for more flexible supply of alternative energy when needed (United Nation Department of Economic and Social Affairs, n.d.).

The Republic of Poland, which is a neighbouring European country, deserves attention. This country attaches great importance to the use of alternative energy sources. At the level of the European Union until 2020, Poland was supposed to reach 15% of the market share of final

consumption of electricity produced from alternative energy sources (European Environment Agency, 2023). According to published calculations, this share was already 15.624% in 2021 and tends to grow as of 2023. An important role is played by stimulating electricity producers from alternative energy sources, which is characterised by a successful combination of economic and regulatory mechanisms (Eurostat, 2023).

The legal basis for stimulating the use of alternative energy sources in the Republic of Poland is mainly the Law of the Republic of Poland "On Renewable Energy" (2015) and other laws and regulations. According to the law, producers of electricity from alternative energy sources can choose a method of incentive measures based either on the green certificate system or on the auction system.

Until 2016, the main method of stimulating the use of alternative energy sources was the green certificate system combined with the quota system. The green certificate market was opened to ensure the free circulation of green certificates and the possibility of their purchase and sale to achieve quotas for the mandatory use of alternative energy: by the Regulation of the Minister of Economy on May 5, 2014 (Regulation of the Minister of Economy of the Republic of Poland No. 671..., 2014) annual quotas were set until 2021.

In the future, producers of electricity from alternative energy sources who put their facilities into operation before 2016 can either continue to use the green certificate system or switch to the auction system – a new innovation in Polish legislation. Currently, the auction system is the main way to encourage the use of alternative energy sources in the Republic of Poland.

Auctions are held at least once a year. During auctions, producers of electricity from alternative energy sources who are eligible for incentives can choose: 1) contracts for the supply of electricity

with a "buyer's guarantee" at the price agreed during the auction; 2) the right to sell the factual electricity produced at the price agreed at the auction and receive compensation for the difference between the expected revenue and the market price of the same electricity (calculated based on the average daily price of electricity on the commodity exchange for the previous one to two days) (Regulation of the Minister of Economy of the Republic of Poland No. 671..., 2014).

According to the Polish legislature's decision to encourage foreign electricity producers from alternative sources, the auction system can also be applied to alternative energy facilities located abroad, if several conditions are met (preliminary signing of an intergovernmental agreement between the Republic of Poland and the country where the alternative energy facility is located, which provides for mutual access to incentives for producers located in both countries) (Paragraph 8 of Decree No. 73). Therewith, the maximum amount of electricity produced abroad and purchased at Polish auctions should not exceed the threshold determined in accordance with the decision of the Cabinet of Ministers, and in no case should the threshold exceed 5% (Law of the Republic of Poland No. 478..., 2015).

Many EU countries have created alternative energy development programmes aimed at making this type of energy affordable for both industrial enterprises and households to further increase the production and consumption of alternative energy. Notably, this positive experience of using renewable energy sources can also be applied on the territory of Ukraine, namely: one of the incentive measures is special tariffs for electricity from renewable energy sources, that is, green tariffs, but here it should be noted that green tariffs in Ukraine in the pre-war period were among the highest in the world, and the

legal conditions for investment and production of green energy were very competitive compared to other European countries (Hritsyshyna, 2020; Topalov, 2023). In the European countries under consideration, an important guarantee for investment in green energy is the Power Purchase Agreement (PPA), which is understood as a special long-term electricity purchase and sale agreement that sets the conditions for future energy supply (quantity, price, obligations, etc.). The advantage of this scheme is that the project can be secured by contractual relations with future buyers already at an early stage of the investment project, that is, before the actual completion of the power plant construction. In turn, for the investor, this is a guarantee that his product will be purchased. Therefore, this experience can be used on the territory of Ukraine to improve the situation using alternative energy sources and to ensure guarantees for sellers of relevant energy sources.

Discussion

The world is facing the problem of global climate change, which has negative consequences for life on our planet. That is why researchers are showing great interest in the use of green energy. They investigate the impact of energy derived from renewable sources on the socio-economic development of Ukraine and international security in the context of dependence on conventional methods of energy production. V. Kovalskyy (2019) notes that Ukraine should make more active use of biofuels, in addition, there should be opportunities for the regeneration of spent fuel and lubricants.

However, it is necessary to make some adjustments, for more active use of biofuels in the country, it is necessary to update the legislative framework: by creating a regulatory act that will describe the stages of creating plants and regulate their activities.

As for the opinion of foreign researchers who have examined this problem, for example, A.S. Flaksman *et al.* (2021) note, that the global trend of energy development, which was formed under the influence of changes in energy policy, the development of new technologies and the transition to an industrial revolution, leads to the rapid development of alternative energy sources, which in the future will provide almost half of the world's electricity production.

This means the emergence of structural shifts in the fuel balance, namely fossil fuel gas. Therefore, the share of coal will decrease, and the share of using hydrogen and biofuels will increase.

It can be agreed with the arguments of these researchers, but when using this experience, it is necessary to consider the high cost of the latest technologies, which can slow down the fast implementation.

Another study worth paying attention to was conducted Z. Ahmed *et al.* (2022). In the study, the developed countries that are also experiencing difficulties associated with climate change, mainly due to the inability to limit greenhouse gas emissions into the atmosphere, are examined. To reduce emissions, especially carbon dioxide, it is important to increase the share of green energy in total energy supplies. Accordingly, public sector investment in the renewable energy sector is expected to play a vital role in specifically improving the technological level needed to significantly increase the production and supply of green energy.

It is worth noting that the paper of these researchers characterised the problematic areas of activity of some countries in the use of green energy and the possibility of preventing the occurrence of negative consequences.

As noted by J. Brodny & M. Tutak (2020), renewable energy sources should replace conventional energy sources as soon as possible, which

is particularly relevant for the heating and cooling sector and the transport sector. Ultimately, these sectors are most dependent on conventional energy sources (coal, oil, and gas). The integration of these sectors, especially the heating and cooling sectors and the electric power industry should take place in two ways: electrification and technological innovation. The implementation of these solutions requires the development of a comprehensive energy policy by states based on both know-how and technological innovation.

The opinion of the authors can be agreed with, but it is important to note that not all countries can use all types of renewable energy sources in their territories, it is necessary to consider the natural conditions of the country for the comprehensive development of alternative energy.

Conclusions

After analysing the experience of EU countries in using alternative energy sources, it can be concluded that renewable energy sources cannot yet compete on an equal footing with conventional energy sources. Therefore, their development should be supported and regulated by various methods at the national level.

In European countries, models of state support for the use of alternative energy are different, mostly based on the use of subsidies for relevant projects and tariff policies (German system). This study examines in more detail Denmark, Germany, and the Republic of Poland, which, according to RISE, are the leading EU countries for the introduction of renewable energy sources. Each country has different approaches and methods for using alternative energy sources. As for Denmark, it is worth noting the quota of green electricity as a percentage of total production and the fact that certificates, which are securities that can be bought and sold independently of energy sales,

are mandatory. The German authorities actively attract private capital to new projects in various ways and means, for example, by organising and holding competitions for energy efficiency loans and offering tax incentives. A characteristic feature of the legislation of the Republic Of Poland in this area is an introduction of incentives for electricity producers from alternative energy sources in foreign countries, subject to the conclusion of intergovernmental agreements with the foreign country where the producer is located, and the amount of energy purchased. These countries are actively promoting the use of all types of alternative energy (biogas, solar, hydro, wind, and thermal energy), mainly because of the challenges facing the EU community in general.

The scientific originality of the study is a comprehensive examination of the experience of European countries in the use of alternative energy sources, borrowing effective measures that the Ukrainian state can take for the active development and use of regenerative energy. Therefore, it is advisable to consider the experience of the EU countries, namely: encourage the application of the contract for the purchase and sale of renewable electricity on the territory of Ukraine to provide a guarantee to investors in the purchased product, thereby attracting new investors to Ukraine; actively attract private capital for the development of alternative energy in Ukraine, creating appropriate conditions; involvement of citizens in the development of the renewable energy sector, a common form of which is the creation of energy cooperatives in Germany (the need for state support for small producers of electricity from renewable sources). Thus, this experience of European countries, including flexible legal structures regulating energy cooperation, is suitable for application in Ukrainian legislation.

The experience of these countries should be considered when determining the most appropriate legal mechanism for creating a national model to support development and encourage the use of alternative energy sources. That is why the perspective of the study should be comparative studies of Ukrainian legislation in the field of green energy and relevant legislation of leading countries in this area to implement positive experience in the development and support of wind, solar, hydro, and bioelectric power plants in Ukraine. There is also a need for studies that,

considering the losses and difficulties associated with military operations on the territory of the country, will offer effective measures of national policy in the conditions of war and for the post-war settlement of the situation in the field of alternative energy.

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Conflict of Interest

There is no conflict of interest in this study.

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Міжнародний досвід використання альтернативних джерел енергії (у межах держав Європейського Союзу)

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Анотація

Актуальність обраної теми зумовлено проблемою нестачі традиційних енергетичних ресурсів у світовому та українському енергетичному секторі. Цю проблему викликало поєднання зовнішніх чинників (застарілі технології, відсутність запасів нафти, вугілля і газу) і внутрішніх чинників, як-от військова агресія Росії проти України, а також її маніпулятивна політика щодо інших країн, що спонукає Європейське співтовариство шукати інші варіанти гарантування енергетичної безпеки. Це надало нові актуальності питанню активізації розвитку альтернативної енергетики. Мета дослідження – вивчити міжнародний досвід використання альтернативної (відновлюваної) енергії та сформулювати концептуальні

методи й підходи до вирішення глобальних енергетичних проблем. У роботі застосовано поєднання загальнонаукових методів, насамперед діалектичного, аналітичного та конкретно-соціологічного, а зі спеціально-юридичних методів – порівняльно-правового. Результати наукового дослідження свідчать про те, що використання альтернативних джерел енергії в країнах Європейського Союзу розвиватиметься і надалі. На основі даних Regulatory Indicators for Sustainable Energy підтверджено, що наразі Данія, Німеччина та Республіка Польща – лідери з використання відновлювальних джерел енергії в країнах ЄС. Проаналізовано успішний досвід цих країн у використанні відновлюваних джерел енергії. Зроблено висновок про наявність динаміки в розвитку альтернативних джерел енергії в європейських країнах, однак, для того щоб альтернативні джерела енергії повною мірою конкурували з традиційними джерелами енергії, необхідно підтримувати та регулювати стимули для збільшення використання відновлюваних джерел енергії на національному рівні. Практична цінність дослідження полягає в тому, що його результати можуть слугувати рекомендаціями для збільшення частки альтернативних джерел енергії в Україні

Ключові слова: енергетика; відновлювальні ресурси; зелена енергетика; енергетична система; енергетична криза; сонячні, вітрові, гідро- та біоелектростанції; країни Європи



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The role of collective-contractual regulation in ensuring the right of agricultural workers to a safe and healthy working environment

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Abstract

The relevance of the study is determined by the need to investigate changes at the international standards level: the inclusion of the right to a safe and healthy working environment in the fundamental principles and rights at work worldwide. This also caused the need for appropriate adjustments to the national legal framework. The second factor of relevance of the study is the novelties of national legislation on collective and contractual regulation of labour and related relations. Analysis of the impact of such changes on the settlement in collective contracts and agreements of the issue of a safe and healthy working environment for people engaged in agriculture, identification of problematic aspects and development of proposals for their overcoming define the purpose of the study. The achievement of this goal was facilitated by the use of a set of methods of scientific knowledge: philosophical (dialectical), general scientific (analysis, synthesis), and special scientific (formal-legal, comparative-legal). As a result of the study conducted, compliance with international standards of changes implemented in Ukrainian legislation regarding the conclusion of collective contracts and agreements was determined. It is proposed to extend the scope of collective agreements to all

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those who work in agriculture, including members of farms and agricultural cooperatives, to guarantee a safe and healthy working environment and to the work of the most vulnerable categories of workers (women, minors, persons with disabilities). The need to replace the term “labour protection” in Ukrainian legislation with “safety and health of employees at work” is justified since it is more consistent with the object of protection and correlates with international terminology. It is established that the norms of the current industry agreement do not correspond to the needs of the present. It is recommended that the development of the new document reflect in more detail the specific features of measures for the safety and health of employees at work, due to the specific features of production processes in agriculture and the realities of war and post-war times. The results obtained fill the gap in scientific research of the relevant issues, are valuable from the standpoint of the opportunity to apply them in the further reform of legislation on the field of collective-contractual regulation in agriculture, and will also be useful for the preparation of collective agreements of agricultural entities

Keywords: safe working conditions; collective agreement; labour protection; legal regulation; agricultural production; farming

Introduction

Having proclaimed in Article 3 of the Constitution of Ukraine (1996) as the highest social values of a person, human life and health, and their safety, the state has committed itself to assert and ensure the relevant rights and freedoms. This, according to the mentioned norm of the Basic Law, is recognised as the main duty of the state. Another constitutional norm – Part 3 of Article 43, establishes for everyone the right to proper, safe, and healthy working conditions, or the right to labour protection. Based on the above, it is the right of every person in Ukraine, which is realised primarily in relations using human labour and should be guaranteed to all employees at the proper level. Regardless of the form of ownership of the subject where the person works, their industry affiliation, type/area of activity. Work in agriculture is no exception. Previously, attention was focused on the specific features of agricultural activities in the context of ensuring labour protection (Novak, 2022).

However, the need for further research in the area of identifying problematic issues in the

field of ensuring the rights of agricultural workers to proper, safe, and healthy working conditions and formulating ways to solve them does not lose relevance and is due to the following. There were several substantial events at the International and state levels from the standpoint of legal regulation of labour protection. The first is the decision of the International Labour Conference to amend § 2 of the International Labour Organisation Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), namely, supplementing the fundamental principles and rights at work worldwide with the right to a “safe and healthy working environment”. The second is the renewal of the current legislation on collective agreements: by the Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine Regarding Strengthening the Protection of Workers’ Rights” (2022), among a number of innovations, the scope of concluding collective agreements was expanded to include employers who are individual entrepreneurs. Namely, the

family farms fall under this category. The third is the formation of promising legislation on collective contracts and agreements: on 23.02.2023, the Law of Ukraine "On Collective Contracts and Agreements" (2023) was adopted, which will enter into force after a six-month period from the date of termination or cancellation of martial law in Ukraine, which introduces new approaches to collective-contractual regulation of labour relations, including relations on labour protection. Finally, the fourth event is a legislative initiative to reform the basic principles of legal regulation of labour protection: The Directorate of Labour Development and conditions of Remuneration of the Ministry of Economy of Ukraine presented the Draft Law of Ukraine "On the Safety and Health of Employees at Work" (2022).

The necessity and timeliness of the study are also due to the situation in the field of scientific developments on the problems of collective-contractual regulation of labour protection in agriculture. Without delving into the retrospective of research on this issue, it should be noted that there have been virtually no findings by Ukrainian researchers over the past 3-5 years. Substantial work in the area of investigation of modern problems of collective-contractual regulation of labour relations is conducted by H. Chanyшева. Among the latest are her papers, which thoroughly analyse the above-mentioned Law of Ukraine "On Collective Contracts and Agreements" (Chanyшева, 2023), highlights the specific features of the conclusion and operation of collective contracts and agreements in Ukraine under martial law (Chanyшева, 2022). Compliance of the legislation of Ukraine with international standards in terms of concluding collective agreements and conducting collective negotiations was the subject of the study by I. Dashutin *et al.* (2022). Ye. Lanchenko (2018) devoted his

study to collective and contractual regulation of labour relations in the agricultural sector in the context of rural development. Foreign researchers also focus on the general problems of the outlined subjects. Here, it is necessary to note the following papers: L. Ben and A. Sag (2021) on "non-union collective agreements", in which the authors explore the possibility of entering into collective agreements without the involvement of unions and the feasibility of appropriate reform of Australian law; L. Lurie (2020) on collective agreements and benefits in terms of occupational health and safety in Israel; X. Xinpeng *et al.* (2023) on the relationship between occupational health, entrepreneurship innovation, and sustainable development in China. However, these are only isolated studies that do not reflect the features inherent in the collective-contractual regulation of labour protection in agriculture in Ukraine, considering the dynamics of changes in the legal field.

The purpose of this study is to fill in the gap in scientific research on the impact of legislative innovations on collective contracts and agreements in the agricultural sector, and the need to ensure the implementation of the right of agricultural workers to a safe and healthy working environment with the formulation of new conclusions and proposals for legal science. Achieving this goal will be implemented through the solution of the following main tasks: determining the scope of collective contracts and agreements in agriculture; investigating international legislation in the field of collective and contractual regulation of labour protection in agriculture and the state of its accounting in Ukrainian regulatory legal acts; analysing the content of existing collective contracts and agreements in terms of labour protection with the definition of the main problems and developing recommendations for their solution.

Materials and Methods

The solution of the tasks set and the achievement of a certain goal became possible through the use of a number of methods of scientific knowledge. The methodological basis of the study was the philosophical (dialectical) method, a group of general scientific methods – logical, analysis, and synthesis, and special scientific (formal-legal and comparative-legal) methods. The dialectical method was used to clarify the state and role of collective-contractual regulation of relations in the field of ensuring a safe and healthy working environment. The analysis method was used throughout the study. In particular, doctrinal approaches to collective-contractual regulation of relations in the field of ensuring a safe and healthy working environment in agriculture were analysed. The same method allowed identifying shortcomings in the relevant regulatory acts. Using the synthesis method, the general state of regulatory support for collective-contractual regulation of the examined relations was evaluated. The determination of trends in the legal provision of the right to a safe and healthy working environment for agricultural workers was conducted using the comparative legal method of scientific knowledge. The formal legal method was used to clarify the content of the requirements of regulatory acts regulating collective and contractual regulation of labour relations, in particular, relations on the safety and health of agricultural workers.

The normative basis of the study was formed by acts of Ukrainian and international legislation. Primarily, the acts of the International Labour Organisation: Convention No. 155 on Occupational Safety and Health (1981), Convention No. 187 on Promotional Framework for Occupational Safety and Health (2006), Convention No. 98 on Right to Organise and Collective Bargaining (1949), Convention No. 154 on Collective Bargaining (1981),

Convention No. 184 on Safety and Health in Agriculture (2001), Recommendation No. 164 on Occupational Safety and Health and Industrial Environment (1981), Recommendation No. 197 on Promotional Framework for Occupational Safety and Health (2006), Recommendation No. 192 on Safety and Health in Agriculture (2001). The versatility and complexity of the study problem led to the use of regulations of various industry affiliations. Firstly labour legislation: Labour Code of Ukraine (1971), Laws of Ukraine “On Collective Contracts and Agreements” (1993), and “On Labour Protection” (1992). The specific features of relations on the use of labour of individuals in agriculture were identified through the norms of the Law of Ukraine “On Farming” (2003) and the Law of Ukraine “On Agricultural Cooperation” (2020). Comprehensive and objective investigation is also provided through the analysis of promising legislation: the Law of Ukraine “On Collective Contracts and Agreements” (2023) and the Draft Law of Ukraine “On the Safety and Health of Employees at Work” (2022). When determining the state of the conclusion of collective agreements in agriculture, the author analysed statistical data published on the official website of the State Statistics Service of Ukraine (2022a; 2022b).

Results and Discussion

It is worth starting with an analysis of the role of collective contracts and agreements to guarantee the right to a safe and healthy working environment for agricultural workers defined at the level of international legal regulation. There are several conditional levels of international regulations regulating this issue.

