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Legal principles of forest fire protection on radiation hazardous lands of Ukraine in modern conditions

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Abstract

The legal framework for protecting forests from wildfires on radiation-hazardous lands in Ukraine, especially in the current environment, considering the new challenges and threats posed by both martial law and accelerated climate change, requires a thorough analysis of the current legislation in this area, clarification of legal gaps, and identification of the most priority areas for its improvement. The purpose of this study was to analyse the system of current legislation aimed at regulating the protection and defence of forests from fires, including on radiation-hazardous lands of Ukraine, and to assess the level of efficiency of legal regulation of these social relations and to evaluate them. The methodological principles in the context of the study were general and special methods of scientific cognition, including formal logical, comparative legal, formal legal, statistical, analysis and synthesis, and dialectical methods. The study substantiated the complex

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nature of the system of forest protection against fires on radiation-hazardous lands. The study analysed the risks and threats of forest fires on radiation-hazardous lands in Ukraine. It is stated that the state of fire safety on the lands of the forest fund that have been affected by radiation is the most threatening at the present stage. Generalisations were made containing a set of necessary measures aimed primarily at strengthening the due level of interaction between the relevant services in organising forest protection from fires on radiation-hazardous lands of Ukraine in modern conditions. The practical value of this study lies in the fact that, considering the scientific theory and a set of methods of scientific cognition, it provides a thorough analysis of Ukrainian legislation and clarifies the peculiarities of legal support for the protection of Ukrainian forests from fires on radiation-hazardous lands at the present stage, which helped to determine the real state of legal regulation of the relevant area and gaps in the organisation of its application, which should actualise the improvement of law-making and law enforcement practice in the area under study. The findings of this study can be used to update the legal support for the activities of public institutions implementing the state policy in the field of forest protection on lands subjected to radioactive contamination

Keywords: legal support; wildfire; forest; radiation safety; fire safety; Chornobyl nuclear power plant; risks and threats of martial law

Introduction

During 2014-2024, Ukraine witnessed a trend of increasing number and scale of wildfires in landscapes that are difficult to extinguish. The greatest risks and threats of such fires relate primarily to radiation-hazardous lands in the northern part of Zhytomyr and Kyiv administrative regions. The full-scale armed aggression of the Russian Federation (RF) and the constant bombardment of Ukraine's territory have significantly increased the risks, spreading them throughout the country.

Since the beginning of Russian aggression in 2014 and the full-scale invasion in 2022, the causes of fires in ecosystems have been compounded by military operations and explosive ordnance contamination. Specifically, in 2020 alone, fires spread across 31.7 thousand ha of Ukrainian land (Regional Eastern European Fire Monitoring Centre, 2020). The territory of the Chornobyl Exclusion Zone (CHZ) was occupied by Russian troops from the first day of their

invasion of Ukraine on 24 February 2022 and was factually de-occupied on 28 March 2022. In such a brief time, the invaders caused considerable environmental damage and left behind mined areas (Halushchenko, 2023).

The problem of forest protection from wildfires in the territory contaminated by radioactive fallout in Ukraine has become a subject of study for many scientists in various fields of knowledge. O. Soshenskyi *et al.* (2023) investigated the problem of reducing the risk of forest fires for settlements in Ukraine. V. Kashparov *et al.* (2024) carried out a comprehensive assessment of firefighters' exposure due to forest fires on radiation-hazardous lands of Ukraine; N. Beresford *et al.* (2021) assessed the risks and consequences of forest fires in the CHZ in the international dimension; many other researchers who established/confirmed that radioactive forests have a series of specific hazards caused by the presence of high

levels of ionising radiation, which should be considered when fighting fires, including those that should be reflected at the legislative level (Baró *et al.*, 2020). Some other researchers have come to analogous conclusions in their studies, having investigated the environmental consequences of the forest fires that occurred in April 2020 in the CHZ (Igarashi *et al.*, 2020; Talerko *et al.*, 2021; Kovalets *et al.*, 2022).

The legal regulation of forest protection from wildfires on radiation-hazardous lands in Ukraine has not received proper scientific analysis. Scientific developments in this aspect can only provide additional arguments for analysing the level of legal regulation of forest fire protection on these lands and forming a new approach to its optimisation by identifying shortcomings and legal conflicts. The studies of researchers who focused on the shortcomings of legal regulation were not comprehensive, did not provide a full assessment of the regulatory framework and did not analyse new regulations in the field under study (Usenya *et al.*, 2018). This raises the issue of identifying shortcomings in the regulatory framework for fire safety in Ukraine's forests, considering progressive changes to the current legislation.

O. Gulac *et al.* (2022a) conducted a study on overcoming the environmental crisis in the forestry sector of Ukraine in the context of The European Green Deal (2019). In another study, O. Gulac *et al.* (2022b) analysed public administration reforms in the forestry sector of Ukraine. D. Holiaka *et al.* (2020) analysed experimental biogenic fluxes of ^{137}Cs and ^{90}Sr in forest ecosystems. The researchers substantiate the need for a systematic and comprehensive approach to management in the forestry sector, which should receive an suitable level of legal support, including the development and adoption of a long-term strategy for managing Ukrainian forests, minimising

forest fire risks, and improving approaches to public sector and public interaction in preventing and extinguishing fires in ecosystems, considering the specific features of the areas affected by radiation damage.

Considering the problematic of the study and the aforementioned trends in the scientific literature, the purpose of this study was to investigate the legal framework for preserving forests from fires on lands contaminated by radioactive fallout in Ukraine in the current conditions.

Materials and Methods

The methodological framework of this study included a set of general and special methods and approaches of scientific cognition, including dialectical, formal logical, analysis and synthesis, comparative legal, and formal legal methods. The application of the dialectical approach helped to investigate social relations regarding the formation and implementation of the legal framework for the protection of forests from fires on radiation-hazardous lands in their unity and interconnection, to identify patterns of development, and to outline the dynamics of the relevant protective legislation. Using the formal logical method, the study analysed the regulations aimed at regulating forest wildfire protection and identified the specifics of ensuring forest wildfire protection on radiation-hazardous lands. The methods of analysis and synthesis helped to identify trends in the current state of forest fire protection on radiation-hazardous lands and focused on special risks and threats during martial law. Using the comparative legal method, the study performed a comparative analysis of the current legal provisions in the field of forest protection from fires on radiation-hazardous lands, which have a series of legal conflicts. Thus, the formal legal method was used to analyse the systematic, effective,

and mutually consistent nature of the current legislation in the area under study. It was important to apply the scientific theory of “human place in life safety”, which substantiated the complex and multi-level nature of the system of forest protection from fires on radiation-hazardous lands. In modern conditions, this system should include not only the potential of relevant state bodies but also involve the capabilities of the public and civil society sector as a whole, to ensure a safe environment for citizens and preserve Ukraine’s natural resources.

The material basis for the study included statistical data on the number and scale of forest fires that occurred on radiation-hazardous lands in Ukraine since 2015 (Nuclear and Radiation Safety in the Exclusion Zone, 2017; Regional Eastern European Fire Monitoring Centre, 2020; Goldammer *et al.*, 2023). Strategic documents, draft laws, and current laws of Ukraine were analysed, including the following: “Fire Safety Rules in the Forests of Ukraine” (2004), “Regulations on Forest Fire Stations” (2005), “Strategy for the Development of the Territories of the Exclusion Zone and the Zone of Unconditional (Mandatory) Resettlement Affected by Radioactive Contamination as a Result of the Chornobyl Disaster for 2021-2030” (2020). A separate part of the source base comprised the system of sub-legislative acts, including joint orders of various central executive authorities (Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 382, 2020; Resolution of the Cabinet of Ministers of Ukraine No. 612, 2022). The analysis of a set of statistical, regulatory, and administrative sources allowed the study to fulfil its purpose.

Results and Discussion

Risks and threats of forest fires on radiation-hazardous lands. The forests of the CHZ

perform a vital protective function in limiting the spread of radioactive contamination. In fact, the safety of the local population depends on the level of reliability of the Exclusion Zone’s protective capabilities. As a result of the Chornobyl accident, over 3 million hectares of forest areas were affected by radiation damage. Environmental monitoring data on radiation-hazardous lands indicate contamination of almost all environmental components, as ^{137}Cs and ^{90}Sr activity concentration levels are still high within forest resources. At the same time, the migration of radionuclides as a result of the Chornobyl accident leads to secondary accumulation of such radioisotopes outside the radiation hazardous areas, which determines their potential hazard (Malimon, 2009).

The results of monitoring the radiation dose rates obtained from the radiation monitoring posts on the territory of the CHZ in 2020 indicate that the equivalent gamma radiation dose rate levels during the period of forest fires (April-August), specifically in the areas of their spread, did not change significantly; and ^{137}Cs activity in the atmospheric air did not reach values exceeding the permissible concentration for the population, but was 1.4-44 times higher than the reference levels, depending on the measurement location (Kashparov *et al.*, 2024). Although the concentration of Chornobyl radioisotopes did not exceed the permissible levels for radionuclides in surface air even in most areas immediately adjacent to the Chornobyl NPP (nuclear power plant) during the fires of 2020 and 2022, due to the large size of the areas covered by the fire during this period, the activity of radionuclides of anthropogenic origin was “raised” to the terabecquerel level in the air in the form of aerosols and condensates (Beresford *et al.*, 2021; Kashparov *et al.*, 2024), which were recorded at a considerable distance from the wildfire epicentres (Fig. 1).

