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Participation of local self-government bodies in licensing of individual entrepreneurial activities in the healthcare sector

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Abstract

Political process management in the healthcare sector is one of the main factors influencing the economic, social, and cultural development of a country, its international prestige and competitiveness in the world, and requires constant development in search of new ways, mechanisms, and methods of improvement. The study aims to reveal and deepen the scientific, theoretical, and methodological foundations of licensing, and their role in the organisation of local self-government in terms of implementing the State policy in the healthcare sector. The object and subject of the study were selected using the dialectical method substantiating its purpose and objectives; the methods of analysis and generalisation were used to provide the necessary justifications for defining the essence and content of the State healthcare policy, clarifying the competence of public authorities and local self-government bodies about compliance with healthcare requirements, considering the powers of public authorities and local self-government bodies in the field of public healthcare, and considering the focus and specific features of the State healthcare policy in the field of healthcare. The problem of the issue has been studied and conceptual directions for its solution have been built by filling the relevant gaps in the legislative

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framework. Several Laws of Ukraine and resolutions of the Cabinet of Ministers of Ukraine regulating the management of the political process in the healthcare sector are analysed. The tendency of changes in legislation to ensure proper control over the quality of healthcare services is revealed. The author identifies several restrictions in the list of bodies authorised to issue relevant licences for individual entrepreneurial activity in the healthcare sector. The author outlines the structure of the system of regulatory management on the issue of exercising the constitutional right of citizens to independent individual economic activity. The author proves that licensing is a necessary instrument of state control over the quality of medical services and patient safety. The author proposes to grant representative local self-government bodies the right to consider and make decisions at their meetings on issuing or refusing licensing documents in the field of economic activity related to healthcare. Based on the results of the study, the author identified gaps in the current legislation of Ukraine relating to public health protection and formulated relevant recommendations for its improvement

Keywords: public protection; competent authorities; entrepreneurship; individual activity; private entrepreneur; political management system; legal documents; local authorities

Introduction

The implementation of entrepreneurial activity in Ukraine is a hot topic due to the existing international and domestic factors influencing the country's economic well-being. In particular, it is worth noting the actualisation of the processes of forming small and medium-sized businesses to support the country's economy, which is in a state of forced active hostilities and, therefore, needs additional capital to expand the state's priority areas. Accordingly, the development of entrepreneurs and individual entrepreneurship is vital at the current stage of Ukraine's formation as a sovereign state with a focus on the European path of development in all spheres of society. According to the current trend, for the country to support individual economic activity, an important issue is strict observance of the constitutional right of citizens to implement their economic direction within the framework of established legal and regulatory norms (Oliynyk, 2020). Here, it is necessary to focus on the compliance of the authorised bodies with the system of legal regulation of

relations in the field of healthcare in a democratic society, as well as fair and equal treatment of all parts of the implementation of such a norm. Regular critical analysis of the legal framework governing the exercise of the right to economic activity makes it possible to correct the shortcomings as soon as possible. From the point of view of S. Ishchuk (2018), dynamism, as one of the factors of such a system of regulatory and legal regulation of economic activity, requires systematic analysis and review of the main postulates, which will allow maintaining the fair exercise of the constitutional rights of Ukrainian citizens.

As part of a systematic study of the legal regulation of entrepreneurial activity, A. Nemchenko *et al.* (2020) defined the healthcare sector as the state's guarantor of the constitutional right to healthcare, medical care, and insurance. Alongside, according to N. Baldych *et al.* (2019), the implementation of public economic activity in the medical sphere is an important aspect of ensuring the integrity and sustainability of the national

security construct of Ukraine and the health of the population, which is its direct component. In this regard, O. Muzyka-Stefanchuk *et al.* (2020) note that the licensing process for such activities is critical to the exercise of the state's right to sovereignty and protection of the population in the provision of healthcare services that meet quality standards. This issue, according to M. Godun (2020), should also be considered in terms of studying the processes of national economic stability and the relationship of an open legislative process to the exercise of the public right to economic activity, including in the healthcare sector.

According to M. Durman (2020), following the trend of the domestic political spectrum of decentralisation and changes in the relationship in the system of power of public administration, it is worth highlighting the aspect of the participation of local governments in several differential processes of public opinion. Thus, in line with the expansion of the competence of local self-government bodies, it is necessary to analyse the place of these structural elements of the exercise of power within the framework of the formation and regulatory regulation of business in Ukraine. As noted by V. Ivanenko and V. Kurepin (2022), following the outlined trends in the factors influencing the economic situation in the country, it is necessary to analyse the regulatory framework of the Ukrainian legal system following the martial law and the variability of the expansion of powers of local authorities during this period. Given the analysis of these publications, the current legislation of Ukraine does not provide for several force majeure circumstances such as martial law or armed aggression by neighbouring countries, and thus this area requires detailed research.

To reveal and deepen the scientific, theoretical and methodological foundations of licensing and their role in the organisation of local

self-government in the implementation of the State policy in the field of healthcare, the following tasks are to be addressed: definition of the essence and content of the State policy in the field of healthcare; clarification (allocation) of the competence of public authorities and local self-government in the field of healthcare; consideration of the powers of public authorities and local self-government in the field of public healthcare; coverage of the direction and peculiarities of the state policy in the field of public health at the local level.

Materials and Methods

The integrity of the methodological basis of this scientific study is substantiated by the use of a synthesis of qualitative and quantitative methods within a single scientific paradigm. Since the study is based on the analysis of the texts of legal acts regulating relations within the framework of participation of local self-government bodies in licensing individual entrepreneurial activity, the research is based on logical and historical methods of cognition, which allowed to form a critical vision of the evolutionary path of regulation of the legal framework of the study. Moreover, the methods of systematisation, generalisation and formalisation were used to form the content of the research work and the stages of analysis of legal facts and norms.

Based on the scientific and critical interpretation of the research sources, the author analysed the main postulates related to the topic of the study and applied the method of data analysis. The methods of induction, deduction, and scientific abstraction were used to formulate a causal relationship between the basis of the study, i.e., regulatory texts, and the academic literature. Thus, a critical view of the research topic was formed and, using the method of abstraction, the main areas of the study were outlined, and the necessary facts were highlighted, which further

helped to describe the research results. To study such a multi-component phenomenon as the system of legislation of Ukraine, a structural-functional method was used, becoming the basis for studying this structure by dividing it into systemic components.

The study's aim and objectives were based on the legal acts that are part of the legal system for the implementation of the rights and freedoms of Ukrainian citizens and are directly related to the subject matter of the study, namely, outlining the factors of individual entrepreneurial activity in the healthcare sector and the possibility of licensing such activities by local governments. Thus, the study analysed numerous Laws of Ukraine and resolutions of the Cabinet of Ministers of Ukraine regulating the above provisions. Constitution of Ukraine (1996), Law of Ukraine "On Fundamentals of the Legislation of Ukraine on Health Care" (1992), Law of Ukraine "On Local Self-Government in Ukraine" (1997), and Law of Ukraine "On Licensing of Economic Activities" (2015) were included into study basis.

At the same time, the studies of I. Demchenko (2019), A. Nemchenko *et al.* (2020), and O. Muzyka-Stefanchuk *et al.* (2020), highlight the construction of systematic and thorough legal regulation of business activity in Ukraine and the process of exercising the constitutional right to freedom of economic activity, were addressed. To formulate the content of the research work and the stages of analysis of legal facts and norms, the systematisation, generalisation, and formalisation methods were used.

Results and Discussion

The healthcare sector in Ukraine is regulated by the relevant legal acts that form the system of state legislation of the relevant sector of political administration. As noted by A. Nemchenko *et al.*

(2020), this systematic construct includes five levels of legislative regulation, namely:

- ✓ the inalienable right to healthcare, medical care and medical insurance recognised by Article 49 of the Constitution of Ukraine (1996);
- ✓ regulations that reflect the specifics of healthcare regulation following a particular area of law: Civil Code of Ukraine (2003), Code of Ukraine on Administrative Offenses (1984) etc.;
- ✓ The baseline law regulating the fundamentals of healthcare activities, namely the Law of Ukraine "On Fundamentals of the Legislation of Ukraine on Health Care" (1992);
- ✓ regulation of certain areas of medical activity in Ukraine through the approval of special regulations;
- ✓ acts that fall within the competence of central and local state executive authorities (approved by the President of Ukraine, the Cabinet of Ministers of Ukraine, etc.).

I. Demchenko (2019), referring to several academic studies in the field of identification and formation of the modern classification of healthcare legislation, emphasises that there is currently no single generally accepted systemic view of the problem for several reasons. First of all, there are several factors and legal acts that affect the extensive system of medical activity in Ukraine. This, in turn, is prompted by a wide range of features and contradictions of the system itself, as it is branched and rather complex, which makes its regulation multicomponent and its implementation multilevel.

According to the outlined system of regulation of the healthcare sector in Ukraine, the issue of participation of local self-government bodies in licensing individual entrepreneurial activity in this area is multicomponent due to the multi-level governance, as noted by S. Dubinsky (2016). The priority is to identify the main legal

acts regulating the competence of local self-government bodies and their place in the process of licensing entrepreneurial activity.

The basis of the regulatory framework for the healthcare sector is the Law of Ukraine “On Fundamentals of the Legislation of Ukraine on Health Care” (1992), last amended on 27.10.2022, which identifies several specific definitions and norms that allow for a thorough legal analysis based on the official legal framework. The Law regulates the concept of a healthcare institution, forming a definition based on the legal understanding of a legal entity of any form of ownership that carries out activities in the field of healthcare, providing healthcare services to the population. Such activities must be officially registered and authorised under a licence issued to the person.

Therefore, a licence to carry out medical activities is a necessary prerequisite for the implementation of any type of medical treatment that has a direct impact on public health. The Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Accreditation of Healthcare Institutions” (1997) as amended on 28.04.2023 provides a clear understanding of the accreditation process, which is defined as the provision of official regulatory recognition of the right to conduct medical activities to a healthcare institution and its compliance with all legal requirements. O. Muzyka-Stefanchuk *et al.* (2020) describe a fundamental difference between the concepts of licensing and accreditation, based on the existing legal framework, and define licensing as the process of identifying a legal entity as fully ready to carry out relevant activities in a particular area. This means that the registration has not revealed any regulatory deficiencies or violations that could prevent state registration. Moreover, accreditation has a wider range of requirements and norms and therefore means a process of

deeper verification of a legal entity’s compliance with certain quality standards of services provided by the state.

According to Art. 17 of the Law of Ukraine “On Fundamentals of the Legislation of Ukraine on Health Care” (1992), economic activity in the field of health care directly depends on the availability of a licence for such activity, and therefore licensing is the basis of any medical practice in Ukraine. At the same time, the Fundamentals of the Legislation of Ukraine on Health Care is the fundamental legal act that regulates and classifies medical care and forms the basis for understanding medical activities as a business practice in Ukraine. In addition, this law forms an understanding of the political management of the healthcare sector and regulates such state activities as financial and logistical support of healthcare, state control and supervision, privilege policy, etc.

Given that the above-mentioned legal acts completely regulate the state provision of certain types of healthcare facilities with the necessary material, technical and financial resources, the regulation of the healthcare sector in Ukraine is multi-level, and therefore involves public authorities and their respective structural units. This applies to both public and private healthcare facilities, as they are equally subject to regulatory checks for compliance with state standards. To understand the role of local self-government bodies in the healthcare system, in particular in the process of licensing individual entrepreneurial activity, it is necessary to formulate the structure of power within this topic.

N. Tkachova (2018) notes that the health care system, given its social function, is a social need and is characterised by several approaches to its understanding. Public administration in the healthcare sector can be identified using a dichotomous approach, i.e., divided into interrelated

characteristics, namely the mechanism for exercising the right to power and the form of such activity to govern society. At the same time, the management of such structures is aimed at implementing the internal management component, namely, the organisational structure of a medical institution, which is both a static and a dynamic phenomenon. According to the topic of the study, namely, the regulatory regulation of individual entrepreneurial activity, it should be noted that the medical system is divided into areas of interconnection, namely, the structure that provides for the process of information exchange between its subjects, which are public administration bodies and business.

Public administration in the field of healthcare is a set of measures aiming to ensure accessibility, quality, and effectiveness of medical care to the population of the country, carried out by the state based on legislation and healthcare strategy. According to the Constitution of Ukraine (1996), such activities can be identified as the focus of the state and its structural units on preserving public welfare through the realisation of the individual's right to adequate medical care, health insurance and health protection. Such activities to provide society with an adequate level of medical services are manifested in the regulatory regulation of all public and private medical institutions and especially individual entrepreneurial activity in the field of healthcare.

The specifics of public administration in the healthcare sector in Ukraine are characterised by several factors that depend on the political will of the state, the public vision of the healthcare sector, the country's foreign policy (and thus the adaptation of state regulation of certain areas of society to international standards), as well as several domestic features and unforeseen situations (for example, the COVID-19 pandemic or special natural phenomena that can have a massive

impact on public health). Ukraine has been gradually implementing a range of policy decisions related to the decentralisation process, which involves the transfer of most powers from the central level of government to local authorities, but this is not enough. The healthcare sector is also affected, requiring more efficient and transparent management and better-quality healthcare on the ground.

The main goal of the decentralisation reform was to improve the effectiveness of the implementation of social rights and freedoms of citizens, and thus support the development and well-being of the country's living environment. An important aspect of the reform of the country's power system was the transfer of several powers from central to local authorities, which allowed for faster and more efficient decision-making. This was possible for several reasons: local authorities' understanding of regional issues, which was limited at higher levels of decision-making; and the actual acceleration of the exercise of power, as decisions on changes and implementation of proposals within the region are considered locally and, accordingly, adopted much faster. The reform allowed local authorities to exercise their powers more effectively and enabled society to form its vision of the region's existence (Law of Ukraine No. 562-IX..., 2020).

Decentralisation, and thus the empowerment of local authorities, as enshrined in the current Law of Ukraine "On Local Self-Government in Ukraine" (1997) with the current version of 31.03.2023, has several strategic advantages for the current healthcare system and legal entities licensed to operate in this area. Primarily, this means bringing the political decision-making body in the region closer to the public, which means improving the quality of healthcare services for the population, being able to regulate such activities and making regulatory approval of certain issues available to businesses, i.e. solving

important problems on the ground. An important element of decentralisation is local financial support, which brings many benefits. This means that public healthcare institutions will have more funding opportunities, and as a result, the technical base and qualification level of doctors will increase. The main factor of positive changes in the context of decentralisation of entrepreneurial activity of individuals may be an increase in the efficiency of decision-making systems and thus a reduction in bureaucracy. In addition, decentralised funding allows local governments to make decisions quickly and efficiently at the local level. Another beneficial element of decentralisation is the improvement of healthcare facilities through the development of local infrastructure, urban development through new buildings and the opening of potential medical practices to private entrepreneurs.

Determination of the regulatory framework for the establishment of individual entrepreneurial activity in Ukraine provides for the implementation of the constitutional freedom of a citizen and the right to engage in a certain type of activity. S. Ishchuk (2018) notes that civil society in Ukraine is not complete without the implementation of freedom of entrepreneurship and a clear regulatory framework for the establishment of such a legal entity in public relations. Considering the abovementioned, the peculiarities of the regulatory law on economic activity in Ukraine provide for clear signs and actual requirements for the process of exercising the right of a person to entrepreneurial activity, namely:

- ✓ regulatory and legal consolidation of the rights and freedoms of a person in the field of civil activity related to the realisation of relevant benefits;
- ✓ the presence of a material and spiritual component of the existence of goods that involve the performance of a certain type of work, sale or production of products, etc;

- ✓ free access to the described benefits and the possibility of using them following the law;

- ✓ fixed standards of requirements from a person in this area;

- ✓ consolidation of the state's responsibilities in the economic sphere and business practices in particular (Oliynyk, 2020).

According to the aforementioned regulations and studies, individual entrepreneurial activity is a type of economic activity that involves the independent conduct of economic activity by an individual entrepreneur to make a profit. In other words, an individual entrepreneur is a person who independently manages a business, engages in entrepreneurial activity, does not have the status of a legal entity, and bears certain responsibility for actions and financial obligations. Individual entrepreneurial activity may include various types of activities, such as trade, services, production, transportation, provision of medical services, etc. The activities of an individual (private) entrepreneur are fully regulated by the state, namely the current Law of Ukraine "On Entrepreneurship" (1991) with the current version as of 11.02.2022. This law defines entrepreneurship as an independent activity for which the entrepreneur is fully responsible by the individual entrepreneur who carries out such practice by manufacturing or selling products, providing services, performing certain works, etc.

Individual entrepreneurial activity is defined by law and regulated by the state policy of Ukraine. State authorities and, following the increasing decentralisation trends, local governments, can partially influence individual entrepreneurs by introducing several policy instruments through the exercise of their powers. For example, state authorities may establish and amend business rules and obligations of such entrepreneurs, as well as control their activities after approval of a licence. Local governments may manage individual

entrepreneurs by providing appropriate conditions for their activities, developing, and implementing programmes for the development of small and medium-sized businesses at the local level, providing consulting and information services, etc. However, the management of individual entrepreneurs should not result in excessive administrative pressure or corruption schemes. The regulation of individual entrepreneurs should be based on the principles of democracy, the rule of law and the protection of the rights and interests of citizens, as enshrined in the Constitution of Ukraine (1996).

When considering the licensing of individual entrepreneurial activity in the field of healthcare, the Law of Ukraine “On Licensing of Economic Activities” (2015) as amended on 31.03.2023 and the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Licence Terms for Conducting Business Activities in Medical Practice” (2016) as amended on 29.04.2023 will be the most important legal acts. First of all, it is worth noting that, according to the above-mentioned regulations, medical activity is an economic activity that involves any sale of services, products, trade, or performance of certain types of work. Therefore, medical activity is the implementation of the licensee’s ability to carry out one of the described activities following the current legislation of Ukraine. The licensee here is a business entity that has received a relevant document on the regulatory framework for conducting business activities, i.e. a licence (Law of Ukraine No. 222-VIII..., 2015).

The Law of Ukraine “On Licensing of Economic Activities” (2015) forms the basis for the practice of licensing several activities in the country that require regulatory approval. According to Art. 3 of the Law, the state policy in the field of licensing has its fundamental principles, namely the existence of a unified system of licensing approvals, a consolidated list of types of economic activities

for which a licence is required, an exhaustive list of documents for legal licensing and a list of specialised state authorities designated by the Cabinet of Ministers of Ukraine that may conduct licensing. Following Article 7, paragraph 15 of the Law, medical practice is a sphere of economic activity that is subject to licensing.

According to the Law of Ukraine “On Licensing of Economic Activities” (2015), licensing activities for individuals and legal entities are carried out by an executive body designated by the Cabinet of Ministers of Ukraine or a specially authorised executive body of local councils for licensing certain types of economic activities. Under the current system of public administration in Ukraine, there is no single authority responsible for issuing licences for all types of business activities. This is partly because each of these activities is quite specific and requires special skills and abilities, and therefore, the decision to issue licences should be made by a body competent in a particularly narrow area of social relations.

The Law of Ukraine “On Licensing of Economic Activities” (2015) stipulates that economic activities can be licensed by both higher and local executive authorities, but their political will varies. Entities licensed by any higher state authority, such as the State Service of Ukraine on Medicines and Drugs Control, which licenses, inter alia, the production of medicines, may operate throughout Ukraine. Licensing by local authorities gives the right to operate only within the competence of these authorities.

Thus, local governments in Ukraine may be authorised to issue licences for business activities within their competence. In particular, such powers may be delegated to the executive committees of city, district and regional councils. Within their competence, they may issue licences for certain types of business activities that do not require

special licensing by the relevant central authorities. Trade and catering commissions may issue licences for trade and catering activities within the relevant regional structure, such as a particular oblast. Land market commissions regulate the issuance of licences for land works and other land use activities. It is important to note that the powers of local governments to issue licences for business activities are limited and defined by law. Local governments may issue licences only for those activities that do not require special licensing by the relevant central authorities and within their competence. However, according to Ukrainian law (Law of Ukraine No. 222-VIII..., 2015), the medical and healthcare sector is a special and highly regulated niche in the country's economy, therefore, licences for medical practice must be issued by higher state authorities. Thus, local governments do not have sufficient competence to issue such documents.

According to the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Licence Terms for Conducting Business Activities in Medical Practice" (2016), medical practice in Ukraine is a regulated and structured activity. Clause 5 of the General Part of this document clearly states that a licence applicant shall apply for a licence to the licensing authority in the manner prescribed by part one of Article 10 of the Law of Ukraine "On Licensing of Economic Activities" (2015). The lawfulness of such actions is also very clearly regulated contains a sample form to be filled in for submitting such an application and a detailed list of all requirements for obtaining a permit to legally carry out medical activities. Currently, there is no single regulatory authority that would issue licences for a wide range of activities, so healthcare activities are very broad and have many different directions. A separate licensing authority with the authority to approve such activities is appointed for each territory for which a permit is required.

In general, the Law of Ukraine "On Licensing of Economic Activities" (2015) stipulates that a person may carry out general or specialised medical practice, as well as dental activities only after obtaining a licence. For these specialities, the licensing authority is only the Ministry of Health of Ukraine, located in Kyiv.

Consequently, local governments are not entitled to grant certain types of licences, including licences to conduct healthcare activities for persons who will carry out direct activities aimed at treating or otherwise interfering with the health of citizens. However, following the Law of Ukraine "On Local Self-Government in Ukraine" (1997) as amended on 31.03.2023, local governments are granted a range of powers in the areas of education, sports, and healthcare. According to Art. 32 of this law, local governments have the right to participate in the licensing of individuals and legal entities in the healthcare sector and to submit proposals to the relevant licensing authorities for individual entrepreneurial activity in the healthcare sector. At the same time, regional medical councils may issue permits for certain medical practices, but they will be limited and must be supported by a licence from the relevant higher state authorities.

The licensing issue needs to be amended to eliminate all misunderstandings and conflicts, which in turn are put before the Ministry of Economic Development (Kovbasiuk, 2011). Furthermore, an important aspect is the issuance of licences to legal entities and individuals in the context of the introduction of martial law in the country, which was introduced on 24.02.2022 by the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" (2022). According to the legal understanding of martial law, it is a special legal regime applied to a certain territory or the entire country within the borders recognised by the international community and

the Constitution of Ukraine in the event of a full-scale invasion or threat of such an act and is valid for a specified period. Martial law implies a change of political forces in the country, i.e., granting local, regional, and supreme authorities of Ukraine a special status and powers that will be used to preserve the territorial integrity and sovereignty of the country. However, there is currently no regulatory framework for special procedures or instruments that would apply to the issuance of licences under martial law or other emergencies. The Resolution of the Cabinet of Ministers of Ukraine "On the Suspension of the Terms of the Provision of Administrative Services and the Issuance of Permission Documents" (2022) is a legal act regulating the terms of provision of certain administrative services, including the issuance of licences. According to this resolution, all terms for issuing licences and submitting reporting documents are levelled out during martial law. Therefore, although the structure of the licence approval system does not change significantly, the timeframe for accepting documents for consideration and approving them or declaring a refusal to issue a licence may be slightly extended by the State Regulatory Service of Ukraine (2022), but the procedure remains bureaucratic.

Thus, the participation of local governments in licensing enterprises operating (providing services) in the healthcare sector will minimise the time required to obtain the relevant licences and ensure closer cooperation on the ground. Achieving a higher level of cooperation between business representatives and local authorities is the key to the development and quality of service provision or implementation of the public healthcare system.

E. Bekirova (2006) studied the legal regulation of certain types of economic activity and emphasised licences as an element of the legitimacy of the subject of this activity; conditions for

conducting independent entrepreneurial activity; grounds for obtaining the right to conduct economic activity requiring authorisation; elements of the mechanism for implementing the constitutional right to conduct entrepreneurial activity; the state instrument for regulating economic activity.

According to A. Kashpersky (2011), licensing has an administrative and legal nature, which provides special legal capacity by legitimising the capacity of business entities in the field of local prohibitions, as it has its principles of organising managerial influence and is carried out through the organisation of administrative approvals using administrative procedures. According to I. Pastukh (2005), licensing should be introduced as a system of legal procedures for legally established types of economic activity, thus establishing legal boundaries for its implementation, providing for control over this activity and the need to terminate it on certain grounds by the competent authorities. V. Siverin (2010) emphasised that many services in public places are related to the need for security, so it is appropriate to call them permissive, and licensing was called permissive services, which he proposed to classify as a legislative act (licence) that has legal consequences.

When analysing the licensing studies of Ukrainian scholars, it should be noted that their work is based on the now-invalid Law of Ukraine III "On Licensing of Economic Activities" (2015), but the individual aspects covered by them still require attention currently. The foregoing shows that researchers focused on the licensing of economic activities in the healthcare sector and tried to distinguish it as a separate branch. However, they did not consider the issue of empowering local governments to license such types of economic activity. This is understandable, since at the time of these studies, the issue of decentralisation of power in Ukraine was not considered at

all. As practice shows, several conceptual aspects for the development of the procedure for licensing individual entrepreneurial activity by local authorities can be distinguished from the global procedure of decentralisation of power.

B. Panda *et al.* (2016) note that decentralisation is the process of transferring power, authority, resources, functions, and responsibilities for service delivery from the central government to lower-level institutions in the political-administrative structure. Power is the ability to influence people, while authority is the power that is granted for a specific purpose. In the context of public health governance, the latter is more commonly mentioned than the former. Decentralisation or local decision-making, is often understood to be an important means of improving service delivery. Increased efficiency and effectiveness, accountability, responsiveness, community participation, integration of services and intersectoral coordination are considered key benefits of decentralisation. In addition, it is argued that co-management will be knowledge-based, promote decision-making at the point of service delivery, improve direct communication between clients and decision-makers, and ensure accountability.

The search for affordable solutions, as expressed by I. Khozhylo *et al.* (2020), for local authorities to exercise their powers in the healthcare sector should aim to reform the conditions of decentralisation of power. The network of reformed financial institutions owned by local governments currently stands at around 10,000 across Ukraine, and structural and functional changes will need to be implemented in stages. As almost 80% of healthcare services are provided at the local government level, the powers of local governments (own and delegated) need to be expanded.

Thus, the issue of licensing economic activities in the healthcare sector has been studied

and improved over time. The Law of Ukraine “On Licensing of Economic Activities” (2015) is the current document regulating, in particular, the licensing of individual entrepreneurial activity. However, this document does not contain any information on local self-government bodies as the ones that grant the right to conduct economic activities in the healthcare sector.

Given that the role of local governments in the implementation of healthcare policy has changed significantly since the start of decentralisation and healthcare reform. Local governments are the guardians of healthcare networks, which now improve the quality and accessibility of healthcare services. At the same time, the transition to new healthcare models did not happen overnight, and this process is ongoing. Therefore, allowing representative bodies of local self-government to consider and make decisions at their meetings on the issuance or refusal to issue licensing documents in the field of economic activity related to healthcare will significantly improve the level of healthcare services. After all, the public health system carries out the main activities in the field of healthcare and is aimed at preserving both the population as a whole and the individual health of individuals.

Conclusions

The structure of the existing system of regulatory management of the issue of exercising the constitutional right of citizens to independent individual economic activity was outlined in the study. The algorithm of management of such a system and the corresponding hierarchical division of state regulatory legal acts regulating the study topic were identified. The author emphasised the importance of obtaining relevant documents and obtaining a licence from the authority authorised in a particular field of activity within the framework of conducting independent activities which have

an impact on the life and health of society. A positive aspect of the study of the influence of local governments on obtaining a licence was the process of decentralisation and expansion of powers of local authorities within the state system of governance. Participation of local governments in licensing individual entrepreneurial activity in the healthcare sector was found to be an important element of regulation of this sector in Ukraine. Licensing is a necessary instrument of state control over the quality of medical services and patient safety. At the same time, it is important to consider that the involvement of local governments in licensing should be properly regulated by law, as well as ensure transparency and accountability of the authorities to citizens. In this regard, to ensure the effective participation of local governments in licensing, it is necessary to ensure an adequate level of funding and staff qualifications, as well as to conduct continuous monitoring and evaluation of the results of the work of local governments in this area.

The study of local self-government bodies in the course of exercising their powers in the healthcare sector has established the need to

provide them with the opportunity to consider and make decisions at their meetings on the issuance or refusal to issue licensing documents in the field of healthcare-related economic activity. The processes of interaction of subjects in the course of licensing should be enshrined in laws and regulations to implement and control the state policy in the field of healthcare.

The study of the existing legislative framework in this area revealed certain conflicts of legal acts that may serve for a more detailed and thorough study of licensing in the healthcare sector provided by local governments, to further develop methodological recommendations for its improvement and bringing it in line with the current legislation of Ukraine. The simplified procedure for obtaining a licence by entities operating in the healthcare sector during military aggression by neighbouring countries should be further studied.

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Conflict of Interest

None.

References

- [1] Baldych, N., Hnydiuk, N., & Trutkovsky, Ts. (2019). *Educational research needs of representatives of local self-government bodies of Ukraine: Analytical report*. Strasbourg: Council of Europe.
- [2] Bekirova, E.E. (2006). *Legal regulation of licensing of the certain kinds of commercial activities*. (PhD thesis, Institute of Economic and Legal Research of National Academy of Sciences of Ukraine, Donetsk, Ukraine).
- [3] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- [4] Code of Ukraine "On Administrative Offenses". (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.
- [5] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.
- [6] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

- [7] Demchenko, I.S. (2019). Classification of health care legislation. *Scientific Notes of Taurida National V.I. Vernadsky University. Legal Sciences*, 30(6), 7-13. doi: [10.32838/2707-0581/2019.6/02](https://doi.org/10.32838/2707-0581/2019.6/02).
- [8] Dubinsky, S.V. (2016). [Problems of ensuring the quality of medical services industry of Ukraine](#). *European Vector of Economic Development*, 1, 51-59.
- [9] Durman, M.O. (2020). Regulatory instruments of local government. *Scientific Bulletin: Public Administration*, 1, 84-96. doi: [10.32689/2618-0065-2020-1\(3\)-84-96](https://doi.org/10.32689/2618-0065-2020-1(3)-84-96).
- [10] Godun, M.O. (2020). [Administrative and legal regulation of entrepreneurial activity](#). (Master's thesis, Sumy State University, Sumy, Ukraine).
- [11] Ishchuk, S. (2018). Specific constitutional frameworks for the functioning of civil society in Ukraine: Freedom of enterprise activity. *ScienceRise: Juridical Science*, 1, 11-17. doi: [10.15587/2523-4153.2018.127354](https://doi.org/10.15587/2523-4153.2018.127354).
- [12] Ivanenko, V.S., & Kurepin, V.M. (2022). [Local authorities under martial law: Powers and cooperation of military administrations with local governments](#). In *Legal basis for the organization and exercise of public power: Collection of theses of the 5th international scientific and practical conference, dedicated to the bright memory of Doctor of Legal Sciences, Professor, Academician-Founder of National Academy of Sciences of Ukraine, the first Chairman of the Constitutional Court of Ukraine Leonid Petrovych Yuzkov* (pp. 148-149). Khmelnytskyi: Leonid Yuzkov Khmelnytskyi University of Management and Law.
- [13] Kashpersky, A.V. (2011). [Administrative and legal status of the subjects of licensing of economic activity in Ukraine](#). (PhD thesis, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [14] Khozhylo, I., Nadyuk, Z., Antonova, O., Tarasenko, T., & Serohina, T. (2020). [Local self-government in the focus of the medical reform in Ukraine: Analysis of powers](#). *Theoretical and Empirical Researches in Urban Management*, 15(2), 22-38.
- [15] Kovbasiuk, Yu.V. (Ed.). (2011). [Encyclopedia of public administration](#) (Vol. 1). Kyiv: National Academy of Public Administration, Office of the President of Ukraine.
- [16] Law of Ukraine No. 222-VIII "On Licensing of Economic Activities". (2015, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/222-19#Text>.
- [17] Law of Ukraine No. 280/97-VR "On Local Self-Government in Ukraine". (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.
- [18] Law of Ukraine No. 2801-XII "On Fundamentals of the Legislation of Ukraine on Health Care". (1992, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/222-19#Text>.
- [19] Law of Ukraine No. 562-IX "On Amendments to Certain Laws of Ukraine on the Definition of Territories and Administrative Centers of Territorial Communities". (2020, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/562-20#Text>.
- [20] Law of Ukraine No. 698-XII "On Entrepreneurship". (1991, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/698-12#Text>.
- [21] Muzyka-Stefanchuk, O.A., Otradnova, O.O., Danchenko, T.V., Muzyka, L.A., & Savenkova, V.H. (2020). Public administrative services in the field of health care. *Zaporozhye Medical Journal*, 22(2), 261-266. doi: [10.14739/2310-1210.2020.2.200634](https://doi.org/10.14739/2310-1210.2020.2.200634).
- [22] Nemchenko, A.S., Nazarkina, V.M., & Kurylenko, Yu.Ye. (2020). [Legislation in the health care system](#). Kharkiv: National University of Pharmacy.