The first is the general or fundamental level. This is, first of all, the Convention of the International Labour Organisation No. 155 on

Occupational Safety and Health (1981), ratified by Ukraine on 02.11.2011 and Recommendation of the International Labour Organisation No. 164 on Occupational Safety and Health and Industrial Environment (1981), Convention of the International Labour Organisation No. 187 on Promotional Framework for Occupational Safety and Health (2006), and Recommendation of the International Labour Organisation No. 197 on Promotional Framework for Occupational Safety and Health (2006). These acts lay the foundations and are a kind of guidelines for the implementation of measures to create a safe and healthy working environment. The above-mentioned conventions and recommendations apply to all areas of economic activity, and their provisions should be considered by all members of the International Labour Organisation (ILO), regardless of ratification of the conventions. From the content of Conventions of the ILO No. 155 (1981) and No. 187 (2006), experts formulate general principles for creating a safe and healthy work environment. The first principle is a systematic approach to managing a safe and healthy work environment. It is implemented through a coordinated national policy in this area. Moreover, this policy covers not only the national level, but also the level of the enterprise. The second one defines the principle of preventing accidents and causing harm to the health of employees. This is a globally recognised trend of preventing the negative consequences of exposure to harmful and dangerous industrial factors on a person in the process of work instead of inefficiently responding to accidents that have already occurred and eliminating their consequences. Finally, the third principle of creating a safe and healthy work environment is the principle of involvement of employers and employees. It is objectified through the provisions of Conventions of the ILO No. 155 (1981) and No. 187 (2006) on the need for consultation

and cooperation between these actors in the decision-making process (International Labour Organisation, 2022). Such cooperation is possible within the framework of collective-contractual regulation, in particular, in the process of collective negotiations. The right to collective bargaining at a fundamental level is defined by the Conventions of the ILO No. 98 on Right to Organise and Collective Bargaining (1949) and No. 154 on Collective Bargaining (1981). The right to collective bargaining, the right to safe and healthy working conditions, the right to conclude collective agreements, and the right to take part in determining and improving working conditions and the studying environment are also enshrined at the level of the European Social Charter (revised) (1996). These rights are granted to workers without restrictions in the field of economic activity in which they exercise their ability to work.

Regarding the second conditional level of international regulations defining the role of collective contracts and agreements in ensuring the right to a safe and healthy working environment for agricultural workers, then it is advisable to include special regulations specifically for the agricultural sector. First of all, it is the Convention of the ILO No. 184 on Safety and Health in Agriculture (2001), which is the basis for the exercise of the right to a safe and healthy working environment in agricultural activities. Analysis of the content of this document shows a substantial role of collective agreements in achieving the goals set. At the level of a collective agreement, according to Article 8 of the Convention of the ILO No. 184, the procedure for the use and implementation of the rights of agricultural workers may be established, among which the same norm defines the rights to: inform and advise on issues related to occupational safety and health; take part in the implementation and revision of measures on

occupational safety and health through the election of representatives from among their number to the committees on occupational safety and health; cooperate with employers in the performance of the latter's duties on the organisation of occupational safety and health. It is advisable to include the Recommendation of the ILO No. 192 on Safety and Health in Agriculture (2001) to the same level. Moreover, this document covers the provisions of the Convention of the ILO No. 184 (2001), contains a very important indication from the standpoint of the specific features of relations on the use of labour in agriculture. 12 Recommendation of the ILO No. 192 obliges ILO member countries to take measures to gradually extend the provisions of Convention No. 184 on self-employed farmers. That is, not only to be limited to employees of agricultural enterprises but also to cover working members of the farms. This study will discuss the relevant position of national legislation below. Article 12 of the Recommendation of the ILO No. 192 (2001) provides for considering the opinion of representative organisations of self-employed farmers in the formation, implementation, and revision of state policies in the field of occupational safety and health in agriculture. It is necessary to consider the fact that according to Article 3 of the Convention of the ILO No. 141 on Rural Workers' Organisations (1975), all categories of rural workers (both those who are employees, that is, work under an employment contract, and those who work at their own expense) have the right to create organisations and join existing organisations that represent the interests of such rural workers. For Ukraine, this thesis is very important in the context of the subject composition of collective agreements (which will be discussed later in the paper). Thus, at the international level, collective agreements play a substantial role in ensuring the practical

implementation of the right to a safe and healthy working environment for agricultural workers.

Turning to the national level of legal regulation of the issue under study, it is first necessary to analyse the basic requirements for concluding collective agreements in the field of agriculture and their scope. Now, according to Article 2 Law of Ukraine "On Collective Contracts and Agreements" (1993), a collective agreement is concluded at enterprises, institutions, organisations (i.e. legal entities), and with employers who are individuals. Moreover, it does not matter whether or not such an individual has the status of a business entity. The possibility of collective bargaining with individual employers is a relatively new phenomenon for Ukraine, which was introduced by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Regarding Strengthening the Protection of Workers' Rights" (2022). Such a step, from the standpoint of collective agreements covering agricultural workers, is correct based on the following. The agricultural sector is characterised by the presence of a substantial number of individual entrepreneurs. According to the latest available statistics (State Statistics Service of Ukraine, 2022b), the number of these entities (as of 2021) was 18,890 out of the total number of business entities in agriculture – 57,374. That is, more than a third. Their inclusion in the subjects of collective-contractual regulation of relations on the employment of employed persons certainly strengthens the protection of the rights of those working in agriculture. Nevertheless, scientific circles express the opinion that it is necessary to normalise the minimum number of employees working for an individual entrepreneur as a condition for the mandatory conclusion of a collective agreement. In Particular, H. Chanysheva (2022) believes that it would be correct to establish at the level of the Law of

Ukraine “On Collective Contracts and Agreements” such a minimum “threshold” for employers – individuals who are not entrepreneurs – at least 3-5 employees, for employers of individuals registered as business entities – at least 10-15 people. Therewith, the researcher does not give arguments about such indicators. Therefore, this position is debatable, especially in relation to the agricultural sector. The fact is that, according to

statistics, in the structure of business entities for this type of economic activity, the dominant place is occupied by business entities with the number of employees up to 9 people, both in general and among individual entrepreneurs. Figure 1 shows the percentage ratio of the number of operating business entities in agriculture with a distribution by the number of employed employees as of 2021 (these are the latest open data).

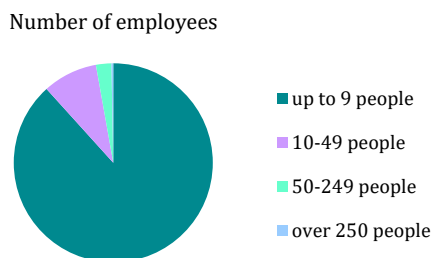


Figure 1. The ratio of the number of operating business entities in agriculture with the distribution by the number of employed employees as of 2021, %

Source: the histogram is based on the latest published official data of the State Statistics Service of Ukraine (2022b)

Among the above number of individuals, entrepreneurs who employ up to 9 people make up 99.3%; from 10 to 49 people – 0.7%. As of 2021, there were no individuals with the status of a business entity that employed more than 50 employees at all. Therefore, the establishment of a minimum number of employees, even up to 10 people, will automatically remove the vast majority of business entities in the field of agriculture from the scope of collective-contractual regulation. This, according to the author of the article, is negative, does not meet the above standards of international legal regulation and worsens the situation of persons employed in the agricultural sector. Promising legislation – The Law of Ukraine “On Collective Contracts and Agreements” (2023) also does not contain any minimum restrictions on the possibility of entering into a collective

agreement with both a legal entity and an individual employer, which is the right thing to do.

However, even in the current state of affairs, collective agreements do not cover all employees of the agricultural sector. Not the least role in this is played by the fact that the current legislation provides for dispositivity in the issue of the existence of a collective agreement – the parties decide at their own discretion whether a collective agreement is needed or not (Smoliarova & Bodziak, 2020). According to the State Statistics Service of Ukraine, as of December 31, 2021, agriculture ranked fifth in terms of the number of collective agreements concluded and registered (Fig. 2).

In terms of the number of employees covered by collective agreements, the agricultural sector is in seventh place (Fig. 3).

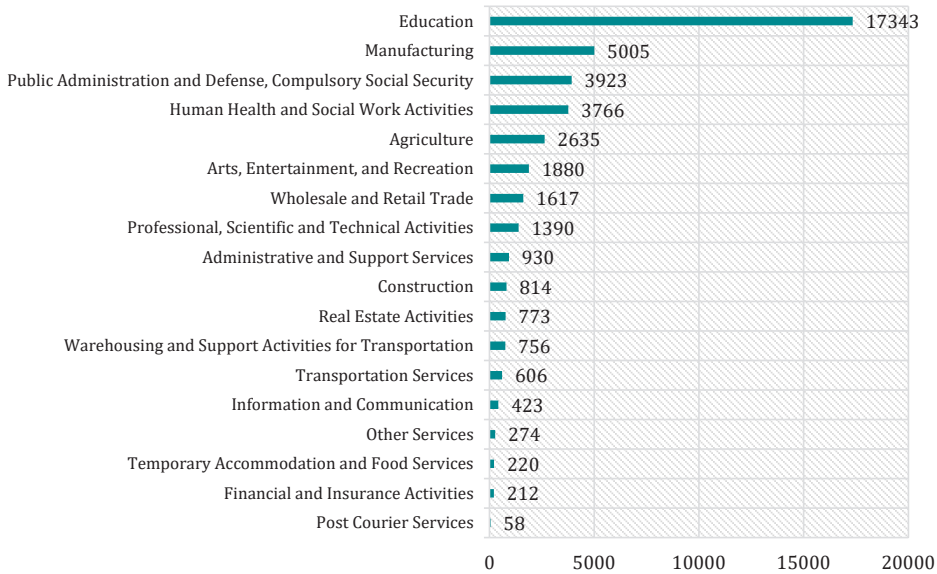


Figure 2. Number of collective agreements concluded and registered by type of economic activity, units

Source: the histogram is based on the latest published official data of the State Statistics Service of Ukraine (2022a)

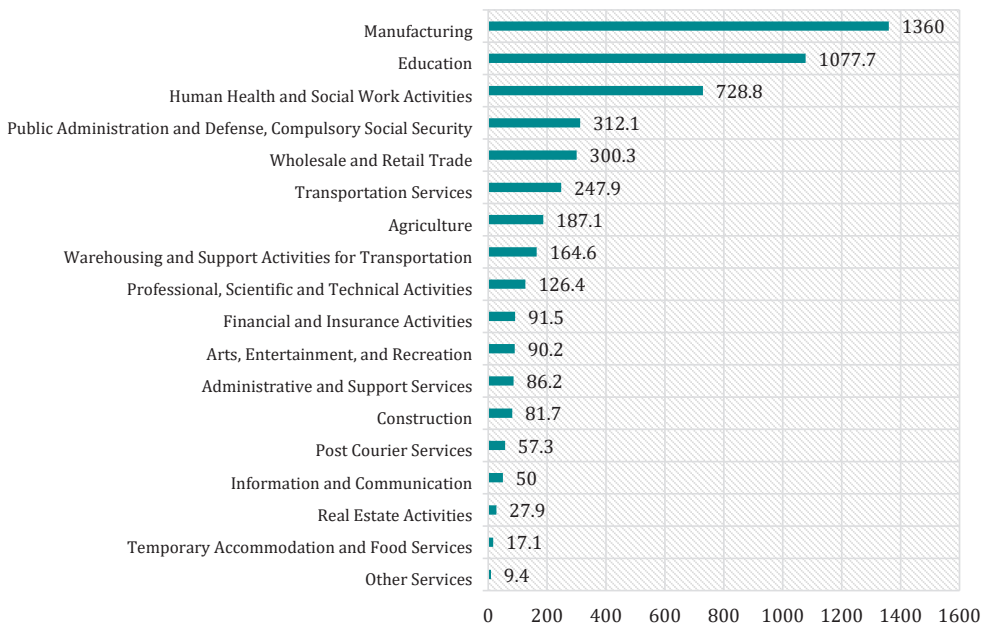


Figure 3. Number of employees covered by collective agreements, thousand people

Source: the histogram is based on the latest published official data of the State Statistics Service of Ukraine (2022a)

Analysing the number of employees covered by collective agreements as a percentage of the accounting number of full-time

employees, which is the most illustrative indicator, in agriculture this indicator is only 58.4% (Fig. 4).

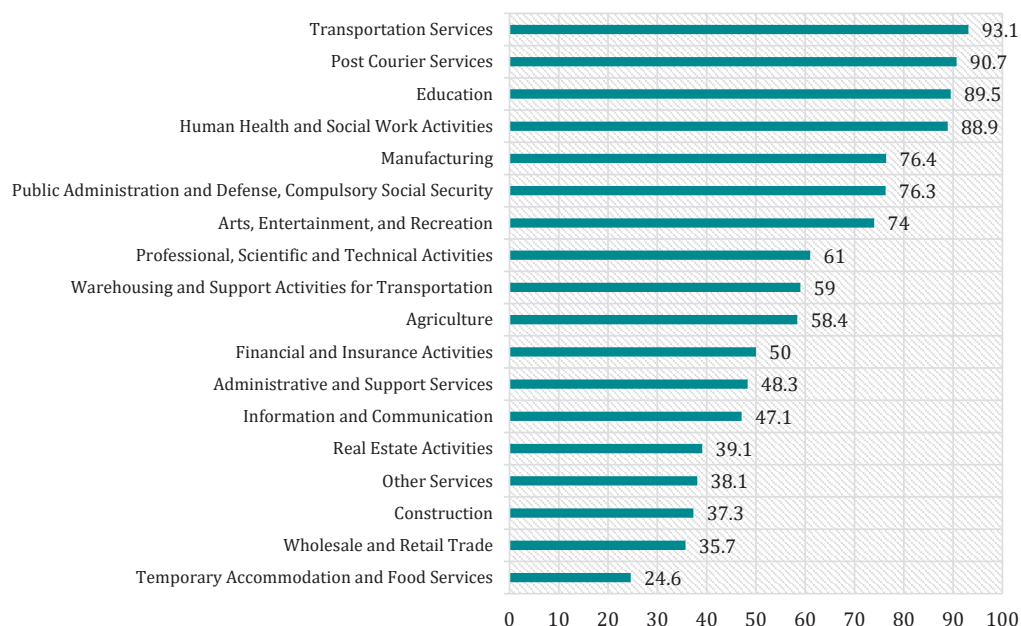


Figure 4. Number of employees covered by collective agreements as a percentage of the registered number of full-time employees, %

Source: the histogram is based on the latest published official data of the State Statistics Service of Ukraine (2022a)

In other words, almost half of agricultural workers are not yet subject to collective agreement regulation and are deprived of the guarantees provided by the collective agreement, in particular, regarding a safe and healthy working environment. This is a rather unfavourable situation for employees, especially now, under martial law, when guaranteeing their rights is difficult. The Law of Ukraine "On the Organisation of Labour Relations under Martial Law" (2022) granted employers the right to initiate the suspension of certain provisions of the collective agreement. However, based on the systematic interpretation

of the mentioned normative act, experts say that the provisions of the collective agreement that can be suspended by the employer include provisions on termination of the employment contract; working hours and rest time; working at night; features of work of certain categories of employees; remuneration; guarantees of remuneration; guarantees of the activities of trade unions (Yatsyshyn, 2022). Regulations on the safety and health of employees at work are not included in this list.

The next important aspect of increasing the role of collective-contractual regulation of

relations in the field of a safe and healthy working environment for agricultural workers is the scope of collective agreements. According to Article 9 of the current Law of Ukraine "On Collective Contracts and Agreements" (1993), the collective agreement applies to all employees and employers. Therefore, the membership of such employees in the trade union does not matter. Upon entry into force of the Law of Ukraine "On Collective Contracts and Agreements" (2023), the scope of the collective agreement will undergo changes. According to Part 4 of Article 5 of this normative act, only those provisions of the collective agreement that are such by virtue of legal requirements or for the parties to collective agreements will be binding both for employees who are members of a trade union and for those who are not its members. The conditions for extending other provisions of the collective agreement to certain employees can be set out in the collective agreements themselves. This provision carries substantial risks, as it requires a very careful and balanced approach to the formulation of the content of collective agreements to avoid abuse by employers and deterioration of the situation of employees.

The agricultural sector is characterised by the presence of specific entities (farms and agricultural cooperatives), which use, in addition to hired labour (based on an employment contract), also the work of their members. Regarding the legal registration of relations on the employment of members of agricultural cooperatives, according to Part 2 of Article 26 of the Law of Ukraine "On Agricultural Cooperation" (2020), this can be the conclusion of an employment contract, the execution of a civil contract, or the registration of the use of labour on another basis (it is not mentioned what kind of basis it is in the law). As for the most optimal way to legally consolidate the implementation by members of an agricultural

cooperative of their labour involvement in its activities, the expediency of concluding an employment contract has already been justified earlier (Novak & Melnyk, 2020). As for the members of farms, the Law of Ukraine "On Farming" (2003) clearly distinguishes between employees of the farm with whom an employment contract (contract) is concluded and members of the farm whose work is regulated by the charter of the farm. Despite the existence in scientific circles of a separate opinion on the need to unify the legal regulation of relations on the employment of members of farms with the full extension of labour legislation to them and the conclusion of employment contracts with these persons (Veryomenko, 2017). In contrast to this judgment, the position of L. Velychko (2018) regarding the impossibility of combining membership and employment relations can be presented, primarily because of their different object.

It follows from the above that if a collective agreement is concluded, employees of these agricultural business entities are subject to it on a general basis. As for working members – not employees, it is worth noting the following. According to Part 2 of Article 3 of the Labour Code of Ukraine (1971), the specific features of the study of members of farms and cooperatives should be regulated by special legislation and charters of such entities. However, labour protection guarantees should be provided to these categories of employees in accordance with the procedure established by labour legislation. According to Article 13 of the Labour Code of Ukraine (1971) and Article 7 of the Law of Ukraine "On Collective Contracts and Agreements" (1993), regulation of labour conditions and protection is one of the mandatory components of the content of a collective agreement. In Article 20 of the Law of Ukraine "On Labour Protection" (1992), a direct

indication is present that the parties to the collective agreement provide for social guarantees for employees in the field of labour protection. The study fully supports the thesis by N. Kviat and O. Tkachuk (2023) that through the implementation of the requirements of the collective agreement, the business entity forms conditions that contribute to increasing the level of protection of employees' rights, and a balance of interests of the parties to labour relations is achieved. Thus, considering the expansion of the scope of labour legislation in terms of labour protection guarantees for members of farms and cooperatives, it can be concluded that it is necessary to extend the relevant provisions of collective agreements to these categories of employees. For regulatory consolidation of such a step, it is proposed to supplement Part 1 of Article 9 of the Law of Ukraine "On Collective Contracts and Agreements" (1993) and Part 4 of Article 5 of the Law of Ukraine "On Collective Contracts and Agreements" (2023) with the following sentences: "guarantees established by collective agreements on the safety and health of employees at work, the work of underage employees and women, persons with disabilities apply to all employees, regardless of the grounds for their work". It is also advisable to support the position of O. Melnychuk (2019) regarding the need to preserve the provision of labour protection guarantees for members of cooperatives, their associations, and members of farms in accordance with the procedure defined by labour legislation when developing the content of a promising codified regulatory act on regulating labour relations to replace the current Labour Code.