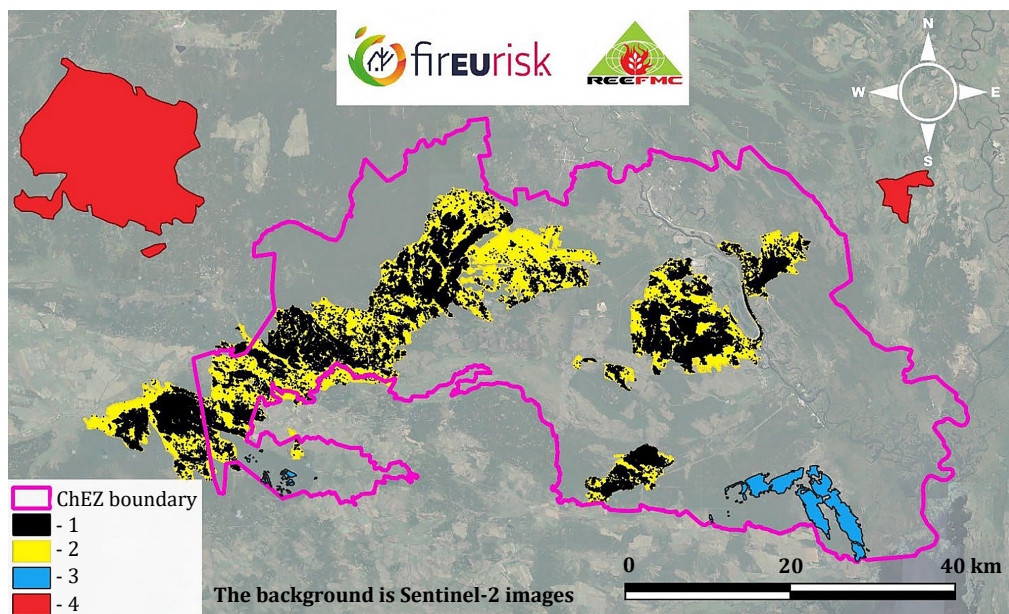


Figure 1. Spatial distribution of areas affected by wildfire in the Exclusion Zone and adjacent territories

Notes: 1 – where woody vegetation died, 2 – other areas affected by landscape fires in April 2020, 3 – areas with dead trees as a result of fires in 2022, 4 – areas of burned areas traversed by fire in April 2020, which are mostly not classified as radiation hazardous land

Source: compiled by the authors of this study

Apart from the release of radionuclides outside the CHZ and the direct physical threat to radioactive substance management facilities, wildfires in the Exclusion Zone can lead to a considerable deterioration of the radiological situation at the local level due to an increase in the volume concentrations of radionuclides in the surface layer of the atmosphere, which can cause an additional risk of exposure to personnel involved in the firefighting process (Kashparov *et al.*, 2024). Internal exposure of firefighters can be caused by radionuclides entering the respiratory system. During wildfires, not only hot evaporation of radionuclides occurs, but also formation of fine radioactive aerosols due to ash formation and condensation of radionuclides, which is accompanied by an increase

in radionuclide concentrations in the surface air (Yoschenko *et al.*, 2006).

Furthermore, according to empirical data from the last decade, pine forests contain up to 40% of gross ^{137}Cs activity on the forest floor (up to 10% in wood and about 5% in bark). Together with the high content of radiocaesium in the litter, which is characterised by low shielding of gamma radiation, this can substantially affect the formation of the equivalent dose rate of external exposure to humans (Kashparov *et al.*, 2024). Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) defines the permissible period for a forest firefighter to stay in the fire zone mediated by the concentration of radionuclides according to certain standards approved by

Resolution of the Chief State Sanitary Doctor of Ukraine No. 62 (1997).

The issue of forest wildfires in the Exclusion Zone is one of the most pressing environmental problems in Ukraine that can transform into social ones (Anisimova *et al.*, 2023). A.A. Dvornik *et al.* (2017) and V.A. Kashparov *et al.* (2024) indicate that even small grassland wildfires across radiation-hazardous lands have significant environmental consequences, specifically due to the accumulation of up to 40% of the total stock of biologically mobile radionuclides in forest ecosystems in the combustible materials. N. Evangeliou and S. Eckhardt (2020) found that large-scale forest fires in 2015 and 2020 in the Exclusion Zone contributed to the spread of radioactive aerosols with smoke and confirm the above. Specifically, two of them in 2015 had an extremely negative social response in Europe for Ukraine's reputation. According to O. Soshenskyi *et al.* (2023), the fires of 2020 had even more extensive negative consequences and scope for the state as a whole, including human casualties, significant destruction, environmental damage (over UAH 10 bn), and the loss of forests – over 157,000 ha (Zhytomyr, Kyiv, and Luhansk oblasts).

At the same time, a series of factors, including active hostilities, rapid climate change, species structure of tree stands in the Exclusion Zone with a predominance of conifers (which generate significant amounts of combustible materials), considerable accumulation of debris and woody debris, low density of firefighting roads, insufficient funding and restricted access to certain forest areas due to mine danger altogether contribute to the occurrence of forest fires, the development of which will be conditioned by the ongoing military operations in Ukraine. The situation is only getting more complicated considering that military actions are causing environmental crises

in other regions of Ukraine (Pyrikov *et al.*, 2022), which poses systemic threats to the environment (Khrushch *et al.*, 2023) and national security of Ukraine (Rzhevskaya & Melnyk, 2023).

Therefore, at the present stage, the risks and threats of forest fires on radiation-hazardous lands of Ukraine are becoming more urgent and acute, considering the rapid climate change that leads to an increase in the number and intensity of fires in ecosystems in general, active hostilities and shelling throughout Ukraine, lack of adequate financial support for their prevention, and, clearly, the threat of radiation contamination to neighbouring territories.

Statutory regulation of protection of Ukrainian forests from wildfires on radiation hazardous lands. The strategic goal of forest management in the Exclusion Zone is to preserve its ecosystems, which are the main source of radionuclides, and prevent their uncontrolled movement, i.e., to maximise the barrier function to prevent radionuclide leakage. Therewith, this purpose does not differ from the usual management at the level of state forestry enterprises, nor from the activities of other agencies in protected areas in Ukraine, but it requires restrictions on the production of commercial products/timber, and therefore on the main use of the forest. Compared to other protected areas in Ukraine, the conditions are characterised by the presence of forests contaminated with radionuclides, which are unstable to fire and disease, and 30% of which have already been damaged by fires (Strategy for the Development of the Territories..., 2020).

The Exclusion Zone is a part of the land with significant management features that has been subjected to the most significant radioactive contamination due to the Chornobyl accident (Order of the Cabinet of Ministers of Ukraine No. 535, 2012). The total area of the Exclusion

Zone covered by forest vegetation is about 140.6 thousand ha (Loginova, 2015). The protection of forests located on radiation hazardous lands is carried out following the Law of Ukraine No. 791a-XII dated 27 February 1991, which defines the procedure for the functioning of this territory (Law of Ukraine No. 791a, 1991).

The regulatory framework for the protection of Ukrainian forests from wildfires in general and the forests of the Exclusion Zone specifically is based on a series of regulations at the highest state, departmental, local, and facility levels. Considering the current legal developments, it is worth noting the most important ones. Among them are resolutions adopted by the Cabinet of Ministers of Ukraine: on the rules for the formation of fire and rescue units within the framework of voluntary fire protection (Resolution of the Cabinet of Ministers of Ukraine No. 314, 2023), on the establishment of rules for forest protection in general (Resolution of the Cabinet of Ministers of Ukraine No. 612, 2022), on the establishment of norms for the functioning of forest protection at any level (Resolution of the Cabinet of Ministers of Ukraine No. 976, 2009). Resolution of the Cabinet of Ministers of Ukraine No. 1127 (2000) establishes the norms of functioning of the service of protection of the nature reserve fund of Ukraine.

At the departmental level (a separate central executive body), it is worth noting the Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 382 (2020) on establishing the requirements for the functioning of the fire protection of the State Forestry Agency of Ukraine; Order of the State Committee of Forestry of Ukraine "On the commissioning of the automated system "Fire" (2021). Orders of the State Committee of Forestry of Ukraine are important: Order of the State Committee of Forestry of Ukraine No. 526 (2005) – on establishing

requirements for the functioning of forest fire stations; Order of the State Committee of Forestry of Ukraine No. 278 (2004) – on establishing requirements for fire safety in the forests of Ukraine. At the interagency level, it is worth noting the joint Order of the Ministry of Ecology and Natural Resources of Ukraine and the Ministry of Internal Affairs of Ukraine No. 01/01 (2018) on establishing an algorithm of actions for joint firefighting by units of the operational and rescue service of civil protection, protection of the nature reserve fund, and other forest users within the Chornobyl Radiation and Ecological Biosphere Reserve, etc.

The system of bodies that perform the state function of firefighting in the forests of Ukraine is generally characterised by a conservative and archaic approach to ensuring fire safety in forests (with the dominance of measures to protect forests from wildfires), which does not include the fundamentally new approach of developed countries aimed at "fire management", which is clearly reflected in the regulations. Therefore, with this in mind, most of the requirements of the already quite outdated regulations, such as the "Fire Safety Rules in the Forests of Ukraine" (2004) and "Regulations on Forest Fire Stations" (2005), are not met in the Exclusion Zone due to a series of objective and subjective factors (Zibtsev *et al.*, 2023). These include a lack of funds, low level of technical equipment, inadequate forest roads and communications, frequent changes in institutional support at the highest state level, and a lack of a strategic vision of the role of institutions that are supposed to protect forests from wildfires on radiation-hazardous lands in Ukraine, etc.

At the same time, the adoption of Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) – on the regulation of forest protection and conservation processes and the corresponding amendments to the regulation of the

same level, the Resolution of the Cabinet of Ministers of Ukraine No. 976 (2009) – on the regulation of state forest protection and protection of other forest users, where the significant legal construction “forest protection of other forest users and forest owners” was added to the title itself (since only about 73% of forests are under the jurisdiction of the State Agency of Forest Resources, while the remaining 27% are distributed among other forest users and owners), made fundamental changes to the state’s function of implementing fire safety in Ukrainian forests, without considering the complexity of the system itself, which is authorised to perform this function.