- [23] Oliynyk, A.Yu. (2020). The concept of realization of the constitutional freedom of a person to engage in entrepreneurial activity in Ukraine. *Law and Society*, 2(2), 98-103. doi: [10.32842/2078-3736/2020.2-1.16](https://doi.org/10.32842/2078-3736/2020.2-1.16).
- [24] Panda, B., Zodpey, S.P., & Thakur, H.P. (2016). Local self-governance in health: A study of it's functioning in Odisha, India. *BMC Health Services Research*, 16(6), article number 554. doi: [10.1186/s12913-016-1785-8](https://doi.org/10.1186/s12913-016-1785-8).
- [25] Pastukh, I.D. (2005). *Organizational and legal bases of licensing of the economical activity in Ukraine*. (PhD thesis, National Academy of State Tax Service of Ukraine, Irpin, Ukraine).
- [26] Resolution of the Cabinet of Ministers of Ukraine No. 285 "On Approval of the License Terms for Conducting Business Activities in Medical Practice". (2016, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/285-2016-%D0%BF#Text>.
- [27] Resolution of the Cabinet of Ministers of Ukraine No. 765 "On Approval of the Procedure for Accreditation of Healthcare Institutions". (1997, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/765-97-%D0%BF#Text>.
- [28] Resolution of the Cabinet of Ministers of Ukraine No. 165 "On the Suspension of the Terms of the Provision of Administrative Services and the Issuance of Permission Documents". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/165-2022-%D0%BF#Text>.
- [29] Siverin, V.I. (2010). *Administratively legal principles of concession of permission services by the subjects of public administration*. (PhD thesis, Kharkiv University of Internal Affairs, Kharkiv, Ukraine).
- [30] State Regulatory Service of Ukraine. (2022). *Position of the SRS on certain issues of licensing and issuance of permits in the field of economic activity under martial law*. Retrieved from <https://www.drs.gov.ua/press-room/pozytsiya-drs-shhodo-okremykh-pytan-litsenzuvannya-ta-vydachi-dokumentiv-dozvilnogo-harakteru-u-sferi-gospodarskoyi-diyalnosti-v-umovah-voyennogo-stanu>.
- [31] Tkachova, N.M. (2018). *Directions of reformation of state policy in the sphere of health care*. *Investytsiyi: Praktyka ta dosvid*, 8, 83-86.

Участь органів місцевого самоврядування в ліцензуванні індивідуальної підприємницької діяльності у сфері охорони здоров'я

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Анотація

Управління політичним процесом у сфері охорони здоров'я – один з основних чинників, що впливають на економічний, соціальний і культурний розвиток країни, її міжнародний престиж

і конкурентоспроможність у світі та потребують постійного розвитку в пошуках нових шляхів, механізмів і методів удосконалення. Мета роботи – розкрити і поглибити наукові та теоретико-методологічні засади ліцензування, їхню роль в організації місцевого самоврядування в частині реалізації державної політики у сфері охорони здоров'я. Діалектичним методом обрано об'єкт і предмет дослідження, обґрунтовано його мету та завдання; методами аналізу та узагальнення здійснено необхідні обґрунтування у визначенні сутності та змісту державної політики в галузі охорони здоров'я, уточнення компетенції органів державної влади та місцевого самоврядування щодо дотримання вимог охорони здоров'я, розгляд повноважень органів державної влади та місцевого самоврядування у сфері охорони здоров'я населення, розгляд спрямованості та особливості державної політики у сфері охорони здоров'я громадян на місцевих рівнях. Вивчено проблематику поставленого питання та побудовано концептуальні напрями її вирішення шляхом заповнення відповідних прогалин в законодавчій базі. Проаналізовано низку Законів України, а також постанов Кабінету Міністрів України, які регулюють управління політичним процесом у сфері охорони здоров'я. Розкрито тенденцію змін в законодавстві щодо забезпечення належного контролю за якістю надання медичних послуг. Визначено низку обмежень в переліку органів, уповноважених видавати відповідні ліцензії на індивідуальну підприємницьку діяльність у сфері охорони здоров'я. Окреслено структуру системи нормативного управління питанням реалізації конституційного права громадян на незалежну індивідуальну економічну діяльність. Обґрунтовано, що ліцензування є необхідним інструментом державного контролю за якістю медичних послуг та безпекою пацієнтів. Запропоновано надати представницьким органам місцевого самоврядування право розглядати та ухвалювати на власних засіданнях рішення щодо видачі або відмови в ліцензійних документах у сфері господарської діяльності, що стосується охорони здоров'я. За результатами проведених досліджень виявлено прогалини в чинному законодавстві України, що стосується охорони здоров'я населення, та сформульовано відповідні рекомендаційні матеріали щодо його вдосконалення.

Ключові слова: сфера забезпечення захисту суспільства; компетентні органи; підприємництво; окрема діяльність; приватний підприємець; система політичного управління; правові документи; місцеві органи влади



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Environmental rights protection in the European Court of Human Rights

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Abstract

A relevant issue of environmental law in Ukraine is the total violation of environmental human rights and the lack of guarantees for their restoration, as well as the imperfection of the procedure for bringing violators to justice. Since Ukraine is an active participant in international relations in the field of environmental protection, and the basic principles of foreign policy are enshrined in the Constitution of Ukraine, an appeal to the European Court of Human Rights may be a way to defend the violated rights to a clean environment. The study aims to examine the issue of environmental rights protection in the European Court of Justice. The study is based on the following methods of scientific cognition: formal legal, dogmatic, and comparative legal. The author analyses international legislation in the field of environmental rights protection. The author notes that environmental problems are borderless, and therefore, their overcoming requires all

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countries to join forces and share experiences. As stated, the issue of environmental protection and environmental security is becoming geopolitical in nature, given the international cooperation in the field of environmental protection which began more than 100 years ago. The author shows the signs of ensuring the implementation of the environmental rights of citizens both in Ukraine and abroad. Examples of effective international cooperation in the field of environmental protection are given. The author analyses the judgments of the European Court of Human Rights in cases related to the subject matter of the study. It is determined that when making a decision, national courts should adhere to the criteria set out by the European Court of Human Rights; find out how a certain situation arose; whether the State knew and should have known that the danger or harmful effect would affect the applicant's private life; to what extent the applicant contributed to the deterioration of the situation and was able to remedy it without excessive costs. The practical significance of the study lies in the possibility of using its results in specialised classes, as well as in the preparation of scientific texts

Keywords: judicial protection; environmental disputes; environmental safety; environmental law proceedings; environmental interests; environmental legislation of foreign countries

Introduction

Environmental problems that potentially threaten the existence of all living things require the greatest attention in the modern world, as they directly affect human life. Any environmental problem is the result of human activity that gradually neglects the rules of behaviour, which destroys natural resources and environmental pollution. To avoid a global environmental catastrophe, efforts must be made to eliminate environmental threats. It is important not only to move towards overcoming environmental problems, but also to improve national legislation in this area, develop national and international programmes aimed at maintaining a safe environment for human life and health, and look for ways to restore lost resources and overcome the consequences of negative natural phenomena and processes.

Scholars in the field of environmental law and international law, as well as scholars of other branches of law, dedicated considerable efforts to the study of the international protection of environmental human rights. The issues of environmental

rights protection in the European Court of Human Rights (ECtHR) were studied by V. Ladychenko and L. Golovko (2017), V. Ladychenko *et al.* (2021) in the context of the implementation of the European Environmental Policy in Ukraine, where scholars thoroughly analyse the main characteristics of the protection of environmental rights by the ECtHR, and it should be noted that some of them are cited by other scholars, but research based on case law always needs to be revised due to new case law.

The studies are based on the analysis of the regulatory framework for household waste management with a focus on the aspects of waste management following the European Union legislation. Relevant studies are theoretical in nature and need to be strengthened by an analysis of international judicial practice (Khlabistova & Gulak, 2019; Zharovska, 2022).

L. Yakushenko (2012) analysed the experience of EU countries in terms of environmental policy formation. The author identifies ways of implementing environmental policy institutions

and ways of using environmental policy instruments. However, the absence of analysis of judicial practice in the field of environmental policy does not allow for study examples of the proposed instruments. The publication of U. Antoniuk (2018) focuses on establishing a correlation between the real impact of economic activity on the environment and the normatively declared guarantees of environmental human rights. Ye. Aliksieieva (2019) conducts research in the context of judicial protection of the rights of amalgamated territorial communities, and the details of the above studies form the basis on which the statements in this scientific article were proposed, but new ECtHR judgments are also subject to research to provide relevant conclusions and proposals in the field of environmental rights protection in the ECtHR.

I. Tolkachova and V. Kyrychenko (2020) examined the problems of human rights protection concerning environmental pollution and provided proposals for their solution. Using the methods of analysis, synthesis, comparative legal, sociological, logical, and dialectical methods, they identified specific problems of environmental human rights protection and provided proposals for overcoming them, as well as discussing the state of environmental human rights protection. In her research, A. Babich (2019) noted that a large number of applications of Ukrainian citizens to the ECtHR indicate that their rights to a safe environment for life and health are systematically violated. At the same time, the scholar raises the problem of applying the ECtHR judgments, since due to the complexity of environmental policy issues, the Court's role is primarily subsidiary.

V. Lykhohliad (2019) notes that the ECtHR considers the state to be the relevant entity that is obliged to organise an effective regulatory and legal regulation of relations in terms of environmental human rights protection. Thus, to ensure

an effective legislative regulator of these legal relations for the protection of environmental human rights, all states should analyse and study the ECtHR case law in this area. S. Shutiak *et al.* (2018) proposed to divide environmental cases of people considered by the ECtHR in the relevant area into those cases that affect life, environmental health, or certain owned objects of an environmentally hazardous nature; as well as those cases that involve access to certain information and/or dissemination of such information, public participation and access to justice in the relevant area. Scholars noted that states should improve their legislative framework in the field of environmental protection, environmental protection, etc. to address existing environmental problems, in particular through analysis and research of the existing ECtHR case law. The ECtHR case law could be an effective source of adjudication by national courts, in particular in the field of environmental relations, as it could help prevent violations of environmental rights and, accordingly, minimise the number of Ukrainians applying to the ECtHR for protection of their rights (Kovalenko, 2019; Surilova, 2022).

Given the problems faced in this area of research, there is a need to analyse international experience, in particular the case law of the European Court of Human Rights, which should be used to improve the national legal system in the field of environmental rights protection by adapting Ukrainian legislation to the provisions and principles of international law.

The study aims to investigate the issue of judicial protection of environmental human rights, in particular, the legislative framework of foreign countries and the ECtHR judgments.

Materials and Methods

A comprehensive and complete study of the topic of the scientific article on the protection of

environmental rights in the ECtHR is possible by applying a set of methods of scientific cognition, in particular, analysis and synthesis, formal legal and dialectical. Analysis and synthesis made it possible to study the methods and practice of environmental rights protection by the European Court of Human Rights and also to identify the basic principles and principles of environmental human rights protection in the relevant instance. The formal legal method was used to study the legal acts and establish the links between the provisions of various legislative documents. The dialectical method was used to study the general characteristics to identify the main aspects of the ECtHR's case law.

To achieve the study goal, several legal acts, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the ECtHR case law were used as the basis for the research. The ECtHR case-law includes the following rulings: the ECtHR judgement in the case of *Hrymkovska v. Ukraine* (2011) concerning the significant damage to the home, personal and family life of an individual due to the operation of the main road that was built near his home, which led to air pollution with exhaust gases, coal dust, noise pollution from the constant movement of trucks; the ECtHR judgement *Dubetska et al. and others v. Ukraine* (2011) concerning water pollution, soil subsidence and frequent flooding of the applicants' village as a result of the production activities of a plant and a coal mine; *Moreno Gomez v. Spain* (2004) concerning the exceeding of maximum noise standards in the settlement at night and the applicant's complaints about sleep disturbance due to noise from nearby pubs, bars and clubs; the ECtHR judgement in *Hutton and others v. the United Kingdom* (2003) concerning complaints about the quality of the environment and human presence in it; about dangerous or

destructive environmental conditions that could adversely affect human well-being; and about the failure to recognise the circumstances requested by the applicants as a violation of the right to privacy; the ECtHR judgement in *López Ostra v. Spain* (1994) on environmental pollution that may interfere with the right to respect for private and family life (and home) and affect people's well-being – prevent them from using their homes); the ECtHR judgement in *Giacomelli v. Italy* (2006) on pollution from a toxic waste processing plant located 30 metres from the applicant's house; the ECtHR judgement in *Tatar v. Romania* (2009) on the failure of state authorities to assess the risk of environmental disaster caused by coal; the ECtHR judgement in *Guerra and others v. Italy* (1998) on the failure to provide important information that would have helped the applicant to assess the risk to himself and his family if he continued to live near a chemical plant until the production of fertilisers was stopped; *Di Sarno and others v. Italy* (2012) concerning the unpleasant smell of a landfill near a prison that permeated prisoners' cells, given that this was the only place for prisoners to live and they could not choose another place to live; *Powell and Rayner v. the United Kingdom* (1990) concerning noise generated by aircraft, and an example where the ECtHR found no violation of Article 8 of the Convention and the rights of those living below the flight path, given the small number of people.

Results and Discussion

Article 50 of the Constitution of Ukraine (1996) enshrines the right to a safe environment for life and health and to compensation for damage in case of violation of such a right, as well as access to information on the state of the environment, food safety and quality, etc. At the same time, Article 16 of the Constitution regulates the

protection of environmental safety and ecological balance. It also addresses the consequences of the Chernobyl disaster, which had an impact on the entire planet, and the preservation of the Ukrainian gene pool, which is the responsibility of the state. Certain issues of environmental liability and judicial protection of rights were covered in the publication by V. Ladychenko *et al.* (2021). Furthermore, the issue of judicial protection of environmental rights requires a separate study, given that sufficient attention has been paid to the issue of studying case law. In particular, when studying the relevant issue, a conclusion was made that most European directives and regulations are formulated very specifically, with the establishment of parameters and criteria for the quality of environmental components and the responsibilities of actors. Instead, Ukrainian environmental legislation sets general requirements and defines principles and goals but does not specify ways to achieve them. Specific regulatory parameters can only be found in state standards, most of which are not publicly available. Ukrainian environmental legislation is declarative, does not contain conditions for achieving quantitative and qualitative results, and does not establish an effective control system. There are no penalties for failure to comply with the relevant requirements. The provisions of the Ukrainian legislation are insufficient to ensure the prevention and remediation of environmental damage and need to be improved. In particular, the Law "On Prevention and Elimination of Environmental Damage" and the State Concept for the Implementation of Human Rights to Quality and Safe Drinking Water should be adopted. To ensure the implementation of European environmental standards in Ukrainian legislation, the adoption of laws is not enough. For implementation, it is also necessary to ensure that appropriate institutions and budgets are in

place to enforce these laws and other regulations. An effective monitoring and sanctioning system must also be established to ensure that the legal requirements are fully and properly implemented (Khlabistova & Gulak, 2019).

Analysing similar provisions in the constitutions of foreign countries, it is worth noting that the Constitution of the French Republic (1958) establishes the powers of a certain council that has the right to draft regulations and submit legislative proposals in the field of environmental regulation. Article 70 of this Constitution provides for the possibility of the respective council to advise the government and parliament on solving or preventing environmental problems.

There are examples of constitutions of countries that do not mention anything at all about people's environmental rights in their constitutions, such as the Constitution of Austria. It is indicated that federal legislation is being developed in the field of environmental law (Federal Constitutional Act of the Republic of Austria, 1920). In addition, Austria has an effective instrument at the state level to regulate, in particular, environmental management through the system of pledge. This instrument provides for the possibility of establishing surcharges imposed on the retail price of goods after their disposal, etc.

The ECtHR is a special tool for protecting human rights. This body's practice implements the concept of judicial protection of environmental human rights. The ECtHR's judgments form the case law, according to which pollution is the basis for violation of citizens' rights, in particular the right to respect for private and family life or the right to life in general. Citizens face problems of access to justice when addressing their environmental problems at the state level. Such problems include violations of the terms of consideration of environmental cases; expensive expert

examinations and lawyer services; lack of free legal aid; lack of awareness of judges in the field of protection of citizens' environmental rights, environmental protection, in particular, international norms in the relevant field; lack of awareness of citizens of their rights in the relevant field (Issues of environmental protection..., 2020).

The ECtHR case law on the protection of environmental rights has considered, in particular, cases of violation of the right to life (Article 2 of the Convention), the right to respect for private and family life (Article 8 of the Convention), the right to peaceful enjoyment of possessions (Article 1 of Protocol 1), the right to an impartial court (Article 6 of the Convention), the right to a fair remedy (Article 13 of the Convention) and the right to freedom of expression (Article 10 of the Convention). The right to life is the first fundamental right enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The right to an adequate environment for life and health, as well as for work and residence, the right to socio-economic well-being and development of all states and peoples, etc. are regulated by international instruments that regulate environmental and human rights issues, although they do not have an exhaustive list of such rights (Voievodin, 2023). In general, environmental rights should not be considered independent rights, as they are an important basis for the legal provision of satisfaction of important human needs (Medvediev, 2012; Dmytrenko, 2021).

Human rights and the environment are interconnected. Accordingly, it is impossible to ensure such rights separately without a safe, clean, and healthy environment, and sustainable environmental management cannot be ensured without observing and respecting human rights (Kirianova *et al.*, 2020). Environmental

obligations are an element of the mechanism for regulating legal environmental relations, enshrining the standard of lawful behaviour of a citizen, establishing consequences for a person in case of its violation, the fulfilment of which is ensured by the threat of state coercion, and their content is dominated by the public law element (Alexi, 2011; Zygrii *et al.*, 2020).

V. Yusupov and N. Chenshova (2021) believe that the improvement of national legislation, as well as ensuring the adoption of clear, enshrined algorithms and mechanisms for ensuring human rights in the relevant area at the legislative level, will take place through the study of the international practice of the ECtHR in cases of the relevant area, as such a study will help ensure the environmental rights of citizens at the national level.

For a better comprehension of the interdependence of these areas, it is necessary to proceed to the direct study of individual judgments of the ECtHR both concerning Ukraine and foreign countries. Particular attention should be devoted to the Judgment of the European Court of Human Rights in the Case of Hrymkovska v. Ukraine (2011). The applicant claimed that his home, personal and family life had been severely damaged by the operation of a main road that ran very close to his home. This caused severe air pollution with exhaust fumes, coal dust caused by the fact that holes in the road were filled with cheap material from coal mines and noise from the constant movement of trucks.

The applicant noted that the house had become practically inhabitable. In addition, the pollution had caused chronic respiratory diseases in his family members. The Court noted that in the case of an environmental threat, an unfounded claim under Article 8 may arise only when the threat reaches such a level that it affects the applicant's ability to use his home, to have private

life and to have family life. In other words, the establishment of a violation of Article 8 depends on the specific circumstances, and the concept of “causing a significant deterioration” is evaluative and can be determined by the degree of harmful effects and consequences. In practice, it is often difficult to prove that the deterioration of health is a consequence of this particular action, however, the court, having examined all the circumstances in detail, recognised the violation as one under Article 8 of the Convention.

A similar argument was put forward by the court in the Judgment of the European Court of Human Rights in the Case of *Dubetska et al. and others v. Ukraine* (2011). The applicant and his fellow villagers complained about water pollution, soil subsidence and frequent flooding in the village where they lived as a result of the production activities of a factory and a coal mine. The main issue examined by the court was the balance between private and public/public/state interests.

According to the court, the state authorities, in the implementation of policy and production activities, must strike a fair balance between the competing interests of those individuals (in this case, rural residents) whose rights are significantly violated and society as a whole (in this case, the economic well-being of the entire population). Undoubtedly, industrial pollution can adversely affect the health of society as a whole and worsen the quality of human life (Judgment of the European Court of Human Rights..., 2011). As a result, the court concluded that the Ukrainian state authorities could not strike such a balance, which resulted in a significant violation of the rights of citizens guaranteed by Article 8 of the Convention.

Importantly, in this judgment, the Court identified three criteria by which to decide whether a human rights violation within the meaning of Article 8 of the Convention has indeed occurred. The

Court has to find out: firstly, whether the situation was the result of a sudden and unexpected turn of events or, on the contrary, whether it had existed for a long time and was well known to the public authorities; secondly, whether the state knew and should have known that the danger or detrimental effect would affect the applicant’s private life; and thirdly, to what extent the applicant contributed to the deterioration of the situation and was able to remedy it without excessive costs.

It may be concluded that a violation of environmental rights will not always be recognised as a violation of Article 8 of the Convention, but only if the disputed damage is significant, i.e. its elimination requires a lot of money and effort or is irreparable. The relevant study is effective given the practice of resolving foreign cases, in particular, the Judgment of the European Court of Human Rights in the Case of *Hutton and others v. the United Kingdom* (2003), unlike the above-mentioned decision, states the evidence of non-recognition of the circumstances requested by the applicants as a violation of the right to privacy.

Furthermore, analysing the Judgment of the European Court of Human Rights in the Case of *Moreno Gomez v. Spain* (2004), which concerned the exceeding of maximum noise standards in a settlement at night, the court concluded that the applicant complained of sleep disturbance due to noise from nearby pubs, bars, and clubs, which were open with the permission of the council. According to the complaint, the government is responsible for “noise pollution”. The court concluded that the damage suffered by Ms. Gomez was caused by the government’s solution to the problem. It was therefore found that the state had failed to ensure the applicant’s right to respect for home and private life.

An analysis of the Judgment of the European Court of Human Rights in the Case of *Hutton and*

others v. the United Kingdom (2003) has shown that although the Convention does not explicitly provide for a declaration on a healthy environment, the Court has determined in various cases concerning the quality of the environment and human presence in it that dangerous or destructive environmental conditions can adversely affect human well-being. Accordingly, Article 8 can be applied in environmental cases regardless of whether the pollution is caused directly by the state or whether the state's responsibility arises from the proper regulation of private sector activities. In such cases, a fair balance between the competing interests of the individual and society as a whole is considered; in both cases, the state may decide at its discretion what steps should be taken to ensure compliance with the Convention.

In the Judgment of the European Court of Human Rights in the Case of López Ostra v. Spain (1994), it was held that serious environmental pollution can interfere with the right to respect for private and family life (and home), which can affect people's well-being and prevent them from enjoying their homes. That is, it would hurt their private and family life. The applicant claimed that the family home had been severely polluted by a private tannery built with state subsidies on municipal land 12 metres from the applicant's apartment.

In the Judgement of the European Court of Human Rights in the Case of Giacomelli v. Italy (2006), the pollution of a toxic waste treatment plant located 30 metres from the applicant's home was found to be a violation of Art. 8, as well as in the Judgment of the European Court of Human Rights in the Case of Fadeyeva v. Russia (2005), where the state authorities violated the woman's right to housing and privacy by failing to provide a real opportunity to receive assistance due to her location in a dangerous "sanitary protection zone" around Russia's largest metallurgical plant,

which is rife with high levels of pollution and hazardous chemical emissions.

In some cases, the failure to provide information about environmental risks or accidents is a violation of Article 8, for example in the Judgment of the European Court of Human Rights in the Case of Tatar v. Romania (2009), where state authorities failed to properly assess the risk of an environmental disaster caused by coal. In the case Guerra and others v. Italy local population was not provided with important information to help them assess the risk to themselves and their families if they continued to live near the chemical plant until fertiliser production ceased (1994) (Judgment of the European Court... 1998).

In Judgment of the European Court of Human Rights in the Case of Di Sarno and others v. Italy (2012) the court found that the unpleasant smell of a landfill near the prison, which permeated the prisoners' cells, which had been their only "living quarters" for several years, fell within the scope of the right to private and family life, as did the constant failure of state authorities to ensure the collection, recycling and disposal of waste.

There are also ECtHR cases where the Court has held that Article 8 applied where adverse environmental conditions resulted from living on a flight path near Heathrow Airport. The landscaping next to the house had been adversely affected by aircraft noise, and the court recognised that claims relating to environmental conditions could in some circumstances fall within the scope of Article 8, as in Powell and Rayner v. the United Kingdom as in Judgment of the European Court of Human Rights in the Case of Powell and Rayner v. the United Kingdom (1990). However, in the end, the court concluded that the state's refusal to restrict night flights from Heathrow in the interests of the country's economic well-being did not violate Article 8 or the rights of those living

downstream of the flight path, given the small number of people, as in case *Hutton and others v. the United Kingdom* (2003).

There are also cases involving noise pollution in which the respondent state failed to fulfil its obligation to guarantee the applicant's right to housing and private life. For example, was the failure to comply with the noise level in a nightclub near the applicant's home in Valencia a violation of Article 8 of the Convention as in *Moreno Gomez v. Spain* (Judgment of the European Court of Human Rights..., 2004), so the applicant was unable to cope with excessive noise pollution due to increased traffic on the street where the applicant worked.

Given that the issue of judicial protection of environmental rights requires a separate study and given that sufficient attention has been paid to this issue, it is worth noting that directives and regulations establish parameters and criteria for the quality of environmental components and the responsibilities of entities. In Ukrainian legislation, these are general requirements, principles, and goals, but not ways to achieve them.

The position of K. Khlabistova and O. Gulak (2019) regarding the need for appropriate institutions and budgets to monitor the proper implementation of environmental legislation is valid. It is worth noting that the authors did not analyse how national institutions can ensure the relevant functions.

The opinions of V. Yusupov and N. Chenshova (2021) in terms of ensuring the adoption of clear algorithms and mechanisms for the protection of citizens' environmental rights at the legislative level through the use of the ECtHR case law are valid, and it is worth noting that this cannot be implemented as a feature of English law, since case law cannot be a source of law in Ukraine, as a country that is a representative of the classical continental system of law.

Quite often, cases of Ukrainian citizens are considered by the ECtHR due to the inability of national courts to meet their needs in one part or another. Citizens of Ukraine often face violations of their environmental rights, as a result of which they file, in particular, a lawsuit against the alleged violator or file a statement with the police, and as a result of the proceedings established by law, the case is resolved in court, but the applicant is not always restored or compensated for his or her violated right. The issue of resolving environmental cases by national courts is complicated due to the small number of satisfied claims, and this is the basis for applying to the ECtHR. The above is also a reason to ensure better legislative regulation of the relevant issue.

Conclusions

As a result of the study of environmental rights protection in the European Court of Human Rights, several judgments addressing the protection of environmental rights at the international level were analysed. This analysis helped to achieve the goal, provided scientific novelty of the work through the study of current case law, and also provided practical value, which is the possibility of using this research for future research papers. The analysis of the ECtHR case law has shown that environmental cases should be resolved primarily by national courts, and the ECtHR can recognise that environmental human rights have been violated only in the context of Article 8 of the Convention.

When passing judgment, national courts should adhere to the criteria set by the ECtHR and build their practice following the Court's judgments, as the courts must first find out whether the situation in question arose as a result of a sudden and unexpected turn of events or, on the contrary, whether it had existed for a long time and the

public authorities were well aware of it; whether the state knew and should have known that the danger or detrimental effect would affect the applicant's private life; to what extent the applicant contributed to the deterioration of the situation and was able to remedy it without excessive costs.

Studying and applying the ECtHR case law in environmental cases is very important for the Ukrainian judicial practice, as it will not only expand the possibilities of protecting environmental rights through the Convention but also fill in the gaps in the environmental legislation of Ukraine. Given the above, it is very important to ensure the rule of law in the field of environmental rights protection and to create conditions for removing obstacles to access to justice in the field of environmental protection and environmental human rights.

References

- [1] Alexi, R. (2011). [Existence of human rights](#). *Law of Ukraine*, 8, 121-130.
- [2] Alieksieieva, Ye. (2019). [The right of the public to appeal to the court in cases of violation of the requirements of environmental protection legislation](#). In *International judicial forum "Judicial protection of the natural environment and environmental rights": Collection of materials* (pp. 13-19). Kyiv: Supreme Court.
- [3] Antoniuk, U.V. (2018). [Protection of environmental rights in Ukraine in the context of the assessment of environmental impact](#). *Uzhhorod National University Herald. Series: Law*, 52(2), 18-21.
- [4] Babich, A. (2019). Practice of the European Court of Human Rights in the field of ensuring the environmental rights of citizens. *Entrepreneurship, Economy and Law*, 11, 161-165. doi: 10.32849/2663-5313/2019.11.26.
- [5] Constitution of the French Republic. (1958, October). Retrieved from https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf.
- [6] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- [7] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf.
- [8] Dmytrenko, M. (2021). Modern civilizational challenges in the context of the world reorganization concepts. *Political Studies*, 2, 150-169. doi: 10.53317/2786-4774-2021-2-8.
- [9] Federal Constitutional Act of the Republic of Austria. (1920, November). Retrieved from <https://constitutionnet.org/vl/item/austria-federal-constitutional-law-1920>.

Given that Ukraine is under martial law, the risk of violation of people's environmental rights is high, and accordingly, the need to protect these rights and study such protection, including international protection, is necessary. In addition, it is important to study the consequences of environmental crimes that result from the war on the territory of Ukraine, as the relevant consequences concern not only Ukraine but the whole world, so it is important to study the reaction to such actions by law enforcement agencies in Ukraine, as well as by the judicial system and international courts.