The settlement of the issue of the specific features of the safety and health of persons employed in agriculture at the level of collective agreements, considering the basic norms of legal

acts on labour protection, is a combination of centralised and local legal regulations. This approach is evaluated positively by researchers (Lysiak, 2018), as one that allows filling the gap in the legal regulation of labour relations of members of agricultural enterprises and considering the specific features of the activities of a particular business entity as much as possible. At the local level of collective-contractual regulation of relations on the use of labour, the obligations of the employer and employee regarding working conditions are recorded (Yakovlev, 2019). The local level of settlement of issues of safety and health of employees at work is progressive based on the specific features of the legal nature, the procedure for creating, filling with meaningful content and implementation of collective agreements, and their social importance. As emphasised by D. Sirokha (2019), local regulations allow quickly and flexibly regulating social and labour relations and ensure their dynamic development. In addition, it is the collective agreement as a local regulatory act that can and should not only fill in the gaps in the legal regulation of relations to ensure the safety and health of agricultural workers but also increase the level of their protection in comparison with centralised legislation, thus solving social problems of society (Sychova, 2019). Another advantage of fixing the provisions on the safety and health of employees at work in the collective agreement and the argument in favour of its presence in agricultural enterprises is that the implementation of these provisions is easily controlled by both trade unions and authorised state bodies (Khrabatyn, 2021). This is an additional guarantee of protecting the right of employees to safe and healthy working conditions. The valuable opinion is that of O. Varenik (2020) on achieving a balance of interests, needs of employees, and

interests of the employer through local labour protection regulations (to which the researcher includes the collective agreement).

In this study, the phrase “safety and health of employees at work” is deliberately used, in fact, instead of the category “labour protection”, since it is advisable to update the legal terminology in this part. The arguments in favour of this approach are as follows. The legal definition of the concept of “labour protection” is contained in Article 1 of the Law of Ukraine “On Labour Protection” (1992). According to this norm, labour protection is understood as a system of measures that differ in content and nature (legal, treatment and prevention measures, sanitary, hygienic, organisational, technical, social, and economic). Their purpose is to preserve, primarily, the life and health, and the working capacity of a person in the process of conducting the latter’s labour activity. In scientific circles, there is an opinion that it is advisable to support that it is not work that is protected, but the life and health of the person who works. As objects of labour protection, researchers refer to a) an employee who performs a certain labour function, b) the environment in which this labour function is implemented (Hryban & Hlukhoveria, 2017; Klochko, 2020). Then it is logical to refer to not “labour protection”, but to “safety and health of employees at work”. This fully complies with international standards. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) defines the right to a “safe and healthy working environment”, not the right to “occupational safety”. Similarly, the Constitution of Ukraine (1996) establishes the right to “proper, safe, and healthy working conditions”. The correct approach of the legislator when formulating the name and content of Draft Law of Ukraine “On the Safety and Health of Employees at Work” (2022) is notable,

which is positioned as a relevant replacement for the current Law of Ukraine “On Labour Protection” (1992). Article 1 of the Draft Law defines the basic concept of “safety and health of employees at work” as a system of measures and means aimed primarily at preventing and minimising the impact on employees of occupational factors and risks that are dangerous and/or harmful, preserving the life, health of employees, and their ability to work. These tools and measures should be taken at all stages of the workflow, including those that are preliminary, such as design and planning. Hence, it is appropriate to define among the mandatory components of the terms of the collective agreement the condition on “safety and health of employees at work” instead of “labour conditions and protection” (in Part 1 of Article 7 and others of the Law of Ukraine “On Collective Contracts and Agreements”, 1993) and instead of “occupational safety, health, and hygiene” (in Part 2 of Article 21 and others of the Law of Ukraine “On Collective Contracts and Agreements”, 2023).

Collective-contractual regulation of the safety and health of agricultural workers is not limited to the local level – collective agreements. It also covers collective agreements. Moreover, they can and should reflect the specific features of agricultural labour and define special provisions for the proper regulation of all aspects of relations on the use of such labour. In Particular, N. Bagai (2009) positions the industry agreement in agriculture in this way. However, there are a number of problems in this area. First of all, this is a certain obsolescence of the current basic system for agriculture in the Sectoral Agreement between the Ministry of Agrarian Policy and Food of Ukraine, the All-Ukrainian Association of Employers’ Organisations “Federation of Employers of the Agro-Industrial Complex and Food of Ukraine” and the Professional Union of Workers

of the Agro-Industrial Complex of Ukraine in Agriculture for 2014-2020 (n.d.), which is still valid today. The task set – the development of an industry-specific programme for improving the state of safety, health, and hygiene of workspace and the industrial environment for 2014-2018 was not completed. The provisions of Section VII “Occupational Health and Safety” at a low level reflect industry specific features. In fact, only in paragraph 7.19 (regarding the prohibition of involving women of childbearing age in working with pesticides and agrochemicals) one of the features of agricultural production was mentioned – a high degree of chemicalisation. The remaining provisions of the section under review are limited to general provisions that could take place in a sectoral agreement in any field of economic activity.

Considering changes in national and international legislation, at least in the labour protection field, martial law, and the specific features of the post-war period, work on concluding a new industry-level agreement should be conducted in the near future. Resolution of the Presidium of the Federation of Professional Trade Unions of Ukraine No. P12/1h (2022) defined “Main Tasks of Collective and Contractual Work for 2023”. Among other things, the mentioned tasks include the development, with the participation of the parties to the collective agreement, of such an important document from a globally recognised risk-oriented approach to organising labour protection as a local-level document: the Plan of Comprehensive Measures to achieve the established standards of occupational safety and hygiene, a safe and healthy working environment. Attention is also focused, again at the local level of collective agreement regulation, on the need for preventive work to prevent accidents, occupational diseases, and emergencies. This includes not only determining the list of relevant measures

but also specifying the necessary volumes and sources of their financing. The importance of fixing at the level of sectoral, territorial agreements, and collective agreements such specific measures as: providing employees with means of protection against the consequences of military operations during martial law (helmets, gas masks, bullet-proof vests, etc.); organisation of psychosocial support for employees under martial law and in the post-war period. All these recommendations should be considered in the new sectoral agreement for the agricultural sector. Mandatory, according to the author of the study, is the inclusion in the content of the sectoral agreement in agriculture and in collective agreements of provisions on training in the basics of mine safety, first aid for explosive injuries, and other security issues caused by military operations.

It is worth noting another innovation of the Law of Ukraine “On Collective Contracts and Agreements” (2023) – the introduction of new types of collective agreements for Ukraine. This refers to industry agreements of limited action (in industries where there are no subjects of the parties at the industry level that meet the criteria of representativeness) and territorial agreements in a separate industry (for industries where local self-government bodies or local state authorities are authorised to regulate the issue of remuneration or other working conditions). This novelty opens up new prospects for further guaranteeing the right of agricultural workers to a safe and healthy working environment through the reflection of this aspect in the relevant agreements. Researchers have already identified the prospects for concluding collective agreements at the community level as an effective tool for social partnership, the development of the social and labour field, and the socio-economic development of rural areas (Lanchenko, 2018). This approach

can be considered appropriate since it is this level that can and should consider the full range of local characteristics of agricultural activities and focus on appropriate measures to create a safe and healthy working environment for employees.

Conclusions

The expansion at the level of international acts of basic principles and rights in the world of work by the right to a safe and healthy working environment determines the need for appropriate changes in regulatory support at the level of states, including Ukraine as a member of the International Labour Organisation and other international institutions. Along with individual contractual regulation, collective contractual regulation through collective contracts and agreements is an effective tool for regulating the provision, guarantee, protection, and defence of this right. The changes that have taken place in the regulatory support of relations for the conclusion of collective contracts and agreements in Ukraine correspond to international trends and are generally positive.

The agricultural sector is characterised by a low degree of coverage of employees by collective agreements. It is necessary to conduct information and advisory work and create information resources to popularise knowledge about the advantages of a collective agreement not only at large but also at small agricultural enterprises to improve the situation. Establishing a minimum number of employees as a condition for the mandatory conclusion of a collective agreement is impractical due to the risk of excluding the vast majority of agricultural workers from collective agreements.

Considering the progressiveness of collective-contractual regulation and the effectiveness of this tool in the context of protecting employees,

the author of the study proposes to legislate the obligation to extend the provisions of collective agreements in terms of guaranteeing the safety and health of employees at work, the work of under-age workers and women, persons with disabilities, to all employees, including members of farms, agricultural cooperatives.

The need to replace the category “labour protection” with “safety and health of employees at work” is to unify the terminological apparatus considering the actual object of protection. It was concluded that there is a low degree of reflection of the specific features of ensuring the safety and health of employees in the current collective agreement at the industry level for agriculture. The urgency of adopting a new sectoral agreement in agriculture, which would consider new realities and risks for those working in this industry, in particular, due to military operations and the specific features of the post-war period, was justified.

It was established that the expansion of the list of collective agreements by sectoral agreements of limited action by territorial agreements in a particular industry is positive and such that it will allow consideration of the specific features of agricultural activities in specific territorial communities as much as possible. The need for ratification of the ILO Convention of 1975 on rural workers’ organisations to ensure proper representation of the interests of persons engaged in agricultural production was proved.

The results obtained can be used in rule-making activities in the formation of changes, additions, and updates of regulatory acts in the field of collective-contractual regulation of relations to ensure a safe and healthy working environment in agriculture. The formulated generalisations also have practical value – for formulating the content of the sections “safety and health of

employees" in collective agreements of specific business entities in the agricultural sector.

The areas of further scientific research can be: analysis of shortcomings in the content of existing collective agreements at agricultural enterprises with the definition of typical shortcomings in terms of safety and health of employees at work; formulation of methodological recommendations for training employees and employers on the conclusion of collective agreements and their

implementation; improvement of special legislation in terms of safety and health requirements of employees for certain types of work in agriculture and certain branches of agricultural production.

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None.

Conflict of Interest

None.

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Роль колективно-договірного регулювання в забезпеченні права працівників сільського господарства на безпечне та здорове робоче середовище

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Анотація

Актуальність роботи зумовлено необхідністю дослідити зміни на рівні міжнародних стандартів: включення до основних принципів та прав у світі праці права на безпечне та здорове робоче середовище. Це також викликало потребу відповідного корегування і національного правового поля. Другий фактор актуальності статті – новели національного законодавства щодо колективно-договірного регулювання трудових та пов'язаних з ними відносин. Аналіз впливу таких змін на врегулювання в колективних договорах та угодах питання безпечного та здорового робочого середовища для осіб, зайнятих у сільському господарстві, виокремлення проблемних аспектів та вироблення пропозицій щодо їх подолання окреслюють мету дослідження. Досягненню поставленої мети сприяло застосування комплексу методів наукового пізнання: філософського (діалектичного), загальнонаукових (аналізу, синтезу), спеціально-наукових (формально-юридичного, порівняльно-правового). У результаті проведеної роботи визначено відповідність міжнародним стандартам впроваджених в українському законодавстві змін щодо укладання колективних договорів і угод. Запропоновано поширити сферу дії колективних договорів на всіх, хто працює в сільському господарстві, зокрема й членів фермерських господарств та сільськогосподарських кооперативів, щодо гарантії безпечного та здорового робочого середовища й щодо праці найбільш вразливих категорій робітників (жінок, неповнолітніх, осіб з інвалідністю). Обґрунтовано потребу замінити в українському законодавстві термін «охорона праці» на «безпека та здоров'я працівників на роботі», оскільки він більшою мірою відповідає об'єкту охорони та корелюється з міжнародною термінологією. Встановлено невідповідність норм чинної галузевої угоди потребам сьогодення. Рекомендовано в розробці нового документу детальніше відобразити особливості заходів щодо безпеки та здоров'я працівників на роботі, зумовлених специфікою виробничих процесів у сільському господарстві та реаліями воєнного й повоєнного часу. Отримані результати заповнюють прогалину в наукових дослідженнях відповідної проблематики, цінні з погляду можливості застосувати їх у подальшому реформуванні законодавства щодо сфери колективно-договірного регулювання в сільському господарстві, а також стануть в пригоді для підготовки колективних договорів аграрних суб'єктів господарювання

Ключові слова: безпечні умови праці; колективний договір; охорона праці; правове регулювання; сільськогосподарське виробництво; фермерське господарство



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State measures to protect the rights of children on the territory of Ukraine under martial law

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Abstract

The relevance of the study is due to the fact that in the conditions of war, Ukrainian children experience physical, psychological, and social difficulties. In these difficult conditions, the state must guarantee children, as the most vulnerable segments of the population, safety and protection. The purpose of the study is to determine what measures are appropriate to implement or have already been implemented to protect the rights of children under martial law and determine their effectiveness. For obtaining complete and objective information the methods of system analysis, concretisation and abstraction, determinism, induction, and deduction are used. The paper analyses the methods and measures of the state to protect the rights of children in Ukraine during the war. The legal framework regulating the protection of children's rights under martial law is considered. It is noted that the examination of methods of protecting the rights of children under martial law is of great

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importance for improving the quality of life of children and improving the situation with their safety. The results of the study justify that the state should guarantee a safe place for children to live and study; it should also conduct safe evacuation of children to other cities or countries and provide assistance in moving to other areas. It is also important to ensure that children have access to healthcare. In addition, the state should provide children with the opportunity to receive education in a safe environment, in particular, remotely. In addition to physical safety, children should be protected from the negative consequences of war from a psychological standpoint. The study is practically relevant for law enforcement, as it provides a deep understanding of what measures should be taken to ensure the protection of children's rights during martial law

Keywords: war; international standards; security; evacuation; programme; convention; psychological support

Introduction

During the war in Ukraine, every child suffered violations of their legally established rights. Even if the child has not suffered bodily harm, exploitation, sexual violence, torture, or other forms of cruel, inhumane, or degrading treatment, in any event, their rights have been violated (Turchenko, 2019). This refers to violations of the basic rights of the child, which are enshrined in the Constitution of Ukraine and international legal norms, such as the right to privacy, development, health, care, recreation, leisure, education, and family (Ihnatenko, 2021). The government of Ukraine is obliged to protect the rights of the child by improving legislation and ratifying international conventions. Ukraine is a party to many international documents related to the protection of children's rights, but under martial law, it is very difficult to ensure their compliance (Kypych, 2022).

The subject of protecting children's rights on the territory of Ukraine under martial law is very important since children are one of the most vulnerable groups of the population. The protection of children's rights is one of the main requirements of international legislation, in particular, the Convention on the Rights of the Child (1989). In addition, the successful implementation of children's rights

in times of war is a key element in ensuring future peace and stability in the country.

In addition, the protection of children's rights during war is also important from the standpoint of the humanitarian crisis that occurs during war. Ensuring the basic needs of children, including access to education and health services, is a prerequisite for preserving the life and health of children in times of war.

L. Protsyk and I. Pampura (2019) noted that "the use of violence against children in war conditions is a serious violation of their rights and has far-reaching consequences for their psychological state, development, and future well-being. States must take responsibility for protecting children from violence and provide them with the necessary assistance and support."

O. Korniyenko (2023) pointed out that "violence and war have a great impact on the physical and mental health of children and their ability to receive proper education and development. It is important to provide children with access to the necessary resources and support to help them survive this difficult period in life."

"Children who experience violence in conflict situations have substantial risks to their health

and well-being, the consequences of which can last a lifetime. Access to adequate medical care, education, and psychological support is critical to ensuring the safety and well-being of children in war conditions”, concluded S. Nikolaichuk (2022).

O. Turchenko and I. Pylypyshyna (2022) analysed the consequences of the impact of armed attacks on the lives of children and determined the specific features of ensuring certain rights of children in the context of the armed conflict in Ukraine.

Therefore, the importance of this subject lies in the need to ensure the protection of children’s rights on the territory of Ukraine under martial law to ensure their future and stability of the country.

The relevance of the study lies in the need to protect the rights of children on the territory of Ukraine under martial law. War can lead to violations of children’s rights and pose threats to their lives and health. Therefore, it is important to analyse the measures that the state should take or has already taken to protect the rights of children in war.

The purpose of the study is to determine the measures that the state should implement or has already implemented to protect the rights of children on the territory of Ukraine under martial law. The objectives of the study are to analyse the legal framework governing the protection of children’s rights in war conditions, describe the measures taken by the state to protect children’s rights, and analyse the effectiveness of applying these measures.

Materials and Methods

To obtain complete and objective information, the method of system analysis was used, which allowed for assessing the state of legislation and practice of protecting children’s rights on the territory of Ukraine under martial law from different standpoints.

Concretisation and abstraction were used in the study to analyse the legislation of Ukraine and international norms regulating the protection of children’s rights in war conditions. The study focused on specific measures taken by the state to protect the rights of children on the territory of Ukraine during martial law. The concretisation method allowed for the examination of legislative acts, programmes, and projects that are aimed at protecting the rights of children during war. The method of abstraction allowed generalising and systematising the results of the study.

The method of determinism was also applied in the study for the clarification of cause-and-effect relationships in the context of the analysis of factors affecting the protection of children’s rights on the territory of Ukraine during martial law.

Induction and deduction methods were also used in the study. The induction was used to analyse the practice of protecting children’s rights under martial law on the territory of Ukraine and form general conclusions from the collected data. The deduction is used to establish a link between the general principles of protection of children’s rights and their specific application in the context of war. The use of these methods allowed for conducting a systematic analysis of the problem and drawing scientifically based conclusions on the protection of children’s rights on the territory of Ukraine under martial law.

The main provisions and conclusions of this study are based on an analysis of national legislation. In particular, the following documents were used in the study: Convention on the Rights of the Child (1989), Law of Ukraine “On Childhood Protection” (2001), Resolutions of the Cabinet of Ministers of Ukraine “On the Establishment of the Coordination Headquarters for the Protection of Children’s Rights in Martial Law” (2022), “On Making Changes to Some Resolutions of the

Cabinet of Ministers of Ukraine Regarding the Protection of Children's Rights During a State of Emergency or Martial Law" (2022), "On the Approval of the Regulation on the Foster Family" (2002), Order of the Ministry of Science and Education "On Some Issues of the Organisation of Obtaining General Secondary Education and the Educational Process in the Conditions of Martial Law in Ukraine" (2022).

Results and Discussion

Ensuring peace and protecting human rights are important tasks for any state. Various countries are making substantial efforts to establish and operate international organisations that are aimed at preventing armed conflicts that can lead to massive violations of the rights of people, in particular, children to achieve these goals (Shchebetun & Mikhaylina, 2019). Many international organisations, in particular, the Council of Europe, the UN Security Council, the African Union, the Organisation of American States, and the Group of 7, work for the security of their member countries, and this once again emphasises the importance of the right to human security, in particular, children, who are a particularly vulnerable category of persons and need special protection. During wars, children become victims of human rights violations to a greater extent (Korniyenko, 2023).

Since the beginning of 2014, the armed conflict has continued on the territory of Ukraine, which on February 24, 2022, turned into a full-scale war as a result of Russian aggression. As a result of war, children suffer from various forms of violence. The system of protecting the rights and interests of children faces numerous problems, including insufficient consideration of the position of the child as a subject of relations, lack of proper legal protection of children's rights, and declarative legislative norms on special

protection of children's rights during armed conflicts (Turchenko & Pylypshyna, 2022).

The actions of the Russian military on the territory of Ukraine, such as the use of prohibited cluster munitions, shelling of civilian populated areas, destruction of civilian infrastructure, and restriction of access to medical care, and numerous cases of murder, rape, in particular, children, and execution of civilians are war crimes under international humanitarian law. Ukrainian legislation provides for criminal liability for the ill-treatment of prisoners of war and civilians, deportation of the civilian population to forced labour, looting of state property in the occupied territories, use of means of warfare prohibited by international law, and other violations of the laws and customs of war provided for by international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine (Shchebetun & Mikhaylina, 2019).

International standards for the protection of children's rights in situations of military conflict are an important component of the work of states and public organisations to protect the rights of children (O. Melnychuk, 2022). The United Nations Declaration on the Rights of the Child (Geneva Declaration..., 1924) and the Convention on the Rights of the Child (1989) define the rights of children and provide them with protection from violence, exploitation, and discrimination in all circumstances, including in situations of military conflict (Bürgin *et al.*, 2022).

According to international standards for the protection of children's rights in situations of military conflict, states must ensure appropriate conditions for the life, safety, and well-being of children. This includes providing them with access to healthcare, education, and social protection, protection against violence, exploitation, and sexual crimes. It is also necessary to provide

children with access to humanitarian assistance and protection from exploitation and involvement in the armed forces to ensure the protection of children's rights in situations of military conflict (Veronese *et al.*, 2021).