Thus, substantial shortcomings in the regulatory framework for fire safety in Ukraine’s forests are as follows:

- the validity of legally and technologically outdated regulations in the context of the issues under study (Order of the State Committee of Forestry of Ukraine No. 278, 2004; Order of the State Committee of Forestry of Ukraine No. 526, 2005);

- substantial contradictions and discrepancies of a legal and substantive nature between the existing regulations in the area under study. The most delicate of these are between Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) – regarding the regulation of forest protection and conservation and Order of the State Committee of Forestry of Ukraine No. 278 (2004) – regarding the approval of fire safety requirements in the forests of Ukraine, which, in essence, regulate relations in one area of public activity and set requirements for the protection of forests from fires);

- the title of the Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) “On Approval of the Procedure for Organising the Protection and Protection of Forests” is “somewhat misleading”, since its content relates mainly to firefighting

activities and relevant regulations; and secondly, the development and adoption of this regulation according solely to the norms of the Forest Code of Ukraine, without considering the basic law – the Civil Protection Code of Ukraine, Article 4 of which defines “civil protection” as a set of measures implemented both in peacetime and during a special period (which is martial law) to protect the population, territories, and the environment as a whole and is aimed at exercising state control over compliance with fire and industrial safety requirements;

- despite the adoption of the resolution of the Cabinet of Ministers of Ukraine concerning the regulation of requirements for the organisation of forest protection and conservation at the highest state level, rather than at the departmental level, it does not consider the complexity of the relevant state function and is not coordinated with the civil protection system and relevant regulations, whose bodies are involved in extinguishing a forest fire if there is a risk of its spreading over more than 5 ha, but have a significant factor in conjunction with other actors (conscious public, territorial community, military administrations, other agencies and organisations), specifically in preventive and other activities.

Even though the Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) refers to some no longer valid regulations (specifically, in Items 61 and 62), its innovative and progressive nature is undeniable according to modern approaches, technological innovations, and modern world standards for the development of strategic regulations with a detailed presentation of the terminology. However, the structure of “Organising the Protection and Protection of Forests”, even though this regulation outlines the procedure for implementing a system of measures to preserve forests from wildfires, illegal logging and other

harmful impacts, contains exclusively fire protection components of its content, namely: 1) types of forest fires; 2) standards of protection and defence of forests against fires; 3) organisation of forest protection against fires; 4) management of forces and means of extinguishing fires; 5) formation of fire and rescue units; 6) functioning of a forest fire station; 7) accounting of forest fires; 8) information on forest fires; 9) formation of fire and rescue units.

Prevention of forest wildfires and fire safety in ecosystems overall is achieved through the annual implementation of pre-planned fire prevention measures, maintaining an appropriate level of readiness of fire and rescue units according to the level of fire danger, considering weather conditions, as well as rapid detection and elimination of forest fires. The State Agency of Forestry, local state/military administrations, local governments, permanent forest users and forest owners are responsible for compliance with regulatory requirements on fire safety in the forest sector. The direct implementation of measures to prevent and extinguish fires and keep records of such fires is the responsibility of permanent forest users and owners of forest plots. The State Agency of Forestry (hereinafter referred to as the SAR), in turn, constantly publishes information on the level of fire danger using the automated system "Pozhezhi".

Specific features of legal support for the protection of Ukrainian forests from wildfires on radiation hazardous lands. Within the boundaries of the nature reserve fund, which is the Chernobyl Radiation and Ecological Biosphere Reserve on the radiation-affected lands, the State Protection Service of the Nature Reserve Fund of Ukraine, whose activities are regulated by Resolution of the Cabinet of Ministers of Ukraine No. 1127 (2000), is responsible for preventing forest wildfires. However, the professional

community is increasingly focusing on the need to create a departmental fire protection service under the State Agency of Ukraine on Exclusion Zone Management, considering the substantial features of implementing such a function in the territory that has suffered significant radioactive damage.

Fire safety requirements in Ukrainian forests stipulate that forest plantations with a radioactive contamination density of 1 to 14 Ci/km², regardless of their type and age, should have one fire hazard class higher (Order of the State Forestry Committee of Ukraine No. 278, 2004). According to official data, 66% of the radiation-affected land is classified as the highest natural fire hazard class (I), of which 38% is land with contamination exceeding 555 kBq/m², and 13% is classified as Class II. In highly fire-prone pine forests, the accumulation of combustible substances, which potentially determines the level of burning intensity, varies from 110 t/ha at age 22 to 220-280 t/ha at ages 44-64. According to the data published by S. Zibtsev *et al.* (2023), about 1.4 mn cubic metres of dead wood and fallen trees have accumulated on the radiation-affected lands; observation tower systems allow detecting wildfires only on 27% of the territory of the radiation-affected zone; many fire roads are cluttered and cannot be effectively used to extinguish wildfires.

Extinguishing forest wildfires on highly contaminated land, even where there are roads and water bodies, is complicated by the fact that it is impossible to send ground firefighting units to the fire, and requires the use of only aviation, which is difficult and risky in the current realities for Ukraine, mediated by active military operations. Resolution of the Cabinet of Ministers of Ukraine No. 612 (2022) also defines the specifics of fire-fighting forestry measures in the Exclusion Zone. Sub-item 13 of Item 27 stipulates that a set of necessary measures must be taken on the lands

affected by radioactive contamination to prevent and spread forest fires, including beyond the contamination zone, and in extinguishing the fire, forest firefighters must ensure compliance with radiation safety standards and proper provision of personal protective equipment, including respiratory or gas masks.

The “Strategy for the Development of the Territories of the Exclusion Zone and the Zone of Unconditional (Mandatory) Resettlement Affected by Radioactive Contamination as a Result of the Chernobyl Disaster for 2021-2030” (2020), developed and presented at the level of the Cabinet of Ministers of Ukraine, as a separate structural element within Section 5 “Areas of Strategic Development of the Exclusion Zone/Unconditional Resettlement” includes subsection 5.6.2 – regarding the development of fire management measures and an integrated decision-making system for prevention, rapid response, and safe extinguishing (in compliance with radiation requirements) of forest fires in the Exclusion Zone. In the context of substantial underfunding of budgets allocated for the protection of forests from wildfires, the use of modern advanced technologies, including information technologies, is a priority in the context of fire safety. In fact, this should allow for more precise adjustment of forest wildfire protection systems, processing of incoming information, and making relevant management decisions.

To improve fire management in the Exclusion Zone, prevent the spread of radioactive substances beyond its borders and enhance the barrier function of ecosystems, the Strategy envisages the following activities: collecting and analysing information on the state of forests; scaling up the number and quality of fire barriers (including roads and water bodies); preparing cartographic materials, including maps of fire danger, fire management, fire sensitivity of ecosystems, and

analysing them; development of fire management plans for the exclusion zones (fire detection systems (towers, cameras fire detection systems (towers, cameras, unmanned aerial vehicles, patrols), fire network (mineralised strips, fire zones, water bodies and their location), firefighting procedures (firefighting strategy and tactics, interaction of involved units), scope of planned firefighting measures, provision of firefighting equipment and relevant equipment; development of modern information systems for proper decision-making on forest wildfire prevention, immediate response and fire extinguishing in compliance with radiation requirements in the Exclusion Zone (Strategy for the Development of the Territories..., 2020).

At the same time, section 5.4 on the requirements for the non-proliferation of radioactive contamination includes forestry and fire prevention measures aimed at limiting the spread of radionuclides outside the relevant zone, since forest wildfires are identified as the primary threat of radioactive contamination. Among a range of ways to achieve positive results, specifically, in the context of fire safety in forests, the following are highlighted: the need to create departmental fire protection; construction and appropriate equipment of forest fire stations; development of a system for early detection of forest wildfires based on modern technologies; artificial reforestation of non-forested areas with forest-forming species resistant to fire and disease; ensuring proper condition of the protection zones of road rights-of-way and linear facilities; cleaning of burned areas; implementation of a system of fire prevention and restrictive fire measures in ecosystems in general.

For a long time, no special legislation was adopted to regulate fire safety and firefighting on lands affected by radionuclides. The Regional Eastern European Forest Fire Monitoring Centre at the National University of Life and Environmental

Sciences of Ukraine, together with the Ministry of Internal Affairs of Ukraine, the State Agency of Ukraine on Exclusion Zone Management, the United States Forest Service and other bodies, within the framework of a research project, developed and discussed in detail a joint regulation of the Ministry of Internal Affairs and the Ministry of Environmental Protection and Natural Resources of Ukraine on the approval of a separate Instruction regarding the specifics of firefighting by the joint security units of the nature reserve fund, civil protection and forest users on the territory of the Chornobyl Biosphere Reserve (Table of comments, 2018), and in 2018 this regulation was approved and registered with the Ministry of Justice of Ukraine (Order of the Ministry of Ecology and Natural Resources of Ukraine and Ministry of Internal Affairs of Ukraine No. 01/01, 2018).

Therewith, a series of regulations have been adopted that govern certain requirements for radiation safety. These include the Order of the Ministry of Emergency Situations defining the procedure for ensuring individual dosimetric monitoring in the structures of the Emergency Service (Order of the Ministry of Emergency Situations No. 85, 2007); the Order of the Ministry of Healthcare of Ukraine and the State Emergency Service on radiation safety requirements during work in the exclusion zone (Order of the Ministry of Healthcare of Ukraine, Ministry of Emergencies and Affairs of Protection of the Population from the Consequences of the Chornobyl Disaster No. z0754-08, 2008). Important, considering the subject of the study, are the departmental orders of the State Agency for the Management of the Exclusion Zone: regarding the algorithm of actions in emergency situations on lands that have suffered radiation damage; the formation and operation of the headquarters in the event of an emergency within this territory; numerous

mobilization plans for extinguishing forest wildfires, etc. (Usenya *et al.*, 2018).

The protection of land affected by radiation, including forests, is mediated by the specific features of their protective statutes. Thus, Part 1 of Article 14 of the relevant Law of Ukraine, which factually regulates the regime of land that is radioactively affected by the Chornobyl accident, determines the need to follow a special environmental protection regime in this territory. Part 2 of Article 14 of the same regulation delineates the functionality of law enforcement agencies in this territory: 1) public order – within the competence of the National Police; 2) fire and technogenic safety – among the powers of the currently functioning State Emergency Service (Law of Ukraine No. 791a, 1991).