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Conflict of Interest

None.

- [10] Issues of environmental protection in the practice of the ECtHR and their impact on judicial practice in Ukraine. (2020). Retrieved from <https://ecolog-ua.com/news/pytannya-ohorony-dovkilliya-v-praktyci-yespl-ta-yih-vplyv-na-sudovu-praktyku-v-ukrayini>.
- [11] Judgment of the European Court of Human Rights in the Case of Di Sarno and others v. Italy (Application No. 30765/08). (2012, January). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-108480>.
- [12] Judgment of the European Court of Human Rights in the Case of Dubetska et al. v. Ukraine (Application No. 30499/03). (2011, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-103273>.
- [13] Judgment of the European Court of Human Rights in the Case of Fadeyeva v. Russia (Application No. 55723/00). (2005, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-69315>.
- [14] Judgment of the European Court of Human Rights in the Case of Giacomelli v. Italy (Application No. 59909/00). (2006, November). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-77785>.
- [15] Judgment of the European Court of Human Rights in the Case of Guerra and others v. Italy (Application No. 116/1996/735/932). (1998, February). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-58135>.
- [16] Judgment of the European Court of Human Rights in the Case of Hrymkovska v. Ukraine (Application No. 38182/03). (2011, July). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-105746>.
- [17] Judgment of the European Court of Human Rights in the Case of Hutton and others v. the United Kingdom (Application No. 36022/97). (2003, July). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-61188>.
- [18] Judgment of the European Court of Human Rights in the Case of López Ostra v. Spain (Application No. 16798/90). (1994, December). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-57905>.
- [19] Judgment of the European Court of Human Rights in the Case of Moreno Gomez v. Spain (Application No. 4143/02). (2004, November). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-67478>.
- [20] Judgment of the European Court of Human Rights in the Case of Powell and Rayner v. the United Kingdom (Application No. 9310/81). (1990, February). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-57622>.
- [21] Judgment of the European Court of Human Rights in the Case of Tatar v. Romania (Application No. 67021/01). (2009, January). Retrieved from <https://hudoc.echr.coe.int/Eng?i=001-57905>.
- [22] Khlabistova, K.V., & Gulak, O.O. (2019). [The principles of waste and resources management in the EU members](#). *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 5, 46-52.
- [23] Kirianova, V.O., Matviienko, Ye.I., & Yaroshenko, A.S. (2020). Features of legal liability for violation of environmental legislation. *Legal Scientific Electronic Journal*, 1, 131-134. [doi: 10.32782/2524-0374/2020-1/30](#).
- [24] Kovalenko, V.V. (2019). European Court of Human Rights Practice – environment and human rights. *Legal Scientific Electronic Journal*, 6, 452-456. [doi: 10.32782/2524-0374/2019-6/113](#).
- [25] Ladychenko, V., & Golovko, L. (2017). Implementation of European environmental policy in Ukraine: Problems and prospects. *European Journal of Sustainable Development*, 6(3), 333-339. [doi: 10.14207/ejsd.2017.v6n3p333](#).

- [26] Ladychenko, V.V., Golovko, L.O., & Serhiienko, B.B. (2021). [Theoretical and legal principles of waste management under the legislation of the European Union](#). *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 1, 46-57.
- [27] Lykhohliad, V.P. (2019). Protection of ecological human rights in the European Court of Human Rights. *South Ukrainian Law Journal*, 4(2), 148-151. doi: [10.32850/sulj.2019.4.2.32](#).
- [28] Medvediev, K.V. (2012). [Environmental rights of citizens of Ukraine: Guarantees of their legal protection](#). (PhD thesis, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine).
- [29] Shutiak, S.V., Alieksieieva, Ye.A., Voitiuk, I.A., & Kravchenko, O.V. (2018). [Human rights and environmental protection: Tutorial manual for judges-trainers of the online course](#). Lviv: Manuscript.
- [30] Surilova, O.O. (2022). [International legal mechanism for the protection of ecological human rights in the period of armed conflicts](#). In *Human rights in the period of armed conflicts: Collection of materials of the international scientific and practical conference dedicated to the 25th anniversary of the National University "Odesa Law Academy"* (pp. 605-609). Odesa: Odesa Law Academy.
- [31] Tolkachova, I., & Kyrychenko, V. (2020). Problems of ecological human rights protection in Ukraine. *Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law"*, 3, 32-39. doi: [10.18372/2307-9061.56.14888](#).
- [32] Voievodin, I.S. (2023). International legal mechanism for the protection of environmental rights of indigenous peoples. *Analytical and Comparative Jurisprudence*, 4, 559-568. doi: [10.24144/2788-6018.2023.04.89](#).
- [33] Yakushenko, L. (2012). *Analysis of the experience of European cooperation regarding the formation and implementation of institutions and instruments of environmental policy. Analytical note*. Retrieved from <http://www.niss.gov.ua/articles/840>.
- [34] Yusupov, V., & Chenshova, N. (2021). [International experience of judicial protection of environmental rights of citizens: A current status](#). *Law Review of the Kyiv University of Law*, 2, 246-249.
- [35] Zharovska, I. (2022). Protection of environmental rights: Theoretical and praxiological nature. *Journal of Lviv Polytechnic National University. Series: Legal Sciences*, 9(1), 41-46. doi: [10.23939/law2022.33.041](#).
- [36] Zygrii, O., Kramarchuk, S., & Kramarchuk, T. (2020). The concept and structure of environmental responsibility. *Actual Problems of Law*, 3, 131-136. doi: [10.35774/app2020.03.131](#).

Захист екологічних прав у Європейському суді з прав людини

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Анотація

Нагальна проблема екологічного права України – тотальне порушення екологічних прав людини та відсутність гарантій їх відновлення, недосконалість процедури притягнення до відповідальності порушників. Оскільки Україна активний учасник міжнародних відносин у галузі охорони навколишнього середовища, а основні засади зовнішньополітичної діяльності закріплені в Конституції України, то способом відстояти порушені права на чисте довкілля може стати звернення до європейського суду з прав людини. Мета статті – вивчити питання захисту екологічних прав у Європейському суді. Основу дослідження склали такі методи наукового пізнання: формально-юридичний, догматичний, порівняльно-правовий. Проаналізовано міжнародне законодавство у сфері захисту екологічних прав. Зазначено, що екологічні проблеми не мають кордонів, а отже, їх подолання потребує, щоб усі країни об'єднали сили та обмінювалися досвідом. Констатовано, що питання охорони навколишнього середовища та екологічної безпеки набуває геополітичного характеру, зважаючи на міжнародне співробітництво в галузі охорони навколишнього середовища, яке розпочалося понад 100 років тому. Наведено ознаки забезпечення реалізації екологічних прав громадян як в Україні, так і за кордоном. Наведено приклади ефективної міжнародної співпраці у сфері захисту довкілля. Проаналізовано рішення Європейського суду з прав людини у справах, що стосуються предмету дослідження. Визначено, що національним судам, виносячи рішення, необхідно дотримуватися критеріїв, визначених Європейським судом з прав людини; з'ясовувати, як виникла певна ситуація; чи знала і чи повинна була знати держава, що небезпека або згубна дія вплинуть на приватне життя заявника; наскільки заявник сприяв погіршенню ситуації та зміг її виправити без надмірних витрат. Практичне значення дослідження полягає в можливості використати його результати під час проведення профільних занять, а також під час складання наукових текстів

Ключові слова: судовий захист; екологічні спори; екологічна безпека; судочинство у сфері екологічного права; екологічні інтереси; екологічне законодавство зарубіжних країн



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Public control over the activities of the Ministry of Justice of Ukraine: An introduction to the problem

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Abstract

The research relevance is determined by the importance of public control over the activities of the Ministry of Justice of Ukraine, which follows directly from the status of this central executive body and its key tasks. The study aims to explore the concept and legal nature of public control as a modern institution, to establish the specifics of its formation and to determine in general terms the peculiarities of its adaptation to the functions and tasks of the Ministry of Justice of Ukraine. The key method of the research is formal-dogmatic (special legal), which is used to study the legal and regulatory constructions of understanding of public control, its goals and mechanisms. The study establishes the relationship between the content of the concept of public control and the goals which it sets or should set. Local self-government bodies and other entities are the primary providers of public control, and it is substantiated that the essence of public control is realised through the tasks of monitoring, inspection and supervision of activities of public authorities, local self-government bodies and other entities. The author establishes that the ultimate goal of control is to ensure that the subjects under control comply with the requirements of legislation,

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human and civil rights and freedoms, and the principles and values of civil society. It is found that the most balanced approach from the point of view of the needs of public administration and the realities of modern democratisation of Ukraine is a broad understanding of public control as a permanent and systematic, multifaceted activity of civil society institutions in their close interaction with the object of control: governmental authorities, law enforcement agencies, judicial and expert bodies, etc. The theoretical value of the article lies in a comprehensive review of the current state of understanding of the concept of public control. The practical value of the study lies in the fact that its results can be used to further improve the legal and regulatory framework for public control in Ukraine

Keywords: judiciary; civil society; public administration; democratisation; executive authorities

Introduction

The current stage of development of developed democracies is characterised by a complex interpenetration of state institutions and civil society. Mechanisms and instruments of direct (elections, referendums, rallies and demonstrations, etc.) and indirect (representative) democracy coexist in the modern world, reflecting the dynamics of social relations and political processes. Even in a representative democracy, when the people of the state delegate certain powers and functions to elected authorities, the methods of direct influence on their activities do not lose their importance, but only increase in importance, gaining more influence and institutionalisation. This is especially true concerning controlling the compliance of decisions and activities of executive authorities with the constitutional principles and guaranteed rights and freedoms.

The importance of implementing public control over the functioning of the Ministry of Justice of Ukraine directly stems from the status and key tasks and areas of activity of this central executive body, which are sensitive for civil society in general and the rights and freedoms of individual citizens in particular. The Ministry of Justice, among other things, according to the Regulation on the Ministry of Justice of Ukraine, Order of the

Cabinet of Ministers of Ukraine No. 228 (2014), in the context of public control, mentions only that the Ministry of Justice facilitates the exercise of public control by supervisory commissions and public associations over the observance of the rights and legitimate interests of convicts during the execution of criminal sentences. Other areas and directions of the exercise of the power of the Ministry of Justice of Ukraine also require attention, which is not mentioned in the Regulation or other legal acts, including at the legislative level.

In this regard, the development of the institution of public control over the activities of the Ministry of Justice and its effective functioning should be preceded and simultaneously ensured by a doctrinal study of the legal nature of public control over the activities of the Ministry of Justice of Ukraine, and the definition of the main principles of its structure and functioning. This issue is still poorly researched, although it is attracting more and more attention from Ukrainian scholars, along with the study of the principles of public control over the activities of other central executive authorities.

O. Dulina and A. Krupnyk (2021) established the theoretical foundations of public control and specific features as a component of the public

administration category. Z. Kravtsova (2019) emphasised the key role of public associations, which have as their statutory activity the exercise by citizens of Ukraine of their constitutional rights and freedoms in the light of organising and exercising public control over the activities of public authorities. N. Gayeva (2018; 2019) determined that to guarantee the effectiveness of such work, it is mandatory to adopt a universal and comprehensive Law of Ukraine "On Public Control in Ukraine", which will establish the principles and forms of participation of public organisations in the inspection and supervision of the functioning of public authorities.

The general aspects of the essence of public control over the activities of public authorities are touched upon by Yu. Nironka (2019), establishes that the Constitution of Ukraine currently provides for two basic forms of public control: 1) public events, which includes the possibility of holding peaceful assemblies, demonstrations, pickets, etc.; 2) through the implementation practice of the right of citizens to establish public associations and organisations. The issues of interaction between the judiciary and civil society institutions were the subject of a study by M. Blikhar and I. Krykavska (2022).

V. Gritsenko (2021) defined the concept and tasks of public control over the activities of the National Police of Ukraine. R. Myroniuk (2020) revealed the legal nature of the institution of public control over the activities of the police, identified the specifics of public control over the activities of the National Police of Ukraine, and outlined ways to improve the current Ukrainian legislation in this area. S. Medvedenko (2019) determined that public control, unlike the existing methods of control and supervision by the state and its bodies, does not empower the public to interfere with the operational activities of the police

and bring police officers to justice. Public control as one of the types of external control over the work of the National Anti-Corruption Bureau of Ukraine was considered in work by R. Osypchuk (2020), in which this institution is closely linked to the general public demand for combating corruption in the functioning of public authorities, individual officials and officers. More detailed forms of public control over the observance of laws, rights and freedoms of citizens in the activities of the above-mentioned body were studied by V. Doroshenko (2018).

At the same time, the issue of comprehensive scientific understanding of the theoretical and legal foundations and peculiarities of organisation and implementation of public control over the activities of the Ministry of Justice of Ukraine, including in the light of the analysis of the modern regulatory framework and specifics of implementation at the level of territorial bodies, is still insufficiently studied. At the same time, a comprehensive scientific study of this issue should be preceded by a thorough introduction. This determines the purpose of this article – to study the concept and legal nature of public control as a modern institution. To achieve this goal, the following tasks are set: to establish the specifics of the modern scientific understanding of the concept of "public control" and its regulatory and legal support; to determine in general terms the peculiarities of adaptation to the functions and principles of the Ministry of Justice of Ukraine.

In the process of researching the basic theoretical foundations of the content of the category of public control, general and special legal scientific methods were applied, among which the leading place was taken by systemic and structural, dialectical, prognostic, methods of formal logic and others. Description, analysis and synthesis, comparison, and other general methods of

scientific knowledge were also used. The formal logical method was used to identify the key features that are included in the definition of public control. The comparative legal method was useful in the comparative analysis of approaches to the legal nature of public control in Ukraine and the EU. The formal-dogmatic (special legal) method also played a key role in the work, as it was indispensable when working with legal and regulatory constructions of understanding public control, its tasks and functions.

The research materials include a few legal acts and/or their drafts in this area, as well as a rich doctrinal heritage of Ukrainian scholars on the development and establishment of the essence of public control as an independent institution and type of activity, its fundamental features and constituent elements. It is the synthesis and analysis of the provisions of these sources, along with an understanding of the practical situation of implementing public control over the Ministry of Justice of Ukraine and a forecast for the future, that have become the methodological and material basis for this research.

Modern approaches to public control legal nature comprehension

The understanding of public control at the current stage of the development of legal and philosophical thought is based on the fact that it is one of the effective ways to maintain the legal order. This opinion is shared, in particular, by V. Nalutsyshyn (2018). That is, public control can be seen as an institution that mediates the mechanisms of cooperation between the state and society to achieve a common goal – building a safe space for people, where their rights and legitimate interests can be freely exercised. Undoubtedly, this general maxim hides the specific ways and tools that public control operates with,

which are also called their forms in the scientific literature. The latter reflects not only the specifics of civil society's influence on the state but also the state of development of such a society. Therefore, public control can also be seen as a benchmark of modern democracies, where the authorities do not operate exclusively horizontally. In turn, the study of the legal nature of public control requires a preliminary reference to the issues of interaction between the state and civil society in general. M. Blikhar and I. Krykavska (2022) include the establishment and functioning of coordinating bodies; joint development and subsequent implementation of decisions aimed at eliminating or minimising the manifestations of negative phenomena for society that may arise in the course of judicial proceedings; implementation of the adopted provisions in the practical activities of the judiciary; and, separately, public control over the activities of the judiciary.

Traditional scientific research analysis of the definitional aspect of the issue – doctrinal approaches to understanding public control – indicates a correlation between the concept of the latter and the tasks (goals) that it pursues or should pursue. The direct connection between these tasks and the spheres and forms of public control is also usually reflected at the conceptual level under study. It is worth referring not only to special works devoted to public control over the activities of the Ministry of Justice of Ukraine but also, given the essential and structural similarities, to the developments related to the study of the specifics of public control over other executive authorities, forensic institutions, law enforcement agencies, etc. General theoretical studies are to be highlighted, which reflect on the place and role of public control in the light of the institutions and mechanisms of modern civil society.

As such, O. Ruvin (2020), defining public control over the activities of forensic institutions, considers it through the prism of the activities of public organisations and individuals not united in public organisations, which is implemented through interaction with public authorities and local self-government bodies, their officials and officials, as well as forensic institutions. Interaction, according to the author's position, is primarily related to ensuring strict compliance with the established principles of organisation and conduct of expert research, such as its legality, impartiality, independence, etc. In other words, the key is to reveal the essence of public control through the category of activities, but those that are not directly related to control itself, but are interaction with the relevant entities to comply with these fundamental principles of expert research.

The concept of "control" is sometimes replaced or disclosed through certain forms of control. For example, I. Skvirskyi (2013) considers public control as the activity of civil society representatives (including individuals and/or associations of citizens) aimed at checking and/or monitoring to ultimately counteract, prevent or stopping illegal activities or cancelling illegally adopted decisions of entities vested with public power. D. Pryputen (2020) defines public control over the police as a form of implementation employing inspection. A related and also widespread approach to categorising public oversight is to refer to a set of measures. For instance, according to the systemic definition of O. Yunin (2021), public control over the functioning of the National Police of Ukraine is considered as a set of measures aimed at: 1) verification (including monitoring and supervision) of compliance with the law in the activities of the National Police units, its designated officials or officers in the performance of their functions and powers; 2) and establishment

of cooperation between the police and the public for joint planning, implementation of projects, programmes and initiatives to meet the needs of the community and improve the efficiency of the tasks assigned to the police. Accordingly, such measures, and thus public control over the activities of the National Police of Ukraine, are carried out by representatives of the public (individual citizens and/or civil society organisations) following the Constitution and laws of Ukraine.

This definition combines the previously defined forms of public control – inspection, observation and supervision – with the addition of an important aspect of interaction with public authorities (here, the police, which can be extended to law enforcement agencies in general). Similarly, other authors define public control over police activities, concerning the norms of the current legislation, as a systemic set of certain measures. These measures are implemented by citizens, their associations and organisations, and even local self-government bodies, aimed at achieving such tasks as primary collection and accumulation with subsequent analysis of information on police activities, which, as a result, should lead to the establishment and effective functioning, based on these data, of intra-departmental control of the National Police bodies for further correction of identified shortcomings (Klochko & Sobina, 2017).

For both dialectical and formal and logical reasons, it is reasonable to reveal the content of civic control through activities rather than a set of measures. Firstly, the latter is an integral part of the activity, as it allows to reveal its forms, methods and techniques, but it would be wrong to limit public control exclusively to such "tools": specific ways of implementing a certain activity are subject to evolutionary and historical changes, being reformed depending on the needs and realities of the time, while the activity of public control itself

continues to maintain and expand its relevance in the context of building a democratic society. This is also emphasised by other researchers (Maslova & Savchuk, 2020). Secondly, the concept of “activity” is a dynamic phenomenon, involving the creation and development of a complex system of interaction between civil society institutions and government institutions in a broad sense. The interpretation of public control as an interaction activity can be considered the most successful. Since, as defined above and repeatedly emphasised by other authors, such activity is not controlled in the strict sense of the term – it lacks several instruments of this concept that are sanctioning in nature, i.e., imply certain liability.

At the same time, these approaches are neither ultimatum nor the only ones in modern Ukrainian legal thought. O. Pukhkal (2010) considers public control as a type of social control, although the researcher also reduces its content to a set of various activities carried out by individual citizens or through established civil society institutions (non-governmental organisations, mass media, political parties, movements, etc.) and related to monitoring and inspection of the activities of public authorities and local self-government bodies. The final goal of public control is to force the authorities to comply with legislative requirements and perform their tasks and duties with responsibility and competence. There are also views on the concept under study as a means (tool) for assessing the public’s performance by public authorities and other controlled entities of their social functions and in the light of public control as a way of exercising the right of citizens guaranteed by the Basic Law to participate in the management of public affairs. Such participation is realised through the possibility of monitoring the functioning of controlled entities vested with power, applying to them for public services,

participating in the adoption of regulatory acts, and, in addition, carrying out other forms of interaction with such entities in the performance of public functions, including ensuring public order and ensuring security, guaranteed by the state and the law (Pashchynskyi, 2021).

O. Poklad (2016) distinguished between narrow and broad approaches to the definition of public control using the differences in public control definitions. According to the first definition, it is limited to the control that takes place through citizens’ applications, complaints, proposals or requests sent to public authorities; non-governmental organisations; representative bodies of labour collectives and trade unions. In the context of police activities, the narrow approach to public oversight covers work with citizens’ requests for access to public information (Poklad, 2018). According to the second (broad) understanding, this concept is understood through the system of modern relations between the state and society, based on the accountability of the executive branch of government to the parliament, non-governmental institutions, or as an organisational and legal form of social interaction (association) of citizens on the principle of free participation and for their protection of various groups of interests. Both paradigms deserve attention and have a theoretical and practical basis, but the complex dimension, i.e. the broader approach, is of interest, which allows not only to point out certain instrumental (applied) aspects of the problem (activities in the field of public control) but also to establish its substantive essence and legal nature.

In the context of improving the legal understanding of public control as an institution, international experience is also noteworthy. Thus, the conclusions of Yu. Nironka (2022), based on a study of the experience of public control in the United States, Belgium, France, Canada and Spain,

summarised that the main forms of manifestation of the analysed concept in these countries are: direct public control, public monitoring, organisation of public hearings, activities of public councils, institutions of public expertise and public inspection, activities of ombudsmen, a wide range of investigative activities (from those carried out voluntarily to professional journalism), mechanical control, and other forms of public control. The researcher also identified the registration of errors of officials, violations of regulatory requirements and consequences of such violations, mechanisms for encouraging positive actions of officials and officials, administrative appeals against illegal decisions, actions and inaction as innovative forms.

Ye. Kasianenko (2019), in the context of the differentiation of mechanisms of state and public control over the exercise of their functions and powers by local self-government bodies, points out that the institutions of modern civil society are increasingly acting as direct and active subjects of control in states characterised by a high level of development of democratic institutions. These include the Scandinavian countries (Norway, Sweden, Denmark), as well as New Zealand, Canada, Ireland, Switzerland, Finland, Austria, and others. It is fair to emphasise that in such countries, the effectiveness of public control is directly related to the traditions of direct democracy, which are currently being transformed into open government institutions with the help of the latest technologies (Hohensinn *et al.*, 2019). At the same time, even in developed democracies, as studies on the example of Norway show, citizen participation in municipal affairs is mainly protest-based (as a reaction within a broad approach to public control) rather than proactive (Holum, 2023). This thesis emphasises the lack of utopian ideality in the ways and manifestations of the participation of civil society institutions in

state and social life, even in Western democracies. Therefore, their experience is not the alpha and omega of building public control in Ukraine, but an important benchmark, suggesting that other states and societies should also adopt the Ukrainian experience, the relevance and progressiveness of which was especially acute during the Russian-Ukrainian war.

Prospects for regulatory and legal support of public control

This systemic understanding of civic control should be the basis for the future special law on civic control. Such a law has not yet been adopted (which has specific practical consequences, such as ignoring acts of public inspections), and the proposals of the only draft law on this issue that is at least somewhat relevant today (Draft Law of Ukraine No. 2737-1..., 2015) deserve constructive criticism. Other existing developments, such as of V. Doroshenko (2019) and O. Olkina (2020), are doctrinal. First of all, the draft law states in its preamble that it defines the content of the state policy on the exercise of the rights of individuals and legal entities united in public associations to exercise public control over the activities of public authorities, local self-government bodies, their officials and employees.

This excludes from its scope non-institutional aspects of public control related to actions (appeals, activities in general) of individual interested citizens. This erroneous approach is reflected directly in the definition of public control under Article 1 of the draft law, which defines it as a public activity of public associations, the subject of which is to oversee the compliance of the activities of public authorities, local self-government bodies, their officials and employees with the Constitution of Ukraine, laws of Ukraine, other regulatory legal acts, and their compliance with state discipline.

Instead, public control is exercised not only institutionally, but also by citizens who are not members of any civic organisations or associations. This allowed N. Nestor (2019) to divide the subjects of public control over the activities of judges into individual and collective ones. At the same time, the latter may be situational in origin, united not in a legal entity, but constitute an unorganised group of people interested in common ideas, values or in solving a particular problem within the framework of the public control and supervision.

In addition, this concept is too narrow in its scope and bureaucratised and formalised in its content. Compliance by the objects of public control with regulatory requirements cannot cover the entire range of tasks and goals set for public control as an institution in developed democracies, while compliance with state discipline (in this formulation) generally goes beyond its essential limits. The draft law proposes to establish a broad enough understanding of state discipline as precise and strict compliance by the objects of public control with the rules of conduct, activities, relations, and official duties established by law, as well as timely and full performance of state tasks and obligations, including the formation and expenditure of budgets. The notion of state discipline in the meaning of the draft law is given an overly broad interpretation. At the same time, supervision and control over compliance with such discipline are the tasks of the relevant public authorities, their departments (divisions), etc., but not of civil society institutions, which should control the consequences of socially important actions or inaction of such bodies, but not compliance with the rules of discipline, internal labour regulations, etc.

However, the system of principles of civic control set out in Article 3 of the draft law is worthy of positive assessment and further development. These include the principles of fairness, objectivity

and impartiality of the public control process; the principles of independence of the subjects of public control from other public associations, political parties, state authorities, local self-government bodies and their officials and employees; full and comprehensive study of the subject of public control; absence of abuse of the right to exercise public control; and validity. Such principles correspond to an important consequence of public control as an institution – it directly affects the legitimacy of public authorities (Gavkalova *et al.*, 2023). Along with the tasks of civic control defined by the draft law in Article 4, these provisions can be used as a basis for the future law on civic control, which will also apply in general to the control of the Ministry of Justice of Ukraine. The above tasks should include the following: to ensure that the subjects of public control do not violate the rights of individuals and legal entities; to form a public assessment of the activities of the subjects of public control; to carry out a permanent public examination of decisions of executive authorities and local self-government bodies, etc.

Additionally, it is worth noting the validity of the conclusions of O. Dulina and A. Krupnyk (2021) regarding the fact that the current regulations contain only certain provisions on certain types of public control, but remain fragmented, as they contain significant gaps. The authors substantiate and propose to supplement Article 38 of the Constitution of Ukraine (1996), which enshrines the right of citizens to participate in the management of public affairs, with part two stating that citizens and associations of citizens have the right to exercise public control over the activities of executive authorities, local self-government bodies, state and municipal enterprises, institutions and organisations, the forms and procedure for which are established by law. Similar theses have been expressed by other authors (Nalyvaiko & Savchenko, 2017).

The proposal to substantially update the regulatory framework of the Law of Ukraine “On Bodies of Self-Organisation of the Population” (2001), and adopt special laws “On Public Control”, “On General Meetings, Conferences at the Place of Residence”, “On Public Consultations”, etc. are also noteworthy. A natural next step would be to enshrine in law the provisions on public control, public councils, and public expertise, which are currently regulated by resolutions of the Cabinet of Ministers of Ukraine and orders of central executive bodies, which would help establish the mandatory rather than recommendatory nature of these regulations for local self-government bodies. Legalisation of public control alone is not enough – it is necessary to consider the best international practices (in particular, those known as “Good Governance” and “Democratic Governance”) adopted and tested in EU member states (Iemelianova, 2016; Neuhodnikov, 2019). Given this, it is important that the procedures for exercising public control, based on such best international practices, should be spelt out in local legal acts: statutes of territorial communities, regulations on public councils, public inspectors, etc. The creation of an appropriate legal framework for the implementation of public oversight based on the examples described and analysed is very important and necessary.

Conclusions

Summing up the above, the most justified from the point of view of the needs of public administration and the realities of modern democratisation of Ukraine – both its state apparatus and civil society – is a broad approach to understanding public control as a continuous and systematic, multi-vector activity of civil society institutions (both institutionalised in the form of public organisations, political parties, mass media and individual

interested citizens) in its close interaction with the object of such control – the bodies of The definition of civic control also includes all possible and necessary forms of activity and interaction – from collecting information and monitoring the compliance of the object of control with the requirements of the Constitution of Ukraine and laws, principles of integrity and professional ethics to forms of feedback and response of public authorities to appeals, complaints and any kind of criticism from the subjects of civic control.

It is established that, based on the analysis of foreign experience, the approaches to the introduction of new forms and methods of public control, in particular, those involving public involvement in public investigations, expert examinations, monitoring activities, participation in meetings of elected collegial bodies of state and local self-government, hearing their reports, etc. are worth borrowing. At the same time, the priority is the mutually coordinated functioning of all these mechanisms, and their systemic unity, as opposed to the chaotic introduction of disordered methods of public control. Therefore, the theoretical value of this study is a comprehensive review of the current state of understanding of the concept of public control.

The practical value of the study is determined by the usefulness of its results for further improvement of the legal framework for public control in Ukraine. In addition, proceeding to further analysis of the peculiarities of public control over the activities of the Ministry of Justice of Ukraine, the author identifies several key scientific and practical issues which require further resolution and which lie in two main areas: 1) fundamental theoretical and legal principles of organisation and implementation of public control through the prism of the specifics of the Ministry of Justice of Ukraine and the system of its bodies; 2) the state

and prospects of solving current problems of public control over the activities of the Ministry of Justice of Ukraine, ensuring its effectiveness and compliance with real public needs. The outlined issues will be the subject of further research.

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Conflict of Interest

None.

References

- [1] Blikhar, M., & Krykavska, I. (2022). Legal characteristics of interaction of judiciary bodies and institutions of civil society. *Uzhhorod National University Herald. Series: Law*, 70, 283-287. doi: [10.24144/2307-3322.2022.70.43](https://doi.org/10.24144/2307-3322.2022.70.43).
- [2] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- [3] Doroshenko, V.A. (2018). [Forms of public control over the activities of the National Anti-Corruption Bureau of Ukraine](#). *Scientific Bulletin of Public and Private Law*, 6(1), 261-262.
- [4] Doroshenko, V.A. (2019). [Some aspects of improving current legislation in the sphere of public control in Ukraine](#). In *Theoretical issues of jurisprudence and problems of law enforcement: Challenges of the 21st century: Abstracts of the reports of the participants of the II all-Ukrainian scientific and practical conference* (pp. 88-91). Kharkiv: Public Policy and Social Sciences Research Institute.
- [5] Draft Law of Ukraine No. 2737-1 "On Public Control". (2015, May). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55101.
- [6] Dulina, O., & Krupnyk, A. (2021). [Public control as a component of public administration: Multilevel measurement](#). *Actual Problems of Public Administration*, 3, 19-23.
- [7] Gavkalova, N., Yeromka, D., & Tabatskyi, M. (2023). Analysis of mechanisms of interaction between public authorities and public organizations at the local level. *Public Administration and Law Review*, 1, 21-29. doi: [10.36690/2674-5216-2023-1-21](https://doi.org/10.36690/2674-5216-2023-1-21).
- [8] Gayeva, N. (2018). [Association of citizens as subjects of public control: Different aspects of definition](#). *Law Review of Kyiv University of Law*, 3, 81-85.
- [9] Gayeva, N. (2019). Legal principles of participation of public associations in exercising public control. *Law Review of Kyiv University of Law*, 4, 81-86. doi: [10.36695/2219-5521.4.2019.12](https://doi.org/10.36695/2219-5521.4.2019.12).
- [10] Gritsenko, V. (2021). Institute of public control over the activities of the National Police of Ukraine. *Scientific Notes. Series: Law*, 11, 55-59. doi: [10.36550/2522-9230-2021-11-55-59](https://doi.org/10.36550/2522-9230-2021-11-55-59).
- [11] Hohensinn, L., Piller, F.T., Bogers, M., & Hilgers, D. (2019). Citizen participation in public administration: Investigating open government for social innovation. *R&D Management*, 49(3), 343-355. doi: [10.1111/radm.12365](https://doi.org/10.1111/radm.12365).
- [12] Holum, M. (2023). Citizen participation: Linking government efforts, actual participation, and trust in local politicians. *International Journal of Public Administration*, 46(13), 915-925. doi: [10.1080/01900692.2022.2048667](https://doi.org/10.1080/01900692.2022.2048667).
- [13] Iemeljanova, A.G. (2016). [Good governance principle as a basis of ensuring right to be heard in the contest of the right to take part in public affairs managing](#). *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 4, 20-26.