Some of the international standards for the protection of children's rights in situations of military conflict also provide protection for children in extreme conditions, such as refugee children, orphans, children with disabilities, and other children in a vulnerable state (Simakova & Malyshko, 2023).

According to Article 10 of the Law of Ukraine "On Childhood Protection" (2001), every child has the right to liberty, security of person, and protection. State social programme for the period up to 2021, "National Action Plan for the Implementation of the UN Convention on the Rights of the Child" (Resolution of the Cabinet of Ministers of Ukraine No. 453..., 2018) also provides for the protection of the rights and interests of children in conditions of military operations or armed conflict, in particular, preventing the involvement of children in such actions, protecting the rights of children in the conflict zone, and conducting comprehensive measures for the rehabilitation of children affected by military operations or armed conflict. According to Article 30 of the above-mentioned law, it is prohibited to involve children in military operations and armed conflicts, including the recruitment, financing, and training of children for the purpose of their use in armed conflicts, the use of children in armed conflicts, and the recruitment and/or involvement of children in armed formations or armed groups not provided for by the legislation of Ukraine. Persons involved in the introduction of minors to armed groups are liable under Article 304 of the Criminal Code of Ukraine (2001) "Involvement of minors in criminal activities".

An important area of activity of Ukraine in the field of protection of children's rights is the

improvement of current legislation, including the implementation of international law and the ratification of treaties. Due to this, Ukraine has become a party to a number of international documents in the field of children's rights (UN Declaration on the Rights of the Child, Convention on the Rights of the Child, etc.). However, under martial law imposed throughout the country, it is extremely difficult to perform the functions assigned to the state to ensure the protection of children's rights.

On March 17, 2022, the Resolution of the Cabinet of Ministers of Ukraine "On the Establishment of the Coordination Headquarters for the Protection of Children's Rights in Martial Law" (2022) entered into force. The Coordination Centre is a temporary consultative and advisory body of the Cabinet of Ministers of Ukraine, established to facilitate the coordination of activities of central and local executive authorities, other state bodies, and local self-government bodies to protect the rights of children under martial law.

The main purpose of the Coordination Centre is to ensure the coordination of actions of local authorities and executive authorities regarding the evacuation of children from dangerous territories, including disabled children, orphans, children deprived of parental care, and other minors living or staying in institutions of various types and forms of ownership.

In addition, the Centre coordinates the placement and satisfaction of the needs of children who were evacuated to safe regions of Ukraine or moved to temporary stay countries. It controls the process of registering children at the consulate and ensures their return to Ukraine after the end of hostilities.

The coordination headquarters determines ways and means of solving problems that arise in connection with the protection of children's

rights under martial law and makes prompt decisions on this issue. It also monitors compliance with social standards and the rights of children in the states of their temporary stay and organises the return of children to Ukraine.

Another function of the institution is the provision of information to the citizens of Ukraine and the international community about the situation and needs for the protection of children under martial law.

Implementation of the national programme "The child is not alone" ("The child is not alone" programme..., 2022) is a substantial step in protecting children's rights during martial law. The programme was created by the Office of the President of Ukraine in cooperation with the United Nations International Children's Emergency Fund (UNICEF Ukraine) and the Ministry of Social Policy. The programme includes the functioning of the chatbot "The child is not alone", which provides assistance to children during military operations. However, after getting acquainted with the work of the chatbot in the course of the study, it is proposed to implement certain recommendations, namely: since a child can become a victim of any type of violence (physical, economic, psychological), and not just sexual (as indicated in the programme), it is necessary to add indicators of the type of violence the child has experienced.

War is the cause of suffering for many children. This can be separation from parents, being in filtration camps, or being lost as a result of shelling (Motsa & Motsa, 2022). However, due to the chatbot "The child is not alone", any Ukrainian citizen can get answers to questions about the temporary shelter of a child in a family, the search for a lost child, or report cases of child neglect. In addition, this resource contains useful information about the rights of children in war conditions, in particular, the regulatory framework and

contacts of child protection services and authorities. The site also contains instructions and rules for relatives, caregivers, psychologists, and journalists on how to communicate with traumatised children. The resource "The child is not alone" is an important step in protecting children from the consequences of war (Drobiazko, 2022).

The conditions of martial law raise the issue of protecting the rights of children who have become victims of Russian aggression and are in difficult life circumstances without parental care. The resolution of the Cabinet of Ministers of Ukraine "On Making Changes to Some Resolutions of the Cabinet of Ministers of Ukraine Regarding the Protection of Children's Rights During a State of Emergency or Martial Law" (2022) was amended. These changes allow temporary placement of children left without parental care in family-type orphanages.

In connection with the outbreak of war, changes were made to the regulations on a family-type orphanage, according to the above-mentioned decree (No. 349). According to these changes, family-type orphanages can temporarily accept children who have become orphans as a result of the war and do not have parental care. However, the number of children who can be placed in such an orphanage is limited. The amendments also provide for the possibility of temporary placement of such children in foster families.

According to Resolution of the Cabinet of Ministers of Ukraine No. 349 (2022), Resolution of the Cabinet of Ministers of Ukraine "On the Approval of the Regulation on the Foster Family" (2002), a new paragraph has been added that concerns the possibility of temporary stay of children without parental care in foster families during a state of emergency or martial law. Such children can be temporarily placed within the maximum number provided for a particular foster family. In addition, it is indicated that during

a state of emergency or martial law, children who find themselves in difficult life circumstances, orphans, children deprived of parental care and children who live in round-the-clock institutions of various types and forms of ownership can temporarily get a job in other institutions located in localities (Tantsiura, 2022).

The Ministry of Science and Education of Ukraine issued the Order "On Some Issues of the Organisation of Obtaining General Secondary Education and the Educational Process in the Conditions of Martial Law in Ukraine" (2022), which emphasises the need to organise general secondary education for those who were forced to change their place of study and/or residence under martial law in Ukraine or abroad. It is necessary to ensure that they are enrolled in educational institutions and receive education in any form that is most safe for them to do this.

During martial law, the state provides an opportunity for children to receive education in a safe environment, in particular, through distance learning. However, many children are unable to take advantage of these opportunities due to a lack of internet access or necessary equipment for distance learning. This problem is urgent, as many families were forced to leave their homes due to the war, go abroad, or stay in the occupied territories, which led to restrictions on the right to education for children (Shchebetun & Mikhaylina, 2019).

Psychological support for children during the war is extremely important, as they may experience fear, anxiety, depression, post-traumatic stress disorder, and other mental health problems that can negatively affect their health and well-being.

One of the ways to provide psychological support to children during the war is to conduct special trainings and consultations with psychologists (Yatsyna, 2022). Such activities can help

children understand their feelings and emotions, teach them strategies that will help them overcome fear and anxiety (Calam *et al.*, 2022)

In addition, it is important to provide children with the opportunity to communicate with family, friends, and psychologists who can understand their situation and help them feel safe. Creative techniques such as drawing, music therapy, etc. can also be used to help children express their feelings and emotions (Giannopoulou *et al.*, 2021).

The state and non-governmental organisations can also organise various activities to support the mental health of children during the war, such as summer camps, sports, creative activities, and excursions (Stepanenko, 2021). Such activities can help children find new friends, distract them from fears and traumatic events.

O. Lehka (2022) emphasises the need to bring national legislation in line with international standards as soon as possible to avoid conflict and ensure adequate protection of the rights of children in situations of armed conflict. The authors agree with the results of this study because changes to all Ukrainian regulatory legal acts that ensure the protection of children on the territory of Ukraine are urgently needed. A. Holubov and L. Gretchenko (2022) noted that strengthening the institutional capacity of the child protection system is an opportunity for the state to provide specialised care and assistance and take the necessary measures to promote the physical and psychological recovery and social integration of children, in particular, those whose rights have been restricted or directly harmed as a result of conflict. Therefore, the results of the study are quite substantial and can be used by the executive power of Ukraine.

Foreign researchers who have raised the issue under study note that it is necessary to remember about economic violence against

children because now this issue is relevant in the field of child protection under martial law. As noted by I. Geovani *et al.* (2021), ineffective legal protection of children affected by economic exploitation means that there are barriers and obstacles to addressing the problem of violence and economic exploitation of children, that is, barriers and obstacles faced by law enforcement agencies in working with children, in their practice, which does not solve the underlying problem, but only takes therapeutic measures, not prevents it. Therefore, researchers believe that it is necessary for the government, together with law enforcement agencies, to pay more attention and act more decisively on the issue of economic exploitation of children with no place of residence, both in terms of leadership and in terms of legal sanctions against individuals who conduct economic exploitation.

However, it is worth noting that in the current situation, it is necessary to consider all children in respect of whom there is a threat of violation of their rights. It is necessary to create a separate unit that will monitor the issues of economic exploitation of children and will be able to apply appropriate measures to counteract this phenomenon.

Notably, the experience of the Republic of Poland in protecting children's rights is somewhat different from the measures taken to protect Ukraine. As K.S. Łupiński (2019) noted, Polish law protects children from various threats at home, at school and on the street. Accordingly, the child is authorised to act personally in their own proceedings, namely, they take part in the court session when considering cases that concern them. The state should facilitate this process through various forms of guardianship and legal assistance. The experience of the Republic of Poland can also be applied in Ukraine to protect children from various threats that may lead to violations of their rights provided for by law.

Therefore, the protection of children and respect for their rights should be a priority for all citizens, and Ukraine should give priority to the protection of children and respect for their rights in the family, school, and other fields of life.

Conclusions

Given the above, the following can be concluded. First of all, the state should provide children with a safe place to live and study, which may include evacuation to other cities or countries, or assistance to move to other parts of the country. It is also important to ensure that children have access to health care. In addition, the state should provide children with the opportunity to receive education in a safe environment, in particular, remotely, if necessary.

In addition to physical safety, the child must be protected from the negative effects of war, from a psychological standpoint. Therefore, the state should provide psychological support to children and their families. This may include counselling and therapy, group and individual sessions, and other forms of support. Government and non-governmental organisations can also organise a number of activities to support children's mental health during wartime, including summer camps, sports, creative events, and excursions. However, with regard to the country's measures, it should be emphasised that in this case (child protection), all children whose rights are at risk of violation should be considered. It is necessary to create a separate unit that can deal with the problem of violence against children and implement appropriate measures to overcome this phenomenon.

The scientific originality of the study is a comprehensive examination of the problems of protecting the rights of children in the conditions of war in Ukraine, determining the effectiveness of the application of measures that the state takes

to protect the rights of children and identifying problems that arise in the process of protecting the rights of children in the conditions of war.

To protect the rights of children, it is also proposed to improve the Ukrainian legislation with relevant regulatory legal acts, which will indicate that, regardless of the place of stay of the child, his rights will not be violated. Notably, such studies will be appropriate to conduct systematically, because children on the territory of Ukraine during

martial law are constantly exposed to various types of violations of rights, and therefore researchers need to develop an appropriate mechanism for protecting children's rights.

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Conflict of Interest

There is no conflict of interest in this study.

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Заходи держави щодо захисту прав дітей на території України в умовах воєнного стану

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Анотація

Актуальність статті зумовлено тим, що в умовах війни українські діти переживають фізичні, психологічні та соціальні труднощі. У цих складних умовах, держава повинна гарантувати дітям як найбільш вразливими верствами населення безпеку та захист. Мета дослідження – з'ясувати, які заходи доцільно реалізувати або вже реалізовано для захисту прав дітей в умовах воєнного стану, та визначити їхню ефективність. Для отримання повної та об'єктивної інформації використано метод системного аналізу, конкретизації та абстрагування, підхід детермінізму, методи індукції та дедукції. У роботі проаналізовано методи й заходи держави щодо захисту прав дітей в Україні в умовах війни. Розглянуто нормативно-правову базу, що регулює захист прав дитини в умовах воєнного стану. Наголошено, що вивчення методів захисту прав дітей в умовах військового стану має велике значення для підвищення якості їхнього життя дітей і покращення ситуації з їхньою безпекою. Результати наукового дослідження обґрунтовують, що держава повинна гарантувати безпечне місце для проживання та навчання дітей; також потрібно проводити безпечну евакуацію дітей в інші міста чи країни та надавати допомогу в переїзді до інших районів. Також важливо забезпечити дітям доступ до охорони здоров'я. Крім того, держава повинна забезпечити дітям можливість здобувати освіту в безпечному середовищі, зокрема дистанційно. Окрім фізичної безпеки, діти повинні бути захищені від негативних наслідків війни з психологічного погляду. Наукове дослідження практично значиме для правозастосування, оскільки надає глибоке розуміння того, які заходи необхідно проводити для забезпечення захисту прав дітей під час воєнного стану

Ключові слова: війна; міжнародні стандарти; безпека; евакуація; програма; конвенція; психологічна підтримка



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Confiscation as a special sign of protection of intellectual property rights

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Abstract

Despite the fact that Ukraine has a legislative framework in the field of intellectual property, some issues remain unresolved, in particular, it is important to improve the mechanisms for protecting intellectual rights, among which one of the most effective is confiscation. The purpose of the study is to explore the existing problems of criminal law and administrative law confiscation as a special feature of the protection of intellectual property rights. Key research methods include dialectical analysis, which helped obtain the most objective information about problematic processes and phenomena related to confiscation as a special feature of intellectual property protection, and deduction and induction, used to examine regulations. The paper analyses the state of legal protection of intellectual property rights and measures taken by the state to reform the intellectual property system. Attention is drawn to the fact that public relations in the studied area relate to criminal

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and administrative legal mechanisms related to confiscation. It is noted that depending on the violated regulation, criminal or administrative confiscation is applied to the violator. The paper analyses Ukrainian and foreign regulations that focus on one of the types of ensuring intellectual property rights – confiscation as a special feature of protecting intellectual property rights. Certain shortcomings of the Ukrainian legislation are noted, and it is proposed to make changes to it. Circumstances that motivate the examination of the legislative reflection of confiscation as a special feature of intellectual property protection are outlined. The findings of the study can be utilised by lawyers and officials of law enforcement and other state bodies responsible for confiscation measures directly related to the protection of intellectual property rights. Individual conclusions can serve as a basis for further research on confiscation as a special feature of the protection of intellectual property rights, and proposals can serve to improve the relevant legislation

Keywords: state; law; protection; violation; copyright holder; court

Introduction

The modern world is difficult to imagine without intellectual products, which are the result of creative intellectual activity and constitute objects of intellectual property law. A distinctive feature of intellectual products is that only those results of creative mental search that meet the requirements of the law and are recognised as eligible are subject to legal protection and eligible for rights holders. The necessity of its protection is explained by the gradual process of economic intellectualisation. Ultimately, this affects the economic security of a particular country (Baranov *et al.*, 2020).

An indicator of the well-being of the country's population is the share of gross domestic product per citizen, which depends entirely on the country's economic development. The 21st century has brought significant changes to the global economy. There is an ongoing, sometimes unrecognised, transition from an economy of things to a knowledge-based economy, where additional value is predominantly formed through the results of intellectual and creative activity, which are, in most cases, objects of intellectual property law (Tsybulov & Romashko, 2021). The

field of intellectual activity is rapidly developing, so there is a need to protect an intellectual product. The Constitution of Ukraine (1996) guarantees the protection of intellectual property, and this guarantee corresponds to the challenges of today as the outcomes of creative activity have reached the level of market relations.

The international community also pays considerable attention to intellectual property issues, which is why the world celebrates the International Day of Intellectual Property (World IP Day). The intellectual product is legally protected in most countries of the world. Countries in the Western world have a number of regulations designed to protect the rights to an intellectual product. Ukraine also has its own legislation on intellectual property

To bring the legislation on the protection of intellectual activity in line with European Union standards, Resolution of the Cabinet of Ministers of Ukraine No. 179 "National Economic Strategy for the Period until 2030" (2021) was adopted, outlining principles for the protection of intellectual property rights. Moreover, a significant step

on this path was the Law of Ukraine No. 2974-IX “On Amendments to Certain Legislative Acts of Ukraine Regarding Strengthening the Protection of Intellectual Property Rights” (2023).

In recent years, various aspects of the mechanism for protecting and safeguarding intellectual property have been addressed by Ukrainian researchers. In Particular, I. Hryshko and M. Utkina (2020) focused on defining the concepts of “intellectual property” and “protection of intellectual property rights.” A. Shabalin (2020) explained the main methods of civil protection of intellectual rights, analysed special methods, and emphasised methods not directly stipulated by the law but could be chosen through judicial procedure. V. Shmorhun (2020) emphasised the proper legal protection of trademarks, trade names, and geographical indications. O. Korotun (2020) provided theoretical and practical generalisation of administrative legal protection of intellectual property. A. Kudin (2021) investigated and disclosed the tools of public administration of patent activities. G. Lebedeva (2021) formulated proposals allowing the application of certain levers for protecting civil rights in cases of illegal use of intellectual products. According to A. Lisovyi and O. Dmytruk (2020), effective means of protecting intellectual product owners’ rights could include restrictions on websites with pirated content. I. Kovalenko (2022) addressed the issue of plagiarism of computer programmes posted online and compared norms of legal protection of intellectual property in Ukraine and the USA. I. Tarasova (2018) examined the protection of intellectual property in education, particularly regarding the protection of results of educational activities.

In the aforementioned studies, researchers primarily focus on administrative and civil law aspects of intellectual property protection. However, issues of confiscation as a form of punishment

and special confiscation, which is not a punishment but is connected with the protection of intellectual property rights, remain unexplored.

The purpose of this study is to explore theoretical, practical, and legislative perspectives on confiscation as a special feature of intellectual property protection.

To achieve this purpose, the following tasks are set: characterise the state of legal protection in the field of intellectual property; analyse legislative grounds for applying confiscation and special confiscation in domestic and foreign legislation; identify ways to improve the legislative regulation of the studied sphere of societal relations.

Materials and Methods

During the research, a system of scientific techniques was used. Specifically, the dialectical method enabled the examination of problematic issues related to confiscation and special confiscation, contributing to the understanding of the legal nature of confiscation. Deductive and inductive methods were utilised to examine the normative application of confiscation and special confiscation within the framework of criminal, administrative, and international legislation. The method of abstraction facilitated the transition from criminal law analysis of confiscation to administrative confiscation. A synergistic approach was applied to determine the expected research results, which helped identify avenues for improving legislation in the studied sphere of relations.

The normative foundation for the paper was Ukrainian regulations, including the Constitution of Ukraine, and provisions of criminal, administrative, and international legislation. The norms of the Constitution of Ukraine provided the basis for exploring issues regarding the state’s guarantee of protection for subjects of intellectual property. Resolution of the Cabinet of Ministers

of Ukraine No. 179 “National Economic Strategy for the Period until 2030” (2021) allowed the investigation of the main directions of state policy regarding the protection of intellectual property rights, while the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding Strengthening the Protection of Intellectual Property Rights” (2023) enabled insights into changes made to certain regulations of Ukraine concerning the reinforcement of intellectual property rights.

The examination of Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority” (2020) provided an understanding of the main stages of reforming the state system of intellectual property and the authority of the created National Intellectual Property Office. The exploration of the Decree of the Cabinet of Ministers of Ukraine “Some Issues of the National Intellectual Property Authority” (2022) determined that the Ukrainian National Office of Intellectual Property and Innovation fulfils the functions of the National Intellectual Property Authority.

The investigation of criminal legislation was necessary to ascertain that the institution of confiscation as a special feature of intellectual property rights protection is stipulated by articles 176, 177, 203-1, 229 of the Criminal Code of Ukraine (2001) (hereinafter – CCU). The investigation of Article 96-1 of the criminal law was necessary to assess the feasibility of applying special confiscation for protecting the interests of intellectual property owners.