Even though the Exclusion Zone already has a protected status that also applies to forest lands, the professional community has long emphasised the need to create a special protected zone regime in this area. Consequently, in 2016, the President of Ukraine signed a corresponding Decree. The Chornobyl Biosphere Reserve is located in two areas within the Ukrainian part of CHZ – namely, within 30 km of the Exclusion Zone and covers 2/3 of its land area (about 225 thousand ha), except for 10 km of the Chornobyl NPP's specially protected zone, the Radioactive Waste Management Zone. The purpose of its creation was to preserve the Ukrainian natural fund, conduct scientific research, coordinate joint activities of various agencies, and restrict visits to radiation-affected lands (Decree of the President of Ukraine No. 174/2016, 2016).

The specific features of forest protection within the nature reserve fund are defined by the relevant Law of Ukraine (Law of Ukraine No. 2456, 1992). A separate Decree of the President of Ukraine No. 381 dated 21 November 2017

argues for additional measures to strengthen the protection of the nature reserve fund, specifically by improving the provision of state protection units of the nature reserve fund of Ukraine (Decree of the President of Ukraine No. 381, 2017). And on 14 July 2000, the Cabinet of Ministers of Ukraine adopted Resolution No. 1127 (2000), which approved the activities of such a service "On the Service of State Protection of the Nature Reserve Fund of Ukraine" – in compliance with Article 60 of the relevant Law of Ukraine on the Nature Reserve Fund (Law of Ukraine No. 2456, 1992).

In due course, the Regulation on the State Protection Units of the Nature Reserve Fund of Ukraine was improved by adopting Resolution of the Cabinet of Ministers of Ukraine No. 283 (2012) and introducing a series of important changes, where the Annex to the list of positions of this Service added a number of firefighters, including "station chief" and "fire observer" (Resolution of the Cabinet of Ministers of Ukraine No. 1127, 2000).

Thus, firstly, the Exclusion Zone lacks sufficient human, financial, and technical resources to implement a set of necessary fire prevention measures on a large territory of forests. Secondly, the significantly increased risks of new-type forest wildfires due to climate change, the gradual accumulation of a critical mass of combustible materials and mine danger necessitate balanced strategic management decisions, considering international best practices, technological developments, and scientific research, which should be systematically reflected in regulations that would be comprehensive/intersectoral, not just local. Examples include the Strategy for the Development of the Territories of the Exclusion Zone and the Zone of Unconditional (Mandatory) Resettlement Affected by Radioactive Contamination as a Result of the Chornobyl Disaster for

2021-2030 (2020) and the joint Order of the Ministry of Ecology and Natural Resources of Ukraine and the Ministry of Internal Affairs of Ukraine No. 01/01 (2018) on the approval of the Instruction on joint firefighting by the units of the state protection of the nature reserve fund, civil protection service, and permanent forest users on the territory of the Chornobyl Radiation and Ecological Biosphere Reserve. At the same time, it is not so much the development as the implementation of such norms/intentions that is more important, considering the basic principle of radiation safety and radiation protection, which means that the number of exposed persons and the absorbed dose of ionising radiation should be minimised as much as possible, according to the economic and social capabilities of a particular entity.

Conclusions

The state of fire safety on the forest lands affected by radiation damage is the most threatening at the present stage. The contamination of the Chornobyl forests, which have been under occupation since the first days of Russia's full-scale aggression, with explosive objects creates new additional risks. The system of fire protection on the lands of the forest fund that have been affected by radiation does not meet the specifics of this territory, as it cannot ensure fire safety in a large area of tens of thousands of hectares, primarily due to the lack of an adequate level of legal regulation of the relevant state function, appropriate firefighting equipment, and a sufficient number of trained specialists. And in the absence of adequate state funding, martial law with the corresponding risks and threats, the real capacity of enterprises and institutions to update firefighting equipment and fire extinguishing equipment is substantially limited. At the same time, the specifics of the activities of those affected by radioactive

contamination are substantially limited in terms of the commercial component.

In the context of the above, it is important, first of all, to ensure proper interaction between the relevant services. Therefore, there is a need to improve the current Mobilisation Plan for extinguishing wildfires in the Exclusion Zone, accommodate the new fire hazard assessment system; create a departmental fire protection service under the State Agency of Ukraine on Exclusion Zone Management, whose activities would consider the specifics of the territory; improve the implementation of the system of preventive fire protection measures; upgrade the skills of forest firefighters, considering the latest approaches and practices of fire prevention and extinguishing in ecosystems; improve the interaction of various services and agencies in firefighting based on clear legal regulation; strengthen the inclusion of voluntary firefighting groups, territorial communities, and public activists, specifically, in educational and informational activities and the implementation of preventive fire measures in forests.

Thus, fire safety in Ukrainian forests as an integral part of national security can only be effectively ensured if environmental, economic, legal, engineering, and technical measures are applied in a comprehensive manner. However, the algorithm of interaction and coordination of actions of bodies regulating relations between state bodies,

NGOs, legal entities, and individuals in the context of the above, regardless of their type of activity and form of ownership, is crucial, since the state is cannot fully fund all necessary measures in the current conditions. Therefore, the prospects for future research in this area include the development of optimisation mechanisms within the framework of legal support and relevant adoption of interagency regulations on the interaction of forces and means in the activities of forest protection from fires on radiation-hazardous lands of Ukraine. Additionally, it is important to consider technological innovations that could replace human labour, with corresponding reflection in regulations in the implementation of such activities; development of mechanisms for attracting international funds, etc.

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Conflict of Interest

The authors of this study declare no conflict of interest.

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Організаційно-правові засади охорони лісів від пожеж на радіаційно небезпечних землях України в сучасних умовах

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Анотація

Організаційно-правові засади охорони лісів від пожеж на радіаційно небезпечних землях України, особливо в сучасних умовах, зважаючи на нові виклики та загрози, пов'язані як з воєнним станом, так і прискореними кліматичними змінами, вимагають ретельного аналізу чинного законодавства у відповідній сфері, з'ясування юридичних прогалин та визначення найбільш пріоритетних напрямків його удосконалення. Мета статті полягала у аналізі системи чинного законодавства, спрямованого на врегулювання охорони й захисту лісів від пожеж, у тому числі і на радіаційно небезпечних землях України, та оцінки стану рівня ефективності правового регулювання означених суспільних відносин та оцінки їх. Методологічними засадами у контексті проведення дослідження послуговували загальні і спеціальні методи наукового пошуку, серед яких: формально-логічний, порівняльно-правовий, формально-юридичний, статистичний, аналізу й синтезу та діалектичний. У межах дослідження обґрунтовано комплексний характер системи охорони лісів від пожеж на радіаційно небезпечних землях. В роботі проаналізовано ризики та загрози виникнення лісових пожеж на радіаційно небезпечних землях України. Констатовано, що стан забезпечення пожежної безпеки саме на землях лісового фонду, що зазнали радіаційного ураження, постає найбільш загрозливим на сучасному етапі. Сформовано узагальнення, що містять комплекс необхідних заходів, спрямованих насамперед на посилення належного рівня взаємодії профільних служб в організації охорони лісів від пожеж на радіаційно небезпечних землях України в сучасних умовах. Практична цінність статті полягає у тому, що в ній, з урахуванням наукової теорії та комплексу методів наукового пізнання, здійснено ретельний аналіз українського законодавства та з'ясовано особливості організаційно-правового забезпечення охорони українських лісів від пожеж на радіаційно небезпечних землях на сучасному етапі, що дозволило визначити реальний стан правового регулювання відповідної сфери та прогалини в організації його застосування, що має актуалізувати удосконалення нормотворчої та правозастосовної практики у досліджуваній сфері. Результати дослідження

можуть бути використані для актуалізації правового забезпечення діяльності публічних інституцій, що реалізують державну політику в сфері охорони лісів на землях що зазнали радіоактивного забруднення

Ключові слова: справове забезпечення; лісова пожежа; радіаційна безпека; пожежна безпека; Чорнобильська атомна електростанція; ризики та загрози воєнного стану



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Liability of a trustee for environmental offences: Problematic issues and specific features of legal nature

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Abstract

The relevance of this subject lies in the fact that an effective enforcement mechanism in the context of compliance with environmental legislation is a lever for preventing environmental offences in general. Considering the lack of a wide range of studies on the environmental liability of a trustee, the scientific and practical need to analyse the relevant issues was identified. The study employed a system of research methods, namely: comparative legal method, method of critical analysis, method of interpretation of legal provisions, method of abstraction, logical and legal method, method of legal modelling, and dogmatic method. The purpose of this study was to provide a comprehensive general theoretical analysis and study of the legal nature and specific features of liability for environmental offences of a trustee and to formulate scientific, theoretical, and practical provisions for the regulation of the relevant legal relations. The study analysed the specifics of the trustee's environmental liability in the context of security trust as a fiduciary institution, as well as in the case of concluding a property management agreement known as a trust in the countries of the Anglo-Saxon legal system. The study offered a vision of the concept of environmental liability of a trustee through the lens of two models of this institution prescribed by

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current legislation. The study examined the category of complicity in the context of guilt in committing an environmental offence by both the trustee and the property management company. The study presented a critical analysis of the legislative technique of presenting the regulatory provisions of the Land Code of Ukraine on regulation of the institute of trust ownership of a land plot. As a result of this study, proposals were formulated for improving the current legislation in the context of the trustee's liability for environmental offences, as well as for the development of a separate chapter of the Land Code of Ukraine dedicated to the legal regulation of the institution of trust ownership of a land plot. The study focused on the theory of trust ownership on a global scale and based on the analysis of the initial provisions, determined its fundamental doctrinal significance for building a mechanism of environmental responsibility of trustees in each individual state. The practical value of this study lies in the fact that its findings can be applied in improving the legal regulation of this area of legal relations

Keywords: environmental liability; land plot; institution of trust property; environment; environmental safety; public trust doctrine

Introduction

The issue of the legal nature and content of liability for environmental offences stays relevant in the context of globalisation processes related to environmental protection and conservation, as well as the development of environmental and natural resource law. The overall safety and well-being of an individual's life depends on the level of efficiency of the environmental protection mechanism, which is one of the main needs of modern time, not only at the national but also at the international level. Various aspects of environmental liability as a type of legal liability are an important subject of scientific research aimed at developing a clear enforcement mechanism in this area and preventing environmental offences in general. As of 2024, the research of environmental liability of trustees in the context of the formation and development of this institution and its increasing use in the regulation of property relations is of great scientific and practical significance. It lies in developing doctrinal approaches to the development of the concept of liability of such an entity with a view to using them for further law enforcement.