- [14] Kasianenko, Ye. (2019). [Foreign practice of control over the activity of local self-government bodies: Theoretical and legal analysis](#). *National Law Journal: Theory and Practice*, 6, 16-19.
- [15] Klochko, A., & Sobina, V. (2017). [Public control of police activity in Ukraine](#). *Bulletin of National University of Civil Defense of Ukraine. State Management Series*, 1, 194-201.
- [16] Kravtsova, Z.S. (2019). Theoretical, legal and practical foundations of the public control over the exercise of the state power in Ukraine. *Expert: Paradigms of Legal Sciences and Public Administration*, 3, 89-130. [doi: 10.32689/2617-9660-2019-3\(5\)-89-103](#).
- [17] Law of Ukraine No. 2625-III "On Bodies of Self-Organization of the Population". (2001, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2625-14#Text>.
- [18] Maslova, Ya.I., & Savchuk, R.M. (2020). Civil control over the activity of the subjects of public administration. In *Pubic administration under modern conditions: Concept, features, challenges* (pp. 99-113). Riga: Baltija Publishing. [doi: 10.30525/978-9934-588-67-9.7](#).
- [19] Medvedenko, S.V. (2019). Concepts and forms of public control over the activities of the National Police of Ukraine. *Subcarpathian Law Herald*, 2, 32-36. [doi: 10.32837/pyuv.v0i2\(27\).183](#).
- [20] Myroniuk, R.V. (2020). [Public control over the police activities](#). Dnipro: Dnipropetrovsk State University of Internal Affairs.
- [21] Nalutsyshyn, V.V. (2018). [Philosophic and legal paradigm of social control as a mean of assurance of legal order](#). (Doctoral thesis, Lviv Polytechnic National University, Lviv, Ukraine).
- [22] Nalyvaiko, L.R., & Savchenko, O.V. (2017). [Theoretical and legal principles of public control over the activities of state authorities](#). Kyiv: Hi-Tech Press.
- [23] Nestor, N.V. (2019). The concept of public control over judges' activity and the system of subjects of its implementation. *Law and Safiety*, 73(2), 43-47. [doi: 10.32631/pb.2019.2.06](#).
- [24] Neuhodnikov, A. (2019). Civil society control of public administration activities: Alignment to international standards. *Lex Portus*, 6, 66-80. [doi: 10.26886/2524-101X.6.2019.5](#).
- [25] Nironka, Yu. (2019). The essence of public control over the activities of public authorities. *Actual Problems of Law*, 2, 67-71. [doi: 10.35774/app2019.02.067](#).
- [26] Nironka, Yu. (2022). International experience in public control. *Scientific Notes. Series: Law*, 12, 95-99. [doi: 10.36550/2522-9230-2022-12-95-99](#).
- [27] Olkina, O.V. (2020). Constitutional and legal regulation of public control of the executive power: Problems and prospects. *Expert: Paradigms of Legal Sciences and Public Administration*, 5, 123-130. [doi: 10.32689/2617-9660-2020-5\(11\)-123-130](#).
- [28] Order of the Cabinet of Ministers of Ukraine No. 228 "On the Approval of the Regulation on the Ministry of Justice of Ukraine". (2014, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/228-2014-%D0%BF#Text>.
- [29] Osypchuk, R. (2020). Public control as a variety of external control measures under the National Anti-Corruption Bureau of Ukraine. *Law Herald*, 6, 381-388. [doi: 10.32837/yuv.v0i6.2070](#).
- [30] Pashchynskyi, O.S. (2021). Public control as a factor of democratic development of the state and society. *Legal Scientifical Electronic Journal*, 11, 496-498. [doi: 10.32782/2524-0374/2021-11/127](#).
- [31] Poklad, O.V. (2016). [Definition and contents of public control over police in Ukraine](#). *Law and Society*, 2, 139-145.

- [32] Poklad, O.V. (2018). [Peculiarities of submitting and considering a request for information on police activities as a form of public control over their activities](#). *Herald of Public and Private Law*, 1(2), 24-29.
- [33] Pryputen, D.S. (2020). Public control over the activities of the National Police of Ukraine. *Legal Position*, 2, 42-47. [doi: 10.32836/2521-6473.2020-2.7](#).
- [34] Pukhkal, O.H. (2010). [Public control as an important factor of democratization and efficiency of public administration](#). *Investments: Practice and Experience*, 14, 56-58.
- [35] Ruvin, O. (2020). The concept and features of public control over the activities of forensic institutions of Ukraine. *Bulletin of the Penitentiary Association of Ukraine*, 4, 129-136. [doi: 10.34015/2523-4552.2020.4.12](#).
- [36] Skvirskyi, I.O. (2013). [Organizational forms of public control: Essence and content](#). *Uzhhorod National University Herald. Series: Law*, 2 (22(1)), 223-227.
- [37] Yunin, O. (2021). The concept of public control over the activities of the National Police of Ukraine. *Entrepreneurship, Economy and Law*, 4, 200-204. [doi: 10.32849/2663-5313/2021.4.30](#).

Громадський контроль за діяльністю Міністерства юстиції України: вступ до проблематики

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Анотація

Актуальність теми наукової статті зумовлена важливістю громадського контролю над діяльністю Міністерства юстиції України, що впливає безпосередньо зі статусу цього центрального органу виконавчої влади та його ключових завдань. Мета статті – дослідити поняття та правову природу громадського контролю як сучасного інституту, встановити специфіку його становлення і в загальних рисах визначити особливості адаптації до функцій і завдань діяльності Міністерства юстиції України. Ключовий метод наукової роботи – формально-догматичний (спеціально-юридичний), застосований для вивчення правових та нормативних конструкцій розуміння громадського контролю, його цілей і механізмів. У статті встановлено взаємозв'язок між змістом концепції громадського контролю та цілями, які вона ставить перед собою або має ставити. Обґрунтовано, що саме через завдання зі спостереження, перевірки та нагляду за діяльністю органів державної влади, органів місцевого самоврядування та інших суб'єктів реалізується сутність громадського контролю. Установлено, що кінцева мета контролю – гарантувати те, щоб суб'єкти, які контролюються, дотримувалися вимог законодавства, прав та свобод людини і громадянина, принципів і цінностей громадянського суспільства. Виявлено, що найбільш збалансоване з погляду потреб державного управління і реалій сучасної демократизації України – широке розуміння громадського контролю як постійної та системної, багатопланової діяльності інституцій громадянського суспільства в їхній тісній взаємодії з об'єктом контролю: владними органами, правоохоронними структурами, судовими і експертними органами тощо. Теоретична цінність наукової статті полягає в здійсненні комплексного огляду сучасного стану розуміння концепту громадського контролю. Практична цінність дослідження зумовлюється тим, що його результати можуть бути використані для подальшого вдосконалення нормативно-правового регулювання громадського контролю в Україні.

Ключові слова: органи юстиції; громадянське суспільство; державне управління; демократизація; органи виконавчої влади



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Cluster formation as a sustainable rural development tool in Ukraine

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Abstract

The difficult situation in Ukraine in general and in the agricultural sector in particular, caused by the war: destruction of settlements with infrastructure, property damage to business entities, impossibility of conducting economic activity in the temporarily occupied territories and territories where active hostilities are taking place, relocation of business, massive displacement of the population to more peaceful regions – necessitates a rethinking of pre-war approaches to the development of rural areas. This study focuses on one of the most promising tools – clusters. Since proper legal regulation is crucial for the effective development of clustering processes, the purpose of the study is to analyse the state of legal support for clustering in rural areas, considering the requirements of smart specialisation, to identify the main problems and to develop proposals for their solution. This goal was achieved through the use of several methods of scientific knowledge: dialectical (philosophical),

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analysis, formal legal, hermeneutical, abstract logical, and historical and legal. As a result, the author formulates a definition of the concept of “cluster”, which enshrines its features (voluntary association of entities with the status of entrepreneurs, sectoral or intersectoral nature). The purpose of the cluster activity is substantiated: creation of products and/or provision of services, promotion of sustainable development of rural areas. It is established that clusters combining agricultural production with other, in particular non-agricultural, activities are promising for rural areas. The necessity to consider the provisions of smart specialisation of regions in the formation of clusters is proved. Proposals have been developed regarding the formation of the legal framework for the formation and functioning of clusters by supplementing the normative acts of economic legislation with provisions on the form of organisation of cluster formations; defining clustering as a promising task in the national and agrarian-sectoral strategic planning documents; basic directions of state support for the creation and functioning of clusters in the field of agriculture/in rural areas. The results obtained are of theoretical importance for the development of the science of agrarian and commercial law. The conclusions of the work are also of practical value since they can be considered in the content of the improved legislation on clusters and smart specialisation of regions

Keywords: clustering; legal regulation; economic legislation; agriculture; business entity; entrepreneurship promotion; smart specialisation

Introduction

The challenges faced by Ukraine in the difficult conditions of war affect all spheres of social life, economic activity, etc. without exception. The full-scale war has dealt a huge blow to the Ukrainian economy. According to preliminary estimates, the damage caused by the war in the country between 24.02.2022 and 24.02.2023 is estimated at over USD (United States dollar) 134.7 billion. Among the most affected sectors are the residential sector (accounting for 38% of the total damage), the transport sector (26%), the energy sector (8%), the trade and industry sector (8%), and the agriculture sector, which accounts for 7% of the total damage (Bohdan, 2023). It should be emphasised that these figures do not yet consider the actual and potential damage to farmland and agricultural production caused by the destruction of the Kakhovka reservoir dam. And the damage is constantly increasing as the fighting continues.

Under such circumstances, the pre-war vision of rural development and the agricultural sector has largely lost its relevance. There is a need to find new directions adapted to the realities of today and the prospects of the post-war period: first, to restore rural areas, and second, to develop them progressively. And this work should be done now, without waiting for the end of the war. The key thesis should be not just the restoration of the destroyed material base of rural settlements or agricultural enterprises, but the development of comprehensive approaches to “reset” agricultural production, agricultural entrepreneurship, and non-agricultural activities to bring the life of the rural population to a qualitatively new level, preserve the environment, and ensure sustainable development of rural areas. This is a unique chance to present Ukraine’s agricultural sector and the charms of rural areas not only to potential investors but also to the wider

world community against the backdrop of growing interest in Ukraine country, its history, culture, traditions, etc. Smart specialisation and clustering are among the tools for regional development, including rural areas, that have already been tested at the international, in particular European, level. They not only allow for a significant consideration of regional interests and opportunities, but also involve the combined efforts of the state, local governments, businesses, educational and research institutions, and other entities interested in the welfare of the region.

Even though the concepts of clustering and smart specialisation were implemented in Ukraine before the war, the legal framework for the relevant relations is only beginning to take shape, and the existing regulations need to be updated to reflect the specifics of Ukraine's current situation. The development of legal aspects of these instruments in scientific doctrine is also at an early stage. The vast majority of works on the creation and functioning of clusters and the introduction of smart specialisation are the work of economic specialists, indirectly touching on certain legal aspects. The thesis by M. Slynko (2021b), which focuses on the theoretical and practical aspects of smart specialisation as a new tool for regional governance, is worth highlighting. The author also addressed the regulatory framework for the implementation of smart specialisation in the regions of Ukraine, in particular in terms of retrospective analysis of legislation (Slynko, 2021a). The institutional and legal framework for the implementation of smart specialisation in Ukraine was covered in the work of another representative of economic science – I. Zalutsky (2019). Interesting from the point of view of studying international experience are the works on smart specialisation in less developed regions of Europe (Kruse & Wedemeier, 2022); assessment of

sustainable development of rural areas in certain regions, such as Latvia, using the concept of smart specialisation (Sipilova *et al.*, 2017); comparative analysis of sustainable agricultural development in Central and Eastern Europe based on smart specialisation (Shvets *et al.*, 2023). The institutional framework for the creation and functioning of agro-industrial innovation clusters was studied by Yu. Nosenko *et al.* (2020a). The authors analysed the institutional framework for the creation and functioning of agro-industrial innovation clusters and concluded that a separate regulation on clusters should be adopted. There are also studies on specific areas of smart specialisation or cluster formation in rural areas. For example, the role of smart specialisation in the development of farms (Hutorov *et al.*, 2021), and rural green tourism (Bugil & Dudyak, 2020). However, only a few works are devoted to the legal framework, legal regulation of relations in the field of smart specialisation, and the cluster approach to rural development. The study of I. Kovalchuk *et al.* (2023), which attempts to identify the prospects for state policy to support the development of clusters in the agricultural sector, is worth noting.

Given the aforementioned, the study aims to investigate the status of legal support for smart specialisation and clustering in rural areas as tools for sustainable development and to formulate theoretical conclusions and practical proposals for improving the legal regulation of the relevant relations. The study aims to determine the following main tasks: to identify the main shortcomings in the legal regulation of clustering in the agricultural sector and rural areas and the main constraints to the development of the relevant clusters; to define the concept of “cluster”; to determine the optimal form of association of cluster members; to develop proposals for amendments and additions to the current Ukrainian legislation on clusters.

Materials and Methods

The relevant methodological tools contributed to the accomplishment of the tasks outlined and the achievement of the purpose of the study – a set of methods of scientific knowledge. The study is based on the dialectical (philosophical) method, which, along with the historical and legal methods, was used to comprehensively analyse the current state and retrospective of legal regulation of clustering in Ukraine in general and in the agricultural sector in particular. The analysis method was used in the study to analyse the doctrinal approaches to the definition of the concept of “cluster”, the types of clusters typical for the agricultural sector, and the organisational and legal forms of cluster associations. The analysis method was also used to identify the shortcomings of the legal acts regulating relations in the field of cluster formation and functioning. The content of the provisions of regulations in the field of clustering was clarified using the formal legal method. The hermeneutic method was used to define the basic categories of “cluster”, “enterprise”, “organisation”, and “association of enterprises”. The data analysis was used to study the state of development of the problems of legal support for the formation and functioning of clusters in the scientific works of Ukrainian and foreign researchers. The use of the abstract and logical method was used to generalise the results of the study and to formulate final proposals for solving the problematic issues.

The study's objectivity is also based on the source base, which is composed of regulations of various industries and focus. First of all, these are acts of economic legislation as the basis for the legal regulation of any economic relations, in particular through clusters: Economic Code of Ukraine (2003), Laws of Ukraine “On Public-Private Partnership” (2010), “On the Priority Areas of Innovative Activity in Ukraine” (2011).

Normative acts of agricultural legislation, in particular the Law of Ukraine “On State Support of Agriculture of Ukraine” (2004), and employment legislation – the Law of Ukraine “On Employment of Population”. (2013) were also used in the study. An array of programmatic acts is presented in the National Economic Strategy for the Period until 2030 (Resolution of the Cabinet of Ministers of Ukraine No. 179..., 2021), State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 695..., 2020), Concept of the Development of Rural Areas (Order of the Cabinet of Ministers of Ukraine No. 995-r..., 2015), Concept of the State Target Program for the Development of Vegetable Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 1333-r..., 2020), Concept of the State Target Program for the Development of Industrial Potato Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 345-r..., 2020). To comprehensively study the identified issues, the prospective legislation was also analysed: Draft Order of the Cabinet of Ministers of Ukraine “On Approval of the Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030” (2021), Draft Law of Ukraine “On the Development and State Support of Small and Medium-Sized Enterprises in Ukraine” (2014).

Results and Discussion

The cluster as one of the most promising forms of economic development, especially in the agricultural sector, is relatively new for Ukraine. As for the legal regulation of the relevant relations, it is only at the initial stage of formation. Experts point to this fact as a deterrent that negatively affects the process of introducing clustering in our country (Romanenko, 2019). In 2008 and 2009, legislative

initiatives were already introduced that were supposed to form the basis for the creation of clusters. These are the Concept of Creating Clusters (2008), developed by the Ministry of Economy of Ukraine, and the Draft Concept of the National Strategy for the Formation and Development of Cross-Border Clusters, developed by the Ministry of Regional Development and Construction of Ukraine (Decision of the Board of the Ministry..., 2009). Despite the goal of defining the basic principles for the creation and development of clusters to increase the rate of economic growth in Ukraine and stimulate the activation of small and medium-sized businesses in the field of integration into business networks, the creation of regional, industrial, innovative, and cross-border clusters, both documents remained at the project level. Currently, at the level of laws, the concept of “cluster” is mentioned in only a few regulations. Among them: the Law of Ukraine “On Employment of Population” (2013), where Article 16 defines the development of clusters of folk artistic crafts as a direction of implementation of the state policy in the field of employment; the Law of Ukraine “On the Priority Areas of Innovative Activity in Ukraine” (2011), where Article 3 mentions innovation clusters in the context of medium-term priority areas of innovative activity. At the same time, several policy documents envisage the development of clusters in various areas and at various levels as an effective tool for economic development. In particular, the State Strategy of Regional Development for the Period until 2020 defined the introduction of clusters as a stimulus for economic development at the local level (Resolution of the Cabinet of Ministers of Ukraine No. 385..., 2014). The current State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 695... (2020) pays much more attention to clusters. This document envisages the formation of urban and regional economic

clusters, IT clusters, cross-border clusters, cluster models in the context of the development of resort infrastructure and recreational areas, and innovation clusters. The strategy also declares the need to stimulate research aimed at identifying priority areas for cluster formation and borrowing international experience in cluster creation. Another document, the Strategy for the Development of Small and Medium-Sized Enterprises in Ukraine for the Period up to 2020 (Order of the Cabinet of Ministers of Ukraine No. 504-r..., 2017), also focused on the need to develop and implement programmes aimed at integrating small and medium-sized enterprises into cluster structures. However, all these provisions have largely remained purely declarative, without further practical implementation.

Narrowing down to the issue of regulatory support for the creation and functioning of clusters in the agrarian/agricultural sector, the following should be noted. One of the fundamental documents that defines the vectors of the Ukrainian economy – the National Economic Strategy for the Period until 2030 (Resolution of the Cabinet of Ministers of Ukraine No. 179..., 2021) – includes the development of agricultural clusters as a way to achieve strategic objective 1 “Ensuring an agricultural policy of stimulating and advisory content”, which should include the reflection of the development of these clusters in the concept of cluster creation at the national level, the formation of a model of cluster development, as well as the formation of a regulatory framework for the regulation of relations between clusters. The creation of specialised clusters is also mentioned in sector-specific documents: Concept of the State Target Program for the Development of Industrial Potato Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 1345-r..., 2020), Concept of the State Target Program for the Development of Vegeta-

ble Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 1333-r., 2020) does not contain any mention of clusters. The same is true for the draft Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030 (Draft Order of the Cabinet of Ministers of Ukraine..., 2021). Therefore, there is inconsistency and a virtual absence of state policy in cluster development. Both in general and concerning clusters in the agricultural sector in particular. The above declarative provisions have not been practically implemented.

Meanwhile, there are several initiatives aimed at further developing the cluster model of economic development. One of the primary initiatives is the Project of the Recovery Plan of Ukraine, drafted in July of 2022 by the working group "Recovery and Development of the Economy" of the National Council for the Restoration of Ukraine from the Consequences of the War (2022). The strategic objectives and measures of the Structural Modernisation and Full Integration into the European Union stage, which are scheduled for implementation in 2026-2032, include "building an industry 4.0 and clustering ecosystem". That is, stimulating and supporting the establishment of cluster production chains, as well as its internationalisation. While this position of the developers is commendable, it should be noted that the Recovery Plan does not mention any special legislation on clusters in terms of the necessary regulatory framework for these measures. Another document, the National Programme of Cluster Development Until 2027, created by a group of experts of the cluster committee of the Industry4Ukraine platform (2020), is much more meaningful in terms of practical implementation of the ideas of cluster intensification. The developers position it as a guiding document for all stakeholders in Ukraine's cluster development. A review of its content leads to the

conclusion that the proposed national cluster development programme until 2027 is comprehensive – from an attempt to define basic terms and concepts to highlighting the European experience of forming and operating a cluster economy, the role of the state and government agencies, defining clear benchmarks and objectives for cluster development in the short term (until 2025), as well as recommendations for central and regional executive authorities. However, both of these documents are not normative acts but can be considered solely as sources of information, ideas, and recommendations for action for entities interested in forming clusters.

Regarding the problems of legal regulation of cluster creation and functioning in Ukraine, the first point to note is the absence of a legal definition of the term "cluster". Researchers attempted to fill this gap, but so far, no regulatory act contains this definition, which leaves it open to interpretation in practice. The current author's definitions of the concept of "cluster" are somewhat controversial. S. Hrudnytska and L. Nestyrenko (2018) suggest defining a cluster as a legal institution with a complex structure, including an open system of legal institutions. According to the researchers, a legal institution is a set of relations of economic and legal content that arise between cluster members. It is impossible to agree with this vision of the category "cluster" since it does not consider the provisions of the legal theory on the concept of "legal institution". The latter is not a set of relations, but a set of legal norms regulating homogeneous, interdependent social relations. This is a well-established understanding of a legal institution by legal theorists (Husariev & Tykhomyrov, 2017).

Another debatable position is the understanding of a cluster as a "form of innovative enterprise" (Nosenko *et al.*, 2020a). Chapter 7 of the

Economic Code of Ukraine (2003) sets out clear criteria for an enterprise, including an organisational form of management; operating based on constituent documents; being a legal entity; and not having other legal entities in its structure. These features are not typical for clusters. Given the current state of legal regulation, it is more correct to say that a cluster is an informal association of efforts of different entities, which allows coordinating efforts, experience, etc. to achieve the purpose of such an association and the interests of the participants (Nosenko *et al.*, 2020b). The issue of the organisational and legal form of the cluster will be addressed below.

Another definition of the concept of “cluster” is offered by the developers of the National Programme of Cluster Development (Industry4Ukraine, 2020), namely as an association of organisations that is sectoral, territorial, and created voluntarily. This association involves close cooperation between the participating organisations and other entities. The cluster aims to create value, increase the competitiveness of the cluster’s products and their exports, and thus develop the region. Taking a critical approach to this meaning of the concept of “cluster”, the use of the term “organisation” as the main cluster member is debatable. The word “organisation” is interpreted very broadly as “an association of people, social groups, states based on common interests, goals, programmes of action, etc.” (Dictionary of the Ukrainian language, 1974). Its use to define the subject composition of a cluster does not remove, but rather adds new questions about who exactly can be part of such an association: should it be only legal entities or is the participation of individuals allowed? Should such organisations have the status of a business entity? Another observation is that the definition in question only mentions “products” produced by the cluster, and

therefore does not indicate whether the cluster can provide services. As the existing practice of clusters in rural areas shows, these can be either purely production clusters (for the production of agricultural products) or clusters that combine production with the provision of services. An example of the first option is the Public Union “Ukrainian Organic Cluster” (n.d.), which has become a platform for the development of organic agricultural production. A vivid illustration of the second type of cluster in rural areas is the Frumushyka-Nova agro-ecological cluster in the Tarutino district of the Odesa region, which united agricultural producers (sheep farming, breeding and a breeding farm and a grape-growing enterprise), it’s processing (cheese, wine, and honey production), as well as recreational and tourist entities (hotel, tavern, local history museum, conference halls, entertainment facilities, etc.) (Malska & Zinko, 2018). These are just some examples of the successful functioning of the rural cluster development model. However, they confirm the expediency of moving from purely agricultural production to the widest possible range of activities to mitigate the risks of agricultural activity (the same seasonality, dependence on weather and climate conditions), maximise the involvement of the rural population in entrepreneurial activities, and use the potential of rural areas not only in terms of the spatial basis and resources for agricultural production but also its historical and cultural value. In modern conditions, all of the above has not only not lost, but, on the contrary, has increased its relevance. This is supported by the emergence of new challenges. These include the need to employ the same internally displaced persons who are not always able and willing to engage in purely agricultural activities, and the need to find new solutions to reformat the activities of entrepreneurs due to the impossibility of

agricultural production as a result of the mining of agricultural land, destruction of enterprise infrastructure, etc. Finally, it is inappropriate to limit the definition of “cluster” to its sectoral nature, as cross-sectoral clusters have proven to be effective both in Ukraine and globally.

The most successful definition of the concept of “cluster” is proposed by the authors of the Draft Law of Ukraine “On the Development and State Support of Small and Medium-Sized Enterprises in Ukraine” (2014). According to this definition, a cluster is an association of business entities characterised by voluntariness, sectoral or intersectoral, territorial in nature, created to increase the competitiveness of domestic products and promote the economic development of the region. A mandatory feature of a cluster is the cooperation of its member businesses with local executive authorities, local self-government bodies, educational and research institutions, public associations, etc. However, this should not be limited to the promotion of products manufactured by cluster members. The overall goal of the cluster should also be adjusted to consider another tool for regional development – smart specialisation. This phenomenon is new to Ukraine and is defined in the Procedure for the Development of the State Strategy for the Regional Development of Ukraine and the Plan of Measures for its Implementation, as well as the Monitoring and Evaluation of the Effectiveness of the Implementation of the Specified Strategy and the Plan of Measures (Resolution of the Cabinet of Ministers of Ukraine No. 931..., 2015). According to this document, smart specialisation is an approach that involves identifying at the regional level those types of economic activity that have the greatest innovation potential. This definition should be reasoned, based on the tasks and goals of the regional development strategy, consider the com-

petitive advantages of the region, and contribute to the restructuring of the region’s sectoral structure into a more efficient one. At the same time, experts point out that smart specialisation is not just a list of sectors that are prioritised for a particular region but is a dynamic process of finding such regional advantages that promptly considers changing trends and regional opportunities (Shvets & Shevtsova, 2020). Clusters, in turn, are one of the principles of smart specialisation defined internationally in the Guide to Research and Innovation Strategies for Smart Specialisation (RIS 3) (Foray *et al.*, 2012). Therefore, the creation of clusters in Ukraine should be based on the principles of smart specialisation. For the sake of objectivity, it is worth noting that work in this area has begun. Even before the outbreak of the full-scale war in Ukraine, the creation of the Slobozhanske Hemp Farming agro-tourism cluster was launched, which was supposed to be a kind of business card for Sumy region, uniting producers of hemp as raw material, entities engaged in the production of hemp food, clothing, etc. The cluster was to focus on the development of the region, the revival of hemp farming traditions, and the development of the latest technologies for the production of hemp products and the provision of services using hemp. Experts describe this cluster as an institutional and innovative project (Omelianenko, 2022), which is valid.

There are already developments in terms of finding options for applying smart specialisation with the creation of clusters in post-conflict areas (for example, the Luhansk region). This refers to the period after 2014, before the start of Russian full-scale invasion. Shevtsova *et al.* (2020) analysed the impact of the armed conflict on the economic structure of this region, the actual destruction of the chemical industry, which is traditionally a priority for the Luhansk region,

prove the feasibility of diversification, innovative and intersectoral “reset” of the region through the digitalisation of the chemical business and its integration into the regional agro-industrial complex through the concept of precision agriculture.

For the regions to effectively operate in the area of smart specialisation, the State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 695..., 2020) provided for the Ukrainian regions to join the European Smart Specialisation Platform (S3 Platform) to access the platform’s tools. However, scholars note that before the war, only nine regions of Ukraine had joined the S3 Platform (Slynko, 2021a). With the start of the Russian full-scale invasion, this process was suspended.

It should be noted that the S3 concept in the EU has already transformed due to the growing interest in solving the global problems of humanity, implementing the Green Deal, and ensuring sustainable development goals. Therefore, S3 has received a new direction of development – Smart Specialisation Strategies for Sustainability (Navarra’s smart specialisation strategy..., 2021). Alternative energy, efficient use of natural resources, production of quality and safe food, etc. are becoming a priority for the European community. Given Ukraine’s European integration course and the desire to become a member of the European Union as soon as possible, it is necessary to build smart specialisation of regions and, accordingly, the formation of clusters, in particular in rural areas, based on the S4 principles.

It is advisable to mention the government’s initiatives to develop alternative energy and energy independence for consumers, which, given the significant potential of the agricultural sector in generating energy from renewable sources (biogas, biomass, solar, wind, etc.), may become an additional area of activity for clusters in rural

areas. The Law of Ukraine “On Making Changes to Some Laws of Ukraine Regarding Restoration and “Green” Transformation of the Energy System of Ukraine” (2023), which, among other things, provides for the possibility of uniting consumers and small producers of electricity from alternative sources through the institution of aggregators, launching a mechanism for self-generation of electricity with the possibility of selling its surplus to the supplier, and other initiatives, is of the primary focus.

Given the aforesaid, it is advisable to define the overall goal of clusters, in particular in the agricultural sector/rural areas, not as “economic development of regions”, but as “sustainable development of regions”, which combines economic, social, and environmental components. Thus, the author offers the following definition of the concept of “cluster”: it is a voluntary sectoral or intersectoral association of business entities that involves cooperation with executive authorities and local self-government bodies, educational and research institutions and other interested parties, the purpose of which is to create and promote goods and services, including export of products, and ensure sustainable development of regions. This definition is universal and can be applied to the definition of a “cluster” in any industry. Given the current state of development of engineering, technology, logistics and other factors, territorial limitations are not a mandatory feature of clusters. To ensure the unambiguity of terminology, it is advisable to enshrine the above definition in the Economic Code of Ukraine (2003).

As for the types of clusters and their list, it may not be exhaustive. Experts identify, for example, the same agro-clusters, understanding them as “an association of organisations based on the territorial principle, between which there are sta-

ble ties through industrial, scientific, innovative activities aimed at the development of rural areas" (Trishin, 2020). Without critically analysing this definition, the above definition can be fully applied to this type of cluster with a clarification regarding the scope of association or territorial features, such as rural areas. There are agritourism clusters, local history, and excursion clusters (Malska & Zinko, 2018), tourism micro-clusters, and railway clusters, which include railway-industrial, and railway-agricultural clusters (Prokopiev, 2020). There is also the most general type of cluster division into industrial, regional, local, and innovative clusters (Hrudnytska & Nestyrenko, 2018).