To further investigate the issues of protection of the rights of intellectual product owners, the norms of the administrative legislation of Ukraine were considered. This allowed establishing that administrative liability for violations in the field of intellectual property is stipulated by Article

51-2 and Articles 156-3, 164-3, 164-6, 164-7, 164-8, 164-9, and 164-13, which also provide for confiscation. In addition, the norms of customs legislation regarding the protection of intellectual property rights were examined.

For the purpose of comparing Ukrainian and foreign legislation, the international experience of applying confiscation as a special feature of intellectual property rights protection was explored using the example of Belgian legislation (Code Pénal de la Belgique, 1867).

The study uses economic and legal journalism, judicial practice, analytical materials, and Internet resources.

Results and Discussion

Establishing violations of intellectual property rights is challenging because it involves encroachments on personal non-property or property rights of intellectual property. Practice shows that such infringements are mostly related to misappropriation of authorship, unauthorised use of intellectual property objects, and the like.

International protection of intellectual property rights is entrusted to the World Intellectual Property Organization (WIPO). Ukrainian legislation encompasses a substantial number of regulations related to intellectual property protection, which provide for civil, criminal, and administrative liabilities.

However, the existing system of intellectual property protection is not sufficiently effective, thus it cannot ensure adequate protection of subjective rights.

This viewpoint is supported by the Office of the United States Trade Representative (USTR) report (2021) concerning intellectual property rights enforcement. Ukraine has been placed on the priority watch list, expressing concerns about insufficient intellectual property protection.

The importance and complexity of the existing issues in the field of intellectual property, reflecting the existing shortcomings within the country, drive researchers to seek solutions, resulting in various perspectives. This ranges from fulfilling a control function in society (Mernyk, 2023) and implementing changes associated with establishing a stable and integrated system of state institutions (Petryshyn *et al.*, 2021), to obligatory involvement of experts in the intellectual property sphere in reform processes (Gusarov, 2020).

It is worth noting that a reform of the state intellectual property system was initiated in Ukraine in 2016, leading to significant changes. For instance, the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority” (2020) led to the establishment of a national intellectual property office responsible for implementing state policies in this sphere.

Furthermore, problems within the state intellectual property system prompted the Cabinet of Ministers of Ukraine to issue Decree No. 43-r “Some Issues of the National Intellectual Property Authority” (2022), designating the Ukrainian National Office of Intellectual Property and Innovations as the National Intellectual Property Authority from November 8, 2022.

Ukrainian legislation regarding intellectual property protection is evolving slowly. However, to ensure the country’s European integration and attract foreign capital, it is necessary to reformat the approach to the field of intellectual activity. A reliable and stable alignment of Ukrainian legislation with European Union norms is a rational path. This aligns with the view of L. Ivashova *et al.* (2022) that foreign states’ legislation evolves faster than corresponding legislation changes in Ukraine.

Investigating Ukrainian legislation on intellectual property protection allows asserting that,

in the initial stages of legislation formation in this field, protection of intellectual property rights was ensured by civil law norms. However, such protection of intellectual property rights alone has become insufficient over time. Thus, current Ukrainian legislation includes regulations providing for civil, criminal, and administrative liabilities for intellectual property rights infringements (Lisovyi, 2021).

Analysis of Article 41 of the Constitution of Ukraine (1996) allows confirming that the right to property is protected by the state. Consequently, property confiscation is applied solely based on a court decision.

In accordance with the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), confiscation can also be linked to criminal offences related to counterfeiting and pirate distribution of goods, potentially violating intellectual property rights.

As stated by D.J. Solove (2020), the value of confidentiality cannot be empirically determined by individual assessments and cannot be reduced to a monetary figure based on specific transactions, as the value of confidentiality constitutes a foundational element of society rather than a commodity traded on the market.

Therefore, for the implementation of legal asset confiscation, it is required that such a penalty is established by law, followed by a court decision, and in certain cases, information related to asset confiscation should be treated confidentially.

The institution of confiscation is regulated by a number of legislative acts, so it is reasonable to examine them. In the sanctions of the articles of the Special part of the criminal law, there are a significant number of articles the norms of which provide for the confiscation of property. In accordance with

the provisions of the current CCU (2001), liability for violation of intellectual property rights is provided for in Articles 176, 177, 203-1, 229.

According to the Criminal Code of Ukraine (CCU) of 2001, criminal offences are divided into misdemeanours and felonies. Regarding misdemeanours, the scope of misdemeanours against intellectual property rights under the current CCU is limited, for example, Article 232. Analysis of articles related to the protection of intellectual property suggests that sanctions once included confiscation. However, in 2016, confiscation and destruction as penalties were removed from Articles 176, 177, 203-1, and 229 of the CCU. This move seems unwarranted as counterfeit products could re-enter circulation. To strengthen accountability in intellectual property protection, legislative changes to reintroduce confiscation as a penalty in Articles 176, 177, 203-1, and 229 of the CCU would be advisable.

In addition to confiscation as an additional penalty, another criminal legal measure was introduced to the CCU in 2013 – the concept of special confiscation (Kulchytskyi & Sliusar, 2020). The Constitutional Court ruled that special confiscation terminates not ownership rights but illegal and unscrupulous possession (Bakonina, 2022). It can be assumed that the special confiscation provided for in Article 96-1 of the CCU (2001) may offer some opportunities for legally re-introducing counterfeit products into circulation. To prevent this, it is suggested to exclude special confiscation concerning counterfeit products from Article 96-1 CCU, as such products should be destroyed (Law of Ukraine No. 981-VIII..., 2016). This strict stance of Ukrainian legislation is consistent with international law (Agreement on Trade-Related Aspects..., 1994).

It is notable that among EU countries, Belgium's criminal legislation includes special confiscation as a form of punishment for offences and

misdemeanours related to items specified in the law. Belgian legislation provides the opportunity to apply special confiscation to items that were created as a result of an offence, which is important for preventing infringements in the field of intellectual property protection, as offenders, depending on the type of intellectual property, can produce counterfeit (pirated) goods (Code Pénal de la Belgique, 1867).

The source establishing administrative liability for offences against intellectual property rights is the Code of Ukraine on Administrative Offences (1984) (hereinafter – CUAO). Articles providing for administrative liability in the field of intellectual property include Article 51-2 and 156-3, 164-3, 164-6, 164-7, 164-8, 164-9, and 164-13. Analysis of these norms indicates that intellectual property offences under administrative law entail the confiscation of the items that were the subject of the offence, such as counterfeit products. The analysis of Article 51-2 of the CUAO provides grounds to state that confiscation of counterfeit products is envisaged for intellectual property rights violations (Code of Ukraine on Administrative Offences, 1984). However, the small fines for intellectual property rights violations specified in Article 51-2 of CUAO do not correspond to current realities, fail to fulfil a preventive function, and therefore constitute an ineffective mechanism in the fight against intellectual property rights violations. To enhance responsibility in the field of intellectual property protection, changes should be introduced to the sanction of Article 51-2 of CUAO, specifically introducing the possibility of destroying counterfeit products and raising the threshold for penalty sanctions.

According to Art. 461 of the Customs Code of Ukraine (2012) (Customs CU), the objects of infringement of intellectual property rights can be various objects of intellectual property rights

against which offences are committed at the customs border.

In addition to confiscation, Article 401 of Customs CU stipulates the destruction of goods that were imported with infringements of intellectual property rights. This type of destruction can be performed at the request of the right holder. An example of the implementation of the requirements of Article 401 of Customs CU can be found in cases involving a founder of a furniture brand.

One feature of confiscation in cases of customs violations is that it: 1) serves as an administrative penalty; 2) involves the compulsory seizure of goods and means of transport; 3) includes their gratuitous transfer to state ownership; 4) applies to the confiscation of vehicles, regardless of whether these goods or means of transport are owned by the offender, including in cases of intellectual property rights violations; 5) can be used both as a primary and additional administrative penalty. Regarding administrative, criminal offences, and violations of customs legislation related to the protection of intellectual property rights, the respective penalties do not correspond to the gravity of the committed offences against intellectual property rights. Article 476 of Customs CU (2012) is not consistent with Article 243. This is because the sanction of Article 476 does not include the destruction of counterfeits, while Article 243 allows for the disposal of confiscated goods, meaning counterfeits already confiscated and intended for state income can be reintroduced into commercial circulation.

Despite certain differences between confiscation as stipulated by administrative and customs legislation, it is worth noting that, in the analysis of cassation case No. 400/548/19, the Grand Chamber of the Supreme Court concluded that according to Article 461 of Customs CU, confiscation is one of the types of administrative penalties

for customs violations. Pursuant to the first part of Article 487 of Customs CU, proceedings in cases of customs violations are conducted in accordance with Customs CU, and to the extent not regulated by it – in accordance with CUAO (Resolution of the Grand Chamber..., 2020). Thus, based on the obtained results, legal argumentation should be regarded as a process that reflects legally significant activities involving substantiating statements using various means – legal and non-legal arguments. Such activities are communicative and are performed in various types of legal activities, often in the form of discourse (Rabinovych & Dudash, 2022).

Material goods have always had proper legal protection. However, the situation has rapidly changed with the emergence of new results of intellectual activity that required different approaches to legal protection. Products (goods) manufactured using intellectual property objects are quickly distributed worldwide, including within Ukraine, and enjoy additional demand, bringing additional profits to their rights holders, as a result of which such goods often become the subject of infringements. Whether the adopted regulations on the protection of intellectual property rights will be effective depends on many factors. Given the unsatisfactory state of legislation in this regard, one of the conditions for effective protection of intellectual property rights is the availability of effective legal mechanisms – including confiscation as a special feature of intellectual property protection.

Conclusions

Based on the provided information, there are grounds to assert that these issues are inadequately regulated by Ukrainian legislation.

The increasing commercialisation of intellectual property and the resulting presence of

counterfeiting, piracy, patent trolling, and the like require proper protection of intellectual property rights, cooperation with international organisations, and consideration of foreign countries' experience in this field. The legal mechanism for protecting intellectual property rights is a complex of legal means necessary for restoring and terminating infringements of authors' rights and applying state coercive measures to infringers.

An overview of scientific sources confirms that the protection of intellectual property rights is achieved through criminal law, administrative law, and civil law norms. This, in turn, results in diverse approaches to the effective application of confiscation and special confiscation as means of protecting intellectual property rights.

The international experience of applying special confiscation as a feature of intellectual property rights protection was examined through the example of the criminal legislation of Belgium. The analysis of provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights allows asserting that national legislation in matters of intellectual property protection is harmonised with the mentioned agreement, as it entails confiscation and/or destruction of goods involved in violations. For the enhancement of administrative confiscation, it would be appropriate to incorporate destruction of counterfeit products alongside confiscation under Article 51-2 of the CUAO.

Regarding customs legislation, fully agreeing with the need to confiscate counterfeit goods that were moved in violation of intellectual property rights, it would be appropriate to destroy such goods, and therefore, it is necessary to make changes to the Customs Code of Ukraine. Currently, Article 476 of the Customs CU does not provide for the destruction of counterfeit goods, and

Article 243 allows confiscated goods, including counterfeit ones, to be reintroduced into economic circulation, which contradicts international agreements stipulating non-alternative destruction of counterfeits.

To strengthen criminal liability in the field of intellectual property rights protection and ensure adequate liability, it is advisable to introduce changes to the sanctions of Art. 176, 177, 229 of the CCU, along with the confiscation and destruction of counterfeit products, materials/raw materials, and equipment used for their manufacture. Further exploration should substantiate the appropriateness of lowering the threshold for criminal liability under Articles 176, 177, 229 and increasing the fines.

It was found that the CCU introduced the institute of special confiscation. While approving the main provisions and considering the conducted study, it would be appropriate to exclude special confiscation from the sanction of Article 96-1 of the CCU concerning counterfeit products, materials/raw materials, and equipment used for their production, and instead provide for the destruction of such products.

The scientific originality of the study lies in the attempt to generalise the issues of confiscation and special confiscation as features of protecting intellectual property rights. Prospects for further research involve delving into the confiscation of intellectual products, developing new mechanisms for protecting intellectual rights, and seeking ways to improve existing legislative norms.

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Conflict of Interest

None.

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Конфіскація як спеціальна ознака захисту прав інтелектуальної власності

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Анотація

Незважаючи на те що Україна має законодавчу базу у сфері інтелектуальної власності, деякі питання залишаються неврегульованими, зокрема актуально вдосконалити механізми захисту інтелектуальних прав, серед яких один з найдієвіших – конфіскація. Мета дослідження – вивчити наявні проблем кримінально-правової та адміністративно правової конфіскації як спеціальної ознаки захисту прав інтелектуальної власності. Ключові методи дослідження – діалектичний, який допоміг отримати максимально об'єктивну інформацію про наявні проблемні процеси і явища, пов'язані із конфіскацією як спеціальною ознакою захисту прав інтелектуальної власності, а також дедукція та індукція, застосовані для вивчення нормативно-правових актів. Проаналізовано стан правової охорони прав інтелектуальної власності та заходи, яких ужила держава щодо реформування системи інтелектуальної власності. Звернено увагу на те, що суспільні відносини в досліджуваній сфері стосуються кримінальних та адміністративних правових механізмів, пов'язаних з конфіскацією. Наголошено, що залежно від порушеної правової норми до порушника застосовуються кримінальна або адміністративна конфіскація. Проаналізовано українські та зарубіжні нормативно-правові акти, у яких зроблено акцент на одному з видів забезпечення прав інтелектуальної власності – конфіскації як спеціальної ознаки захисту прав інтелектуальної власності. Зауважено певні недоліки українського законодавства, з метою його вдосконалення запропоновано внести зміни. Окреслено обставини, що актуалізують дослідження стану законодавчого відображення конфіскації як спеціальної ознаки захисту прав інтелектуальної власності. Результати роботи, а також її частини можуть використати юристи, а також посадові особи правоохоронних та інших державних органів, які забезпечують заходи конфіскації, що безпосередньо пов'язані із захистом прав інтелектуальної власності. Окремі висновки можуть бути основою для подальшого дослідження конфіскації як спеціальної ознаки захисту прав інтелектуальної власності, пропозиції можуть слугувати для вдосконаленні відповідного законодавства

Ключові слова: держава; право; охорона; порушення; правовласник; суд



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Ukraine's nuclear security as a key element of the European security system

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Abstract

Ukraine, as a strategically located territory and an important player in the geopolitical interests of various power blocks, has become a key element of the European nuclear security system, so it is important to study the most important factors shaping the situation around nuclear weapons and take appropriate measures to avoid potential threats. The research aims to outline all aspects and factors of Ukraine's nuclear security that directly affect the international security system, in particular, the European countries. The methodological basis of the study is a systematic analysis of information and regulatory sources, such as bilateral and multilateral international agreements, documents and materials of international organisations, documents of individual country authorities, speeches, and materials of print and electronic media. The article highlights the historical context, including the transfer of Ukrainian nuclear weapons materials to Russia following the Treaty on the Non-Proliferation of nuclear weapons. The current stage of development of the international nuclear non-proliferation regime is analysed. Attention is paid to the evolution of the regime under the influence of the confrontation between the two superpowers and the doctrine of mutual deterrence. The situation with nuclear security in Ukraine and its impact on the Black Sea

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region is analysed. The consequences of military actions in Ukraine and factors that create new dimensions for nuclear security, in particular in the context of control over nuclear materials and the possibilities of their use, are considered. The results of the study of the problem are presented in the description of new threats and risks that require deepening cooperation of international partners and taking effective measures to ensure nuclear safety in the region. The study emphasises the need for joint efforts to counter new challenges and minimise nuclear safety risks. The practical significance of the study is determined by strategies for cooperation with international partners to achieve stability in the field of nuclear safety

Keywords: radiation safety; risks; nuclear weapons; nuclear facility; non-proliferation; geopolitics

Introduction

Security challenges in the post-bipolar world have changed significantly. Although nuclear-related tensions between the superpowers have not reached the level of the Cold War, the existence of significant nuclear arsenals still creates a burdensome situation. The possibility of an accidental nuclear war or escalation of a non-nuclear conflict to the level of nuclear war cannot be ignored. The further proliferation of nuclear weapons and the possible lowering of the barrier to their use are particularly worrying. Russian threats to use nuclear weapons against Ukraine are a terrible example of this.

The current stage of development of the international nuclear non-proliferation regime is characterised by the existence of fundamental national security documents developed by the leading nuclear powers. For example, such documents are the U.S. 2022 National Security Strategy (Johnston, 2023) and the Global Britain strategy (Robinson *et al.*, 2021). Detailed assessments of new threats and challenges to the international nuclear non-proliferation regime are provided by organisations such as the Nuclear Threat Initiative (NTI) (NTI convenes largest global..., 2023) and the Stockholm International Peace Research Institute (SIPRI) (Fedchenko *et al.*, 2023).

Many researchers addressed the issue of nuclear and energy security in the world and Ukraine. B. Ostudimov (2021) points out the exceptional importance of doctrinal regulation of security issues in the world and in Ukraine in particular. In his opinion, the status of safety and sustainability can be ensured by guarantees of signatory countries that create international agreements on nuclear policy regulation.

Some researchers have presented a view on the peculiarities of the international legal regime of nuclear non-proliferation, outlining related issues related to the category of “exceptional circumstances”, which are referred to by a state party to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT (1968), as a basis for termination of its participation in the Treaty (Okladnaya & Zal, 2020).

O. Reznikova (2022) examined the theoretical and practical aspects of ensuring national resilience in a changing and uncertain security environment. According to the researcher, nuclear safety is one of the key aspects of the country's resilience and security. L. Gunko and V. Zadorozhnyi (2021) analysed possible developments in the international situation in connection with the possible launch of Ukraine's nuclear weapons

programme and the inevitable consequences this will have in the international context.

Current research questions are formulated in the works of T. Melnyk and P. Sinovets (Melnyk, 2020; Melnyk & Sinovets, 2020). According to these scientists, current transformations in international security create nuclear uncertainties that affect the strategic stability of the world. Ukraine, as a country in a situation of conflict and hostilities, is becoming both an object and a subject of international security transformations, which significantly affects the status of nuclear balance and the threat of nuclear war.

The analysis of recent publications shows that scientific works do not sufficiently cover the current state of nuclear safety in Ukraine in the context of a full-scale Russian invasion. Therefore, the study aims to highlight the role of Ukraine as a key element of the European security system in terms of nuclear safety in the situation of hostilities with the aggressor country. The study analyses and highlights the main aspects and factors that affect Ukraine's nuclear safety and have a direct impact on the international security system, in particular, on the European countries.

The study's objectives include consideration of the historical context: coverage of Ukraine's transfer of its nuclear weapons materials to Russia following the Treaty on the Non-Proliferation of Nuclear Weapons; analysis of the current stage of development of the international nuclear non-proliferation regime and its impact on Ukraine's nuclear security; study of Ukraine's role in the context of the European security system, in particular, its impact on the Black Sea region; analysis of the consequences of military actions in Ukraine and their impact on nuclear security; identification of new threats and risks related to nuclear security. The study aims to emphasise the need for joint

efforts and cooperation of international partners to counter new challenges and minimise nuclear safety risks.

The problem under study has a complex nature, so a combination of general and special methods of cognition is used to study it. The main method is the system analysis, which is the methodological basis of the study and based on which the model developed by the author to study this issue is built.

One of the important tools of the research was the synergistic approach, which made it possible to reveal the peculiarities of the processes of self-organisation of complex nonlinear systems, considering the many active components that make up the European security system. The synergistic approach allowed us to study the interaction and interrelationships between these components and identify their synergistic effects.