An environmental offence as a basis for environmental liability is characterised by a concrete composition, which includes the following elements: subject, object, subjective and objective parties. The nature and extent of liability are specific to the individual perpetrator of the offence. The scientific and practical need for a thorough investigation of the specific features of bringing individual actors to liability for environmental offences is that this type of offence encroaches on the constitutional right of citizens to a safe environment. In this regard, the analysis of the content of the trustee's environmental liability is important for developing the concept of liability for environmental offences by trustees and will also facilitate compliance with environmental requirements in their use of environmental objects, which may, in turn, be objects of trust.

Overall, the problematic issues of environmental liability as a type of legal liability, including the specific features of its subject matter, have been the subject of investigation by many researchers. L. Khizhnya (2020) investigated the

specific features of administrative liability for environmental offences in environmental protection and emphasised that in the context of implementing the idea of sustainable development, it is important to optimise national and international mechanisms of legal liability for environmental damage. O. Kalia *et al.* (2023) express an analogous opinion, pointing out that to effectively protect the environment in Ukraine in the context of globalisation and military operations, there is a substantiated need to improve the institutions of legal liability for violations of environmental law through the implementation of international standards. In terms of the functional aspect of environmental liability, M. Sirant (2021) noted that legal liability helps motivate people who do not commit environmental offences to follow environmental requirements and discourages those held liable from repeatedly committing environmental offences. B. Sheehy (2023) noted that the principal idea of environmental responsibility as a type of legal liability is that business entities that benefit from the use of natural resources should minimise the negative impact on the environment and, moreover, take actions of a compensatory nature for society for such negative impact. In terms of conducting business activities and the need for business entities to follow environmental requirements, J. Lee *et al.* (2022) focused on the significance of accounting for environmental impact in business activities and the importance of environmental responsibility in the legal context, both from a legal and moral standpoint. Al Halim and M. Ali (2020) note that the introduction of a strict legal regime of environmental liability for environmental offences is conditioned by the long-term nature of the danger that may be caused by such offences, as well as the difficulties in eliminating their ramifications. L. Dam *et al.* (2019) emphasised the

global nature of the institution of environmental liability, pointing out that environmental liability is increasingly determined by human actions that affect global environmental change. Thus, the institution of environmental liability is not merely a coercive measure within a particular country but is a global instrument for ensuring a safe environment. The environmental liability of a trustee is no exception due to the increasing use of this title in rem, as well as the way in which it is used to secure the performance of an obligation.

In the context of the trustee's environmental liability, the following studies are worth paying attention to. L. Brown (2024) provided a thorough analysis of the personal liability of trustees for land contamination and the existence of a duty to remediate it. The study raises the issue of environmental management in the context of trustees' fulfilment of their fiduciary duties aimed at both protecting the trust property and the environment. The issue of fiduciary responsibility has also been discussed by D. Postlethwaite (2022), who pointed out that trustees are increasingly expected to consider environmental, social, and governance (ESG) factors when making investment decisions. The researcher emphasised that fiduciaries must balance these trends with their fiduciary duties, ensuring that ESG integration is in the best interests of beneficiaries and follows legal requirements. S. Roy (2020) investigated the specific features of the fiduciary legal institution in the context of environmental protection, noting that the trust doctrine prescribes a model of management that would enable the state to apply a sustainable and holistic approach to environmental management to consider the interests of future generations. R. Marusenko (2020) studied the specific features of the institute of trust ownership of land plots. The researcher noted that the improvement of legislative regulation of the trust

ownership structure can avoid disputes over its nature, and transform it from an ambiguous, partially declarative innovation into an effective tool according to the legislator's intention. Based on the above, streamlining the regulatory provisions on the legal regulation of the trust property institute will also improve the mechanism of environmental liability of trustees.

The purpose of this study was to provide a comprehensive general theoretical analysis and study of the legal nature and specific features of liability for environmental offences of a trustee, as well as to formulate scientific, theoretical, and practical provisions for the regulation of the relevant legal relations. This study was focused on the specific features of the environmental liability of a trustee. To fulfil the purpose set, the tasks of the study were defined as follows:

- 1) to analyse the regulatory provisions of the Civil Code of Ukraine (2003), the Land Code of Ukraine (2001), the Code of Administrative Offences of Ukraine (1984) for the current state of legal regulation of the mechanism of environmental liability of the trustee;

- 2) to conduct a comparative analysis of the specific features of the environmental liability of a trustee under a property management agreement and in the case of establishing trust ownership as a way to secure performance of an obligation;

- 3) to formulate scientific and theoretical conclusions and practical recommendations for improving the legal regulation of trustee liability for environmental offences.

Materials and Methods

This study was based on the concept of sustainable development, according to which there is an urgent and substantiated need to strike a balance between the current needs of humanity and their satisfaction, as well as the protection and defence

of future generations by guaranteeing their right to a safe environment. In the context of this problematic, the concept of sustainable development is important for the development of environmental legal awareness of trustees and prevention of environmental offences committed by them to ensure environmental safety.

Considering the purpose of this study and the tasks formulated to achieve it, a multifaceted range of both general scientific and special legal research methods was employed, namely: comparative legal method, method of critical analysis, method of interpretation of legal provisions, method of abstraction, logical and legal method, method of legal modelling, and dogmatic method. The use of these methods was substantiated by the fact that it is this system of scientific methods that ensured an in-depth investigation of the outlined issues, organisation of information, and contributed to the formulation of relevant conclusions. The use of research methods that are different in their content created an opportunity for a multidimensional and versatile study and ensured the comprehensiveness and completeness of this scientific study. The algorithm of the study was to distinguish certain aspects of liability for environmental offences by trustees from the general problematic of environmental liability. In analysing the specific features of environmental responsibility of such an entity, the study compared the specifics of such responsibility through comparing the models of trust ownership.

The comparative legal method helped to investigate the trustee's environmental liability by comparing two institutions: security trust and trust as a separate legal title. In applying the critical analysis method, the study formed a critical vision of the current state of legal regulation of environmental liability of a trustee and suggested practical solutions to improve the identified

gaps. The application of the method of interpretation of legal provisions helped to analyse legal provisions and reveal their content to identify problematic issues and form conclusions regarding the specific features of law enforcement. The scientific and practical conclusions and findings of this study were formulated based on a thorough analysis of the regulatory provisions of Ukrainian legislation. The regulatory framework of this study was based on the following regulations: Civil Code of Ukraine (2003), Land Code of Ukraine (2001), Code of Administrative Offences of Ukraine (1984).

The method of abstraction helped to highlight the essential and substantive aspects of the environmental liability issues and to focus on the issues of liability for environmental offences by trustees. The logical-legal method employed logical tools and techniques for researching and explaining the content of legal provisions based on the laws of formal logic. Using the method of legal modelling, the study applied the model of owner's liability and used it as the basis for developing the concept of trustee's liability for environmental offences. The dogmatic method helped to establish the content of the statutory provisions relating to the trust property institute and, using logical techniques, to identify the regularities of legal regulation of legal relations which are the subject of this study.

Results

The institution of trust ownership is a common legal phenomenon in the countries of the Anglo-Saxon legal system. Thus, in the UK, trusts form an integral element of the legal regulation of property relations. I. Gvelesiani (2023) points out that a trust is considered as a "by-product" of property rights, which reflects its dualistic legal nature. According to E. Zaccaria (2019), in UK law, the system

of beneficiary rights is analogous in nature to the rights of the owner but has specific limitations. In this regard, the specific feature of the legal nature of a trust determines the specifics of the system of rights and obligations of its parties, which further affects the formulation of the institution of environmental liability. The fundamental legal act in this context is the Trustee Act (1925). This regulatory document prescribes the fundamental basis for the legal regulation of trusts, including provisions on the rights and obligations of trustees, regulates the specifics of their appointment, and the principles of trust management. UK legislation, as well as Ukrainian legislation, does not contain clear provisions on the environmental liability of trustees. However, certain provisions of a series of regulations can be applied by analogy to the legal regulation of the above issues. Such regulations include the Trustee Act (2000). Notably, this act does not contain special regulatory provisions on environmental safety and protection but prescribes general provisions on the system of trustee obligations relating to the consideration of beneficiaries' interests and caution in the management of property. These provisions can be interpreted in the context of the trustee's compliance with environmental legislation. Another regulation important within the framework of this study is the Environmental Protection Act (1990). The relevant regulatory document does not contain any special provisions relating to the trust but defines the fundamental principles and principles in the context of environmental protection. Therefore, trustees who manage land plots or other environmental objects are obliged to strictly and in good faith follow the requirements set out in the act. In this regard, it is necessary to note the imperfection of UK legislation in the context of legal regulation of environmental liability of trustees. This incompleteness of legislation leads

to the absence of an established concept of trustee liability for environmental offences at the international level, as UK law is primary in terms of defining the standards for regulating trusts. In this regard, T. Kuntz (2023) was correct to point out that a view of the development of fiduciary law from the perspective of transnational legal theory forms an understanding of the patterns of emergence of legal orders and processes of legal regulation that fall outside the legal system of a particular state.

On the other hand, in the legislation of France, the institution of trust ownership is unformed and lacks clear legal regulation. However, French legislation contains a legal category “*fiducie*”, which is a kind of analogue of the trustee. Article 2011 of the Civil Code of France (2024) states that “*fiducie*” is an agreement under which one party or several parties, called the founders, transfer property, or property rights to one or more trustees who hold the property provided separately from their personal property to ensure the interests of the beneficiaries. It can be concluded that the legislation governing trusts in Europe is not homogeneous and is determined by the specifics of the historical development of each individual country.