The development of clusters, in particular in the agricultural sector/rural areas, is hindered by the uncertainty of the legal framework regarding the organisational and legal form of such an entity. The authors have already focused on the lack of legal regulation of cluster formation, in particular in the agricultural sector (Kovalchuk *et al.*, 2023). An analysis of existing scientific proposals to fill this gap shows that the main approach is to classify clusters as one of the types of associations of enterprises (Hrudnytska & Nestyrenko, 2018). The following arguments render the statement untenable. As mentioned above, the characteristics of an enterprise according to the Economic Code of Ukraine (2003), in particular, the imperative condition that it function as a legal entity, have already been mentioned. The nature and essence of the cluster is not only not limited to the participation of legal entities, but, on the contrary, implies maximum openness of the structure and coverage of the largest possible range of stakeholders, including individual entrepreneurs. In terms of clustering, this feature of clusters is very important for the sustainable development of rural areas, since a significant

number of entrepreneurs in the agricultural sector are represented by farms without the status of a legal entity. One cannot ignore private farms as entities that exist only in the agricultural sector and have significant development potential in the same areas of rural green tourism, rural hospitality, organic production, generation of electricity from alternative sources, etc. Hence, it is inappropriate to consider clusters as associations of enterprises, even considering the non-exhaustive list of organisational and legal forms of the latter under Article 120 of the Economic Code of Ukraine (2003). As another argument in support of this opinion, R. Prokopiev (2020), that in considering a cluster as a form of association of enterprises, the issues of interaction of the main cluster members (producers of products and/or service providers) with executive authorities and local self-government bodies, scientific institutions, educational institutions, public organisations, and other auxiliary entities remain unresolved. As a solution to the problem, R. Prokopiev (2020) proposes to formalise the interaction of cluster members through a joint activity agreement. It is also possible to consider the experience of updating the legislation on public procurement, namely, the provision for the creation of an association of participants without the creation of a legal entity (clause 37 of Article 1 of the Law of Ukraine "On Public Procurement", 2015). It is also permissible to use public-private partnership instruments to organise clusters. The phrase "public-private partnership", as defined in the Law of Ukraine "On Public-Private Partnership" (2010), is used deliberately, since local governments and territorial communities should also participate in the creation of clusters and their effective functioning. The creation of clusters is a promising area for sustainable development of Ukraine's regions in general and rural

areas in particular. The state should comprehensively promote clustering, carrying out relevant work without delay until the end of hostilities.

Conclusions

Summarising the study of the state of legal support for clustering in agriculture and rural areas, the following conclusions and generalisations can be drawn that are characterised by scientific novelty and support the achievement of the tasks set and the goal of the study. The primary task of the state is to establish the general principles for the creation and functioning of clusters as an association of participants in a separate Chapter 12-1 of the Commercial Code of Ukraine. It is proposed to consolidate the definition of “cluster” and establish the possibility of forming clusters as an association of participants both with and without the creation of a legal entity. To enhance the creation of clusters in rural areas, it is proposed to consolidate the task of forming relevant clusters based on smart specialisation at the level of a basic document for the agricultural sector: The Concept of Rural Development. Include provisions on clustering of rural areas in the text of the draft Concept for the Development of Entrepreneurship in Rural Areas until 2030. Consider the need to develop clusters in agriculture and rural areas in the plans for post-war regional recovery and in determining the priority areas of cooperation between Ukrainian institutions and international partners in overcoming the consequences of the war in Ukraine.

Since the state is expected to have a significant impact on the initial stage of rural clustering (and in the current difficult conditions of martial law and the prospects for post-war reconstruction, this role is only increasing), it is advisable to provide special conditions for state

support for agro-clusters at the level of the Law of Ukraine “On State Support for Agriculture of Ukraine”. Such support should be comprehensive, combining direct financial support with indirect measures of consulting and information, providing access to the European Smart Specialisation Platform (S3 Platform) for territorial communities, and in the short term – developing a similar instrument adapted to the specifics of the Ukrainian economic and legal environment, in particular, considering the principles of Smart Specialisation Strategies for Sustainability (S4).

The conclusions drawn are a contribution to the scientific doctrine of agrarian and commercial law, in particular, in terms of enriching the terminological apparatus with the definition of “cluster”. The results of the study are also of practical value for lawmaking as a resource in shaping the content of regulations in the field of regulation of relations related to the creation and operation of clusters, in particular in the agricultural sector and rural areas. Further research should be carried out in the following areas: determination of the optimal model of interaction between the state, represented by executive authorities, and cluster members, and its impact on the functioning of such associations; development of a set of bylaws on the mechanism of cluster formation in the agricultural sector/rural areas; development of a procedure for creating and launching an information and resource platform for all stakeholders, primarily leaders of territorial communities.

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Conflict of Interest

None.

References

- [1] Bohdan, T. (2023). *Financial and economic consequences of the war*. Retrieved from https://lb.ua/blog/tetiana_bohdan/550614_finansovoeconomichni_naslidki.html.
- [2] Bugil, S.Ya., & Dudyak, R.P. (2020). A cluster approach to the development of rural green tourism. In A. Pawlik & K. Shaposhnykov (Eds.), *Economic development: Global trends and national peculiarities* (pp. 288-302). Kielce: Publishing House "Baltija Publishing". doi: 10.30525/978-9934-588-61-7-20.
- [3] Concept of Creating Clusters in Ukraine. (2008). Retrieved from https://www.ligazakon.ua/news_old/ga012109.html.
- [4] Decision of the board of the Ministry of Regional Development and Construction of Ukraine No. 46 "On the Draft Concept of the National Strategy for the Formation and Development of Cross-Border Clusters". (2009, September). Retrieved from <http://consultant.parus.ua/?doc=05WAMA28B1>.
- [5] Dictionary of the Ukrainian language (Vol. 5). (1974). Retrieved from <http://sum.in.ua/p/5/739/2>.
- [6] Draft Law of Ukraine No. 1256 "On the Development and State Support of Small and Medium-Sized Enterprises in Ukraine". (2014, December). Retrieved from <https://ips.ligazakon.net/document/view/jh0yw00a>.
- [7] Draft Order of the Cabinet of Ministers of Ukraine "On Approval of the Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030". (2021, September). Retrieved from <https://minagro.gov.ua/npa/pro-shvalennya-koncepciyi-stimulyuvannya-rozvitku-pidpriyemnictva-na-silskih-teritoriyah-do-2030-roku>.
- [8] Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/card/436-15>.
- [9] Foray, D., Goddard, J., Beldarrain, X.G., Landabaso, M., McCann, P., Morgan, K., Nauwelaers, C., & Ortega-Argilés, R. (2012). *Guide to research and innovation strategies for smart specialisation (RIS 3)*. Retrieved from <https://s3platform.jrc.ec.europa.eu/ris3-guide>.
- [10] Hrudnytska, S.M., & Nestyrenko, L.A. (2018). Legal basis of the cluster self-organization and self-control of energetic area. *Forum Prava*, 5, 13-27. doi: 10.5281/zenodo.2527932.
- [11] Husariev, S.D., & Tykhomyrov, O.D. (Eds.). (2017). *Theory of the State and Law*. Kyiv: Osvita Ukrainy.
- [12] Hutorov, A., Gutorov, O., Krasnorutskyy, O., Groshev, S., & Yermolenko, O. (2021). Smart-specialization development of farms. *Bulletin of National academy of sciences of the Republic of Kazakhstan*, 3, 45-52. doi: 10.32014/2021.2518-1467.97.
- [13] Industry4Ukraine. (2020). *National program of cluster development until 2027: Concept, landmarks of development, recommendation*. Retrieved from <https://mautic.appau.org.ua/asset/166:proekt-nacprogrami-klaster-nogo-rozvitku-do-2025-v1pdf>.
- [14] Kovalchuk, I., Pakhomova, A., Melnyk, V., Novak, T., & Tymoshchuk, O. (2023). State policy to support the promotion of agricultural clusters as a factor for sustainable development. *Cuestiones Políticas*, 41(76), 556-567. doi: 10.46398/cuestpol.4176.33.
- [15] Kruse, M., & Wedemeier, J. (2022). Smart specialisation policy strategy for interregional cooperation: Pushing less-developed regions. *Eastern Journal of European Studies*, 13(1), 254-270. doi: 10.47743/ejes-2022-0112.

- [16] Law of Ukraine No. 1877-IV "On State Support of Agriculture of Ukraine". (2004, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1877-15#Text>.
- [17] Law of Ukraine No. 2404-VI "On Public-Private Partnership". (2010, July). Retrieved from <https://zakon.rada.gov.ua/laws/card/2404-17>.
- [18] Law of Ukraine No. 3220-IX "On Making Changes to Some Laws of Ukraine Regarding Restoration and "Green" Transformation of the Energy System of Ukraine". (2023, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3220-20#Text>.
- [19] Law of Ukraine No. 3715-VI "On the Priority Areas of Innovative Activity in Ukraine". (2011, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/3715-17#Text>.
- [20] Law of Ukraine No. 5067-VI "On Employment of Population". (2013, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/5067-17?lang=en#Text>.
- [21] Law of Ukraine No. 922-VIII "On Public Procurement". (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.
- [22] Malska, M., & Zinko, Yu. (2018). Types and models of rural tourism clusters in Ukraine. *Bulletin of the Kyiv National University of Culture and Arts. Series: Tourism*, 2, 8-23. doi: 10.31866/2616-7603.2.2018.154397.
- [23] National Council for the Restoration of Ukraine from the Consequences of the War. (2022). *Project of the Recovery plan of Ukraine. Materials of the working group "Recovery and development of the economy"*. Retrieved from <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada.ua/economic-recovery-and-development.pdf>.
- [24] Navarra's smart specialization strategy: Period 2021-2027 (S4). (2021). Retrieved from <https://s4navarra.es/en>.
- [25] Nosenko, Yu., Nechyporenko, O., & Lukyanchuk, L. (2020a). Organizational and legal basis of functioning of agro-industrial innovation clusters. *State and Regions. Series: Economics and Business*, 3, 78-84. doi: 10.32840/1814-1161/2020-3-14.
- [26] Nosenko, Yu., Nechyporenko, O., & Sinelnik, L. (2020b). Innovative agroclusters as a form of integration scientific and educational activities and business. *Ekonomika APK*, 5, 77-86. doi: 10.32317/2221-1055.202005077.
- [27] Omelianenko, V.A. (Ed.). (2022). *Innovative foundations of recovery and development of countries after armed conflicts: Innovative dimension*. Sumy: Institute of Innovative Development Strategies and Knowledge Transfer.
- [28] Order of the Cabinet of Ministers of Ukraine No. 1333-r "On the Approval of the Concept of the State Target Program for the Development of Vegetable Growing for the Period until 2025". (2020, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1333-2020-%D1%80#Text>.
- [29] Order of the Cabinet of Ministers of Ukraine No. 1345-r "On the Approval of the Concept of the State Target Program for the Development of Industrial Potato Growing for the Period until 2025". (2020, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1345-2020-%D1%80#n9>.
- [30] Order of the Cabinet of Ministers of Ukraine No. 504-r "On the Approval of the Strategy for the Development of Small and Medium-Sized Enterprises in Ukraine for the Period up to 2020". (2017, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/504-2017-%D1%80#n8>.

- [31] Order of the Cabinet of Ministers of Ukraine No. 995-r "On the Approval of the Concept of the Development of Rural Areas". (2015, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/995-2015-%D1%80#Text>.
- [32] Prokopiev, R. (2020). Organizational and legal forms of implementation of the cluster approach in the field of railway transport. *Knowledge, Education, Law, Management*, 2(3), 140-144. doi: [10.51647/kelm.2020.3.2.25](https://doi.org/10.51647/kelm.2020.3.2.25).
- [33] Public Union "Ukrainian Organic Cluster". (n.d.). Retrieved from <https://organic-platform.org/gs-organichnyi-klaster>.
- [34] Resolution of the Cabinet of Ministers of Ukraine No. 179 "On the Approval of the National Economic Strategy for the Period until 2030". (2021, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#Text>.
- [35] Resolution of the Cabinet of Ministers of Ukraine No. 385 "On the Approval of the State Strategy of Regional Development for the Period until 2020". (2014, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/385-2014-%D0%BF#Text>.
- [36] Resolution of the Cabinet of Ministers of Ukraine No. 695 "On the Approval of the State Strategy of Regional Development for 2021-2027". (2020, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/695-2020-%D0%BF#Text>.
- [37] Resolution of the Cabinet of Ministers of Ukraine No. 931 "On the Approval of the Procedure for the Development of the State Strategy for the Regional Development of Ukraine and the Plan of Measures for its Implementation, as well as the Monitoring and Evaluation of the Effectiveness of the Implementation of the Specified Strategy and the Plan of Measures". (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/931-2015-%D0%BF#Text>.
- [38] Romanenko, Yu.O. (2019). Agroclusters – innovative form of development of rural territories of Ukraine. *Public Management*, 5, 185-197. doi: [10.32689/2617-2224-2019-5\(20\)-185-197](https://doi.org/10.32689/2617-2224-2019-5(20)-185-197).
- [39] Shevtsova, H., Shvets, N., Kramchaninova, M., & Pchelynska, H. (2020). In search of smart specialization to ensure the sustainable development of the post-conflict territory: The case of the Luhansk Region in Ukraine. *European Journal of Sustainable Development*, 9(2), 512-524. doi: [10.14207/ejsd.2020.v9n2p512](https://doi.org/10.14207/ejsd.2020.v9n2p512).
- [40] Shvets, N., & Shevtsova, H. (2020). Entrepreneurship development and its role in implementing the smart specialization approach in Ukraine. *Economic Herald of the Donbass*, 2, 53-66. doi: [10.12958/1817-3772-2020-2\(60\)-53-66](https://doi.org/10.12958/1817-3772-2020-2(60)-53-66).
- [41] Shvets, N., Shevtsova, H., Pidorycheva, I., Prokopenko, O., & Maslosh, O. (2023). Sustainable development of agriculture based on the smart specialisation approach: Cases of the Central and Eastern European countries. *Agricultural and Resource Economics: International Scientific E-Journal*, 9(1), 260-282. doi: [10.51599/are.2023.09.01.12](https://doi.org/10.51599/are.2023.09.01.12).
- [42] Sipilova, V., Ostrovska, I., Jermolajeva, E., Aleksejeva, L., & Olehnovics, D. (2017). Evaluation of sustainable development in rural territories in Latgale Region (Latvia) by using the Conception of smart specialization. *Journal of Teacher Education for Sustainability*, 19(1), 82-105. doi: [10.1515/jtes-2017-0006](https://doi.org/10.1515/jtes-2017-0006).

- [43] Slynko, M. (2021a). Regulatory framework for the implementation of smart specialization in the regions of Ukraine. *Proceedings of Scientific Works of Cherkasy State Technological University. Series: Economic Sciences*, 61, 75-85. doi: [10.24025/2306-4420.61.2021.236192](https://doi.org/10.24025/2306-4420.61.2021.236192).
- [44] Slynko, M.Yu. (2021b). *Smart specialization of the region as a tool for innovative development*. (PhD thesis, Cherkasy State Technological University, Cherkasy, Ukraine).
- [45] Trishin, A. (2020). *Agrocluster as a basis for the development of rural territories*. *The Scientific and Technical Bulletin of the Institute of Animal Science NAAS of Ukraine*, 124, 195-202.
- [46] Zalutsky, I. (2019). Institutional and legal principles of smart specialization implementing in Ukraine. *Socio-Economic Problems of the Modern Period of Ukraine*, 5, 3-14. doi: [10.36818/2071-4653-2019-5-1](https://doi.org/10.36818/2071-4653-2019-5-1).

Правові засади формування кластерів як інструменту сталого розвитку сільських територій

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Анотація

Складна ситуація в Україні загалом та в аграрній сфері зокрема, спричинена війною: руйнування населених пунктів з інфраструктурою, нанесення майнової шкоди суб'єктам господарювання, унеможливлення ведення господарської діяльності на тимчасово окупованих територіях та територіях, де ведуться активні бойові дії, релокація бізнесу, масове переміщення населення в більш спокійні регіони – зумовлює потребу переосмислити довоєнні підходи до напрямів розвитку сільських територій. У роботі акцентовано увагу на одному з перспективних інструментів – кластерів. Оскільки вирішальне значення для ефективного розвитку процесів кластеризації має належне правове регулювання, метою дослідження визначено аналіз стану правового забезпечення кластеризації на сільських територіях з урахуванням вимог смартспеціалізації, виокремлення основних проблем та розробка пропозицій щодо їх розв'язання. Досягнення поставленої мети здійснювалось через

використання низки методів наукового пізнання: діалектичного (філософського), аналізу, формально-юридичного, герменевтичного, абстрактно-логічного та історико-правового. У результаті сформульовано дефініцію поняття «кластер», у якій закріплено його ознаки (добровільність об'єднання суб'єктів зі статусом підприємців, галузевий чи міжгалузевий характер). Обґрунтовано мету діяльності кластера: створення продукції та/або надання послуг, сприяння ста-лому розвитку сільських територій. Установлено, що для сільських територій перспективними є кластери, що поєднують виробництво сільськогосподарської продукції з іншими, зокрема несільськогосподарськими, видами діяльності. Доведено необхідність враховувати положення смартспеціалізації регіонів під час формування кластерів. Розроблено пропозиції щодо: формування правових засад утворення та функціонування кластерів через доповнення нормативних актів господарського законодавства положеннями про форму організації кластерних утворень; визначення кластеризації як перспективного завдання в загальнодержавних та аграрно-галузевих документах стратегічно-планувального змісту; базових напрямів державної підтримки створення та функціонування кластерів у сфері сільського господарства/на сільських територіях. Отримані результати мають теоретичне значення для розвитку науки аграрного та господарського права. Характеризуються висновки роботи й практичною цінністю, оскільки можуть бути враховані в змістовому наповненні вдосконаленого законодавства про кластери та смартспеціалізацію регіонів

Ключові слова: кластеризація; правове регулювання; господарське законодавство; сільське господарство; суб'єкт підприємництва; стимулювання підприємництва; смартспеціалізація



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Information and communication technologies legislation for self-government bodies

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Abstract

The research relevance is determined by the fact that in Ukraine, digital and information processes are increasingly popularised in the activities of local self-government bodies, allowing for prompt resolution of certain community tasks. However, the legislation in this area does not fully meet the requirements for the use of information and communication technologies. The study aims to analyse the powers of local self-government bodies to use information and electronic resources in their activities. The main research method used was the systemic and structural one, which helped to determine the specifics of the use of information and communication technologies. The results of the study show that Ukrainian legislation fragmentarily regulates information and communication relations of local self-government bodies. It is proposed to adopt a specialised legislative act. It is determined that local self-government bodies have a fairly significant number of information and communication technologies and e-government tools. It is found that it is expedient for Ukrainian local self-government bodies to adopt the experience of the Republic of Poland in using the crowdsourcing tool, but for its implementation, it is necessary to adopt an appropriate legal act and allocate adequate funding. The

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author emphasises the importance of the opinion of the international European community in the field of information support for the activities of public authorities and local self-government within the framework of bilateral partnership. The author emphasises the need to consider the financial capacity of Ukraine to maintain and develop new information and communication technology tools under the legal regime of martial law. The practical significance of the results obtained is that they encourage the introduction of new information and communication technology tools in the work of local self-government bodies

Keywords: communication; decentralisation; territorial community; municipal law; information; Kyiv City Council; crowdsourcing

Introduction

In the context of the decentralisation reform, local governments are constantly expanding their powers and opportunities for their implementation. It is the decentralisation process that is the stimulating factor aimed at providing territorial communities with more resources and mobilising their internal reserves. With the development of information and communication technologies, the activities of local governments are changing and constantly improving. In particular, the quality of information support for the activities of city, village and settlement councils and territorial communities is significantly improving, and new information technologies are emerging. These changes, in turn, enable local governments to address local issues more effectively.

It should be noted that information and communication technologies and e-governance are currently playing an important role in the life of Ukraine. Information and communication technologies and governance involve the implementation of one of the basic principles of local government, namely transparency. Transparency is a key factor for Ukraine, which is currently implementing a democratic model of interaction between society and the government. Local self-government bodies are obliged to report to the public on the results

of their work and public administration decisions, thus ensuring coordination of two-way communication between the authorities and the community.

In addition, it is worth considering that information is a means (tool) for finding new ideas and phenomena. Currently, the development of information and communication technologies plays an important role in the international arena, and the greater the progress, the more economically and democratically successful the state is. That is why the study of the processes of information and communication technologies and e-government in the activities of local self-government bodies is currently relevant.

The analysis of recent publications confirms the relevance of the chosen topic among modern scholars. The study of I. Aristova *et al.* (2019) on the legal status of local governments of Ukraine as subjects of the information society development is noteworthy. These researchers have also established that the development of the knowledge-based information society leads not only to the clarification of the functions and legal status of these authorities but also to the emergence of a new function – information. The importance of introducing new legal knowledge regarding the legal status of local self-government bodies of

Ukraine into their law-making and law enforcement activities is also emphasised.

It is also worth highlighting the study of O. Diegtiar *et al.* (2022), who concluded that the main indicator of the success of innovative municipal management is the provision of quality, accessible and timely public services to the population and business entities located in the territory. As a result, the category of “innovative municipal governance” is defined as the most complex type of management activity, which emphasises the use of scientific and intellectual resources of management, formed through the introduction and use of an information and communication system for the effective reproduction, distribution and use of available and potential resources to ensure a high standard of living for members of the territorial community, which will allow for the balanced development of the three most important systems: nature, civil society, and the economy.

O. Lialiuk and Ye. Hrynenko (2023) identified factors that influence the level of digitalisation in the local self-government system, including: 1) the need to maintain an adequate level of protection of public information and database information administered by local self-government bodies; 2) concentration of several public services in local self-government bodies; 3) digitalisation of public services available in local self-government bodies; 4) consideration of the peculiarities of the system and structure of local self-government bodies when implementing the electronic document management system.

The study by Ye. Kasyanenko (2018), notes that the use of information and communication technologies provides an opportunity to intensify public control over the activities of local self-government bodies, which is noteworthy. The main forms of such control include platforms for online briefings, online voting, electronic

petitions, online consultations, etc. O. Pronina and O. Semenko (2023) analysed the impact of the legal regime of martial law on the use of information and communication technologies in local government. The researchers argued for the need to find new approaches to improving the efficiency and effectiveness of local authorities through the prism of the best standards and management methods, considering European experience.

Among foreign studies, it is worth highlighting the study by E. Przybilowicz *et al.* (2018), who characterised the use of information and communication technologies by Brazilian municipalities, discussing the possibility of developing e-government and actions in smart cities. A quantitative cluster analysis study using data from the Munich 2014 survey identified four clusters: “no technology”, “concerned citizen”, “concerned legislation” and “supported ICT”, which suggest different directions for action in the field of information and communication technologies. Each group of municipalities represents different needs in terms of e-governance development and smart city actions, which indicates the need for specific actions for each of the four clusters (Przybilowicz *et al.*, 2018).

The study aims to conduct a comprehensive analysis of the processes of informatisation and digitalisation in the activities of local self-government bodies. The following tasks need to be addressed: determination of the legal basis for the use of information and communication technologies and e-government by local self-government bodies in their activities, characterisation of the tools of information and communication technologies and e-government that can be used in the activities of local self-government bodies, consideration of the experience of the Republic of Poland in the use of e-government and information and communication technologies in local self-government bodies

Several general scientific research methods were used, including analysis and synthesis methods and the method of abstraction. These methods were used in conjunction with each other, which contributed to the completeness, comprehensiveness and objectivity of the scientific research, validity and consistency of the conclusions drawn, and reliability of the results obtained. At the same time, special legal research methods were key to the study. Using the systemic-structural method, the author studied the current legal and regulatory acts in the field of information and communication technologies and e-government in Ukraine and the Republic of Poland. The comparative method was used to characterise the main instruments used by local self-government bodies in the area of public relations under study. Using the comparative legal method, the author examines foreign experience in the example of the Republic of Poland and identifies the advantages of using certain e-government tools, namely, crowdsourcing and the possibility of its application in Ukraine. Using the systematisation method, the author formulates conclusions and proposals to the current legislation in the area of public relations under study.

Several regulatory acts in the field of information and communication technologies and governance were used in the process of revealing the topic and objectives of the study. Among them are the Constitution of Ukraine (1996), Orders of the Cabinet of Ministers of Ukraine “On the Approval of the Information Society Development Strategy in Ukraine” (2013) and “On the Work of Central and Local Executive Authorities to Ensure Openness in Their Activities, Public Relations and Interaction with Mass Media” (2004), Laws of Ukraine “On Access to Public Information” (2011), “On Information” (1992), “On Local Self-Government in Ukraine” (1997), “On the

National Informatization Program” (2022), “On Electronic Trust Services” (2017).

Regulatory and legal framework for the use of information and communication technologies and e-governance in the activities of local self-government bodies

The transformational changes in modern Ukraine are driven by global digitalisation, which reflects the causal relationship between the Fourth Industrial Revolution (Industry 4.0) and the development of society (digital society). The scale and pace of digital transformation have become the main characteristics of economic development. Digitalisation is aimed at providing every citizen with equal access to services, information and knowledge based on digital technologies. The introduction of digital technologies has a positive impact on the efficiency, quality, and cost of public and personal activities. Digital technologies open up new opportunities for the social and political inclusion of citizens (Nikolina *et al.*, 2020)

According to the provisions of the main legislative act of Ukraine – the Constitution of Ukraine (1996), every citizen is guaranteed the right to participate in the management of public affairs, as well as the right to choose legitimate representatives of the authorities based on democratic procedures, and to receive information on the exercise of their powers by such authorities. Concerning the functioning of the information sphere, the Constitution of Ukraine provides for the prohibition of censorship (Article 15), the right to freedom of speech and thought, the right to free expression of beliefs and opinions (Article 34), information transparency and openness of the functioning of state authorities and local self-government bodies (Articles 3, 32, 57). In general, the information and communication legislation in Ukraine is quite liberal and includes

an extensive range of regulatory legal acts (hereinafter referred to as "RLA") and bylaws – more than 250.

The analysis of the norms of the RLA and national legislation, which regulates various social relations in the context of the development of the information society in Ukraine, was used to determine the place and role of public authorities and local self-government bodies in the implementation of the relevant national policy. For example, according to the Information Society Development Strategy (Order of the Cabinet of Ministers of Ukraine No. 386-r., 2013), the public authorities of Ukraine, primarily executive and local self-government, should focus on achieving the main objectives of Strategy 1) improving the quality and accessibility of administrative services to citizens and businesses; 2) developing the e-economy; 3) developing e-governance; 4) simplifying the procedure for ensuring citizens' access to information and knowledge through information and telecommunication technologies.

The by-laws that directly define the specifics of public relations are Order of the Cabinet of Ministers of Ukraine "On the Work of Central and Local Executive Authorities to Ensure Openness in Their Activities, Public Relations and Interaction with Mass Media" (2004). It defines the ordering of structural units of the apparatus of local, regional, and central executive authorities, which, according to the distribution of powers at the local level, are responsible for public relations and interaction with the media. This RLA also defines the main measures to increase the effectiveness of political and civic education among the population of Ukraine; the development and publication of several popular science publications on political education and civil society development. A mandatory element of this is the availability of the Electronic Public Reception system.

The adoption of the Law of Ukraine "On Access to Public Information" (2011) can be considered a significant step, even a revolutionary step. This law regulated and significantly simplified the procedure for access to open information. A point that is important to mention is the legal provision on the impossibility of restricting information related to the management of budget funds, disposal, use or possession of municipal or state property, as well as uninterrupted access to documentation related to such funds and property.

Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On Information" and the Law of Ukraine "On Access to Public Information" was adopted in 2014. According to Art. 1 of the Law of Ukraine "On Information" (1992), a special subject of power defines a local authority and a state authority that will carry out management functions on access to information as defined by the legislation of Ukraine. Therefore, this Law defined the status of local self-government as a subject of information relations.

The RLA that defines the need for the transition of management of cities and other administrative units to an online system is the Law of Ukraine "On the National Informatization Program" (2022). The informatisation law regulates the procedure for information support of environmental, national-cultural, socio-cultural, defence, scientific and technical activities in areas of national importance, in particular, it defines the procedure for meeting information needs and solving problems.

The Law of Ukraine "On Electronic Trust Services" (2017) is also noteworthy within the scope of the study. This Law describes the basic organisational and legal framework for the provision of electronic services, including cross-border services, and regulates in detail the obligations and

rights of entities providing such services, the basic principles of electronic identification, as well as measures for state control and supervision over compliance with the legislation relating to the provision of such services.

The Law of Ukraine “On Local Self-Government in Ukraine” (1997) stipulates a range of powers in the field of information and communication. The main ones include the right to receive unhindered information from organisations, enterprises and institutions of all forms of ownership on issues that may directly or indirectly fall within the competence of local self-government bodies (Article 26(1)(8)); to hear the necessary information from the prosecutor’s office and the National Police on the state of lawfulness in the territory of the respective community (Article 18(2)); to establish and use electronic media of the respective local council (Article 43(1)(7)).

Given the above information, it should be noted that Ukrainian legislation lacks a systematic approach to the regulation of information and communication relations in municipal authorities within the framework of the Law of Ukraine “On Local Self-Government in Ukraine” (1997). The lack of a comprehensive information and communication policy of such bodies; omission of the main stages of information provision and vesting with relevant powers (competence); termination of the activities of such bodies, etc. In particular, it is necessary to note the fragmentary regulation of this area of competence of local self-government bodies, which also lacks competence and a systematic description of the powers in the information sphere of public administration bodies. This is primarily because the information interests and needs of local self-government bodies, as well as the organisational and legal means for their implementation, are not properly defined. Therefore, it is necessary to make appropriate changes to the legislation.

According to H. Blinova (2019), it is necessary to adopt the Law of Ukraine “On Information Support of Public Administration Bodies”. According to the scientist, this law should outline the main powers and information needs of public administration bodies, which may include local self-government bodies; define the organisational, legal, information and technical means for exercising the powers of such bodies, including liability for offences in the field of research. The opinion of the researcher should be accepted, but it would be more appropriate to define the title of the Law as the Law of Ukraine “On Information Support of Public Authorities and Local Self-Government Bodies” to cover all subjects of information relations without exception.

Tools of information and telecommunication technologies and e-governance in the activities of local self-government bodies

Local governments are an important component of the functioning and development of any country, but their impact on ensuring the rights, freedoms and legitimate interests of citizens and addressing their pressing issues needs to be improved. A positive aspect of decentralisation is the shift of several administrative powers from central authorities to local communities. The time required for such implementation should be considered. Conversely, if the central government has maximum power and imperative powers, and local governments have a rather narrow scope of real powers, the development trends of such a state will be mostly negative (Fedorenko *et al.*, 2021).

Information and communication support of local self-government bodies should also be understood not only as separate activities but also as a complex factor in improving the efficiency of their management and service activities in the

following areas: effective interaction of the authorities with citizens and enterprises; efficiency of the internal work of each agency; efficiency of coordinated interaction between state authorities and local self-government bodies (Nepomnyashchyy *et al.*, 2020). In the process of establishing e-government in local authorities, an electronic document management system is a necessary component. After all, such a system is a key element in the interaction of citizens with public authorities and local self-government bodies. Electronic document management is an important technical tool of the e-government system, which can be used to systematise the necessary information and carry out any necessary analysis.