Since the purpose and objectives of the study are interdisciplinary in nature, additional methods of a general logical nature were used to achieve them. In particular, analysis and synthesis, induction, and deduction, as well as the application of the principle of objectivity. These methods were used to identify and study the entire range of factors (subjective and objective, internal and external, global, and regional) and their interrelationships that determine the role of nuclear safety in the European security system. These methods allowed us to create the most objective picture model of the existing system.

Comparative and historical analysis, critical analysis, formal legal analysis, and contextual analysis were also applied. These methods allowed us to explore and evaluate various aspects of the process, considering its historical context, political aspects, legal aspects and contextual relations.

Historical and political context of nuclear safety in Ukraine

Ukraine is currently at a difficult stage of its development after gaining independence. The country is at war due to the aggression of the Russian Federation, which led to the introduction of martial law. Ensuring international security under martial law becomes the main goal of constitutional and legal regulation to protect and preserve human rights. In times of crisis, the priority of human rights is an important indicator of the level of democracy in a country and indicates the recognition of citizens as the highest social value.

Ukraine's nuclear security is a key element of the European security system due to several important factors. First, Ukraine is a security risk state, as it is, on the one hand, a neighbour of countries with nuclear weapons, and, on the other hand, located in a conflict area, which could pose a threat to its security (Ministry of Energy of Ukraine, n. d.).

Analysing the historical and political context, it is important to note that Ukraine, having gained independence in 1991, played an important role in ensuring nuclear safety in the post-Soviet space. At that time, Ukraine was the third largest nuclear power in the world, but for several legal and technical reasons, it was forced to give up its nuclear arsenal. Ukraine took this step by signing an agreement with Russia and the United States that guaranteed the country's security status. This agreement provided for the surrender of Ukraine's nuclear weapons for destruction and international assistance and support for the transition period. This process of nuclear surrender was complex and required significant efforts on the part of Ukraine. However, as a result of these agreements and cooperation with international partners, Ukraine ensured its nuclear safety and contributed to the overall reduction

of nuclear potential in the world (Law of Ukraine No. 248/94-VR..., 1994).

Ukraine was one of the founding signatories of the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of nuclear weapons (1994). According to the Budapest Memorandum, Britain, Russia, and the United States pledged to defend the sovereignty and territorial integrity of Ukraine, which had renounced its nuclear weapons (Redko, 2022). Ukraine has also signed the Rome Statute of the International Criminal Court (1998), which obliges states parties to ensure respect for human rights and international humanitarian law. This increases the importance of Ukraine's nuclear safety, as nuclear safety is linked to ensuring security and protecting human rights (Zhakun, 2022). One cannot but agree with the analysts' opinion that the country, which is located at the intersection between Russia and the European Union, plays an important geopolitical role. Therefore, Ukraine had a strategic vector of development aimed at international and political balance and security (Melnyk, 2020). Given the threat of proliferation of nuclear weapons and materials from Russia to terrorist groups, Ukraine has a responsibility to ensure the security of nuclear facilities on its territory and should contribute to solving global security problems (Law of Ukraine No. 39/95-VR..., 1995).

Nuclear safety researchers (Gunko & Zadorozhnyi, 2021) emphasise that the conflict in Donbas and the illegal occupation of Crimea have significantly increased attention to Ukraine's nuclear safety. Russia is putting forward plans to restore its nuclear potential in the occupied territory of Crimea and is actively defending its interests in the region. This may lead to an aggravation of the situation in Europe and create new challenges in the field of nuclear safety.

Ukraine's nuclear security in the context of the war

Russia's military aggression against Ukraine in 2022, including attacks on nuclear facilities, has posed serious challenges to the world in the field of nuclear safety and security. These events not only have a significant impact on international nuclear safety but also require revision of national policies and safety regimes for nuclear facilities in Ukraine and other countries of the Black Sea region. Until 2014, the nuclear safety situation in Ukraine was similar to that in neighbouring countries. However, with the annexation of Crimea by Russia, military actions in the east of Ukraine and the creation of the so-called Donetsk and Luhansk People's Republics, the security situation in the country has undergone significant changes. This has led to the need for political and administrative reforms, including in the field of nuclear safety, to counter new threats, including internal and potential attacks on nuclear facilities. In this regard, Ukraine was forced to pay considerable attention to the protection of its nuclear facilities.

One of the main documents related to the nuclear security regime is the Convention on the Physical Protection of Nuclear Material (1979) as amended in 2005. The main idea of this convention is that the physical protection of the country should be based on the assessment of current threats to the state. According to the International Atomic Energy Agency, IAEA (2009) Nuclear Security Guidelines, the threat assessment should be a document known as the Design Basis Threat (DBT), which includes a comprehensive description of the motivation, intentions, and capabilities of potential adversaries, which is considered when developing and evaluating defence systems (Manuilova, 2020; Ivanytskyi, 2023). The DBT concept is widely used around the world and is discussed in numerous IAEA nuclear safety documents, including a series

of documents published in 2009 and updated in 2021. Nuclear facility operators have the primary responsibility to protect against the threats identified in the DBT, while the state has the primary responsibility to protect against threats that exceed the DBT but are less than the "maximum threat capability". It is important to note that threats with capabilities exceeding the "maximum threat capabilities" (e.g., foreign military attack) are not covered by nuclear safety documents (Resolution of the Cabinet of Ministers of Ukraine No. 824..., 2013; Shevchenko, 2022).

The study of nuclear safety in the context of military operations showed that the events of 2014 led to changes in the threat environment for nuclear safety in Ukraine in several directions. First, these events highlighted internal threats. Previously, physical protection of nuclear facilities was the responsibility of the Internal Troops of Ukraine, which were subordinated to the Ministry of Internal Affairs. However, as a result of the annexation of Crimea to Russia, one of the units responsible for the physical protection of facilities in Crimea fell under Russian control. These events forced Ukraine to review its national security measures and create internal Ukrainian forces independent of Russian influence. To this end, the National Guard was created in March 2014, with the responsibility to protect critical infrastructure, including nuclear facilities, nuclear material, radioactive sources, and nuclear waste (Vashchenko *et al.*, 2021).

Secondly, the loss of control over Crimea and the eastern part of the country has created new risks of illicit nuclear trafficking. Along with the loss of territory, the nuclear safety infrastructure, in particular in seaports and on the borders of Ukraine, disappeared. The possibility of training on nuclear safety and control over radioactive materials and orphan sources that remained in

the territories controlled by the so-called DPR and LPR has also been lost.

Thirdly, two known threats related to attacks on nuclear facilities were discussed at the time. One of them is a potential attack by armed groups with heavy weapons on a nuclear power plant in Ukraine with the aim of proliferation of radioactive material. This threat was identified due to the presence of heavy weapons, including tactical missile systems, in the hands of separatists in eastern Ukraine. In particular, Zaporizhzhya NPP, the largest nuclear power plant in Europe, was specifically identified as a potential target for these weapons, which was achieved during the Russian aggression against Ukraine in 2022. Another risk situation was the possible downing of an aircraft in the vicinity or on the territory of a nuclear power plant. This threat became particularly relevant after the downing of the Malaysia Airlines plane on 17 July 2014 as a result of a missile attack launched from separatist-controlled territory in Ukraine (Manuilova, 2018; Global Nuclear Community..., 2022).

According to the analysis of scientific sources (Manuilova, 2020; Shymanska, 2020), in 2015 and later, Ukraine followed the IAEA recommendations by updating and revising its core document for nuclear facilities, nuclear material, radioactive waste and other radioactive sources to consider changes in the threat environment. These updates

have focused on the risks mentioned earlier. However, starting in 2022, as a result of Russia's large-scale invasion of Ukraine and the subsequent war and occupation, hazards and threats have emerged that significantly exceed the risks discussed earlier.

New nuclear safety challenges after 24 February 2022

Since the outbreak of hostilities on 24 February 2022, the IAEA has played an important role in providing timely safety information to all nuclear facilities in Ukraine. The State Nuclear Regulatory and Control Inspectorate of Ukraine, which acts as the national competent authority under the Convention on the Early Notification of a Nuclear Accident (1986), maintains direct communication with the Emergency Response Manager of the IAEA's Events and Emergencies Centre.

The IAEA actively publishes a significant part of the information received from Ukraine, including data on its actions and relevant information provided by other countries. This contributes to strengthening the IAEA's role as an international defender of nuclear safety, providing safeguards in the context of the situation in Ukraine, as well as during multiple attacks on nuclear facilities. The attacks on nuclear facilities in Ukraine recorded by the IAEA can be classified into the types shown in Table 1.

Table 1. Classification of IAEA-recorded attacks on nuclear facilities in Ukraine

Type 1	Type 2	Type 3
Physical damage to nuclear facilities: shelling, missile attacks or other military actions that damage the infrastructure of nuclear facilities and may pose a threat to nuclear safety.	Damage to power lines and power outages: attacks on power lines supplying nuclear facilities, causing problems with power supply, resulting in a reduction in the safety of nuclear facilities.	Military occupation or annexation: a hostile force invading and taking control of or occupying nuclear facilities. This can pose serious threats to nuclear safety and require immediate countermeasures.

Source: developed by the author based on NTI data (NTI convenes largest global..., 2023)

During emergencies, the responsibility for countering threats is shared among national nuclear security actors. So far, there has been limited discussion of nuclear security responsibilities in emergencies in the IAEA and many of its Member States. The contribution of Ukrainian officials specialising in nuclear safety issues to the discussion of actions and responsibilities of actors in the event of an emergency is crucial. The experts offered recommendations and their views based on their own experience. These proposals may be valuable for further discussions (Risk of nuclear weapons..., 2023).

A review of the recommendations of nuclear safety experts showed the importance of developing a set of regulatory documents and operational guidelines that would describe the safety responsibilities of nuclear facility operators and the measures to be taken in emergencies, including threats beyond the Design Basis Threat (DBT). According to them, the lack of previous experience and the absence of such operational protocols describing the operation of safety systems and facilities during emergencies outside the DBT posed a serious problem for Ukraine (NTI convenes largest global..., 2023). Officials emphasised the need to consider various aspects when developing the proposed documents. These aspects included the limits of safe operation of nuclear facilities under threat, emergency preparedness, monitoring of radiation levels, availability of sufficient material reserves for reliable operation, availability of diesel fuel and mobile power supplies, and staff work and rotation opportunities (April 2023 Global Dialogue, 2023; Nuclear safety in Europe, n.d.).

The development of a schedule for staff to operate in emergency circumstances is likely to address the need to minimise the number of employees at a nuclear facility, balancing the need for safe operation of nuclear facilities with the need

to ensure personal safety and evacuation of personnel. However, it is unclear how such protocols can define the actions of personnel at nuclear facilities during an occupation. Holding personnel accountable in such circumstances becomes a difficult task, although their behaviour must comply with international humanitarian law.

Ukrainian officials participating in the discussion proposed the development of an international guidance document, possibly within the framework of the IAEA Nuclear Safety Session or a similar format. This document should address the national nuclear security regime in the face of threats beyond the DBT. The development of such guidelines should address the issue of coordination between the authorities responsible for the legal operation of the facility and the occupying power, which may not have internationally recognised rights to operate the facility but has the physical ability to do so (Reznikova, 2022).

It is important to note that Ukrainian officials who participated in the April 2023 Global Dialogue (2023) expressed concern about the cooperation of international organisations, in particular the IAEA, with the occupation authorities on urgent nuclear safety issues. This may result in unforeseen recognition of the occupying authorities' territorial claims.

Experts interviewed believe that existing plans to protect personnel and the public in the event of a radiation accident at a nuclear power plant caused by a threat outside the DBT need to be strengthened or revised (NTI convenes largest global dialogue..., 2023). They propose to improve the reliability, automation and autonomous operation of technical systems that monitor the level of radioactivity around nuclear facilities, including nuclear power plants, as well as communication channels. The ideal situation would be if radioactivity monitoring systems could transmit data

to the regulatory authority or the relevant institution without the involvement of plant personnel who may be under attack or captured. It is worth developing redundant logistical arrangements and stockpiling diesel fuel and spare components in case normal logistical routes are unavailable. It is also important to consider creating additional evacuation routes for power plant personnel (NTI convenes largest global dialogue..., 2023).

The events that began in Ukraine in 2014 significantly changed the nuclear security challenges for the countries of the Black Sea region, except Ukraine itself, and at the same time limited the possibilities for regional cooperation in this area. The region continued to face serious nuclear security challenges, the main ones being the management and control of nuclear materials, other radioactive substances, orphan sources, and insufficiently secure radioactive waste storage. The region has also become a route for illicit nuclear trafficking and a haven for smugglers. None of the nuclear security experts surveyed by the Stockholm International Research Institute in 2022 (Coles *et al.*, 2023) denied the importance of combating the smuggling of radioactive materials. However, most of them pointed out that insufficiently secure storage of radioactive waste and smuggling of abandoned radioactive sources are more urgent problems.

The Russian military aggression in Ukraine in 2022 and attacks on nuclear facilities not only exacerbated existing problems in the Black Sea states but also changed the perception of threats in several important aspects (Kosharna, 2023; Ukraine: Russia-Ukraine war..., 2023; IAEA Director General statement..., 2023). This conflict is the first time that a functioning nuclear power plant has been the direct target of a military attack and occupation.

Recent research conducted by the Royal United Services Institute (RUSI) focuses on the

risks to nuclear power plants in Ukraine, including the potential radiological hazards posed by the Russian invasion and occupation of the nuclear power plants in Chornobyl and Zaporizhzhia (Ukraine: Russia-Ukraine war..., 2023).

Although penetration of a reactor or spent fuel storage facility through a military strike is unlikely in the current situation with military operations around Ukrainian nuclear facilities, an accident or deliberate event could occur through an attack on the infrastructure that supports the operation of a nuclear power plant, including water and electricity supply systems. The likelihood of a Chornobyl-like disaster is low, but an accident similar to the one at Fukushima in 2011 is possible.

There are currently no indications that Russia is planning to launch strikes targeting Ukraine's nuclear power plants, although Moscow may have considered nuclear sabotage in Ukraine. The report also examines how Russian military forces might respond if Ukrainian forces successfully breached Russian defensive positions in Zaporizhzhia, which could include attempts to provoke a radiological event by Russia. This follows reports from the UK Ministry of Defence that Russian forces have established sandbagged fighting positions on the roofs of several of the six reactor buildings at the Zaporizhzhia nuclear power plant.

Although the current situation in Ukraine is the first time that an operational nuclear power plant has been under fire or occupied by a foreign military force, several modern NPPs are located in areas prone to conventional military conflicts, raising questions about the risks these facilities may face in the future. As the international community seeks to transition to a sustainable energy source and achieve zero carbon emissions by 2050 (International Energy Agency, 2021), the

role of nuclear energy in the world, and thus the number of NPPs, is likely to increase.

Conclusions

The historical context of Ukraine's nuclear security is analysed. Following the Treaty on the Non-Proliferation of nuclear weapons, Ukraine voluntarily renounced its nuclear status by transferring its nuclear weapons materials to Russia. This decision contributed to maintaining nuclear safety in the region and promoted cooperation with international partners. Ukraine pays great attention to nuclear safety and actively cooperates with international organisations such as the IAEA and the EAEU. The country adheres to international standards and commitments in the field of nuclear safety.

The analysis of the consequences of military actions in Ukraine and their impact on nuclear safety has shown that the nuclear safety regime should develop practical guidelines at the operational level, known as "emergency protocols". These protocols define the actions and responsibilities of facility operators in emergency circumstances, including armed conflict. The development of such emergency protocols may be based on documents and guidance provided by the IAEA, but their implementation and compliance are the responsibility of each State. The main objective of emergency protocols is not only to achieve nuclear safety and radiation protection but also to ensure that these objectives are met by international humanitarian law.

Overall, the nuclear safety of Ukraine is not only a national priority but also an important element of the European security system. Ukraine fulfils its obligations to the international community, actively cooperates with international organisations and takes measures to ensure the safety of its nuclear potential. However, due to the

complexity of the geopolitical situation in the region, it is important to continue to focus on nuclear safety issues and take the necessary measures to maintain stability and security. Further scientific research should be devoted to legal regulation of these issues and finding ways to reduce the level of potential threat to Ukraine and Europe as a whole.

The study is distinguished by a comprehensive analysis of Ukraine's nuclear security. It does not limit itself to technical issues only but also addresses the geopolitical, social, and international factors that affect this important aspect of security. Given the general interest and importance of nuclear security, there are numerous interesting areas for further research. For example, research in the field of automated safety of nuclear facilities. With the development of artificial intelligence and automation technologies, it is possible to consider methods and systems that improve the safety of nuclear facilities and help prevent possible accidents. The second area is the study of the interaction between nuclear energy and climate change. Understanding the impact of nuclear energy on climate change and developing strategies to reduce CO₂ emissions from nuclear power may be key to energy sustainability and the fight against global warming. The third area includes research into new technologies and designs for next-generation nuclear reactors to improve their safety and efficiency. This may include the use of small reactors, fusion reactors, or innovative coolants.

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Conflict of Interest

None.

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Ядерна безпека України як ключовий елемент європейської системи безпеки

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Анотація

Україна як стратегічно розташована територія та важливий гравець у геополітичних інтересах різних силових блоків стала ключовим елементом європейської системи ядерної безпеки, тому актуально дослідити найважливіші чинники, що формують ситуацію навколо ядерної зброї, та вжити відповідних заходів для уникнення потенційних загроз. Основна мета дослідження – окреслити всі аспекти та фактори ядерної безпеки України, які безпосередньо впливають на систему міжнародної безпеки, зокрема країн Європи. Методологічна основа дослідження – системний аналіз інформаційних та нормативно-правових джерел, як-от: двосторонні та багатосторонні міжнародні угоди, документи й матеріали міжнародних організацій, документи органів влади окремих країн, промови, матеріали друкованих та електронних засобів масової інформації. У статті висвітлено історичний контекст, зокрема передачу українських ядерних збройних матеріалів Росії відповідно до Договору про нерозповсюдження ядерної зброї. Проаналізовано сучасний етап розвитку міжнародного режиму нерозповсюдження ядерної зброї. Звернено увагу на еволюцію режиму під впливом конфронтації двох супердержав та доктрини взаємного стримування. З'ясовано ситуацію з ядерною безпекою в Україні та її вплив на регіон Чорного моря. Розглянуто наслідки військових дій в Україні та фактори, що створюють нові виміри для ядерної безпеки, зокрема у контексті контролю над ядерними матеріалами та можливостей їх використання. Результати дослідження проблеми представлено в описі нових загроз і ризиків, що вимагають поглиблення співпраці міжнародних партнерів та вжиття ефективних заходів для гарантування ядерної безпеки в регіоні. Дослідження підкреслює необхідність спільних зусиль для протидії новим викликам та мінімізації ризиків, що пов'язані з ядерною безпекою. Практичне значення роботи полягає в розробці стратегій співпраці з міжнародними партнерами з метою досягнення стабільності у сфері ядерної безпеки

Ключові слова: радіаційна безпека; ризики; ядерна зброя; ядерний об'єкт; нерозповсюдження зброї; геополітика



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Epistemological construction doctrine of the veterinary care defect phenomenon in forensic veterinary examination

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Abstract

To prove the guilt of a veterinary professional in causing harm to animal health, forensic veterinary examination plays an important role, as the expert's opinion is a source of evidence in legal proceedings that helps law enforcement agencies or the court to correctly qualify the offence and establish the compliance of certain actions of a veterinary professional with the current legislation. However, the study of the problem of defects in veterinary care is not properly covered in Ukrainian scientific sources. The research aims to formulate a definition of the concept of "defects in veterinary care", to identify the signs of this phenomenon in the aspect of forensic veterinary examination, to propose a classification of types of defects and to give their characteristics. The methodological basis of the study is a systematic approach due to the specifics of the topic of the work and involving the use of general scientific and special scientific methods, including analysis, synthesis, analogy; logical and semantic method; systemic and structural method; modelling method; comparative legal method. It is proved that a defect in the provision of veterinary care should be considered a situation where a veterinary professional performs poorly diagnostic, therapeutic, tactical, resuscitation, rehabilitation and other procedures, carries out preventive measures, and also

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performs professional duties improperly or fails to perform them, which causes or may cause negative consequences for the animal(s) in the form of a health disorder (disease, injury, mutilation, etc.) or cause death. The author's definitions of the concepts of "non-performance or improper performance of professional duties by a veterinary practitioner", "accident in veterinary practice", and "professional error in veterinary practice" are proposed and their signs are outlined. It is shown that defects in veterinary care can be caused by both objective and subjective factors. A classification of defects in veterinary care is proposed: by stages of veterinary care, elements and nature of veterinary care, and legal basis. The practical significance of the study is that it forms the basis of the methodology for determining defects in veterinary care during forensic veterinary examination

Keywords: forensic veterinary medicine; expert animal; professional duties of a veterinary practitioner; failure to perform/improper performance of professional duties; accident in veterinary practice; professional error in veterinary practice

Introduction

The negligent performance of professional duties by a veterinary practitioner is the basis for law enforcement agencies to initiate criminal proceedings and conduct an appropriate expert examination. The issues raised by the subject of the forensic examination or the subject of the involvement of a forensic expert before the Forensic Veterinary Expert Commission during the pre-trial investigation of criminal proceedings or court proceedings in other types of proceedings regarding offences, including professional offences committed by veterinary practitioners, have not yet been worked out due to the lack of a developed theoretical basis. They require systematic knowledge in the field of veterinary medicine, forensic veterinary medicine, as well as related disciplines (biology, chemistry, physics, etc.), as they are the subject of forensic veterinary expertise.