As of 2024, the Civil Code of Ukraine (2003) also makes provision for the possibility of using such a legal instrument in property relations. However, the concept of trust ownership is relatively new to Ukrainian legal doctrine. Thus, the Law of Ukraine No. 980-IV (2003) amended the Civil Code of Ukraine (2003), which legalised the institution of trust ownership. In this regard, a series of fundamental issues arise that have not been legislatively consolidated, including issues related to the environmental responsibility of the trustee. Such a study will allow formulating the concept of liability for environmental offences of

a trustee based on determining its place and role in the implementation of the triad of ownership of the trust property. In modern Ukrainian law, the right of trust ownership has a dualistic nature and can be considered as a right in rem, which is derived from the right of ownership, and as a way of ensuring the performance of obligations, which is an innovation of the Civil Code of Ukraine (2003).

According to L. Foksha and O. Zuieva (2020), the right of trust security property is a real way of securing the fulfilment of an obligation, since the trustee’s property interest is secured at the expense of the trust property to which they acquire title. In other words, in this case, this refers to the concept of fiduciary duty, which is inherent in Roman law, and relations can be defined within the relevant type of trust as fiduciary. L. Broadway *et al.* (2021) recognises the fiduciary duties of trustees as traditionally focused on maximising financial returns for beneficiaries. However, trustees as individuals may be aware of and concerned about environmental issues such as climate change. The main position lies in exploring ways in which trustees can balance these ethical considerations with their duty to the beneficiaries without running into legal risks. Thus, in the context of environmental protection, property relations and institutions derived from them are on the verge of ensuring environmental safety and maintaining economic efficiency of economic activity. That is why a well-established and clear mechanism of prosecution for environmental offences is the lever that will ensure the prevention of such offences in general.

Pursuant to Part 2 of Article 597-1 of the Civil Code of Ukraine (2003), the right of trust ownership as a way of securing the performance of obligations (trust ownership) is a type of property ownership under which a creditor who has received property in trust (trustee) is not entitled to

independently alienate such property, except for foreclosure on it, as well as to redeem it for public needs pursuant to the procedure established by law. Pursuant to Article 597-4 of the Civil Code of Ukraine (2003), the trustee (the user) is entitled to use the trust property. The user may also be another person specified in the trust agreement.

The trustee is directly the debtor under the principal obligation, who transfers the relevant object into trust ownership to ensure the performance of the primary obligation. In other words, in the construction of trust ownership as a way of ensuring the performance of an obligation, the trustee does not act as a user of a particular object. In this regard, this type of trust ownership is non-sedentary. However, in case of a default on the primary principal obligation, the trustee is entitled to foreclose on the trust property, which results in the trustee becoming the full owner of the relevant facility and, therefore, the subject of environmental liability. The above fact is important for identifying the specific features of environmental liability, considering the subjective composition of the security trust relationship. Thus, considering that in the concept of a security trust as a fiduciary institution, the trustee is not authorised to exercise such an element of the property triad as use, the requirements for compliance with environmental legislation are imposed on the trustee, who is the debtor under the primary obligation. Accordingly, the trustee will also be subject to environmental liability for environmental offences committed in the operation of the trust property.

However, in this context, it is also worth paying attention to the regulatory provision prescribed in Part 4 of Article 597-4 of the Civil Code of Ukraine (2003), which states that the trustee is entitled to check the presence, condition, storage, and use of the trust property at any time during

the term of the trust and subject to prior notice to the user. Moreover, the legislator clearly stipulates that the agreement may specify issues related to the frequency of such inspections, their duration, the obligation to notify the user of the trustee's decision to conduct an inspection, as well as other conditions for inspecting the trust property.

Thus, in analysing the said regulatory provision, the question arises as to what actions the trustee should take if the latter discovers signs of violation of environmental legislation in the actions or inaction of the user of the trust property. It is clear that if the trustee fails to act upon the results of the detection of an environmental offence, such behaviour threatens the environmental safety and should be defined as an environmental offence. Thus, according to Item 3 of Article 83-1 of the Code of Administrative Offences of Ukraine (1984), it is a violation of plant protection legislation to fail to notify (concealment) or provision of false information about the threat to crops, tree plantations, other vegetation of open and closed ground, as well as plant products from pests.

Considering the right granted to the trustee to inspect the operating conditions of the trust property, the trustee may be a subject of the relevant administrative offence and, accordingly, be held liable for environmental damage. Thus, considering that the trustee in the context of security trust ownership does not directly use and operate the trust property, its environmental responsibility has a specific manifestation within the scope of the powers granted to it to control the user's activities in relation to the trust property.

Furthermore, in respect of a particular type of trust property, such as a land plot, due to its social significance, there is a need to define the said right of the trustee as an obligation. Thus, during the operation of a land plot, actions may be taken that contain signs of environmental offences,

which creates an unfavourable environment for environmental safety. In this regard, such an obligation will be an effective lever for shaping environmental legal awareness, preventing the commission of environmental offences, and forming a direct basis for holding the trustee environmentally liable for failure to perform such an obligation.

Notably, the security trust differs in its legal nature from the trust arising under a property management agreement and is a so-called trust. In the first case, this refers to fiduciary relations and ensuring the performance of the primary obligation. However, in case of analysing the concept of trust ownership as a separate legal title, the situation regarding the subject of environmental liability is considerably different due to the following. Thus, pursuant to Part 1 of Article 1029 of the Civil Code of Ukraine (2003), under a property management agreement, one party (the trustor) transfers property to the other party (the manager) for management for a certain period of time, while the other party undertakes to manage the property on its own behalf for a fee in the interests of the trustor or a person specified by the trustor (the beneficiary).

This agreement is the direct basis for the emergence of trust ownership as a separate type of property right. And with this concept of trust ownership, it is the manager who is the entity that will directly bear environmental liability in case of a violation of the relevant legislation. Thus, according to Part 5 of Article 1033 of the Civil Code of Ukraine (2003), a manager, if it is stipulated in the property management agreement, is a trustee of the property, which they own, use, and dispose of following the law and the property management agreement.

In other words, in this case, the trust property is directly operated by the property manager, who, by the legal nature of their status, is

equated to the trustee, and therefore may act as a subject of environmental liability. In this context, A. Holovko (2021) fairly noted in her thesis research that the fundamental principle of environmental law “polluter and user pay the full price” is aimed at introducing legal mechanisms and incentives for such persons to reduce the level of adverse impact on the environment and guarantee the user’s full legal responsibility for the state of the natural resources provided for use. In other words, in this case, this principle is directly related to the formation of the concept of the trustee’s liability, who in the model of trust ownership as a separate legal title acts as a direct user and, therefore, should be liable for damage to the environment.

However, it should be emphasised that the manager manages the property on its own behalf and manages this property in the interests of the manager or the person (beneficiary) specified by the manager. In other words, in a concrete agreement, the trustor authorises the manager to exercise a range of powers in relation to the trust property. Therefore, if the property management agreement prescribes a certain type of operation of the relevant facility that contradicts the principles of environmental safety and violates the requirements of environmental legislation, a case can be made regarding complicity in the commission of such an offence. This leads to the need to hold both the trustee and the manager liable for environmental damage.

Discussion

According to O. Yakymets (2022), the basis for bringing a person to legal liability is the commission of an offence, and since this refers to liability in the field of environmental legal relations, the basis will be the commission of an environmental offence, which should be understood as an unlawful act (action or inaction) that violates the

established environmental legal order and for which the law prescribes legal liability. In such a case, the concept of environmental responsibility of the trustee will differ in relation to the trust ownership model. In this regard, in each particular case of prosecution for environmental offences, there will be a need for a thorough investigation of the nature and legal nature of the legal relationship between the owner and the trustee. Thus, in the system of fiduciary relations arising from security trust ownership, the trustee is not a direct user, but is entitled to control the operation of the trust property by the trust founder or a third party, which suggests that the trustee may be held liable for environmental offences, but only in respect of certain offences. In turn, subject to the existence of a property management agreement, the content and functional focus of the trustee's activities is to directly operate the relevant facility on behalf of the trustor and factually implement all elements of the property triad, which introduces adjustments to the specifics of environmental liability.

In practice, a common object of trust ownership is a land plot. Pursuant to Part 1 of Article 89-1 of the Land Code of Ukraine (2001), if, pursuant to the law, the ownership of a person who has transferred their property into trust is terminated, the trustee has the rights and performs the duties of the owner of the land plot, subject to the specific features prescribed in the Land Code of Ukraine (2001) and the Civil Code of Ukraine (2003). However, within the limits prescribed in the property management agreement, the trustee may exercise the powers of the owner of the actual land plot prescribed in such agreement even prior to the termination of such right. In this context, the scientific position of R. Marusenko (2020) is quite sound, who notes that it is inappropriate to mediate different legal

constructions and achieve different goals with their help using the same term – trust title. Mixing the legal title of ownership, use, and disposal of a land plot, and at the same time the type of security for the performance of an obligation, as well as the type of property management agreement, in a single legal structure introduces confusion into the system of legal institutions of both civil and land law. Clearly, to achieve several goals, it would be more suitable for the legislator to employ separate terms rather than to rely on judicial practice to resolve the problem of interpreting the same term in different meanings.

It is worth agreeing with the above opinion, because the analysis of the Land Code of Ukraine (2001) makes it difficult to identify which model of trust ownership the legislator implies, which leads to a lack of systematic understanding of the status of the trustee and, as a result, to problems in practice in bringing perpetrators to environmental liability for environmental offences committed during the operation of the land plot. Thus, the regulatory provisions on trust ownership of land plots are formulated in Chapter 14 of the Land Code of Ukraine (2001), which handles the legal regulation of land ownership. Considering that under civil law, trust property is positioned as a separate legal title, it can be concluded that the legislator limited itself to this model of trust property when formulating the regulatory provisions of the Land Code of Ukraine (2001).