The development of e-governance in Ukraine allows for an appropriate level of protection of the rights of Ukrainian citizens and constant access to government information. It also helps engage citizens in indirect democracy and improves the quality of management decisions. Therefore, to ensure transparent and open public administration in local authorities, it is necessary to continue working towards the expansion of e-governance. As a result of the introduction of e-governance tools, Ukraine can move closer to European standards in the field of local self-government (Havrylenko, 2021). It is worth noting that in the context of the constant processing of diverse information, cooperation in the preparation and publication of documents, and provision and creation of electronic services provided by local self-government bodies, there is an objective need for comprehensive automation of documentary processes. In this case, scientists describe an “ideal automated system” that allows local governments to use various messengers for data exchange, and use electronic platforms for various meetings, conferences, or conferences. In addition, it is important to remember the legislatively

established possibility of using an electronic digital signature in the process of holding plenary sessions and meetings of standing committees in local self-government bodies. In recent years, the capital has also been using a tool for public participation in the allocation of budget funds – participatory budgeting. The participatory budget allows various organisations, self-organisation bodies, or ordinary Kyiv residents to receive funds for their projects if they receive the appropriate number of votes. Another tool that is also popular is the use of e-petitions, which allows one to raise a controversial issue or problem to solve it (Bilousko & Yakovlieva, 2016).

In terms of document management, for example, the Kyiv City Council and its structural units use an automated electronic document management system – ASKOD (ASKOD docflow system, n.d.). This system can support several functions, including an automated system of official document flow and record keeping; an automated system for processing citizens' appeals; the ability to process various internal, incoming, and outgoing, regulatory, and organisational documents; an automated system for providing administrative services; and an automated system for processing requests for public information (Sytnyk & Melnychenko, 2015). This system also allows for the exchange of data and documents in connection with the systems of other central executive authorities. ASKOD also includes an automated workstation for managers (hereinafter referred to as the manager's workstation), which allows managers of enterprises, institutions, and organisations to sign any documents using their electronic digital signature, including monitoring the implementation of their decisions. It is also worth noting that the manager's workstation can be used both on personal computers and on mobile phones, tablets, etc. (ASKOD docflow system, n.d.).

In recent years, Ukraine has faced such challenges as COVID-19 and full-scale invasion, which has also affected the activities of the Kyiv City Council as a local government body. The IX convocation of the Kyiv City Council has held its plenary sessions and meetings of standing committees several times over the past three years in the form of online meetings. The meetings are held according to special procedures provided for by the Rules of Procedure of the Kyiv City Council, namely, with the technical impossibility of voting online using an electronic digital signature. It should also be noted that the Kyiv City State Administration, as an executive body of the Kyiv City Council, also actively uses electronic document management systems. In general, it should be noted that as of 2023, local governments in Ukraine use a fairly significant number of information and communication technology and e-government tools, which allows them to solve tasks, respond to problems and difficulties, and provide quality administrative services quickly and efficiently.

The experience of the Republic of Poland in the application of e-governance and information and communication technologies in local self-government bodies

The development of the information society and democratisation provide many opportunities to use new information and communication technologies in government to improve the efficiency of public administration. The criteria for the quality of administrative services provided to the public by state and local authorities are their transparency, legality, accessibility, and maximum time savings. The Republic of Poland is often cited as a model for Ukraine in terms of reforms.

Information society issues have appeared in every official government programme since

1997. Citizens' needs (e.g. free and fast access to the Internet) and fears (increased government control) related to e-government are becoming important issues of interest to policymakers. In 2000, the Polish government developed the first action plan to support the development of the information society in Poland for 2001-2006. One of the goals set out in the plan was to create transparent and citizen-friendly public administration structures based on open information society standards, with the help of information and communication technology tools. Local authorities were to play an important role in the strategy (Dobrzaniecki, 2018).

Since 2011, the Ministry of Administration and Digitalisation (Ministerstwo Administracji i Cyfryzacji, MAC) has been responsible for the implementation of e-government in the Republic of Poland. The special Operational Programme Digital Poland (Programme Operacyjny Polska Cyfrowa, POPC) (n.d.) was designed for 2014-2020 and funded by the European Union. This plan had three vectors that most closely correspond to important areas of digitalisation: high-speed Internet access, provision of electronic services to the population, and improvement of citizens' competence in digital skills. The Digital Operational Programme was presented by the Ministry of Governance and Digitalisation and the Ministry of Regional Development of Poland. The main focus of the programme was the use of digital potential to improve the living standards of citizens, introduce information and communication technologies, and increase the efficiency of e-services through constant interaction with citizens, NGOs, governments, and investors. Following the Polska Cyfrowa project, regional operational programmes are also being implemented (Marchuk, 2021). The development of e-governance and the use of information and communication technologies

in the Republic of Poland is at a fairly high level, which allows most administrative services to be performed online: electronic tax calculation; electronic customs records; electronic business registration; electronic elections; electronic courts; electronic procurement; vehicle registration and road safety; emergency warning system; electronic patient information services, etc. All these e-services are provided to citizens on different government websites that interact with each other as they are united by the ePUAP platform (What is ePUAP?, n.d.).

According to the current legislation of the Republic of Poland, the role of information and communication technologies in local self-government is very important. Thus, information and communication technologies in such bodies perform four main tasks: 1) help improve the internal functioning of government agencies (one of the oldest and least complex forms of IT system support); 2) promote the implementation of e-government functions at the local level to enable citizens and entrepreneurs to solve necessary tasks via the Internet; 3) contribute to increasing the level of transparency of public authorities; 4) provide the political authorities with the necessary information for effective and efficient state governance.

These tasks are significantly related to the effective and efficient interoperability of information and communication technology systems throughout public administration (Electronic Document Management in the Republic of Poland, n.d.). It is also worth noting that the implementation of the Smart City approach is becoming increasingly popular in the Republic of Poland. This approach fully reflects the democracy of the state with the involvement of a large number of citizens. In particular, citizens have the opportunity to control and monitor at any time the following: electronic auctions, electronic analysis of the

economic market, electronic auction maps, and the status of online processing of citizens' appeals. Electronic surveys provide an opportunity to process citizens' opinions and take them into account when making important decisions. An important element of the Smart City is the introduction of a crowdsourcing mechanism (Shoturma, 2016).

Crowdsourcing is a technology of online interaction between public authorities, including local ones, and consumers of administrative (government) services, namely the population, businesses, and individual groups, to provide the latter with opportunities and powers to participate in processes related to public administration decisions. Crowdsourcing is often confused with outsourcing, as both categories involve human resources. However, they have a significant difference when applied in practice. Outsourcing always involves the conclusion of a formal contract, where the parties are predetermined. Crowdsourcing is concluded based on a public offer (proposal). Crowdsourcing also improves the quality of feedback. People who agree to the specified conditions for cooperation will be more balanced in their attitude toward the functions because there will always be a flexible system of material and non-material incentives (Kravchenko, 2015).

Information and communication technologies play an important role in the development and economic growth of a local government unit. Information and communication technologies in local government can accelerate the development process. The main recommendations may include, firstly, adequate training of local government officials and employees in the use of ICT tools to increase their knowledge and skills in the use of ICT services. Secondly, to increase the budget for the transformation of traditional service delivery mechanisms into e-government. Thirdly, to raise public awareness of the introduction, use and

access to information and communication technologies in local governments (Dhital, 2015).

Thus, the following advantages of e-governance and information and communication technologies in the Republic of Poland can be identified: improved quality of administrative services; openness and transparency of administrations; the possibility of stable receipt of administrative services; saving time for information processing; ensuring unimpeded access to public information. Ukraine should consider introducing the practice of crowdsourcing by developing a regulatory framework for its implementation and providing appropriate funding.

Conclusions

Although Ukraine is under the legal regime of martial law, the level of digitalisation and electronic support of public authorities is growing. The study shows that information and communication technologies and e-governance are the main drivers of local government performance. In the context of ongoing decentralisation, local governments are acquiring more and more powers and tasks that require a quick and efficient response. Such a response can be provided by a range of information and communication technologies. The main tools of information and communication technologies and e-governance of local self-government bodies are electronic document management using appropriate automated systems; electronic administrative services provided online; public e-budget and electronic petitions of citizens; electronic digital signature, etc.

Ukrainian legislation lacks a systematic approach to regulating information and

communication relations of local self-government bodies. Therefore, to regulate relations in this area, it is necessary to adopt the Law of Ukraine "On Information Support of State Authorities and Local Self-Government Bodies", which would cover all subjects of information relations without exception. To develop such a legislative act, it is advisable to involve experts in the field of information support from foreign countries. Ukraine has a fairly large number of international partners and bilateral partnership agreements, both with states in general and with individual institutions in particular. Such cooperation with international bodies usually increases the level of Europeanisation and European integration of Ukraine, as since 2022 it has acquired the official status of a candidate for membership in the European Union.

Considering the experience of the Republic of Poland, Ukraine needs to adopt appropriate regulatory legislation in the field of crowdsourcing and ensure its sufficient funding, which will allow even more citizens to be involved in solving problems on the ground. However, it is also worth noting that a significant percentage of budget funding in Ukraine is spent on defence and the Armed Forces of Ukraine. In this regard, a future study could analyse Ukraine's financial capacity to provide new information and communication technology tools under martial law.

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Conflict of Interest

None.

References

- [1] Aristova, I.V., Zapara, S.I., Bielov, D.M., Kaliuzhna, S.V., & Chernadchuk, T.O. (2019). [Legal status of local self-government authorities of Ukraine in the conditions of information society development: Research methodology](#). *Journal of Advanced Research in Law and Economics*, 10(8), 2244-2252.

- [2] ASKOD docflow system. (n.d.). Retrieved from <https://askod-web.kyivcity.gov.ua/Loginv4.aspx>.
- [3] Dobrzeniecki, K. (2005). [Local e-Government in Poland: Perspectives for private public co-operation](#). *The Journal of Information, Law and Technology*, 2-3.
- [4] Bilousko, T., & Yakovlieva, K. (2016). [Information technologies in the activities of state executive bodies](#). In M.V. Makarova (Ed.), *Structural changes in society and the economy under the influence of communications and information: Materials of the international scientific and practical conference* (pp. 144-148). Poltava: Poltava University of Economics and Trade.
- [5] Blinova, H.O. (2019). [Powers of local self-government bodies as participants in information relations](#). *Law and Society*, 1(1), 74-80.
- [6] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text>.
- [7] Dhital, H. (2019). [ICT in a local government unit: A case of Sharada Municipality](#). *Salyan. International Journal of Emerging Technology and Innovative Research*, 6(6), 274-281.
- [8] Diegtiar, O.A., Kravchenko, T.A., Yevmieshkina, O.L., Sych, T.V., & Linetska, Ya.M. (2022). Innovative foundations for optimizing the information and communication system of local government. *Linguistics and Culture Review*, 5(S4), 955-967. doi: 10.21744/lingcure.v5nS4.1774.
- [9] Electronic Document Management in the Republic of Poland. (n.d.). Retrieved from <https://www.gov.pl/web/ezd-rp>.
- [10] Fedorenko, V., Dniprov, V., Panchyshyn, R., & Muzychuk, O. (2021). Exercising the powers of local self-government agencies in Ukraine: The need for implementation of international standards. *DIXI*, 23(2). doi: 10.16925/2357-5891.2021.02.04.
- [11] Havrylenko, T.S. (2021). Introduction of modern technologies in local governments of Ukraine on the example of the city of Kyiv. *Legal Scientific Electronic Journal*, 9, 18-20. doi: 10.32782/2524-0374/2021-9/2.
- [12] Kasyanenko, Ye.V. (2018). Information and communication technologies in the implementation of public control over the activities of local self-government: Theoretical and legal aspect. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 3, 40-45. doi: 10.31733/2078-3566-2018-4-40-45.
- [13] Kravchenko, T. (2015). [Innovative instruments of enforcement of the right for participation in local government by the citizens of Ukraine](#). *Public Administration: Theory and Practice*, 2.
- [14] Law of Ukraine 2657-XII "On Information". (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>.
- [15] Law of Ukraine No. 1170-VII "On Amendments to Some Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On Information" and the Law of Ukraine "On Access to Public Information". (2014, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1170-18#Text>.
- [16] Law of Ukraine No. 280/97-VR "On Local Self-Government in Ukraine". (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-вр#Text>.
- [17] Law of Ukraine No. 2807-IX "On the National Informatization Program". (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2807-20#Text>.

- [18] Law of Ukraine No. 2155-VIII "On Electronic Trust Services". (2017, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.
- [19] Law of Ukraine No. 2939-VI "On Access to Public Information". (2011, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.
- [20] Lialiuk, O.Yu., & Hrynenko, Ye.V. (2023). Some problems of implementation of electronic government in the local government system in Ukraine. *Legal Scientific Electronic Journal*, 4, 101-105. doi: 10.32782/2524-0374/2023-4/22.
- [21] Marchuk, V. (2021). *E-government development under the decentralization reform in Ukraine: The experience of Poland and Slovakia*. In K.S. Soliman (Ed.), *Innovation management and information technology impact on global economy in the era of pandemic: Proceedings of the 37th international business information management association* (pp. 9455-9460). Cordoba, Spain.
- [22] Nepomnyashchyy, O.M., Marusheva, O.A., Prav, Yu.H., Medvedchuk, O.V., & Lahunova, I.A. (2021). Certain aspects of the system of public administration of universities: World practices and the Ukrainian dimension. *Journal of the National Academy of Legal Sciences of Ukraine*, 1, 99-105. doi: 10.37635/jnalsu.28(1).2021.99-105.
- [23] Nikolina, I.I., Hulivata, I.O., Husak, L.P., Radzihovska, L.M., & Nikolina, I.I. (2020). Assessment of digitalization of public management and administration at the level of territorial communities. *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, 5, 150-156. doi: 10.33271/nvngu/2020-5/150.
- [24] Operational Program Digital Poland. (n.d.). Retrieved from <https://www.gov.pl/web/cyfrizacja/program-operacyjny-polska-cyfrowa>.
- [25] Order of the Cabinet of Ministers of Ukraine No. 386-r "On the Approval of the Information Society Development Strategy in Ukraine". (2013, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/386-2013-p#Text>.
- [26] Order of the Cabinet of Ministers of Ukraine No. 759-r "On the Work of Central and Local Executive Authorities to Ensure Openness in Their Activities, Public Relations and Interaction with Mass Media". (2004, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/759-2004-p#Text>.
- [27] Pronina, O.V., & Semenko, O.V. (2023). Current trends in the development of information and communication technologies in local government during military aggression. *Visnyk of Kherson National Technical University*, 1, 239-243. doi: 10.35546/kntu2078-4481.2023.1.33.
- [28] Przybilowicz, E., Cunha, M.A., & de Souza Meirelles, F. (2018). The use of information and communication technology to characterize municipalities: Who they are and what they need to develop e-government and smart city initiatives. *Brazilian Journal of Public Administration*, 52(4), 630-649. doi: 10.1590/0034-7612170582.
- [29] Shoturma, N.V. (2016). *Communication policy of local authorities (on the example of Ukraine and the Republic of Poland)*. (PhD thesis, Lviv national University named after Ivan Franko, Lviv, Ukraine).
- [30] Sytnyk, I.P., & Melnychenko, A.I. (2015). *Electronic document management system in e-business*. *Scientific Bulletin of the Uzhhorod National University. Series: International Economic Relations and World Economy*, 4, 174-178.
- [31] What is ePUAP? (n.d.). Retrieved from <https://epuap.gov.pl/wps/portal/english>.

Законодавчі засади застосування інформаційно-комунікаційних технологій у діяльності органів місцевого самоврядування

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Анотація

Актуальність обраної тематики полягає в тому, що в Україні зростає популяризація електронних та інформаційних процесів в діяльності органів місцевого самоврядування, що дає змогу оперативно вирішувати певні завдання громади. Однак законодавство в цій сфері не повною мірою відповідає вимогам щодо застосування інформаційно-комунікаційних технологій. Мета дослідження – проаналізувати наявні в органів місцевого самоврядування повноваження застосовувати інформаційні та електронні ресурси у своїй діяльності. Основним методом дослідження став системно-структурний, за допомогою якого визначено специфіку застосування інформаційно-комунікаційних технологій. Результатами дослідження встановлено, що українське законодавство фрагментарно регулює інформаційні та комунікаційні відносини органів місцевого самоврядування. Запропоновано ухвалити профільний законодавчий акт. Визначено, що органи місцевого самоврядування володіють досить значною кількістю інформаційно-комунікаційних технологій та інструментів електронного урядування. З'ясовано, що українським органам місцевого самоврядування доцільно перейняти досвід Республіки Польща в застосуванні інструменту краудсорсингу, проте для його реалізації необхідно ухвалити відповідний нормативно-правовий акт та виділити належне фінансування. Підкреслено важливість думки міжнародної європейської спільноти в галузі інформаційного забезпечення діяльності органів державної влади та місцевого самоврядування в рамках двостороннього партнерства. Наголошено на необхідності враховувати фінансову спроможність України підтримувати та розвивати нові інструменти інформаційно-комунікаційних технологій в умовах правового режиму воєнного стану. Практичне значення отриманих результатів полягає в тому, що вони спонукають до запровадження нових інструментів інформаційно-комунікаційних технологій у роботі органів місцевого самоврядування

Ключові слова: комунікація; децентралізація; територіальна громада; муніципальне право; інформація; Київська міська рада; краудсорсинг



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Legal regulation of the protection of women from domestic violence in Western Europe

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The relevance of the stated issue is explained by the constant increase in the number of reports of domestic violence in the vast majority of European countries. The purpose of the study is to conduct a comparative analysis of the legal framework for protecting women from domestic violence in Western European countries using the examples of Italy, Germany, and France. General theoretical methods of research, namely abstract-logical, systemic-functional, analysis and synthesis, and the comparative method, were used in the paper. It was clarified that the criminalisation of domestic violence victims has become a gradual trend in Western European countries. Protective measures such as issuing protection orders, using Global Positioning System bracelets to track perpetrators, and increasing responsibility for committing domestic violence have been implemented. The necessity of criminalising the crime of stalking was justified in Ukraine. Western European countries actively combat domestic violence in general and towards women in particular. It is established that the feature of the German legal system is the presence of specialised police units whose activities are aimed at protecting victims of domestic violence. France focuses on developing state programmes aimed at protecting individuals who have experienced family violence. In all analysed countries, the legislation ensures the protection of domestic violence victims through the issuance of protective orders. The analysis of the legislation of Italy, Germany, and France disclosed features of legal regulation regarding the protection of women from domestic violence and identified advantages and disadvantages that may exist in this area. The results of the study can be used in the research field as a basis for further studies on the protection of women from domestic violence and in legislative activities, providing recommendations for changes to Ukrainian legislation

Keywords: women's rights protection; Istanbul Convention; protection order; court; applicant; court decision

Introduction

The relevance of analysing the legal regulation of women's protection from domestic violence in Western European countries is driven by the constant dynamics of social and cultural changes. The increasing awareness of gender inequality and family violence demands continuous analysis and adaptation of legislative mechanisms. The issue of domestic violence remains significant in many countries worldwide, including Ukraine. Therefore, researching the international experience in legal regulation to prevent and combat domestic violence, identifying positive practices

with public approval, is crucial. These countries include Italy, Germany, and France. Since Ukraine recently ratified the Istanbul Convention, it is essential to examine the experience of other countries in its implementation.

As statistics, particularly from the World Health Organization (WHO), show, predominantly women are victims of domestic violence (Violence against women, 2021). Protecting women's rights from domestic violence is a widely discussed issue in the 21st century, both at the international and national levels. The situation worsened

during the COVID-19 pandemic and its aftermath. WHO research revealed that one in three women worldwide experienced violence, and one in four women aged 15 to 24 became victims of partner violence. These figures were collected before the COVID-19 pandemic, which exacerbated the number of people experiencing various forms of violence, as indicated by T.O. Pertseva *et al.* (2021). UN (United Nations) Secretary-General A. Guterres, noting the “horrificing global surge in violence,” called for a “ceasefire” in households (United Nations News, 2020). All this underscores that domestic violence against women is one of the most significant global issues, emphasising the need to examine ways to counter it, develop effective prevention strategies, and provide protection.

Many researchers have explored issues related to combating domestic violence, emphasising the importance of collaboration among stakeholders in preventing domestic violence. For example, O. Yara *et al.* (2021) and N. Yuzikova *et al.* (2021) focus on the necessity of collaboration between healthcare professionals and police officers in their study. They concluded that collaboration among professionals working in different fields (doctors, police officers, social workers) is crucial as it helps identify victims of domestic violence who may not be psychologically ready to officially report to law enforcement and immediately provide them assistance. In their study, V.L. Andreenkova *et al.* (2020) argue that collaboration among professionals working with domestic violence victims contributes to prevention and resistance to domestic violence. O.O. Uvarova and K.K. Daineko (2019), as well as T.V. Zhuravel *et al.* (2020), emphasise gender-based domestic violence, highlighting that women are the most frequent victims and require special protection through restraining orders.

In the study by Yu. Slukhaenko (2020), the criminological characteristics of domestic violence were investigated. The author argues that creating a criminological profile of the perpetrator allows for preventing future incidents of domestic violence. N.O. Lishchuk (2020) and O.V. Lomakina (2020) examined the issue of women’s protection from domestic violence through the norms of criminal law. The criminalisation of domestic violence proved to be an effective means of combating it. I.A. Horbach-Kudrya (2021) and O.S. Dmytrashchuk (2021) concluded on the necessity of taking preventive measures against individuals who committed domestic violence and conducting preventive work with them. K.V. Dovgun (2021) proposed an original classification of entities implementing measures to counter and prevent domestic violence, categorising them into subjects of general competence, subjects of special competence, and subjects of optional competence. A.Ya. Shynkarchuk (2021) justified the need for legislative provisions allowing the implementation of restrictive measures of a criminal-law nature concerning minors who commit criminal offences. N.O. Lishchuk (2020) defines violent acts against women as intentional socially unlawful actions causing moral, psychological, physical, or material harm to the victim, motivated by the victim’s social-role status. T.R. Humennikova and A.S. Metil (2018) and D.I. Yaitska (2018) identified family violence as actions or inactions in the form of economic, psychological, physical, or sexual violence occurring within a family. E.A. Polyanska (2020) supports strengthening criminal liability for committing domestic violence, a stance that is fully endorsed. A.I. Berendeewa and V.Yu. Tomina (2022) advocate directing individuals who have committed violence against their partners to undergo a programme for offenders.

The study employed general scientific and special-scientific methods of cognition, including dialectical, for identifying legislative features in France, Germany, and Italy regarding combating domestic violence; systemic-functional, for revealing protective mechanisms for women against domestic violence in these countries; abstract-logical. Analysis and synthesis methods were used to identify legislative trends in these countries, and the comparative method was applied to compare legislation in the three countries. The dialectical method was used to investigate social relations in the protection of domestic violence victims in Italy, Germany, and France, revealing patterns in their development. The formal-logical analysis method critically examined the Criminal Code of Italy, several laws in Germany and France, allowing for the identification of peculiarities in national legislation. The formal-juridical method analysed the effectiveness and consistency of regulations in Italy, Germany, and France concerning the protection of domestic violence victims.

The purpose of the study is to identify the features of legal regulation for preventing and combating domestic violence against women in Western European countries, using the examples of Italy, Germany, and France, and to formulate proposals for amending Ukraine's legislation.

Experience of Italy in protecting women from domestic violence

One of the countries that has achieved considerable success in combating domestic violence is Italy. In this country, in 2019, new legislation aimed at combating domestic violence, the so-called "codice rosso" ("red code"), was developed and adopted. The "Red Code" increased the penalties for crimes related to domestic violence and violence against women, specifically for committing sexual violence and stalking. The code also

established new types of crimes related to violence against women, criminalising forced marriages, acid attacks, non-compliance with eviction orders, and the dissemination of photos or videos with sexual content with the intent to harm a former partner after the end of the relationship. Committing such crimes in Italy is punishable by imprisonment for a term of 1 to 6 years and a fine ranging from 5,000 to 15,000 euros. If the committed crime belongs to the above-mentioned crimes and is perpetrated by a current or former partner using social media, these circumstances aggravate the responsibility (Cordero: Italy passes new domestic violence law, 2019). In Ukraine, the perpetrator of domestic violence is punished with community service for a period of 150 to 240 hours, or arrest for up to six months, or restriction of liberty for up to five years, or imprisonment for up to two years (Article 126-1) (Criminal Code of Ukraine, 2001). Compared to the types of punishment in Italy, the types of punishment in Ukraine are less severe, so it is necessary to bring them in line with European standards.

It is worth considering the criminalisation of stalking as a useful and worthy experience to emulate. The crime of stalking in the Criminal Code of Italy is defined as the repeated making of threats or stalking with the intent to cause fear or concern for the safety of the targeted person or the safety of a person with whom he/she is in close relationship (Criminal Code of Italy, 1978). The Criminal Code of Italy imposes criminal liability for stalking in the form of imprisonment for a period of 5 to 7.5 years. Stalking has also been criminalised in Germany. The criminalisation of victims of domestic violence becomes a trend in Western European countries. This experience is advisable to adopt in Ukraine.

Italian practice regarding the duties of the judicial police in cases of domestic violence reflects

the state's serious attention to this issue and its efforts to ensure a prompt and effective response to such situations. This obligation arises even if domestic violence is committed verbally. In this case, the person who has experienced domestic violence is guaranteed the right to be heard by a magistrate within three days from the moment the crime is reported (Violence against women, code red is law..., 2019). These measures aim to improve access to justice and ensure safety for those who become victims of domestic violence. This approach underscores the importance of taking prompt action and effective coordination to counteract the crime.

In December 2021, the Council of Ministers of Italy approved a package of measures that enhance the protection of women and increase the penalties for men who commit domestic violence. The most considerable changes introduced by this package of measures include immediate arrest for threats of committing domestic violence, committing the crime of stalking; the use of electronic bracelets by men who behave violently or threaten women. In the case of forgery of the device by the offender, imprisonment is applied as a sanction. Moreover, the package of measures approved by the Council of Ministers of Italy increased the punishment for beating, inflicting bodily harm, breaking into the place of residence of the injured person, threats, and causing damage. In addition, the approved package of measures provides immediate financial assistance to women who have experienced domestic violence, even during the investigation phase (Italy unveils new bill to combat violence against women, 2021). It would be advisable for Ukraine to also increase the penalties for individuals who commit domestic violence, serving as an additional incentive to reduce the number of violent crimes. This opinion is supported by researchers

in the field of combating domestic violence, such as O.L. Bepal (2019).

An interesting experience in Italy is the establishment of the Commission for the Investigation of Femicide and any form of gender-based violence. This Commission investigates the phenomenon of violence against women in Italy and monitors the implementation of the Istanbul Convention (Council of Europe Convention "On Preventing and Combating Violence...", 2011). The experience of monitoring the implementation of the Istanbul Convention is valuable and contributes to better implementing the convention, making this experience worth emulating.

Experience of Germany in protecting women from domestic violence

In Germany, several national laws on domestic violence and violence against women have been enacted. Among the most important of these are the Act "On Civil Law Protection Against Acts of Violence and Stalking" (2001); the Draft Law "On the Establishment and Operation..." (2011); the Law Amending the Criminal Code to improve protection of sexual self-determination (2016); the Act to Improve the Fight Against Human Trafficking (2016); and the Law to Improve Protection Against Stalking (2017).

Firstly, in this way, Ukraine would follow European standards, as demonstrated by the examples of Italy and Germany. Secondly, this is required by the Istanbul Convention. According to it, all countries that have ratified it must criminalise stalking, as well as sexual violence, including rape, psychological violence, which is also a form of domestic violence, physical violence, forced marriage, female genital mutilation, coercion to abortion, and the commission of forced sterilisation. Some of these criminal offences are already recognised as crimes in Ukraine, such as

sexual violence (Article 153 of the Criminal Code of Ukraine), illegal abortion or sterilisation (Article 134 of the Criminal Code of Ukraine), coercion to marriage (Article 151² of the Criminal Code of Ukraine), psychological and physical violence constitute the objective side of the crime under Article 126¹ of the Criminal Code of Ukraine on “Domestic Violence,” and mutilation of sexual organs constitutes the objective side of the crime under Article 121 of the Criminal Code of Ukraine on “Intentional Grievous Bodily Harm.” In addition to that, the Criminal Code of Ukraine needs to establish criminal liability for stalking, which should be understood as intentional systematic unlawful actions causing or likely to cause the person reasonable fear for their life or health, or the life or health of family members, close relatives, or significantly deteriorating the quality of their life, punishable by imprisonment for a term of two to three years.

The German Criminal Code includes coercion as a type of domestic violence, i.e., actions of a person who unlawfully, by using force or threat, causes major harm, forces another person to act, agree to act, or refrain from certain actions; and stalking, i.e., actions of a person towards another person that significantly restrict their way of life and manifest in seeking physical proximity to another person, attempting to establish contact with another person through electronic communication means, or using third parties; the unlawful use of another person’s personal data with the intent to order goods or services for that person or induce third parties to contact that person; threats to another person, one of their relatives, or someone close to them to harm life, physical integrity, health, or freedom, or to perform other similar actions. The formulation of the criminal offence of stalking used in German legislation can be utilised by the Ukrainian legislator when criminalising stalking and making corresponding

amendments to the existing legislation in Ukraine.

If a woman becomes a victim of domestic violence, she should file a complaint with the police. After the police arrive at the scene, the victim of domestic violence must disclose everything that happened, show any physical injuries inflicted by the perpetrator. The police are obliged to draw up a protocol describing the events, documenting statements provided by both parties, and specifying the nature of the injuries suffered by the person. Each party is entitled to receive a copy of the protocol. The police may order the offender to leave the shared residence, take away their keys, and prohibit them from entering the shared residence. Such prohibition can be issued for a duration of up to 14 days. In addition, police officers may prohibit the person who committed violence from contacting the victim, approaching them and their children, approaching their workplace, daycare/school, etc. During this specified period, the victim of domestic violence must seek medical attention to document physical injuries and file a complaint with the nearest court specialising in family dispute resolution. Police officers also have the right to temporarily detain the person who committed domestic violence in custody if there is no other way to ensure the safety of the victim.

Within the framework of the criminal police in Germany, departments of specialists in domestic violence cases have been established. They handle domestic violence cases and ensure the protection of individuals who have experienced violence. Ukraine should learn from this experience. Cases of domestic violence should be handled by experts specialised in the field, as indicated in the work of N.V. Lesko (2019). A key aspect of such an approach is to ensure not only the conduct of investigations but also the guarantee of protection for individuals who have become victims of domestic violence. Department experts

can collaborate with other services, such as social services, medical institutions, and non-governmental organisations.