The study of the problem of defects in veterinary care has not been adequately covered in Ukrainian scientific sources. At the same time, foreign scientists are developing this scientific and practical area. J. Cohen *et al.* (2023) determined the nature of veterinary radiological errors;

C.A. Alexander-Leeder *et al.* (2022) analysed the impact of veterinary errors on the safety of sick animals; the influence of deontological factors on the occurrence of professional veterinary errors was studied by C.E. Ashton-James and A.G. McNeilage (2022).

At the same time, the problem of defects in the provision of medical care is the focus of close attention of scholars in the field of criminal and medical law, as well as forensic medicine, and is widely reflected in the works of well-known Ukrainian scholars. In particular, V. Franchuk (2018) examined the problem of medical malpractice from the perspective of forensic expert practice; I. Senyuta (2017) provided definitions of terms related to defects in the provision of medical care; K. Danchenko and Kh. Gereljuk (2020) analysed the corpus delicti of improper performance or failure to perform their professional duties by a pharmacist or healthcare professional, and identified the main gaps in the legislation; A. Serdiuk *et al.* (2020) developed the concept of forming a strategy for preventing defects in the provision of medical care; O. Mostovenko (2018) provided the

author's understanding of the concept, formulates the signs and provides a classification of medical errors from a doctrinal perspective; V. Khyzhniak *et al.* (2018) considered the problematic issues of forensic medical support of bringing medical professionals to criminal liability for professional crimes; Kh. Maikut (2017) revealed the problematic issues of legal qualification for medical error.

In addition, the problem of defects in the provision of medical care is actively discussed in foreign scientific publications, in particular, by N. Kozan *et al.* (2020) analysed commission forensic medical examinations on professional errors of surgeons; V. Grenon *et al.* (2023) systematised the causes of negligence in the diagnostic medical field; L. Lehmann *et al.* (2022) analysed medical errors in dermatology, and T. Enzmann and K. Albrecht (2023) – in urology; A. Ünal and Ş. Seren Intepeler (2022) evaluated global studies of medical error reporting using bibliometric analysis; N. Aghighi *et al.* (2022) investigated the influence of various factors that lead to medical errors; deontological aspects of defects in the provision of medical care were considered by K.R. Amlaev *et al.* (2022), K.C. Brimhall *et al.* (2023), C. J. Li *et al.* (2023).

Given the ever-increasing requirements for the quality of expert activity, there is an urgent need for forensic veterinary science and practice to develop a holistic scientific concept and build unified methodological approaches to the organisation and performance of forensic veterinary examinations related to professional offences by veterinary practitioners. The solution to this problem will be possible if a comprehensive scientific study is carried out to identify problems, and doctrinal gaps and outline specific ways to optimise the conduct of forensic veterinary examinations regarding the negative consequences of veterinary care.

The research aims to identify the elements of the conceptual and categorical apparatus of the

phenomenon of veterinary care defect and build its doctrinal epistemological construction for use in forensic veterinary examination; to propose amendments to the veterinary legislation of Ukraine.

The methodological basis of the study is a systematic approach, determined by the specifics of the topic under study and associated with the use of general scientific and special scientific methods, including analysis, synthesis, and analogy, to determine the essence of the categorical apparatus of defects in the provision of veterinary care. The logical and semantic method made it possible, from the point of view of modern forensic veterinary expert practice, to clarify the essence and formulate the interpretation of the terms “defect in veterinary care”, “non-performance or improper performance of professional duties by a veterinary worker”, “accident in veterinary practice”, “professional error in veterinary practice” and unify them for use in forensic veterinary examination, identify gaps and other shortcomings in the current legislation of Ukraine, and submit proposals for its improvement. The systematic and structural method was used to systematise and structure the tasks of a forensic veterinary expert in assessing the quality of veterinary care and determining the type of its defect; the methods of modelling and forecasting were used to develop the problem of forensic veterinary detection of defects in the provision of veterinary care; the comparative legal method was used to analyse and compare the legal provisions governing the activities of veterinary medicine professionals.

Defects in veterinary care as a separate legal institution and their signs

In cases of negligent performance of professional duties by a veterinary officer or unsuccessful veterinary treatment and diagnostic intervention, resuscitation, preventive or rehabilitation

measures and negative consequences for the health or even life of an animal, complaints, and claims from dissatisfied animal owners regarding these measures naturally arise (Oxtoby, 2019; Whipple *et al.*, 2020; Low & Wu, 2022). All this serves as a basis for law enforcement agencies to open criminal proceedings, within which a commission forensic veterinary examination is mandatory since it is the expert's opinion that helps to correctly qualify the offence, establish compliance with the current legislation of certain actions of a veterinary professional and prove his or her guilt (Munro, 2022; Yusupov, 2023).

Defects in veterinary care are a separate legal institution that is closely related to the legal institution of liability for cruelty to animals and intentional damage to other people's property, since if the causal link between defects in veterinary care and damage to animal health in the form of bodily injury, mutilation or even death is confirmed, the question of bringing veterinary professionals who provided veterinary care to liability may arise. Assessment of defects in the provision of veterinary care involves determining the type of defect, as each of them has different legal consequences and different legal liability for each of them. Defining the definition of "defect in veterinary care" is necessary to understand the nature, content, and construction of this veterinary and legal phenomenon for the correct and objective statement of factual data during forensic veterinary examination and qualification by law enforcement agencies and the court of actions of veterinary professionals in the event of negative consequences of veterinary care.

The Large Explanatory Dictionary of the Modern Ukrainian Language (Busel, 2009) defines a defect as a flaw or a shortcoming. The Medical Encyclopaedia states that a "defect is a flaw, deficiency, fault, damage" (Cherviak, 2012).

Thus, "defect" means insufficiency, or error of something and is synonymous with the word "deficiency". S. Stetsenko (2019) considers a defect in the provision of medical care to be the improper diagnosis, treatment of a patient, and organisation of medical care, which led to or could have led to a negative outcome of medical intervention. I. Senyuta (2017) defines a defect in medical care as the poor quality of diagnosis, treatment, prevention, and rehabilitation, as well as the organisation of their provision, when a medical professional has improperly performed or failed to perform his or her professional duties, which has led or could have led to negative consequences for patients. The list of defects in medical care includes A. Zavalniuk *et al.* (2009) also includes behavioural deficiencies of healthcare professionals. It follows from the studied scientific sources that there is no unanimity among medical professionals regarding the content of the concept of "defect in medical care", although there are common features of this concept in the author's definitions.

Having summarised and systematised the opinion of scientists and our forensic practice, it is possible to state that the system of signs of a defect in veterinary care is as follows:

- 1) improper (low-quality) performance by a veterinary professional of diagnostic, therapeutic, tactical, resuscitation, rehabilitation and other procedures and improper organisation of preventive measures or their absence at all;
- 2) the fact that defects in veterinary care have caused or are likely to cause negative consequences for the animal(s) in the form of a health disorder (disease, injury, mutilation, etc.) or death;
- 3) the existence of defects in veterinary care in a direct and necessary causal relationship with the improper or proper performance or non-performance by a veterinary professional of professional duties.

These signs of a defect in the provision of veterinary care may be manifested in various combinations: all at the same time or in a certain combination, as well as with the dominance of some over others. For a correct understanding of the general signs of a defect in the provision of veterinary care in law enforcement and forensic practice, it is necessary to analyse them in detail, which will allow the formulation of a definition of the concept of "defect in the provision of veterinary care".

The first sign of a defect in the provision of veterinary care is the improper (poor) conduct of diagnostic, therapeutic, tactical, resuscitation, rehabilitation, and other procedures by a veterinary professional, as well as the organisation of their preventive measures. Following clause 132 of Article 1 of the Law of Ukraine "On Veterinary Medicine" (2021), veterinarians are doctors and veterinary assistants who have a relevant diploma and carry out activities related to the prevention, rehabilitation, diagnosis and treatment of animals, veterinary and sanitary examination, or other veterinary activities. Diagnostic procedures include a system of clinical, technical, instrumental and laboratory methods for examining sick animals, the technique and sequence of their application to detect symptoms and the main ways of recognising diseases. Therapeutic and tactical procedures are a process, aimed at alleviating, relieving, or eliminating symptoms and manifestations of a disease, pathological condition, or other vital activity disorder, normalising disturbed vital activity processes and recovery. Resuscitation procedures are a set of actions or means aimed at restoring severely impaired or lost vital functions of the animal's body. Rehabilitation procedures are a set of measures that include ways to accelerate recovery, stimulate reparative and regenerative processes, identify, and strengthen compensatory mechanisms, and correct the body's overall

resistance and immunity to restore the animal's independence, physical functions, and adaptation to new restrictions. Preventive veterinary measures are an officially established procedure for the implementation of sanitary and hygienic measures aimed at preventing diseases and eliminating risk factors. According to clause 124 of Article 1 of the Law of Ukraine "On Veterinary Medicine" (2021), the risk is the possibility of a negative event (biological and economic consequences of a negative impact on animal and/or human health or the environment), as well as the likely extent of its consequences over a certain period.

The second criterion is the fact that defects in veterinary care cause or are highly likely to cause negative consequences for the animal(s) in the form of a health disorder (disease, injury, mutilation, etc.) or death (Yatsenko *et al.*, 2021; Yatsenko & Parilovsky, 2022). The term "negative" means "bad in terms of properties, qualities, purpose, etc., which does not cause approval but deserves condemnation; the opposite of positive; unfavourable; opposite to expected and usual" (Dictionary of the Ukrainian Language, 1970-1980). In veterinary practice, the negative consequences of defects in the provision of veterinary care may include the following: deterioration of veterinary and epizootic welfare, bodily injuries, and mutilations; development of diseases and pathological conditions of animals, as well as their death.

The third feature is the presence of negative consequences of veterinary care in a direct necessary causal relationship with the improper performance or non-performance by a veterinary professional of professional duties. Direct causation is understood to mean such a necessary connection between phenomena (action or inaction) when one exists (the cause) and is inevitably followed by another phenomenon (the negative consequence of veterinary care). Many factors

can act at the same time, but only one causes the effect. If the negative consequences do not occur due to the unlawful behaviour of a veterinary professional, but for other reasons beyond control (for example, due to a violation of the dietary regime, intervals, and dosage of veterinary drugs or due to individual characteristics of the sick animal's body), the legal liability of the veterinary professional is excluded.

Thus, a defect in veterinary care is the poor performance by a veterinary professional of diagnostic, therapeutic, tactical, resuscitation, rehabilitation and other procedures, poor implementation of preventive measures, as well as their organisation, associated with improper or proper performance or non-performance by a veterinary professional of his or her professional duties, which caused or could have caused negative consequences for the animal(s) in the form of a health disorder (illness, injury, mutilation, etc.) or death.

Objective and subjective factors that cause defects in veterinary care

An analysis of our forensic practice has shown that defects in the provision of veterinary care can be caused by both objective and subjective factors. The objective factors include the following:

1) lagging behind the development of veterinary science from the needs of veterinary practice at a certain stage, in particular, the use of undeveloped or imperfect, imperfect, limited methods and techniques for diagnosis, treatment, prevention, rehabilitation, etc. It takes a long time from the development and testing of the latest technical solutions in the field of veterinary medicine to their implementation in practice, so the methods and ways of providing veterinary care quickly become outdated and anachronistic;

2) the dynamism of veterinary concepts, postulates, and provisions in theoretical and

clinical veterinary medicine causes variability in approaches to veterinary care, updating of veterinary guidelines, etc;

3) insufficient regulation of professional veterinary activity means that in veterinary medicine, unlike humane medicine, there are no standards of veterinary activity, or animal treatment protocols, which allows a veterinary specialist to use treatment algorithms at their discretion, the evidence of which is often questionable, as well as outdated regulations and rules that do not consider the modern realities of the veterinary medicine industry;

4) the growing specialisation in veterinary medicine is since multidisciplinary veterinary activities require specialised veterinary knowledge in a narrow profile area. That is why such sciences as veterinary oncology, dentistry, traumatology, laboratory diagnostics, imaging diagnostics, dermatology, nephrology urology, etc. are being separated into independent areas of medical care. The lack of narrow specialisation leads to a significant limitation of medical thinking and makes it impossible to have a holistic approach to veterinary care;

5) In most cases, the material and technical base of veterinary institutions and farms is weak, which complicates the diagnosis and treatment of sick animals, leads to misdiagnosis and incorrect or insufficient treatment;

6) unfavourable conditions or circumstances of veterinary intervention (for example, a veterinary specialist is often forced to provide veterinary care in an unequipped room, without sufficient lighting and proper instrumentation, laboratory facilities, directly on a livestock farm, etc);

7) provision of veterinary care in the absence of other veterinary specialists from whom professional advice could be obtained;

8) provision of veterinary care by a veterinary worker who does not yet have sufficient

practical experience of veterinary activity in a particular area of veterinary medicine;

9) special condition of the sick animal, for example, aggression, neglected treatment, rapid or acute course of the disease, senile age of the animal and layering of chronic pathologies; individual abnormalities of body structure and functioning of individual organs, non-standard reactions of the animal's body to the effects of veterinary medicines or veterinary procedures (defects occur regardless of the professionalism of the actions of a veterinary officer in the absence of intent), atypical development of diseases; allergic reactions that could not be foreseen during veterinary intervention, etc;

10) the imperfection of the current veterinary legislation leads to shortcomings and defects in the organisation and management of the veterinary industry, inadequate social protection of veterinary professionals, etc;

11) engaging in illegal veterinary activities, i.e., without a special permit, carried out by a person who does not have a proper veterinary education.

The subjective factors of defects in the provision of veterinary care, which depend on the activities of a veterinary professional (unreasonable deviation from the established rules, negligence, and self-confidence), degree of professional training and deontological qualities, are as follows:

1) the level of professional training (poor theoretical training, in particular in educational institutions, and insufficient practical skills);

2) insufficient diagnosis of a sick animal (incomplete clarification of the animal owner's complaints regarding the vital activity of the sick animal, failure to take into account anamnestic data, imperfect clinical examination due to physical impossibility of using the latest methods and diagnostic techniques, inadequate assessment of the results of clinical and laboratory tests);

3) negligent surgical intervention or other medical and preventive measures;

4) unjustified professional veterinary risk, which does not belong to the category of force majeure and is considered an aggravating case with inevitable negative consequences for the health and life of the animal;

5) unsatisfactory organisation of various stages of veterinary care, both at the outpatient and inpatient stages of its provision, including negligent document management;

6) deontological, caused by negative moral qualities of a veterinary specialist (disorganisation, negligence, overconfidence and inattention, arrogance, tactlessness, overestimation of self-esteem, inadequate communication with colleagues and animal owners, rejection of criticism and comments, low professional level, indifference, conflict, authoritarian style of work, which lead to the fact that a veterinary worker departs from the humanistic nature of the profession.

Types of defects in veterinary care and their characteristics

The proposed epistemological construction of the defect in veterinary care will facilitate the development and implementation into forensic practice of methods for determining each type of defect in veterinary care, and forensic veterinary examination of animals with negative consequences of veterinary intervention. Currently, the current Law of Ukraine "On Veterinary Medicine" (2021) does not define the concept of "veterinary care". Given this, it is worth proposing our definition of the concept: "a set of diagnostics, therapeutic and restorative (rehabilitation) measures aimed at establishing a clinical diagnosis, eliminating or reducing the manifestations of a disease or pathological condition of an animal for which veterinary care is provided, which helps to

improve or restore the health and normalise the animal's vital activity".

To assess the effectiveness of veterinary care, it is necessary to define its limits, in particular, "necessary" (minimum) and "sufficient" (maximum). "Necessary" (primary) veterinary care should be understood as the minimum amount of care that will only stabilise the animal's body and remove it from a life-threatening condition. At the same time, "sufficient"

veterinary care should be understood as care that provides for its maximum amount (instrumental and laboratory diagnostic methods, therapy, including resuscitation, by generally accepted principles and treatment algorithms based on their pathophysiological justification) and ensures maximum.

Before describing certain types of defects in veterinary care, it is worth considering their classification according to various criteria (Fig. 1).

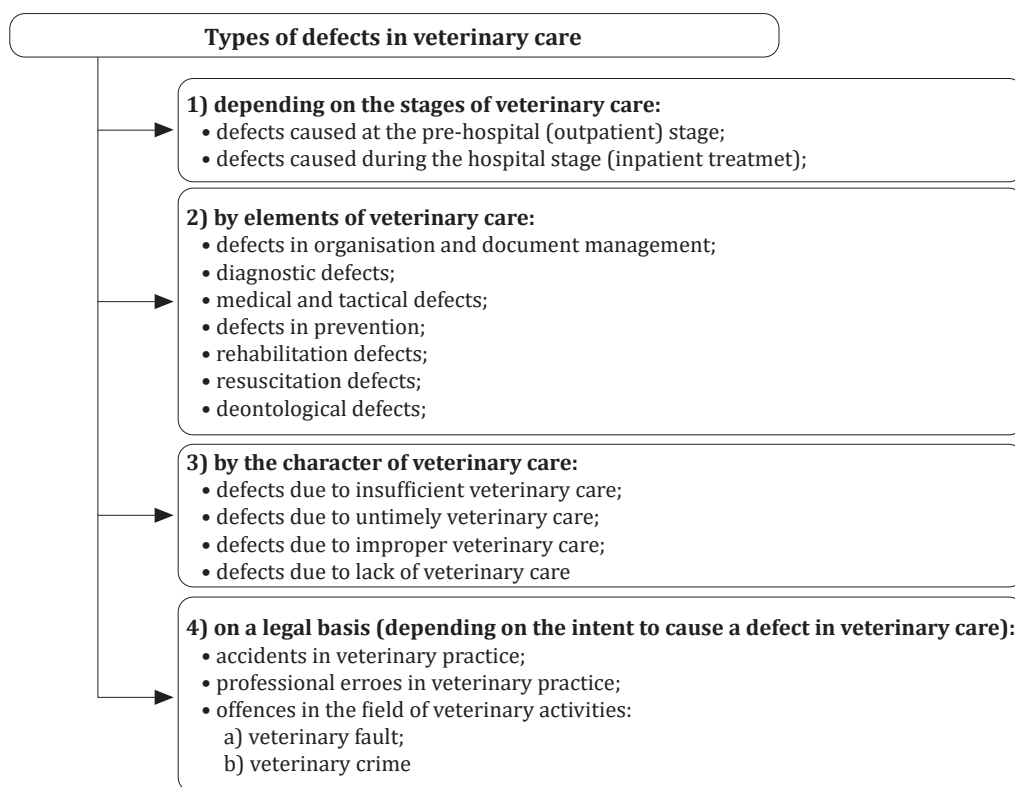


Figure 1. Types of defects in veterinary care

Source: developed by the author

It is necessary to describe each type of defect in the provision of veterinary care.