The absence of a systematic cross-sectoral approach in the context of legal regulation of trust property in its dualistic manifestation leads to inconsistencies upon law enforcement in this area. Considering that land is an extremely common object of trust ownership, the problematic legislative technique of formulating regulatory provisions in this context leads to an imperfect mechanism for governing such relations overall,

including the mechanism for holding the trustee liable for environmental offences.

Thus, considering that the provisions on trust ownership are located in the chapter on property rights, this logic of building the regulatory provisions leads to difficulties in practice in understanding the functional aspect of this institution. In this regard, it is necessary to create a new chapter of the Land Code of Ukraine dedicated to the specifics of legal regulation of the institution of trust ownership of a land plot as a separate legal title and as a way to secure the performance of an obligation. Such a centralised approach to the placement of regulatory provisions within the code will ensure the effectiveness of regulation of the relevant institution and the development of a clear legislative mechanism for holding trustees liable for violations of the requirements for the operation of the land plot, as well as provide convenience in the law enforcement process.

S. Roy (2019) investigated the issue of streamlining the provisions on fiduciary property as a fiduciary institution and fiduciary property as a trust, and the researcher reasonably noted that a broader investigation of judicial practice that would offer a comprehensive definition of the application, content, and scope of fiduciary duties has not yet been conducted. Nevertheless, it is still unclear whether property rights will have to be revised to adapt them to the concept of trust ownership. Such a revision could mean that owners would act as trustees to protect the resources on their land, while natural resources would be considered common to all. The answer to this question will certainly be a necessary component of any solution to the greatest challenges of the 21st century, the challenges of the Anthropocene.

This position relates to the global concept of trust ownership of natural resources, which has gained great popularity in the international arena

and is one of the crucial tools for shaping environmental awareness and an effective mechanism for bringing to environmental responsibility. According to K. Bosselmann (2020), the concept of trust ownership of the planet Earth emerged in the environmental law movement, according to which states must accept the responsibilities of trustees for the Earth's ecological systems. This will provide stronger environmental protection than the current trade-off points that balance environmental care with economic growth and efficiency.

According to D. Grinlinton (2023), expanding the scope of the Public Trust Doctrine is an essential step in protecting natural resources. Under this doctrine, trustees are obliged to ensure sustainable management of and access to natural resources. This fiduciary responsibility ensures environmental protection and sustainable management of natural resources. Thus, based on the above, the Public Trust Doctrine is an important legal principle according to which natural resources management should be carried out in the public interest. In this case, the authorised state bodies act as trustees and must ensure environmental protection and sustainable use of natural resources. According to R. Costanza *et al.* (2021), the modern context, effective management of the natural fund requires a transition from conventional legal titles of private property to the regime of trusts in the context of the Public Trust Doctrine.

The concept of environmental liability of a trustee as a subject of contractual relations is individual and relates to concrete legal relations. However, it should not be forgotten that in the context of ensuring environmental safety, the fundamental issue is the existence of environmental legal awareness of each individual, especially when it comes to the exploitation of environmental objects. That is why such a fundamental concept should underlie the development of an

environmental liability mechanism for each individual case. In this regard, J.C. Dernbach (2020) fairly notes that the legislation governing trusts has a solid potential to enhance the level of protection and defence of public trusts by imposing various fiduciary duties on trustees. Considering the above, the concept of trust ownership of the Earth defines the state as the trustee, not an individual, but the state as a whole, which indicates its global nature.

Conclusions

The study of the composition of environmental offences and the specifics of bringing various actors to environmental liability is a crucial guarantee of a safe environment for humans and citizens. Environmental safety is a priority area of state activity that can be effectively implemented through the development of a high-quality enforcement mechanism in this area. However, based on the above, not all aspects of environmental responsibility are widely reflected in the studies of scholars, and as a result, are not regulated at the legislative level. One of the gaps in environmental legislation is the absence of regulatory provisions on bringing the trustee to environmental liability, both in the concept of security trust and in the context of implementing trust ownership by entering into a property management agreement.

As of 2024, the trusteeship institution is gaining in popularity as Ukraine actively adopts positive European practices. In the absence of a mechanism to enforce trustees in the context of compliance with environmental requirements, there is a threat to environmental safety in the implementation of trust ownership relations. The scientific originality of this study was that it was the first to comprehensively investigate the liability for environmental offences of such an offender as a trustee in the context of Ukrainian legislation.

This study formed scientific and theoretical conclusions. It was found that the specifics of a trustee's environmental liability depend on whether the trustee is a subject of security trust as a fiduciary institution or acts as a manager under a property management agreement, which is called a trust in the countries of Anglo-Saxon law. The study determined that a trustee, as a subject of security trust ownership, may be liable for environmental damage in respect of a limited range of offences relating to its powers to inspect the operation of the trust property by the user. It was found that within the limits prescribed in the property management agreement, the trustee is directly liable for environmental offences, since it exercises almost in full the entire triad of ownership, with the exception of certain restrictions on disposal which do not limit its liability in the context of operation of the trust property. The study formulated the concept of complicity of a property manager as a trustee and a manager under a property management agreement. It was found that the concept of trust ownership in the context of planet Earth should be a fundamental principle for the development of the mechanism of environmental property of a trustee as a subject of security trust ownership or as a party to a property management agreement.

Practical provisions were developed based on scientific and theoretical conclusions. The study established the need to harmonise the regulatory provisions of the Land Code of Ukraine and set out the regulatory provisions governing the specifics of land trust and the trustee's liability for violation of the procedure for its operation in a separate chapter "Land Trust". In case of application of the institution of trust ownership of a land plot as a way of performing an obligation, this study proposed to make provision for the trustee's obligation to monitor the operation of the land plot

by the user and to take relevant actions aimed at stopping the identified environmental offences.

Therefore, based on the above, a general conclusion can be drawn that in the context of rapid development of science and technology, environmental issues are becoming increasingly relevant and acute every day. This problem transcends the borders of a single country and becomes a global issue that needs to be addressed urgently. In this regard, each state should develop effective legal regulation of relations related to environmental safety and the formation of environmental legal awareness in society. The level of regulation of the environmental liability mechanism overall depends on the state of compliance with environmental legislation, which is the primary link in influencing global environmental processes.

The prospects for further development of this subject are to make provision for concrete corpus delicti of environmental offences in relation to such a special entity as a trustee. In addition, an important vector for expanding the

research is the analysis of international practices in regulating this issue to accommodate the relevant regulatory provisions upon developing Ukrainian legislation. It is also important to consider globalisation processes and trends in the development of environmental protection concepts.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Відповідальність довірчого власника за екологічні правопорушення: проблемні питання та особливості правової природи

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Анотація

Актуальність вказаної тематики полягає у тому, що ефективний механізм примусу в контексті дотримання вимог екологічного законодавства є важелем запобігання вчинення екологічних правопорушень. Метою наукової роботи був комплексний загальнотеоретичний аналіз і дослідження правової природи та особливостей відповідальності за екологічні правопорушення довірчого власника, а також формування науково-теоретичних та практичних положень щодо врегулювання відповідних правовідносин. В ході проведення дослідження автором була застосована система методів дослідження, а саме: порівняльно-правовий метод, метод критичного аналізу, метод тлумачення норм права, метод абстрагування, логіко-юридичний метод, метод правового моделювання, догматичний метод. Було проведено аналіз специфіки екологічної відповідальності довірчого власника в контексті забезпечувальної довірчої власності як фідучіарного інституту, а також у випадку укладення договору управління майном, відомого як траст у країнах англо-саксонської правової системи. Запропоновано бачення концепції екологічної відповідальності довірчого власника крізь призму двох моделей вказаного інституту, передбачених чинним законодавством. Розглянуто категорію співучасті в контексті наявності вини у вчиненні екологічного правопорушення як довірчого власника, так і установника управління майном. У статті присвячено увагу критичному аналізу законодавчої техніки викладу нормативних положень Земельного кодексу України щодо регулювання інституту довірчої власності на земельну ділянку. В результаті такого дослідження було сформульовано пропозиції щодо удосконалення чинного законодавства в контексті відповідальності довірчого власника за екологічні правопорушення, а також формування окремої глави Земельного кодексу України, присвяченої правовому регулюванню інституту довірчої власності на земельну ділянку. Акцентовано увагу на теорії довірчої власності в планетарному масштабі та на основі аналізу вихідних положень визначено її основоположне доктринальне значення для побудови механізму екологічної відповідальності довірчих власників в кожній окремій державі. Практична цінність проведеного дослідження полягає у тому, що отримані результати можуть бути застосовані в ході удосконалення нормативно-правового регулювання вказаної сфери правовідносин.