Experience of France in protecting women from domestic violence

Substantial opposition to domestic violence is also observed in France. Proof of this is the adoption of a number of regulations. One of the most noteworthy in this area is the French Law on the Protection of Non-National Victims of Violence (Law No. 2016-274..., 2016). This law establishes the principle of automatic extension of the residence permit in France obtained through marriage to a French citizen in case the couple, which does not have French citizenship, becomes a victim of domestic violence. Also notable is the Law on Measures Against Domestic Violence ("Grenelle Law") (Law No. 2020-936..., 2020), adopted on December 28, 2019. This law consolidates the rules for the use of electronic bracelets. The use of an electronic bracelet allows real-time notification if the person who committed domestic violence approaches the victim. The Grenelle Law establishes a deadline of six days from the date of the court hearing appointment to the issuance of a court order for civil protection, prohibits family mediation in cases of divorce or exercising parental responsibilities in cases of possible domestic violence; the use of electronic bracelets by men who behave violently or threaten women, with imprisonment for offenders who tamper with the device, is also provided for in the legislation of Italy (Italy unveils new bill..., 2021). Their use can be considered a European trend worth emulating. In addition to the mentioned laws, it is also necessary to highlight the Law on Domestic Violence (2015). This law empowers a doctor or any other medical professional to break patient confidentiality if they believe that domestic violence directly threatens the life

of the victim. With the enactment of this law, the punishment for harassment by a partner was also increased to a term of up to ten years of imprisonment and a fine of 150,000 euros if the harassment induced the victim of domestic violence to commit or attempt suicide. An increase in the punishment for committing domestic violence is also observed in Italy (Cordero: Italy passes new domestic violence law, 2019). However, the highest punishment is established in France.

In France, there are no specialised courts exclusively handling cases related to domestic violence. Criminal courts have jurisdiction over criminal offences related to domestic violence, and matters concerning protective orders are addressed by family civil courts. Women who have become victims of domestic violence have the opportunity to use both civil and criminal legal means of protection. To obtain civil protection, a person who has experienced domestic violence can file a petition for a protective order with a family court judge for immediate protection of their life and health. The court order for civil protection for the person affected by domestic violence is issued for a period not exceeding six months from the date of notifying the offender of the decision, and the duration of this order can be extended. The prosecutor has the right to provide a victim of domestic violence with a remote protection device that allows them to report to law enforcement authorities the danger of violence, for example, when the offender approaches the victim of domestic violence or their residence. With the victim's consent, who has experienced domestic violence, this device allows them to determine their geographic location when the notification is triggered. The experience of reporting domestic violence that has developed in France is worth emulating in Ukraine.

In France, police officers closely collaborate with the hotline, and this cooperation is well-

established. This enables police officers to quickly respond to incidents of domestic violence. Police officers are authorised to issue eviction orders for the person who committed domestic violence from the residence shared with the victim of domestic violence. The court may decide to use GPS (Global Positioning System) bracelets on the offender, which allows the police to receive a signal when the offender approaches the victim of domestic violence, enabling them to respond promptly to such notifications, as indicated by O.V. Lomakina (2020). The decision to use a GPS bracelet can be made by either the criminal proceedings or a family court judge resolving family disputes. The use of electronic GPS bracelets, providing the police with tracking capabilities and immediate response to the approach of the person who committed domestic violence to the victim, is an excellent experience worth adopting.

Conclusions

The study showed that Ukraine should borrow the experience of Italy, Germany, and France in criminalising the prosecution of perpetrators of domestic violence. Through the analysis of the legislation in these Western European countries, the conclusion has been drawn that persecution is considered a crime. An original definition of persecution has been formulated, proposed for incorporation into Ukrainian legislation. Persecution, in the development of Ukrainian legislation, should be recognised as a deliberate and systematic conduct of threatening behaviour towards another person, causing them to fear for their safety, punishable by imprisonment for a term of three to five years.

An analysis of the legal regulation of the protection of women from domestic violence in Italy, Germany, and France has been conducted, highlighting the features of legal protection for

victims of domestic violence in these countries. Proposed amendments to Ukrainian legislation have been identified. The analysis of the legal regulation of the protection of women from domestic violence in Italy, Germany, and France indicates that substantial steps have been taken in all three countries to improve legislation in the fight against this disgraceful phenomenon. Positive steps include recognising domestic violence as a criminal offence and applying restrictive measures to individuals who have committed domestic violence. The experience of Italy and Germany in criminalising the persecution of perpetrators of domestic violence is valuable and worth adopting in Ukraine. This experience should also be borrowed by Ukraine. A particular feature of Germany's legal system is the presence of specialised police units focused on protecting victims of domestic violence. France's distinctive feature is the development of state programs aimed at protecting individuals who have experienced family violence. In all countries analysed (Italy, Germany, France), the protection of victims of domestic violence is ensured by issuing protective orders.

The scientific originality lies in the proposal that the most acceptable form of ensuring the safety of victims of domestic violence, which could be introduced into Ukrainian legislation and the practical activities of the courts, is conducting judicial proceedings in cases related to domestic violence via video conferencing while adhering to clearly established procedures. The person who committed domestic violence must be present in court, and the person who has become the victim of domestic violence must participate in the proceedings either from the court premises or outside the court premises in an online mode, for example, using the Easycon service. This procedure will enhance the protection of victims of domestic violence and is worth applying both in Ukraine

and in other Western European countries, including Italy, Germany, and France.

The practical value of the results obtained is that they can be used in the research field as a basis for further investigation of the protection of women from domestic violence. The issue of preventing domestic violence deserves further exploration. The relevant area of research may be

the legal regulation of the prevention of domestic violence.

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None.

Conflict of Interest

None.

References

- [1] Act "On Civil Law Protection Against Acts of Violence and Stalking" (Protection against Violence Act – GewSchG). (2001, December). Retrieved from <https://www.gesetze-im-internet.de/gewschg/BjNR351310001.html>.
- [2] Act to Improve the Fight Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book Eight of the Social Code. (2016, October). Retrieved from <https://dip.bundestag.de/vorgang/gesetz-zur-verbesserung-der-bek%C3%A4mpfung-des-menschenhandels-und-zur-%C3%A4nderung/65143>.
- [3] Andreenkova, V.L., Baidyk, V.V., Voitsyakh, T.V., Kalashnyk, O.A., Lehenga, M.M., Matviichuk, M.M., Melnychuk, V.O., Poul, V.S., Stolbun, N.O., Kharkivska, T.A., Cherepakha, K.V., & Chernets, K.O. (2020). *Prevention and countermeasures against manifestations of violence: Activities of educational institutions. Educational and methodological manual*. Kyiv: La Strada Ukraine.
- [4] Berendeewa, A.I., & Tomina, V.Yu. (2022). Referral of an offender to a program for offenders in the context of combating domestic violence in Ukraine. *Legal Scientific Electronic Journal*, 1, 171-174. doi: 10.32782/2524-0374/2022-1/42.
- [5] Bupal, O.L. (2019). *Criminological characteristics and prevention of crimes against the life and health of children committed in the family*. (Doctoral dissertation, Classic Private University, Zaporizhzhia, Ukraine).
- [6] Codered: Italy passes new domestic violence law. (2019). Retrieved from <http://surl.li/bnibs>.
- [7] Council of Europe Convention "On Preventing and Combating Violence Against Women and Domestic Violence" (Istanbul Convention). (2011, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text.
- [8] Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2341-14#Text>.
- [9] Criminal Code of Italy. (1978, May). Retrieved from <https://www.gazzettaufficiale.it/sommario/codici/codicePenale>.
- [10] Dmytrashchuk, O.S. (2021). *Prevention of domestic violence by units of the National Police of Ukraine*. (Doctoral dissertation, Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine).
- [11] Dovgun, K.V. (2021). *Administrative and legal principles of the activity of entities that implement measures in the field of prevention and counteraction of domestic violence*. (Doctoral dissertation, National Academy of Internal Affairs, Kyiv, Ukraine).

- [12] Draft Law "On the Establishment and Operation of a Nationwide Helpline "Help Hotline "Violence against Women" (Help Helpline Act – HilfetelefonG). (2011, September). Retrieved from <https://dserver.bundestag.de/btd/17/072/1707238.pdf>.
- [13] Horbach-Kudrya, I.A. (2021). *Administrative and legal principles of the application of special measures to combat domestic violence*. (Doctoral dissertation, National Academy of Internal Affairs, Kyiv, Ukraine).
- [14] Humennikova, T.R., & Metil, A.S. (2018). Characteristics of domestic violence: Responsibility and consequences. *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, 35(2), 12-14. doi: 10.32841/2307-1745.2018.35.2.3.
- [15] Italy unveils new bill to combat violence against women. (2021). Retrieved from <https://www.wantedinrome.com/news/italy-unveils-new-bill-to-combat-violence-against-women.html>.
- [16] Law Amending the Criminal Code – Improving the Protection of Sexual Self-determination. (2016, November). Retrieved from <https://dip.bundestag.de/vorgang/gesetz-zur-%C3%A4nderung-des-strafgesetzbuches-verbesserung-des-schutzes/73418?f.deskriptor=Ausweisung&start=50&rows=25&pos=57>.
- [17] Law No. 2016-274 "Relating to the Rights of Foreigners in France (1)". (2016, March). Retrieved from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032164264>.
- [18] Law No. 2020-936 "Aimed at Protecting Victims of Domestic Violence (1)". (2020, July). Retrieved from <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042176652>.
- [19] Law on Domestic Violence. (2015, December). Retrieved from https://lex.vd.ch/app/fr/texts_of_law/550.6.
- [20] Law to Improve Protection Against Stalking. (2017, March). Retrieved from <https://dip.bundestag.de/vorgang/.../76261>.
- [21] Lesko, N.V. (2019). *Administrative and legal support for the formation and implementation of state policy in the sphere of protection of children from violence and other illegal actions*. (Doctoral dissertation, Educational and scientific institute of Law. Prince Vladimir the Great, Kyiv, Ukraine).
- [22] Lishchuk, N.O. (2020). *Violent acts committed against women: causes and prevention*. (Doctoral dissertation, Lviv University of Business and Law, Lviv, Ukraine).
- [23] Lomakina, O.V. (2020). Foreign experience of combating domestic violence and gender-based violence. *Theory and Practice of State Administration and Local Self-Government*, 1. doi: 10.35546/kntu2308-8834/2020.1.18.
- [24] Pertseva, T.O., Ogorenko, V.V., Kozhina, H.M., Zelenska, K.O., Nosov, S.G., Teryoshina, I.F., Gnenna, O.M., Mamchur, O.Y., Timofeev, R.M., & Shornikov, A.V. (Eds.). (2021). *Actual problems of family violence*. Dnipro: Lira.
- [25] Polyanska, E.A. (2020). Restrictive measures applied to persons who have committed domestic violence. In *Materials of the IV international scientific and practical conference "reforming the legal system in the context of European integration processes": In 2 parts* (pp. 357-360). Sumy: Sumy State University.
- [26] Shynkarchuk, A.Ya. (2021). *Criminal and legal measures to respond to manifestations of domestic violence*. (Doctoral dissertation, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).

- [27] Slukhaenko, Yu. (2020). Criminal characteristics of domestic violence. *Bulletin of the LDUVS Named After E.O. Didorenko*, 91(3), 295-306. doi: 10.33766/2524-0323.91.295-306.
- [28] United Nations News. (2020). Retrieved from <https://news.un.org/en/story/2020/04/1061052>.
- [29] Uvarova, O.O., & Daineko, K.K. (2019). *Protection of women's rights: Legal instruments for ensuring gender equality in Ukraine: Study guide*. PE: Holembovska.
- [30] Violence against women, code red is law: Yes, from the Senate. (2019). Retrieved from https://www.repubblica.it/politica/2019/07/17/news/codice_rosso_senato-231421710/.
- [31] Violence against women. (2021). Retrieved from <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.
- [32] Yaitska, D.I. (2018). *Criminalization of domestic violence in Ukraine*. *Legal Scientific Electronic Journal*, 2, 204-208.
- [33] Yara, O., Artemenko, O., Lytvyn, O., Ladychenko, V., & Gulac, O. (2021). Legal principles of activities of public administration entities, which carry out measures in the field of prevention and control of domestic violence. *Brazilian Journal of Law and International Relations*, 4(33). 51-71. doi: 10.21902/Revrima.v4i33.5577.
- [34] Yuzikova, N., Korniakova, T., Khomiachenko, S., & Chasova, T. (2021). Moral and psychological features of the motivational sphere of juveniles who commit crimes: Risk assessment of determining communication. *European Journal of Sustainable Development*, 10(1), 123-135. doi: 10.14207/ejsd.2021.v10n1p123.
- [35] Zhuravel, T.V., Kochemirovska, O.O., Pukha, K.V., & Yankovets, V.V. (Eds.). (2020). *Addressing domestic and gender-based violence and community well-being*. PE: Klymenko.

Правове регулювання захисту жінок від домашнього насильства в країнах Західної Європи

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Анотація

Актуальність теми дослідження пояснюється постійним зростанням кількості повідомлень про насильство в сім'ї в переважній більшості європейських країн. Мета статті – провести порівняльне дослідження правового забезпечення захисту жінок від домашнього насильства в країнах Західної Європи на прикладі Італії, Німеччини та Франції. У роботі використано загальнонотеретичні методи наукових досліджень, а саме: абстрактно-логічний, системно-функціональний, аналізу і синтезу, порівняльний метод. З'ясовано, що криміналізація жертв домашнього насильства стала поступовою тенденцією в країнах західної Європи. Як і видача охоронних приписів, використання Global Positioning System-браслетів, за допомогою яких

поліція має змогу відстежувати кривдника, а також збільшення відповідальності за вчинення домашнього насильства. Обґрунтовано необхідність криміналізації злочину переслідування і в Україні. Країни західної Європи здійснюють активну боротьбу з насильством у сім'ї загалом і щодо жінок зокрема. Установлено, що особливість правової системи Німеччини – це наявність спеціалізованих підрозділів поліції, діяльність яких спрямована на захист жертв домашнього насильства. Особливість Франції – розроблення державних програм, спрямованих на захист осіб, що зазнали насильства в сім'ї. В усіх країнах, законодавство яких аналізувалося, захист жертв домашнього насильства здійснюється шляхом видачі охоронних приписів. При аналізі законодавства Італії, Німеччини та Франції виявлені особливості правового регулювання захисту жінок від домашнього насильства та встановлено переваги та недоліки, які можуть існувати в цій сфері. Результати проведеного дослідження можуть бути використані в науково-дослідній сфері, як основу для наступних наукових досліджень з проблематики захисту жінок від домашнього насильства, та правотворчій діяльності, оскільки надані рекомендації для змін до законодавства України

Ключові слова: захист прав жінок; Стамбульська конвенція; обмежувальний припис; суд; заявник; судові рішення



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Veterinary defects as a subject of forensic veterinary investigation

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Abstract

Defects in veterinary activities often cause epizootics that pose a threat to animal and human life and cause economic losses to livestock facilities. To prove the guilt of a veterinary practitioner in the occurrence of professional defects, forensic veterinary examination is essential. The study aims to formulate and characterise the conceptual and categorical apparatus of the phenomenon of defects in veterinary practice, to identify the signs of these defects in terms of forensic veterinary examination, and to propose amendments to the criminal, administrative and veterinary national legislative framework. The methodological basis of the study includes a systematic approach which uses general and special scientific methods: analysis and synthesis, induction and deduction, analogy; logical-semantic and system-structural methods; modelling method and comparative legal method. It is argued that it is appropriate to distinguish two groups of offences related to veterinary activities, including criminal offences (misdemeanours and crimes), administrative offences and civil torts. The author's definitions are proposed: “crime in veterinary activity”, “fault in veterinary activity”, “non-performance or improper performance of professional duties by a veterinary practitioner”, “engaging in illegal veterinary activity”, “illegal issuance of a veterinary prescription”, “illegal conduct of veterinary biological or other

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experiments on animals” and their features are outlined. The features of the objective side of criminal, administrative and civil law offences in the field of veterinary medicine are outlined. The author identifies the problematic aspects of defects in veterinary activities which should be emphasised by scientists and practitioners and suggests ways to solve them. The study became the basis for the development of a methodology for forensic veterinary research of defects in veterinary activities in criminal and administrative proceedings and civil cases

Keywords: forensic veterinary medicine; veterinary professionals; non-performance and improper performance of professional duties; expert animals; professional offence; crime; guilt; civil tort

Introduction

The issue of improper performance of professional duties by veterinary practitioners, which causes negative consequences during the provision of veterinary services, is an acute one for practical veterinary medicine. This problem is relevant both in Ukraine (Zapara *et al.*, 2019) and in other countries (Low & Wu, 2022; Daly, 2023). According to leading scientists in the field of veterinary medicine, including K. Whipple *et al.* (2020), P. Mosedale and K. Blackie (2021), A. Woolrich (2021), various shortcomings in the provision of veterinary care are rarely discussed in scientific publications, and little is known about their nature and frequency, but they are a significant cause of animal patient mortality, ending in claims and complaints from dissatisfied animal owners, lawsuits against veterinary professionals, and may be accompanied by insurance payments.

The arguments of J. Wallis *et al.* (2019), R. Munro (2022) and J. Cohen *et al.* (2023) regarding the defects in veterinary care and the specifics of their expert assessment are extremely important for forensic veterinary examination as a scientifically sound and justified means of proof in legal proceedings. This is because the expert's opinion provides answers to the questions posed to the forensic expert by the pre-trial investigation body or the court to clarify the facts and

circumstances of the offence in the field of veterinary activities, and helps to correctly qualify the offence (Yatsenko, 2022). However, research activity in this area of veterinary medicine is insufficient. Currently, the issues of criminal offences and crimes, administrative offences, and civil torts in the field of veterinary medicine remain unexplored. A significant organisational and legal problem of forensic veterinary expertise is the lack of a developed theoretical basis in cases of “veterinary cases”, which significantly reduces the quality of expertise.

Thus, there is a pressing need to develop unified methodological approaches to the organisation and conduct of forensic veterinary examination of professional offences by veterinary specialists, since improving the quality of expert practice is possible if a holistic scientific and methodological concept of organising and conducting forensic veterinary research on the improper performance of professional duties by veterinary specialists is developed. Only a comprehensive scientific study will solve this important problem to ensure pre-trial investigation of offences relating to defects in veterinary activities. The aforesaid determines the research relevance.

The study aims to develop a doctrinal and epistemological construction of the phenomenon

of veterinary practice defect for use in forensic veterinary examination as a means of proof in the course of investigation of criminal offences, crimes, administrative offences and civil law torts; to formulate the author's definitions of the conceptual and categorical apparatus and characterize them, and also to propose amendments to the criminal, administrative and veterinary national legislative framework.

The methodological basis of the study employs general and special scientific methods: analysis and synthesis, induction and deduction, analogy to determine the essence of the categorical apparatus of defects in veterinary practice; logical and semantic method to formulate the terms: "non-performance or improper performance of professional duties by a veterinary worker", "fault in veterinary activity", "crime in veterinary activity", "performance of professional duties by a veterinary worker" for use in forensic veterinary examination, removing gaps in the current legislation of Ukraine, and providing proposals for its improvement; the structural and systemic method was used to complete and build tasks for a forensic veterinary expert to assess the quality of veterinary activities and determine the type of defect; the modelling method was used to predict and develop the issues of forensic veterinary determination of defects in veterinary activities; the comparative legal method was used to consider and compare legal provisions that accurately define the professional activities of veterinary workers.

Types and signs of professional veterinary offences under Ukrainian law

If a causal link is confirmed between the improper performance of professional duties by a veterinary practitioner and bodily injury, maiming or even death or the public interest in the field of veterinary medicine, the question of legal liability

of veterinary practitioners may arise. The algorithm for assessing defects in veterinary activities is to determine the type of defect, outline the legal consequences and establish legal liability (criminal, administrative, civil).

From the personal practice of conducting forensic veterinary examinations in cases of professional offences by veterinary practitioners, it is known that they mostly have superficial knowledge of legal liability. However, awareness of veterinary professionals of the predictors, types, and consequences of legal liability for their professional offences disciplines them, and on the other hand, reduces the likelihood of unjustified accusations and prosecution. Veterinary medicine specialists can perform both professional and official functions and therefore may be subjects of offences in the field of veterinary activity, which may also affect its organisation. Therefore, it is appropriate to distinguish two groups of offences related to the provision of veterinary care, including criminal offences, i.e. misdemeanours and crimes under the Criminal Code of Ukraine (CC) (2001), administrative offences under the Code of Ukraine on Administrative Offences (CAO) (1984), and civil torts under the Civil Code of Ukraine (2003).

Veterinary offences in the course of veterinary activity, including professional offences in the field of veterinary activity, are separate types of offences. Therefore, it is necessary to characterise possible professional offences in the field of veterinary practice. To do this, it is first necessary to define the concepts of "fault in veterinary activity" and "crime in veterinary activity". In this regard, "crime in veterinary activity" should be understood as a socially dangerous, unlawful, guilty, punishable offence caused by a veterinary practitioner intentionally or negligently, provided for by criminal law and consisting of a breach of their

professional duties, requirements of veterinary regulatory documents, which cause deterioration of veterinary, sanitary and epizootic welfare, or bodily injury or other health disorder, mutilation, death of an animal or cause significant damage to the state interests in the field of veterinary medicine and animal husbandry.

A crime differs from misconduct in veterinary activities by the degree of public danger. In this regard, misconduct in veterinary activities is a socially harmful, unlawful, culpable, punishable, intentional or negligent act of a special subject of misconduct – a veterinary professional – provided for by law, which consists of deviating from the requirements stipulated by regulatory documents, including veterinary ones, which results in violation of animal quarantine procedures, failure to comply with any other established veterinary rules provided for by the Law of Ukraine “On Veterinary Medicine” (1992), as well as failure to comply with decisions of local authorities on the prevention and control of contagious animal diseases.

The following are characteristic features of professional offences in the field of veterinary activity: 1) an unlawful act as an active form of behaviour of a veterinary professional, active deed or unlawful inaction as a passive form of behaviour (passive act); 2) acts of a special subject of a crime from the point of view of criminal or administrative law – a veterinary worker whose official or official duty is to provide veterinary care; 3) a socially dangerous (criminal) or socially harmful (administrative) act is a legally significant act that occurs under the control of the consciousness of a veterinary professional (volitional act) and is prohibited by law; 4) unlawful – means the mandatory provision of a socially dangerous act in the Special Part of the CC (2001) or a socially harmful act in the CAO (1984). Thus, only a veterinary

professional who has committed a socially dangerous or socially harmful act may be subject to criminal or administrative liability and punishment; 5) culpable act (committed intentionally or negligently) means a conscious, volitional act of a veterinary professional by choosing and carrying out an unlawful course of conduct among possible other options; 6) punishability of an act means that the sanction of the relevant article or paragraph of the article of the CC (2001) or CAO (1984) provides for punishment or other measures of a criminal or administrative law nature (based on the results of legal qualification) to be applied for the commission of a socially dangerous or socially harmful act; 7) committed intentionally (with direct or indirect intent) or negligently (through overconfidence or negligence); 8) provided for exclusively by criminal or administrative law; 9) the consequence of professional offences in the field of veterinary medicine is the deterioration of veterinary and epizootic welfare, injuries, mutilation or death of an animal, violation of the rules for conducting veterinary and sanitary measures following the Law of Ukraine “On Veterinary Medicine” (1992), other regulatory legal acts on the control of contagious animal diseases; causing significant damage to the state interests in the field of veterinary medicine and animal husbandry.

Crimes and misdemeanours in veterinary activity differ in the amount of damage caused, which is an evaluative concept. crimes in veterinary activity are socially dangerous and have severe consequences, while misdemeanours in veterinary activity entail socially harmful and less severe consequences. Based on the analysis of expert practice, it is possible to conclude that the main causes of professional misconduct by veterinary practitioners are bad faith (negligence), personal disorganisation and carelessness. However, the highest degree of responsibility of veterinary

professionals for professional offences is moral responsibility for the negative consequences of veterinary care.

Crimes committed by veterinary professionals in the course of their professional activities

The Criminal Code of Ukraine provides for the most severe legal liability for the commission of a crime by a veterinary professional in the course of professional activity – criminal liability, which is based on the obligation of the person who committed the criminal offence to suffer restrictions on rights. The criminal significance of professional offences by veterinary practitioners is determined by the fact that they cause or may cause a significant danger to the health and life of animals, the food security of Ukraine and other countries, as well as state interests.

A crime in professional veterinary activity is a violation of veterinary rules, as provided for in Article 251 of the CC of Ukraine. On the objective side, this offence is characterised by its material composition, which includes an act (action or inaction), negative consequences, and the relationship between them. Its external side is characterised by acts that are antithetical to Article 4 of the Law of Ukraine “On Veterinary Medicine” (1992), in particular in the following: violation of the development, approval and application of veterinary and sanitary measures, which led to serious consequences; failure to eliminate or ensure veterinary and sanitary measures to reduce the risk of human infection with contagious diseases common to humans and animals; poor provision or failure to provide veterinary and sanitary measures to prevent the penetration of infectious agents into the territory of Ukraine from other countries; poor provision or failure to protect people and animals from contagious dis-

eases, which led to serious consequences; failure to ensure reliable veterinary and sanitary measures against exotic animal diseases, which led to serious consequences; failure to implement or insufficient implementation of veterinary and sanitary measures to eliminate animal disease outbreaks, especially to minimise the risk to humans; failure to monitor animal feed and water for their suitability for animal consumption and to prevent the transmission of animal diseases through them; violation of the established rules for the production, storage, transportation, sale and use of veterinary medicines and control over compliance with these rules; violation of the established requirements for the use of veterinary medicines; violation of the animal identification procedure; violation of state control requirements for the protection of animals, production and circulation of veterinary medicines, strains of microorganisms, pathological material, and by-products of animal origin; failure to perform or poor performance of veterinary and sanitary measures during the quarantine of animals, which led to serious consequences; the emergence and spread of an epizootic, as well as other serious consequences, depending on the specific circumstances of the crime; allowing animals with contagious diseases to be sold; allowing the sale of animal feed without veterinary documents certifying its quality and safety.

In the context of research on defects in veterinary practice, serious consequences are considered to include the illness of at least one person due to a violation of veterinary rules. Furthermore, it is worth noting that violations of veterinary regulations may be manifested in the following: failure to perform or improper performance of professional duties by a veterinary officer; engaging in illegal veterinary activities; and illegal conduct of experiments on vertebrates. However, no provision in the CC of Ukraine would provide for criminal liability

for such an act. In this regard, Article 251 “Violation of Veterinary Rules” should be supplemented with new parts of the following content:

- ✓ paragraph 2: “failure to perform or improper performance of professional duties by a veterinary officer as a result of negligence or dishonesty, if this led to the emergence and spread of epizootics or entailed any other serious consequences”;
- ✓ paragraph 3: “engaging in illegal veterinary activities, if this has led to the emergence and spread of epizootics or other serious consequences”;
- ✓ paragraph 4: “unlawful conduct of experiments on a vertebrate animal if it caused unjustified danger to life or health”.

When justifying the amendments to the criminal legislation of Ukraine, it should be noted that in the proposed paragraph 2 of Article 251 CC, for the semantic analysis of certain terms contained in this paragraph, it is worth referring to the Dictionary of the Ukrainian Language (1974) (hereinafter – the Dictionary). All terms in paragraph 2 are inextricably linked to the term “professional duty”. The Dictionary defines duty as follows: “something that must be unconditionally observed, that should be performed without fail following the requirements of society or based on one’s conscience; a certain amount of work, set of cases, limits of responsibility, etc., determined by the relevant rank, position, family status, etc.”.

Furthermore, the said dictionary explains that the term “non-fulfilment” should be understood as the failure to do something, and the term “improper” means “not as it should be”. Following the antinomy of paragraph 91 of Article 1 of the Draft Law of Ukraine “On Veterinary Medicine and Animal Welfare” (2020), an inadequate “level of animal health protection and related human health protection is a level of protection that is considered insufficient when establishing veteri-

nary and sanitary measures to protect the health and life of people and animals from adverse effects associated with animal diseases”. The term “negligent” is quite multidimensional. The Dictionary (1974) explains it as follows: “treating one’s duties indifferently, without due diligence, not caring, not concerned about someone or something; done, performed without effort, in a sloppy manner; treating someone with inattention, indifference; inattentive”. And “unscrupulous” is interpreted as “having no conscience, honour, not treating duties conscientiously, honestly, in good faith, expressing a lack of conscientiousness, honesty, good faith”.

As stated in paragraph 2 of the amendment to Article 251 of the CC of Ukraine, a breach of professional duties by a veterinary officer may result in an epizootic or other serious consequences. Thus, an “epizootic” should be understood as “a widespread explosive spread of a contagious animal disease that significantly exceeds the normal incidence of that disease in a particular area” (State Committee on Technical Regulation and Consumer Policy, 2010). Other grave consequences include human illness or death due to violations of veterinary regulations. Given the aforementioned, it is possible to conclude that veterinary care (activities) should be considered inadequate (poor quality) when at least one of the specified requirements for proper medical, diagnostic and other veterinary activities is not confirmed, and veterinary care (activities) was carried out promptly, in an insufficient amount, technically and technologically incorrectly; in violation of applicable regulatory and technical documents (instructions, guidelines, rules, etc.).

Therefore, the following definition of the term “non-performance or improper performance of professional duties by a veterinary professional” can be proposed: “an activity performed by a veterinary professional within the scope of profes-

sional competence, provided that it is objectively possible to exercise professional competence in a proper manner, but performed incorrectly, insufficiently, untimely and superficially, in violation of the rules, regulations, guidelines or instructions available in veterinary medicine, provided for by law for the mandatory performance of actions in accordance with the position held by the employee, including organisational, diagnostic, therapeutic and tactical, preventive, rehabilitation, resuscitation”.

In justifying the proposed amendments (paragraph 3 “engaging in illegal veterinary activities”) to Article 251 of the CC of Ukraine, it should be noted that veterinary specialists may be doctors and veterinary assistants who have the appropriate veterinary education in the field of knowledge 21 “Veterinary Medicine”, speciality 211 “Veterinary Medicine”; meet the uniform qualification requirements set out in the educational standard of Ukraine. Veterinary activity should be understood as both a one-time and systematic provision of veterinary services. The professional rights and obligations of veterinary medicine specialists are stipulated by the job description developed following the legislation of Ukraine, in particular the Law of Ukraine “On Veterinary Medicine” (1992), as well as other by-laws and regulations. Private veterinary activity is possible with a licence for such activity, as well as appropriate material and technical support, by the Licensing Terms (Resolution of the Cabinet of Ministers of Ukraine No. 896..., 2015). Entities that do not meet these requirements are not allowed to carry out veterinary activities.

The severe consequences of engaging in illegal veterinary activities should be considered the occurrence of severe or moderate bodily injuries, mutilation, or death of an animal. to establish the causal link between engaging in illegal veterinary activities and the negative consequences of such

activities, a forensic veterinary examination is appointed. Scientists at the Kharkiv Scientific Forensic Veterinary School have developed guidelines and methods for conducting forensic veterinary examinations of animal corpses and live animals to determine the severity of injuries and mutilations.