1) Types of defects depending on the stages of veterinary care:

✓ defects caused at the pre-hospital (outpatient) stage (for example, in the case of veterinary care provided at the animal owner's home);

- ✓ defects caused during the hospital stage (in the case of veterinary care provided in the in-patient facilities of a veterinary medicine clinic or a livestock facility, in the case of productive animals).

2) Types of defects by elements of veterinary care:

- ✓ organisational defects – errors in the organisation of the provision of certain types of veterinary care, the creation of the necessary conditions for the functioning of a veterinary medical institution, its structural units, etc;

- ✓ defects in document management are due to inadequate veterinary records;

- ✓ diagnostic defects consist of improper technical compliance or failure by a veterinary professional to perform clinical, technical, instrumental and laboratory methods of examination of sick animals, violation of the technology of their application, which caused negative consequences for the health or life of the animal(s);

- ✓ therapeutic and tactical defects consist of improper technical performance or non-performance by a veterinary professional of veterinary medical procedures to alleviate, relieve or eliminate symptoms and manifestations of a disease, pathological condition or other disorder of the body's vital functions, normalise disturbed vital processes and recover a sick animal, which has caused negative consequences for the health or life of the animal(s);

- ✓ defects in prevention consist of improper performance or failure to perform by a veterinary professional of the officially established procedure for the implementation of sanitary and hygienic measures aimed at preventing diseases and eliminating risks, which has caused negative consequences for the health or life of the animal(s), as well as deterioration of veterinary, sanitary and epizootic welfare;

- ✓ rehabilitation defects consist of improper implementation or non-implementation by a veterinary professional of a set of measures covering ways to accelerate recovery, stimulate reparative regeneration of processes, identify and strengthen compensatory mechanisms, correct the general resistance of the body and immunity to restore the animal's independence, physical functions and adaptation to new restrictions caused by negative consequences for the health or life of the animal(s);

- ✓ defects of resuscitation – consist of improper performance or non-performance by a veterinary professional of a set of actions or non-use of means aimed at restoring severely impaired or lost vital functions of the animal's body, which caused negative consequences for the health or life of the animal(s);

- ✓ deontological defects – often associated with negative personal qualities of the veterinary professional.

3) Types of defects by the nature of veterinary care:

- ✓ defects due to insufficient veterinary care. The Dictionary of the Ukrainian Language (1970-1980) explains that the term “insufficient” means “less than required, than necessary; inadequate; not meeting certain requirements; unsatisfactory, bad”;

- ✓ defects due to untimely veterinary care. The Dictionary of the Ukrainian Language (1970-1980) interprets the term “untimely” as “occurring, being carried out not when it is necessary, not in due time”;

- ✓ defects due to improper veterinary care. The term “wrong” means “not conforming to certain norms, rules, requirements; not corresponding to the truth, to what is in reality; false, erroneous; not as it should be; not leading to the desired consequences” (Dictionary of the Ukrainian language, 1970-1980);

- ✓ defects due to lack of veterinary care.

Further, it is advisable to characterise the defects of veterinary care by their legal qualification depending on the intent of the veterinary specialist. Such defects include accidents in veterinary practice, professional errors in veterinary practice and offences in the field of veterinary activity.

Accidents in veterinary practice

An accident in veterinary practice, or mishap, is a controversial, i.e., disputable, debatable, ambiguous defect from both legal and veterinary perspectives. It occurs due to an unfavourable combination of various circumstances, accidents that do not depend on the actions of a veterinary professional, as there is no way to predict and prevent them. The peculiarity of an accident in veterinary practice is that this concept is not regulated in the regulatory framework and is not defined by legal boundaries. In this regard, professional mistakes of veterinary practitioners or even professional offences (crimes and misdemeanours) are often presented as accidents to avoid liability for the veterinary practitioner. At the same time, the legislative regulation of this term would make it possible to clearly outline its features and formulate a complete definition of this legal construct.

Typical accidents in veterinary practice include the death of an animal during infusion of blood substitutes, blood transfusion; death from embolism; reflex cardiac arrest during surgery with proper anaesthetic and resuscitation support; anaphylactic shock during administration of veterinary medicines to an animal; death from pain shock with proper blocking, etc. Scientific medical and legal sources contain different definitions of the term "accident". In particular, I. Senyuta (2017) notes that this is "a type of defect in the provision of medical care related to the proper performance by a medical professional of professional duties following regulations and the

provision of medical care following healthcare standards and local protocols, which is caused by a sudden, unforeseen, insurmountable and inevitable set of circumstances that caused harm to the patient's health or death". Such a definition of the concept of "accident" should be considered meaningful, complete, and profound, but given the peculiarities of regulatory and legal regulation of veterinary activities, it cannot be applied in veterinary medicine, veterinary law, and forensic veterinary examination, since, unlike humane medicine, it still lacks standards and local protocols.

Taking into account the above features, it is possible to formulate the author's definition of the concept of "accident in veterinary practice" as a type of defect in the provision of veterinary care associated with the proper performance by a veterinary professional of professional duties following regulatory acts and the provision of veterinary care following animal health standards, disease treatment protocols, instructions on measures for the prevention and control of infectious diseases of animals, as well as other regulatory documents, but caused by a sudden, unforeseen, insurmountable and inevitable set of circumstances that caused damage to the health of the animal or its death.

Thus, an accident in veterinary practice has the following characteristics:

- 1) it is a type of defect in the provision of veterinary care; actions of a veterinary professional that occurred during a veterinary intervention justified by veterinary science and practice, with awareness of the danger of such intervention;
- 2) occurred in the case of proper and timely performance by a veterinary professional of professional duties, provided that in a particular case, everything necessary was done to prevent negative consequences from the point of view of the principles of veterinary science;

3) the provision of veterinary care by a veterinary professional is qualified following the regulations, and standards in the field of animal health, treatment protocols for sick animals, instructions on measures to prevent and control infectious diseases of animals, as well as other regulatory documents (it should be noted that although there are still no treatment protocols for sick animals and no standards in the field of animal health in the field of veterinary medicine, this study is aimed at the future);

4) suddenly occurring – “which took place, came unexpectedly, unforeseen” (Dictionary of the Ukrainian language, 1970-1980), unpredictable – “which was not foreseen, not expected, not hoped for” (Dictionary of the Ukrainian language, 1970-1980), insurmountable – “which cannot be overcome, which cannot be resisted” (Dictionary of the Ukrainian language, 1970-1980) and inevitable – “which cannot be averted, which cannot be prevented from happening” (Dictionary of the Ukrainian language, 1970-1980) by a coincidence;

5) there is a direct and necessary causal link between the provision of veterinary care and the damage caused to the animal's health or death;

6) an unsuccessful outcome of a veterinary intervention does not depend on defects in veterinary care, including errors of a veterinary professional, but arises due to the characteristics of the animal's body, the complexity of the case, and the unfavourable environment in which veterinary care is provided;

7) the legitimacy of the actions of a veterinary professional and the absence of the criterion of error in actions, but in terms of the resultant factor; it is a defect in the provision of veterinary care;

8) absence of legal liability based on the results of legal qualification of the act.

An accident in veterinary practice, or mishap, in law enforcement and forensic veterinary

examination, must be differentiated from negligence, error, ignorance, or overconfidence. In the event of a veterinary care accident, there are no unlawful acts or faults of the veterinary professional, and therefore no grounds for legal liability.

Professional error in veterinary practice and key problems of detecting a defect in veterinary care

The most common type of defect in the provision of both medical and veterinary care is a professional error in veterinary practice, which is similarly called a “medical error” in humane medicine. The term “mistake” in the Dictionary of the Ukrainian Language (1970-1980) means “incorrectness, inaccuracy in any mechanism, device, scheme, map, etc.”. However, it should be noted that there is still no statutory definition of this concept in both human and veterinary medicine.

To create a terminological construction of the definition of “professional error in veterinary practice”, it is necessary to analyse scientific sources that contain different definitions of the concept of “medical error” as one of the defects in the provision of medical care. Ya. Radish *et al.* (2008) state that a medical error is “an erroneous action or inaction of medical personnel, manifested in the incorrect provision (failure to provide) care, diagnosis of diseases and treatment of patients (victims) and actually worsened the patient's condition or caused damage to the health or life of a person, characterised as bona fide neglect in the absence of signs of negligence, malicious or reckless misconduct and criminal ignorance”.

O. Onishchenko and V. Yerzaulova (2013) synonymise the concepts of “medical error” and “medical” fault, defining them as actions or omissions of a medical professional that led to negative consequences for the patient's health or life caused by objective factors, and therefore exclude the possibility

of legal liability. The same definition of “medical error” is given by R. Tytykalo and T. Handziy (2014), adding subjective factors to the factors that cause negative consequences for the patient.

The position of V. Stebliuk and A. Pletenetska (2015), who define “medical error” as a defect in the provision of medical care associated with the wrong actions of medical personnel, characterised as a bona fide error in the absence of signs of intentional or reckless crime. The position on the legal construction of the concept of “medical error” is also reflected by I. Senyuta (2018) and is that it is “a type of defect in the provision of medical care, which is the improper performance (non-performance) of professional duties by a medical professional as a result of a subjective or objective error, not related to a negligent and dishonest attitude, which caused harm to the patient’s health”.

Therefore, the view of scientists regarding the good faith of a medical professional in the event of a “medical error” is dominant, and therefore there are no signs of guilt in these actions. To summarise, it is possible to formulate the author’s definition of the term “professional error in veterinary practice” (which is analogous to the concept of “medical error”), which is that it is “a type of defect in the provision of veterinary care, associated with the improper performance or non-performance by a veterinary professional of professional duties as a result of an objective or subjective error, but not related to a negligent and dishonest attitude, which caused damage to the health of the animal or even led to death”.

Signs of professional error in veterinary practice include the following:

- 1) it is a type of defect in the provision of veterinary care;
- 2) a defect that caused damage to the animal’s health;

3) civil liability based on the results of legal qualification of the act;

4) the nature of the error is not related to a negligent and dishonest attitude to the performance of professional duties;

5) defects in veterinary care in the form of action (active form of behaviour) or inaction (passive form of behaviour) of a veterinary professional in the performance of professional duties;

6) a fine line with professional offences (misconduct and crimes);

7) a veterinary professional commits an act contrary to the requirements of animal health standards and protocols, instructions, making a mistake due to subjective (low level of qualification, underestimation or overestimation of the consulting opinion, results of the consultation, etc.) or objective (severity of the condition of the sick animal, lack of necessary veterinary technical and instrumental support, etc.

Discussing the results of the presented theoretical research, which are fully based on practical forensic veterinary expert activity, it should be emphasised that the problem of forensic veterinary examination for defects in veterinary care has not been fully resolved because forensic veterinary examination itself is still a fairly young field of forensic expert activity in Ukraine. However, the issue of defects in medical care is actively discussed in specialised medical journals (Franchuk, 2018; Grenon *et al.*, 2023; Enzmann & Albrecht, 2023), and legal publications (Senyuta, 2017; Maikut, 2017; Danchenko & Gereljuk, 2020).

The number of criminal proceedings regarding defects in veterinary activities is increasing every year. Thus, from the expert practice of the author of this paper, it is known that in 2019 (after the opening of the forensic veterinary examination at the Ministry of Justice of Ukraine), only 1 forensic veterinary examination was conducted

regarding a defect in the provision of veterinary care, in 2020 there were 2 such forensic examinations, in 2021 – 4, and 2023 – 5. At present, the use of specialised veterinary knowledge to identify a defect, and its type and, accordingly, to establish a causal link between a defect in veterinary care and negative consequences for the health and life of an animal is quite limited.

To outline the range of all the problems that arise the way of forensic veterinary research of various defects in veterinary care, it is still necessary to study the issue of forensic veterinary examination as a means of evidence in the investigation of criminal offences or crimes, which are also a type of defects in veterinary activities, by identifying the elements of the conceptual and categorical apparatus of “veterinary fault” and “veterinary crime”, as well as indicating their signs; to characterise the defects in the organisation and implementation of veterinary and sanitary measures, especially in the event of outbreaks of acutely contagious infectious diseases, and to develop a methodology for conducting forensic veterinary examination in criminal proceedings initiated in connection with defects in veterinary activities.

To summarise, it should be noted that the experience of law enforcement and forensic assessment of defects in the provision of veterinary care shows that, in particular, it is necessary to address this problem:

- ✓ initiate the development of veterinary standards and animal treatment protocols based on the latest achievements of science and technology;
- ✓ develop a system of compulsory veterinary insurance that will encourage control over defects in the provision of veterinary care;
- ✓ introduce the definitions of the following concepts into the terminological construction and consolidate them in the legislation: “defects in veterinary care”, “non-performance or improper

performance of professional duties by a veterinary practitioner”, “accident in veterinary practice”, “professional error in veterinary practice”, and outline the criteria for their distinction;

- ✓ to complement Art. 1 of the Law of Ukraine “On Veterinary Medicine” (2021) with new definitions of the concepts of “veterinary care”, “diagnostic procedures”, “medical and tactical procedures”, “resuscitation procedures”, formulating them in the author’s wording;

- ✓ to supplement Article 1 of the Law of Ukraine “On State Control over Compliance with the Legislation on Food Products, Feed, Household Products of Animal Origin, Animal Health and Welfare” (2017) with definitions of the concepts of “defect in veterinary care”, “non-performance or improper performance of professional duties by a veterinary practitioner”, “accident in veterinary practice”, “professional error in veterinary practice”, formulating them in the author’s wording;

- ✓ to develop a methodology for forensic veterinary determination of defects in the provision of veterinary care and defects in the organisation of veterinary and sanitary measures for the effective organisation and conduct of forensic veterinary examination in this area, which will enable courts and law enforcement agencies to correctly qualify veterinary offences and provide an objective criminal law assessment of the illegal activities of veterinary professionals.

Conclusions

The study for the first time formulated the definition of the concept of “defect in veterinary care”, the meaning of which is that it is the poor performance by a veterinary professional of diagnostic, therapeutic, tactical, resuscitation, rehabilitation and other procedures, implementation of preventive measures, as well as their organisation, associated with improper or proper performance or

non-performance by a veterinary professional of professional duties, which caused or could have caused negative consequences for the animal (animals) in the form of a disorder

The system of signs of a defect in the provision of veterinary care is outlined, which are as follows: poor performance of diagnostic, therapeutic, tactical, resuscitation, rehabilitation and other procedures by a veterinary practitioner, poor organisation of preventive measures; the fact of actual causing or high probability of causing by defects in veterinary care of negative consequences for the animal (animals) in the form of health disorders (disease, injury, mutilation, etc.) or death; the presence of defects in veterinary care in a direct necessary causal relationship with improper or proper performance or failure to perform. These signs of a defect in the provision of veterinary care may be manifested in various combinations: all at the same time or in a certain combination, as well as with the dominance of some over others. Defects in the provision of veterinary care may be caused by both objective and subjective factors.

The author's definitions of the concepts of "non-performance or improper performance of professional duties by a veterinary practitioner", "accident in veterinary practice", and "professional error in veterinary practice" are proposed and their signs are outlined. Proposals are made to supplement criminal and veterinary legislation in terms of defects in veterinary care.

It is advisable to classify defects in the provision of veterinary care: by the stages of veterinary care (defects caused at the pre-hospital/outpatient stage and defects caused at the hospital stage, during the provision of veterinary care in the inpatient hospital of a veterinary medicine clinic; by elements of veterinary care (defects in the organisation, diagnosis, treatment and tactical, prevention, rehabilitation, resuscitation, deontological

defects); by the nature of veterinary care (defects in connection with insufficient, untimely, incorrect veterinary care, defects in connection with the failure to provide veterinary care); by the legal basis, i.e. depending on the intent to cause a defect in veterinary care (accidents in veterinary practice, professional errors in veterinary practice, veterinary crimes and veterinary misconduct).

A comprehensive epistemological approach to the phenomenon of a defect in veterinary care can have a positive impact on the efficiency and effectiveness of forensic veterinary examination, the provision of a well-grounded and objective expert opinion in a categorical form, as well as a qualitative legal analysis and qualification of the negative results of veterinary intervention by law enforcement agencies or the court.

The research novelty is based on the fact that for the first time in world practice, the author of this work has proposed an epistemological construction of the phenomenon of veterinary care defect in the aspect of forensic veterinary examination. Prospects for research on the chosen topic are to study the issue of forensic veterinary examination as a means of proof in the investigation of criminal offences or crimes regarding defects in veterinary activities.

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Conflict of Interest

The author declares no conflict of interest. The study is of initiative character and was not funded.

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Доктрина гносеологічної конструкції феномену дефекту ветеринарної допомоги в судово-ветеринарній експертизі

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Анотація

Для доведення винуватості працівника ветеринарної медицини в заподіянні шкоди здоров'ю тварини важливе місце відводиться судово-ветеринарній експертизі, оскільки висновок експерта – це джерело доказів у судочинстві, яке допомагає правоохоронним органам чи суду правильно кваліфікувати правопорушення та встановити відповідність чинному законодавству певних дій працівника ветеринарної медицини. Проте дослідження проблеми дефектів ветеринарної допомоги належно не висвітлене на шпальтах українських наукових джерел. Мета роботи – сформулювати дефініцію поняття «дефекти ветеринарної допомоги», виокремити ознаки цього феномену в аспекті судово-ветеринарної експертизи, запропонувати класифікацію видів дефектів та дати їхню характеристику. Методологічна основа дослідження – системний

підхід, зумовлений специфікою теми роботи й пов'язаний з використанням загальнонаукових і спеціально-наукових методів, серед яких аналіз, синтез, аналогія; логіко-семантичний метод; системно-структурний метод; метод моделювання; порівняльно-правовий метод. Доведено, що дефектом надання ветеринарної допомоги необхідно вважати ситуацію, коли працівник ветеринарної медицини неякісно виконує діагностичні, лікувально-тактичні, реанімаційні, реабілітаційні та інші процедури, здійснює профілактичні заходи, а також виконує в неналежний спосіб або не виконує свої професійні обов'язки, що спричиняє або може спричинити негативні наслідки для тварини (тварин) у вигляді розладу здоров'я (хвороби, ушкодження, каліцтва тощо) або загрозувати смертю. Запропоновано авторські дефініції понять «невиконання чи неналежне виконання професійних обов'язків працівником ветеринарної медицини», «нешасний випадок у ветеринарній практиці», «професійна помилка у ветеринарній практиці» та окреслено їхні ознаки. Показано, що дефекти ветеринарної допомоги можуть бути зумовлені як об'єктивними, так і суб'єктивними чинниками. Запропоновано класифікацію дефектів ветеринарної допомоги: за етапами надання ветеринарної допомоги, елементами та характером ветеринарної допомоги, правовою підставою. Практичне значення проведеного дослідження полягає в тому, що воно покладене в основу методики визначення дефектів ветеринарної допомоги під час проведення судово-ветеринарної експертизи

Ключові слова: судова ветеринарна медицина; підекспертна тварина; професійні обов'язки працівника ветеринарної медицини; невиконання/неналежне виконання професійних обов'язків; нещасний випадок у ветеринарній практиці; професійна помилка у ветеринарній практиці

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