The subject of illegal veterinary activity is both veterinary specialists and persons without veterinary education. Signs of illegal veterinary activity include the following: a person does not have a veterinary education and a diploma confirming it; a legal entity or individual entrepreneur does not have a licence to conduct business in veterinary practice. In justifying the proposed amendments to Article 251 of the CC of Ukraine (paragraph 4 “illegal conduct of experiments on vertebrate animals”), it should be noted that the law establishes the procedure for the use and outlines the requirements for keeping animals used in scientific experiments, testing, education, production of biological products, etc. based on the principle of humanity and protection from cruel treatment, which is consistent with European requirements, as this problem concerns many moral aspects of society that need to be addressed. Such norms are aimed at preventing unnecessary suffering and torment, as well as preventing harm to animals ensuring their safe and natural existence, as well as protecting human morality (Zapara *et al.*, 2019).

Illegal experimentation on a vertebrate animal, if it created an unjustified danger to its life or health, resulting in injury, or if it caused injury or death, is grounds for criminal liability under Article 299 of the Criminal Code of Ukraine (cruelty to animals). Such an act is observed in case of violation of the legislation of Ukraine on the treatment of animals, in particular, Law of Ukraine “On the Protection of Animals from Cruelty” (2006); Guidelines of the Ministry of Health of Ukraine “Medicines. Preclinical Safety Studies as The Basis for Clinical

Trials with Human Participation and Registration of Medicines" (2014); Procedure for Carrying Out Trials and Experiments on Animals by Scientific Institutions (Ministry of Education and Science, Youth and Sports of Ukraine..., 2012) others.

To conduct experiments using vertebrate animals, as well as to be able to care for experimental animals, persons must have appropriate medical, veterinary, zootechnical, biological or pharmaceutical education and training, according to paragraph 4 of Article 26 of the Law of Ukraine "On the Protection of Animals from Cruelty" (2006). Thus, applying the antinomy to Art. 26 of the Law, it is possible to outline the signs of unlawful experiments on vertebrates, including the following:

- ✓ conducting scientific research and testing on animals, if there is an alternative;
- ✓ participation of persons without higher medical, veterinary, zootechnical, biological or pharmaceutical education in work with experimental animals;
- ✓ carrying out research procedures on experimental animals, causing them pain without sufficient anaesthesia;
- ✓ use of the experimental animal in subsequent experiments until their health is normalised;
- ✓ devocalisation of animals;
- ✓ dementia on animals for certain veterinary and biological procedures during the educational process, if alternative methods of teaching involving inanimate objects can be used;
- ✓ conducting experimental research on live animals involving surgery or any other kind of injury, with the participation or in the presence of children;
- ✓ failure to provide expert animals with qualified care;
- ✓ not killing a non-viable experimental animal before it suffers, etc.

Specialised veterinary knowledge in the form of forensic veterinary examination is used as a

means of proof during the pre-trial investigation of illegal experiments on vertebrates. In this context, I. Yatsenko (2022) theoretically substantiated and outlined the pragmatic significance of the stages of expert examination of a live animal and an animal corpse; formulated the questions posed in a court decision or an investigator's decision to appoint a forensic veterinary examination; developed a theoretical and epistemological construction of the phenomenon of the severity of harm caused to the health of an animal. Thus, it is possible to note that violation of veterinary rules poses a public danger (creates a threat of anthrozo-zoonotic diseases – diseases common to humans and animals), causes the emergence and rapid spread of contagious diseases, which are accompanied by mass deaths of animals, and causes economic losses to livestock facilities, and sometimes threatens the country's food security; may hurt international trade in animals and food and non-food products of animal origin.

Official crimes of veterinary professionals in the course of their professional activities constitute a separate large group in the structure of defects in veterinary activities, which, when extrapolated to the field of veterinary activities and animal health, form a group of official veterinary crimes and misdemeanours. They relate exclusively to officials in the field of veterinary medicine and have authority in the field of veterinary medicine and institutions of the competent authority, which is currently the State Service of Ukraine on Food Safety and Consumer Protection and its territorial bodies. The official crimes of veterinary medicine employees include criminal offences under the Special Part of the CC of Ukraine (2001), in particular, abuse of power or official position (Art. 364); abuse of authority by an official of a legal entity of private law regardless of its legal form (Art. 364¹); abuse of power or official posi-

tion (Art. 364); forgery (Art. 366); declaration of false information (Art. 366²); official negligence (Art. 367); abuse of influence (Art. 369²).

However, the above-mentioned official crimes of veterinary professionals will be defects in veterinary activities if they result in the emergence and spread of epizootics or other serious consequences from abuse of office by a person in the performance of professional duties related to organisational, administrative, or economic functions or the performance of such functions by special authority. All of the above crimes have a special subject, which is a veterinary professional, but they all have a common generic object – a negative impact on the life and health of animals (in the case of zoonoses) or the life and health of animals and humans (in the case of anthro-po-zoonoses).

Thus, during the performance of professional veterinary activities, an intentional or negligent act is committed that is prohibited by criminal law under penalty of law. However, the relevant law, the Law of Ukraine “On Veterinary Medicine” (1992), does not contain a provision on the liability of veterinary professionals. Given this, it would be advisable to amend Article 94 of the said law as follows: “2. Veterinary practitioners guilty of violating legislation in the areas of animal health and welfare, veterinary practice, production, circulation, and use of veterinary drugs, as well as circulation of animal by-products, shall bear civil, administrative, or criminal liability following the law”.

Misconduct and civil law torts of veterinary practitioners in the course of their professional activities

Violation of veterinary rules that did not cause the spread of epizootic or other serious consequences may be qualified as an administrative offence. Veterinary offences include violations of animal quarantine rules and other veterinary and sanitary re-

quirements (Article 107 of the CAO). In addition, it is worth noting that violation of veterinary rules may be manifested by non-performance or improper performance of professional duties by veterinary officers or as a result of engaging in illegal veterinary activities or illegal issuance of prescriptions. However, there are no provisions in the CAO that would provide for administrative liability for such acts. In this regard, it makes sense to supplement Article 107 CAO “violation of rules on animal quarantine and other veterinary and sanitary requirements” with new parts as follows: paragraph 2 “non-performance or improper performance of professional duties by a veterinary officer as a result of negligent or dishonest attitude to them, if this caused negative consequences for the animal/animals”; and paragraph 3 “illegal issuance of a veterinary prescription”.

It is worth focusing on the proposed amendments to Article 107 of the CAO regarding the illegal issuance of a veterinary prescription. A veterinary prescription is “a document of the prescribed form issued by a licensed veterinarian, a veterinarian of a licensed veterinary institution or, in cases determined by law, another veterinary specialist, based on which a veterinary medicine or a medicine intended for the treatment of animals is manufactured and/or sold” (Order of the Ministry of Agrarian Policy and Food of Ukraine “On Approval of the Form and Rules for Issuing Veterinary Prescriptions”, 2022).

Veterinary prescriptions are issued in paper and/or electronic form. Signs of illegal and improper issuance of a prescription for the purchase of veterinary medicinal products include the following: violation of the content and form of a veterinary prescription; issuing a prescription for veterinary drugs that are not approved for use in the treatment and prevention of animal diseases; issuing a veterinary prescription by a person who

was not entitled to do so; issuing a veterinary prescription without a clinical diagnosis of animals; issuing a veterinary prescription more than three times for a particular animal or group of animals, unless they have been re-examined clinically; issuance of a veterinary prescription for more than one name of poisonous, potent, hypnotic veterinary medicinal products, in other cases – more than three names.

The official misconduct of veterinary medicine employees includes administrative offences that infringe on the established management procedure provided for in the Special Part of the CUO (1984), in particular, evasion of the lawful requirements of officials of the central executive body implementing state policy in the field of state control over compliance with consumer protection legislation (Article 188²); failure to comply with the lawful requirements of the central executive body implementing state policy in the field of labour protection (Article 188⁴); failure to comply with resolutions, orders, instructions, conclusions, as well as other legal requirements of officials of the state sanitary and epidemiological service (188¹¹); failure to comply with legal requirements of officials of the state sanitary and epidemiological service and the state veterinary medicine service (Art. 188²²); violation of requirements for the prevention and settlement of conflicts of interest (Art. 172⁷).

It should be emphasised that the above-mentioned misconduct of veterinary professionals will be defects in veterinary activities in the event of negative consequences resulting from abuse of office by a person in the performance of professional duties related to organisational, administrative, or economic functions, or the performance of such functions by special authority.

Many lawsuits filed by animal owners or animal rights activists are related to compen-

sation for material and moral damages suffered as a result of the death of an animal that has received veterinary care, as pointed out by J. Wallis *et al.* (2019); and M.L. Daly (2023). Based on personal forensic practice, the civil liability of veterinary practitioners for professional offences caused by violation of property rights in the field of veterinary medicine and animal welfare involves compensation for damages, as per the provisions of Article 22 of the Civil Code of Ukraine (2003), is 22%.

If the harmful consequences for the animal were not caused by the unlawful professional actions of a veterinary specialist, but for other reasons (e.g., individual characteristics of the organism, neglected treatment, atypical or rapid development of diseases, etc. This problem can only be resolved by employing forensic veterinary examination. Thus, the doctrine of the causal relationship between the unlawful professional acts of a veterinary professional and the harm caused to a sick animal during its treatment or veterinary and sanitary measures is central to the determination of guilt and is a prerequisite for legal liability for causing such harm and cannot be accidental. The civil liability of a veterinary professional is incurred for damage caused to the health of an animal and arises only when such damage was caused by the fault (usually through negligence) of the veterinary professional. In this regard, the burden of proof lies with the parties in each case. If the veterinary professional against whom the claim is filed proves that the negative consequences of the provision of veterinary care were not service fault, no obligation to compensate for both material and moral damage will be required.

Analysing and summarising the results

The group of defects in veterinary activities, which are offences by their legal nature (crimes, misde-

meanours, civil torts), is provided for by criminal, administrative and civil legislation. However, this legislation is not perfect. There are also no publications on this topic in Ukrainian scientific sources. The problems of the occurrence and prevention of defects in veterinary activities are actively discussed in foreign publications (Gartrell & White, 2021; Mosedale & Blackie, 2021).

The problem of veterinary care defects and defects in veterinary activities is not sufficiently covered by Ukrainian scientists. At the same time, many international scholars – theorists and practitioners – have devoted their research to this issue. In particular, K. Blackie (2022), M. Turner (2022), E.H. Hofmeister and L. Love (2023) focus on improving the culture of patient safety and preventing human errors in veterinary hospitals through systematic analysis of clinical cases; B. Gartrell and B. White (2021) emphasise the need to improve the quality of veterinary medicine and prevent errors in veterinary care; C.O. Cummings *et al.* (2022) argue the deontological problems of veterinary care defects and identify risk factors associated with working in specialised veterinary hospitals, including the burnout syndrome of veterinary medicine specialists, and emphasise the need to improve communication within the team to reduce the risk of medical errors; G.M. Hayes *et al.* (2020) presented a multidisciplinary study of animal care errors, staffing levels and workload in small animal intensive care units.

In addition, the problem of defects in the provision of medical care in various areas of this industry is actively discussed in foreign scientific publications. T. Miyagami *et al.* (2023) and V. Grenon *et al.* (2023) analyse diagnostic medical errors; F. Steffens *et al.* (2023) found out the advantages of the commission examination in identifying professional errors of doctors; D. Ostrovsky *et al.* (2022) summarise the views of emergency clini-

cians on medical errors that cause patient harm through negligence or lead to litigation; A. Ünal and Ş.S. Intepeler (2022) conducted a bibliometric analysis and systematised global sources on medical errors; K.R. Amlaev *et al.* (2022) studied the deontological aspects of defects in the provision of medical care. Many foreign scientists devoted their studies to the issues of medical errors in various areas of medical activity, in particular in anaesthetic practice (Oliveira Junior *et al.*, 2023), orthopaedic surgery (Yamamoto *et al.*, 2023), dermatology (Lehmann *et al.*, 2022), gastroenterology (Azizian *et al.*, 2021), obstetrics and gynaecology (Klemann *et al.*, 2023) etc.

The foregoing indicates that the research results obtained in this paper in many areas of defects in veterinary practice are consistent with similar studies in the field of humane and veterinary medicine conducted by foreign scientists. However, despite the active publication activity on defects in veterinary activities, the issue of using these scientific achievements to solve the problems of forensic veterinary examination and expert support of legal proceedings has not been addressed by either domestic or foreign researchers. This, in turn, further substantiates the relevance of our results and the outlined problems for future research and improvement of domestic legislation on veterinary and sanitary support of animal health and life.

While studying the phenomenon of using specialised veterinary knowledge in the form of forensic veterinary examination as a scientifically sound means of proving offences relating to defects in veterinary practice, the author identified problematic issues which should be emphasised by scientists and practitioners, in particular: no methodology for pre-trial investigation of professional offences in the field of veterinary medicine has been developed; no algorithms have been developed for forensic veterinary examination in

case of defects in the provision of veterinary care and veterinary activities; no methodology has been developed for conducting forensic veterinary examination in criminal and administrative proceedings initiated in connection with defects in veterinary activities; the questions that law enforcement agencies would consider in a procedural document on the appointment of a forensic veterinary examination regarding defects in the provision of veterinary care and veterinary activities are not formulated.

Given the above, there is a need to improve Article 251 of the CC of Ukraine (violation of veterinary rules), Article 299 of the Criminal Code of Ukraine (cruelty to animals) and Article 107 of the CUO (violation of animal quarantine rules and other veterinary and sanitary requirements), as well as veterinary legislation by supplementing them with new parts. Timely and qualified detection of veterinary practice defects, as well as their prevention, is not possible without the involvement of specialised veterinary knowledge, in particular, forensic veterinary examination as a means of proof in criminal, administrative and civil proceedings. The forensic issue in this regard is the development of a methodology for conducting forensic veterinary research in connection with defects in veterinary activities.

Leaving further theoretical discussion for future research, it is appropriate and important from the pragmatic point of view to focus on outlining ways to solve this problem. In particular, it is necessary to: introduce the conceptual and categorical apparatus of the construction of the phenomenon of defects in veterinary activity and consolidate the definitions of the concepts in the legislation: “crime in veterinary activity”, “fault in veterinary activity”, “non-performance or improper performance of professional duties by a veterinary practitioner”, “engaging in illegal veterinary activity”, “illegal conduct of experiments

on vertebrates”, “illegal issuance of a veterinary prescription”, and clearly define the criteria for their distinction; supplement Article 251 of the CC of Ukraine (2001) “Violation of Veterinary Rules” with new parts, in particular, 2. “Failure to perform or improper performance of professional duties by a veterinary worker due to negligence or dishonesty if this led to the emergence and spread of epizootics or other serious consequences”; 3. “Engaging in illegal veterinary activities without a special permit, carried out by a person who does not have a proper veterinary education if this led to the emergence and spread of epizootics or other serious consequences”; 4. “Unlawful conduct of experiments on vertebrates if it caused unjustified danger to the life or health of the vertebrate”; supplement Article 299 of the CC of Ukraine (2001) with paragraph 5. “Unlawful conduct of veterinary biological or other experiments on animals, if it caused unjustified danger to their life or health”; supplement Article 107 CUO’s “violation of rules on animal quarantine and other veterinary and sanitary requirements” with new parts, in particular, 2. “Failure to perform or improper performance of professional duties by a veterinary officer due to negligence or dishonesty, if this caused negative consequences for the animal(s)”; 3. “Illegal issuance of a prescription for the purchase of veterinary medicines”; supplement Article 1 of the Law of Ukraine “On State Control over Compliance with the Legislation on Food Products, Feed, By-Products of Animal Origin, Animal Health and Welfare” (2017) with definitions of the following concepts: “crime in veterinary activity” and “guilt in veterinary activity”, formulating them as per the author’s wording; include the author’s definitions of the conceptual and categorical apparatus of defects in veterinary activity in the methodology of forensic veterinary examination to determine defects in veterinary

activity, which will ensure the correctness and validity of the qualification of professional offences of veterinary medicine specialists; develop standards for ensuring veterinary activities and animal treatment protocols that would allow forensic veterinarians to refer to them as reference standards (samples) when conducting forensic examinations to determine defects in veterinary activities and provide expert assessment of the actions of veterinary professionals.

Conclusions

The study of defects in veterinary activity produced the first formulation of the concept of "crime in veterinary activity", the definition of which is a socially dangerous, unlawful, guilty, punishable act committed by a veterinary professional intentionally or negligently, provided for by criminal law and consisting of a breach of professional duties, requirements of veterinary regulations, which result in deterioration of veterinary, sanitary and epizootic welfare, or bodily injury or other health disorder, mutilation, death of an animal or cause significant damage to the state interests in the field of veterinary medicine and animal husbandry.

Misconduct in veterinary activity differs from a crime in veterinary activity in the degree of public danger. In this regard, misconduct in veterinary activities is a socially harmful, unlawful, culpable, punishable, intentional, or negligent act of a special subject of misconduct – a veterinary professional – provided for by law, which consists of deviating from the requirements outlined in regulatory documents, including veterinary documents. The system of signs of professional offences in the field of veterinary activity is outlined, in particular, such as an unlawful act as an active form of behaviour of a veterinary worker, active conduct or unlawful inaction as a passive be-

haviour (passive act); acts of a special subject of crime from the standpoint of criminal or administrative law – a veterinary worker whose official or official duty is to provide veterinary care or carry out veterinary and sanitary measures; a socially dangerous (criminal) or socially harmful (administrative) act prohibited by law; an unlawful, culpable, punishable act committed intentionally (with or without direct intent) or through negligence (through self-confidence or negligence); provided for by law; deterioration of veterinary, sanitary and epizootic welfare, bodily injury or other health disorder, mutilation or death of an animal, violation of animal quarantine rules, other veterinary and sanitary requirements resulting from professional offences in the field of veterinary medicine.

The author's definitions of the concepts are proposed: "crime in veterinary activity", "fault in veterinary activity", "non-performance or improper performance of professional duties by a veterinary practitioner", "engaging in illegal veterinary activity", "illegal issuance of a veterinary prescription", "illegal conduct of veterinary biological or other experiments on animals", and their signs are highlighted. It is proposed to supplement criminal and administrative legislation in terms of defects in veterinary activity. It is proposed to amend Article 94 of the relevant Law of Ukraine "On Veterinary Medicine" on the liability of veterinary professionals. The epistemological and praxeological aspects of the phenomenon of a defect in veterinary activity can predictably influence the appointment and conduct of forensic veterinary research, the provision of a well-founded categorical opinion of a forensic veterinary expert, as well as law enforcement agencies and the court to conduct a qualitative legal consideration and qualify the negative results of veterinary activity. Prospects for research on the chosen topic

are to develop a methodology for conducting forensic veterinary research to determine defects in veterinary activities.

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Conflict of Interest

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References

- [1] Amlaev, K.R., Bakunts, S.A., & Mazharov, V.N. (2022). The medical mistakes as consequence of poor communication. *Problems of Social Hygiene, Public Health and History of Medicine*, 30(6), 1291-1294. doi: [10.32687/0869-866X-2022-30-6-1291-1294](https://doi.org/10.32687/0869-866X-2022-30-6-1291-1294).
- [2] Azizian, J., Dalai, C., Adams, M.A., Murcia, A., & Tabibian, J.H. (2021). Medical professional liability in gastroenterology: Definitions, trends, risk factors, provider behaviors, and implications. *Expert Review of Gastroenterology & Hepatology*, 15(8) 909-918. doi: [10.1080/17474124.2021.1940957](https://doi.org/10.1080/17474124.2021.1940957).
- [3] Blackie, K. (2022). Learning from patient safety event reporting in veterinary practice. *The Veterinary Record*, 191(2), 71-73. doi: [10.1002/vetr.2053](https://doi.org/10.1002/vetr.2053).
- [4] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- [5] Code of Ukraine “On Administrative Offenses”. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.
- [6] Cohen, J., Fischetti, A.J., & Daverio, H. (2023). Veterinary radiologic error rate as determined by necropsy. *Veterinary Radiology & Ultrasound*, 64(4), 573-584. doi: [10.1111/vru.13259](https://doi.org/10.1111/vru.13259).
- [7] Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [8] Cummings, C.O., Krucik, D.D.R., Carroll, J.P., & Eisenbarth, J.M. (2022). Improving within-team communication to reduce the risk of medical errors. *Journal of the American Veterinary Medical Association*, 260(6), 600-602. doi: [10.2460/javma.21.09.0407](https://doi.org/10.2460/javma.21.09.0407).
- [9] Daly, M.L. (2023). The case for quality improvement in veterinary medicine. *Journal of Veterinary Emergency and Critical Care*, 33(1), 11-15. doi: [10.1111/vec.13264](https://doi.org/10.1111/vec.13264).
- [10] *Dictionary of the Ukrainian language* (Vol. 5). (1974). Kyiv: Naukova Dumka.
- [11] Draft Law of Ukraine No. 3318 “On Veterinary Medicine and Animal Welfare”. (2020, April). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68554.
- [12] Gartrell, B., & White, B. (2021). Surviving clinical errors in practice. *New Zealand Veterinary Journal*, 69(1), 1-4. doi: [10.1080/00480169.2021.1840740](https://doi.org/10.1080/00480169.2021.1840740).
- [13] Grenon, V., Szymonifka, J., Adler-Milstein, J., Ross, J., & Sarkar, U. (2023). Factors associated with diagnostic error: An analysis of closed medical malpractice claims. *Journal of Patient Safety*, 19(3), 211-215. doi: [10.1097/PTS.0000000000001105](https://doi.org/10.1097/PTS.0000000000001105).

- [14] Guidelines of the Ministry of Health of Ukraine No. 42-6.0:2014 "Medicines. Preclinical Safety Studies as The Basis for Clinical Trials with Human Participation and Registration of Medicines". (2014, September). Retrieved from <https://compendium.com.ua/uk/clinical-guidelines-uk/standartizatsiya-farmatsevtichnoyi-produktsiyi-tom-2/st-n-mozu-42-6-0-2014>.
- [15] Hayes, G.M., Bersenas, A.M., Mathews, K., Lane, W.G., LaLonde-Paul, D.F., Steele, A., & Avellaneda, A. (2020a). A multicenter observational study investigating care errors, staffing levels, and workload in small animal intensive care units. *Journal of Veterinary Emergency and Critical Care*, 30(5), 517-524. doi: 10.1111/vec.12991.
- [16] Hofmeister, E.H., & Love, L. (2023). Patient safety culture is needed in veterinary medicine. *Journal of the American Veterinary Medical Association*, 261(12), 1908-1911. doi: 10.2460/javma.23.07.0370.
- [17] Klemann, D., Rijkx, M., Mertens, H., van Merode, F., & Klein, D. (2023). Causes for medical errors in obstetrics and gynaecology. *Healthcare (Basel)*, 11(11), article number 1636. doi: 10.3390/healthcare11111636.
- [18] Law of Ukraine No. 2042-VII "On State Control over Compliance with the Legislation on Food Products, Feed, By-Products of Animal Origin, Animal Health and Welfare". (2017, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2042-19#Text>.
- [19] Law of Ukraine No. 2498-XII "On Veterinary Medicine". (1992, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2498-12#Text>.
- [20] Law of Ukraine No. 3447-IV "On the Protection of Animals from Cruelty". (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3447-15#Text>.
- [21] Lehmann, L., Appelbaum, S., Ostermann, T., Weber, B., & Hofmann, S.C. (2022). Medical error analysis in dermatology according to the reports of the North Rhine Medical Association from 2004 to 2018. *Journal of the German Society of Dermatology*, 20(12), 1603-1611. doi: 10.1111/ddg.14899.
- [22] Low, R., & Wu, A.W. (2022). Veterinary healthcare needs to talk more about error: For the wellbeing of our patients and medical teams. *Journal of Veterinary Internal Medicine*, 36(6), 2199-2202. doi: 10.1111/jvim.16554.
- [23] Miyagami, T., Watari, T., Harada, T., & Naito, T. (2023). Medical malpractice and diagnostic errors in Japanese emergency departments. *The Western Journal of Emergency Medicine*, 24(2), article number 340347. doi: 10.5811/westjem.2022.11.55738.
- [24] Mosedale, P., & Blackie, K. (2021). Why do medication errors occur in veterinary practice? *Companion Animal*, 26(7), 1-4. doi: 10.12968/coan.2021.0033.
- [25] Munro, R. (2022). Viewpoint: Integrity and limitations of forensic veterinary evidence. *Journal of Comparative Pathology*, 199, 86-87. doi: 10.1016/j.jcpa.2022.10.003.
- [26] Oliveira Junior, J.M.D., Santos Neto, L.F.D., Duarte, T.B., Carmona, B.M., da Costa, L.V.P., Tramontin, D.F., Santos, D.R.D., & Corrêa, L.M. (2023). Factors associated with medical errors in perioperative anesthetic practice: Cross-sectional study. *Brazilian Journal of Anesthesiology*, 73(1), 117-119. doi: 10.1016/j.bjane.2022.07.004.
- [27] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 752 "On Approval of the Form and Rules for Issuing Veterinary Prescriptions". (2022, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1452-22#Text>.

- [28] Order of the Ministry of Education and Science, Youth and Sports of Ukraine No. 249 "On the Approval of the Procedure for Carrying Out Trials and Experiments on Animals by Scientific Institutions". (2012, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0416-12#Text>.
- [29] Ostrovsky, D., Novack, V., Smulowitz, P.B., Burke, R.C., Landon, B.E., & Isbell, L.M. (2022). Perspectives of emergency clinicians about medical errors resulting in patient harm or malpractice litigation. *JAMA Network Open*, 5(11), article number e2241461. doi: [10.1001/jamanetworkopen.2022.41461](https://doi.org/10.1001/jamanetworkopen.2022.41461).
- [30] Resolution of the Cabinet of Ministers of Ukraine No. 896 "On the Approval of the Licensing Terms for the Conduct of Business Activities in Veterinary Practice". (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/896-2015-%D0%BF#Text>.
- [31] State Committee on Technical Regulation and Consumer Policy. (2010). *Classifier of emergency situations DC 019:2010*. Retrieved from <https://zakon.rada.gov.ua/rada/show/va457609-10#Text>.
- [32] Steffens, F., Steffens, J., Kranz, J., & Enzmann T. (2023). Experiences from the commission of experts. *Urologie*, 62(3), 256-260. doi: [10.1007/s00120-023-02034-3](https://doi.org/10.1007/s00120-023-02034-3).
- [33] Turner, M. (2022). Improving veterinary patient safety through systems analysis of clinical incidents. *The Veterinary Record*, 191(12), 496-498. doi: [10.1002/vetr.2559](https://doi.org/10.1002/vetr.2559).
- [34] Ünal, A., & Intepeler, Ş.S. (2022). Scientific view of the global literature on medical error reporting and reporting systems from 1977 to 2021: A bibliometric analysis. *Journal of Patient Safety*, 18(7), e1102-e1108. doi: [10.1097/PTS.0000000000001025](https://doi.org/10.1097/PTS.0000000000001025).
- [35] Wallis, J., Fletcher, D., Bentley, A., & Ludders, J. (2019). Medical errors cause harm in veterinary hospitals. *Frontiers in Veterinary Science*, 6, article number 12. doi: [10.3389/fvets.2019.00012](https://doi.org/10.3389/fvets.2019.00012).
- [36] Whipple, K.M., Leissinger, M.K., & Beatty, S.S. (2020). Frequency and classification of errors in laboratory medicine at a veterinary teaching hospital in the United States. *Veterinary Clinical Pathology*, 49(2), 240-248. doi: [10.1111/vcp.12851](https://doi.org/10.1111/vcp.12851).
- [37] Woolrich, A. (2021). Surviving clinical errors in practice. *New Zealand Veterinary Journal*, 69(2), article number 134. doi: [10.1080/00480169.2021.1872965](https://doi.org/10.1080/00480169.2021.1872965).
- [38] Yamamoto, N., Watari, T., Shibata, A., Noda, T., & Ozaki, T. (2023). The impact of system and diagnostic errors for medical litigation outcomes in orthopedic surgery. *Journal of Orthopaedic Science*, 28(2), 484-489. doi: [10.1016/j.jos.2021.11.006](https://doi.org/10.1016/j.jos.2021.11.006).
- [39] Yatsenko, I.V. (2022). Problems of making a decision on the appointment of forensic veterinary examination by an authorized person and the ways to solve them. *Forum Prava*, 2, 6-21. doi: [10.5281/zenodo.6471059](https://doi.org/10.5281/zenodo.6471059).
- [40] Zapara, S.I., Fotina, H.A., Klochko, A.M., Fotina, T.I., & Yatsenko, I.V. (2019). Revisiting legal understanding of wild life as a sustainable value. The case 2019 of Ukraine. *Journal of Environmental Management and Tourism*, 10(1), 14-21. doi: [10.14505/jemtv.10.1\(33\).02](https://doi.org/10.14505/jemtv.10.1(33).02).

Дефекти ветеринарної діяльності як предмет судово-ветеринарного дослідження

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Анотація

Дефекти ветеринарної діяльності часто стають причиною виникнення й розповсюдження епізоотій, які несуть загрозу для життя тварин і людей, заподіюють економічні збитки тваринницьким потужностям. Для доведення винуватості працівника ветеринарної медицини у виникненні дефектів професійної діяльності суттєве значення має судово-ветеринарна експертиза. Мета роботи – сформулювати та схарактеризувати поняттєво-категорійний апарат феномену дефектів ветеринарної діяльності, виокремити ознаки цих дефектів в аспекті проведення судово-ветеринарної експертизи, а також запропонувати доповнення до кримінальної, адміністративної й ветеринарної національної законодавчої бази. Методологічна основа дослідження – системний підхід в якому використані загально- та спеціально наукові методи: аналіз та синтез, індукція й дедукція, аналогія; логіко-семантичний та системно-структурний методи; метод моделювання й порівняльно-правовий метод. Аргументовано, що доречно виокремлювати дві групи правопорушень, пов'язаних із ветеринарною діяльністю, серед яких кримінальні (проступки та злочини), адміністративні провини та цивільно-правові делікти. Запропоновано авторські дефініції: «злочин у ветеринарній діяльності», «провина у ветеринарній діяльності», «невиконання чи неналежне виконання професійних обов'язків працівником ветеринарної медицини», «заняття незаконною ветеринарною діяльністю», «незаконна видача ветеринарного рецепта», «незаконне проведення ветеринарно-біологічних або інших дослідів над тваринами» та окреслено їхні ознаки. Окреслено ознаки об'єктивної сторони кримінальних, адміністративних та цивільно-правових правопорушень у сфері ветеринарної медицини. Виявлено проблемні аспекти дефектів ветеринарної діяльності, на які необхідно акцентувати увагу науковцям і фахівцям-практикам, а також запропоновано шляхи їх вирішення. Проведене дослідження стало базою для розробки методики судово-ветеринарного дослідження дефектів ветеринарної діяльності в кримінальних і адміністративних провадженнях та цивільних справах

Ключові слова: судова ветеринарна медицина; працівники ветеринарної медицини; невиконання і неналежне виконання професійних обов'язків; підекспертні тварини; професійне правопорушення; злочин; провини; цивільно-правовий делікт

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