Ключові слова: екологічна відповідальність; земельна ділянка; інститут довірчої власності; довкілля; екологічна безпека; доктрина громадської довіри



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Electric transport as one of the ways to achieve climate neutrality in Europe: Problems of development and legal regulation in Ukraine

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Abstract

The study of ways to improve the regulatory framework for the use of green technologies is becoming increasingly important due to the exacerbating climate crisis, which is prompting a reduction in greenhouse gas emissions. The purpose of this study was to identify and describe the gaps in the current legislation on the development of electric transport, as well as to investigate the feasibility and effectiveness of the proposed changes in this area, which are intended to reduce the adverse impact of transport on the environment. The methodology of the study included formal logical, formal legal, comparative legal, as well as other general scientific and special scientific methods of cognition, a review of the current laws of Ukraine and draft laws submitted to the Verkhovna Rada of Ukraine aimed at improving the current legislation on electric transport, including the regulation of the use of personal light electric transport. An analysis of current legislation and draft laws submitted for consideration revealed that some laws contain provisions that hinder the development of electric transport, and the adoption of a series of draft laws could negatively affect the economic viability and ease of

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use of such transport. The study provided recommendations, based on the approaches of EU countries, to promote and motivate drivers to change their internal combustion engine vehicles to electric ones. The study resulted in a series of proposals to address the identified problems and shortcomings of the current legislation. Specifically, the study suggested ways to encourage drivers to change their internal combustion engine vehicle to an electric one, analysed the ways of developing and popularising personal electric vehicles, examined the current state of development of green infrastructure and availability of electric vehicle charging points, and proposed approaches to solving the issue of recycling electric vehicle batteries. The practical value of this study lies in the possibility of further use of the research findings and conclusions drawn therein to address the gaps in current legislation by submitting a draft law with the proposed relevant amendments

Keywords: green transition; ecological vehicle; road safety; light personal electric transport; development of green infrastructure; electric vehicle charging points; zero pollution

Introduction

Finding quick and effective ways to reduce the effects of global warming is a critical task, even in the face of a full-scale invasion, as it poses a direct threat to the life and health of the country's population. The largest sources of greenhouse gas emissions in the EU are energy, industry, and transport. When analysing possible ways to reduce greenhouse gas emissions, special attention should be paid to the latter, as transport is one of the primary air pollutants. Cars with internal combustion engines cause a large environmental burden not only on the air, but also on land and water resources, and therefore reducing the impact of this category of pollutants is a priority area for research. The primary types of environmental pollution from transport include exhaust gas emissions and waste from its operation. According to the latest published data of the Ministry of Environmental Protection and Natural Resources of Ukraine (2021) (in 2022-2023, the report was not compiled due to martial law), the total amount of air emissions from mobile sources of pollution was 1,546.8 thousand t, which is about 40% of the total amount of air pollution,

and considering the constant increase in the number of cars, it can be argued that this figure will only grow if effective methods of influence are not implemented. To achieve climate neutrality, one of the goals of the European Green Deal (2019) is to reduce emissions from transport by 90% by 2050, and therefore, for Ukraine, reducing road pollution is an important strategic objective.

According to the Ministry of Internal Affairs, over 160,000 cars were imported into Ukraine in the first five months of 2024, including about 20,000 electric vehicles. According to the statistics published by the Service Centre of the Ministry of Internal Affairs, as of June 2024, about 105,000 cars and 2,000 trucks with electric motors were registered in Ukraine (Service centres of the ministry..., 2024). Considering that this data does not include hybrid vehicles, which, apart from an internal combustion engine, also have an electric motor, it can be stated that environmentally friendly transport is gradually gaining popularity in Ukraine, which, if this trend continues, will have a positive impact on reducing air pollution from motor vehicles. The increase

in the number of users of such vehicles has led to an urgent need for legal regulation of their rights and obligations, as Ukrainian legislation is not adapted to the mass emergence of electric vehicles with an engine of up to 4 kW.

Several scholars have investigated this issue. According to A. Chervinchuk and Y. Atamenko (2022), the process of legitimising personal electric vehicles (PEVs) in Ukraine, even under the legal regime of martial law, is a crucial task, as the number of road traffic accidents (RTAs) involving such vehicles is constantly growing. Within the framework of the study, the researchers proposed to classify light personal vehicles into several types, depending on their design features, which in the future should facilitate the process of determining their legal status. Y. Dzyubanytskyi (2023), who investigated the legal regulation of personal light electric transport in Ukrainian legislation, addressed the lack of clear regulation of the range of rights and obligations of users of such vehicles. The researcher identified and described a series of gaps in the current legislation and the draft laws submitted for consideration and proved the need to improve the current version of the Road Traffic Rules (2001). S. Maslyanko (2023) reached an analogous conclusion, analysing the administrative legal capacity of a person to drive a vehicle, specifically an electric scooter and analogous electric vehicles. Based on the analysis of the current legislation, the researcher concludes that in the absence of a properly established legal status of the users of PEVs, it is impossible to determine their concrete legal capacity, and, alternatively, suggests that they should be equated with the existing category of road users, e.g., cyclists or drivers.

M. Spivak (2021) made a considerable contribution to the investigation and research of ways and viable solutions for legalising electric

transport users, analysing ways to improve the regulation of relations in the field of ensuring the safety of light electric transport users as a separate category of road users. The researcher addressed the fact that the person who will operate the PEV must not only have knowledge of road safety rules, but also have a driver's licence, and therefore undergo relevant training and pass an exam. It was also proposed to develop a system of mandatory registration of such vehicles.

M. Kolodyazhny (2021) investigated the international practices in determining the scope of rights and obligations of users of electric scooters and analogous vehicles, describing international legal and methodological support for road safety. As one of the consequences of the lack of clear legal regulation of the rules for the use of PEVs in Ukraine, as in the EU countries, the researcher named the high mortality rate of road accidents involving such vehicles. S. Panova (2023) reached an analogous conclusion, analysing European legislation on the regulation of the use of electric scooters and analogous electric vehicles. In conclusion, the researcher noted that there is no single approach to defining the range of rights and obligations of users of such vehicles, but each country analysed has clear rules for their use.

M. Dutov (2024) investigated the European Union's climate and energy strategy and analysed its stages to achieve climate neutrality. The study described the principal tools for implementing The European Green Deal (2019), as well as the possibility of their adaptation and transfer to the national programme for achieving climate neutrality. The researcher paid considerable attention to the steps of transition from internal combustion engines to electric ones. F. Colli (2021) investigated the mechanisms of public involvement in the development and implementation of The European Green Deal (2019). Specifically,

the researcher analysed ways to ensure citizen participation in decision-making processes. Colli described the effectiveness of these mechanisms and methods and offered recommendations for improving public participation in achieving climate neutrality.

Considering the above, the purpose of this study was to investigate the current regulatory framework for the use of electric vehicles and to identify the rules which hinder and complicate the development of such vehicles. The objectives of the study were as follows: to analyse the judicial practice on bringing users of personal light electric transport to administrative liability, specifically for causing road accidents or creating emergency situations, as well as driving while intoxicated; to identify legal conflicts or inconsistencies, as well as to formulate recommendations on possible ways to eliminate them; to investigate the negative consequences for all road users caused by the existing legal uncertainty regarding the range of rights and obligations of electric transport users.

Materials and Methods

The material basis for this study included the current versions of the Laws of Ukraine related to the transport sector, as well as the relevant draft laws submitted to the Verkhovna Rada of Ukraine. The analysis also used statistical information from the official websites of state authorities, including the Ministry of Environmental Protection and Natural Resources of Ukraine, regarding the level of air pollution. The study was also based on a review of Laws of Ukraine No. 3353-XII "On Road Traffic" (1993), No. 2344-III "On Road Transport" (2001), and No. 2956-IX (2023). The Resolution of the Cabinet of Ministers of Ukraine No. 1306 "On Traffic Rules" (2001) was also analysed. Beyond this, the study analysed draft laws, specifically, No. 5479 "On Amendments to Some Legislative

Acts of Ukraine Regarding the Inclusion of Personal Transport in the Unified Transport System of Ukraine and Increasing the Level of Road Safety" (2021), No. 5731 "On Amendments to the Law of Ukraine "On Road Traffic" Regarding the Movement of Self-Balancing Vehicles Equipped with Electric Motors (Electric Scooter, Segway, Segwheel, Gyroscoter)" (2021) and draft laws No. 8082 (2018), No. 3023 (2020), No. 5732 (2021), which aimed to regulate the rules for the use of new electric vehicles. Additionally, the state strategies in the field of green transition and transport development were analysed, specifically, the National Transport Strategy of Ukraine for the Period Until 2030 (2018), Strategy for Promoting Road Safety in Ukraine for the Period Until 2024 (2020), Strategy for low-carbon development (2018), Strategy for environmental safety (2021). International agreements such as the Paris Agreement (2015) and the Agreement on Financing Between Ukraine and the European Commission (2020) were also investigated.

Both general and special research methods were used. Using the historical legal method, the study analysed the establishment and development of Ukrainian legislation on regulation of the rules for use of the latest electric vehicles. The formal logical and formal legal methods helped to identify contradictions and inaccuracies in the current legislation of Ukraine regarding the regulation of the rules for the use of such vehicles and examine in detail such terms as "wheeled electric vehicle", "electric vehicle", "light personal electric vehicle", "low-speed light electric vehicle", "mechanical vehicle", "vehicle", "motorcycle", and "moped". Conclusions were drawn on the logical perfection and consistency of the current legislation in the field of road safety and the impact of electric transport on air pollution. The study analysed the factors that contribute to the increase

in the number of electric vehicles on Ukrainian roads, as well as the factors that hinder such an increase. Using the comparative legal method, the study investigated and compared legal provisions and approaches to regulating the rules of use of electric scooters and analogous electric vehicles in the laws of different countries.

Results and Discussion

Substantiation of the significance of developing electric transport and green transport infrastructure. Of all the types of vehicles, cars are the primary source of air pollution, considering their number. Most of them use various types of oil products and lubricants as fuel, which emit greenhouse and other toxic gases into the air as a result of combustion. Since it is impossible to reduce the number of motor vehicles, and their number is only growing every year, alternative fuels are being considered to reduce their pollution. The world has long faced the problem of excessive carbon emissions, which was addressed by the European Green Deal (2019), a package of policy initiatives proposed by the European Commission, whose main purpose is to make the European continent climate neutral by 2050 (Voronkova *et al.*, 2021).

On its way to full membership in the European Union, Ukraine, by signing the Association Agreement with the EU, committed to a series of reforms and measures, including those to protect clean air and reduce the harmful effects of CO₂ on the environment (Agreement on financing between Ukraine..., 2020), which, according to O. Gulac *et al.* (2019a), can be achieved through the development of environmentally friendly and energy-efficient vehicles. To achieve the goals of the green transition, the National Transport Strategy of Ukraine for the Period Until 2030 (2018) was developed, which prescribes a range of prior-

ity areas for the development and improvement of the transport sector, including the development of safe, environmentally friendly, and energy-efficient transport. By 2030, the share of cars with internal combustion engines on Ukrainian roads is expected to be substantially reduced, with this result to be achieved through the gradual replacement of urban passenger transport with electric analogues and an increase in the number of private electric vehicles.

Only by using clean energy sources and investing in advanced developments and technologies for the production, storage, and transmission of electricity can fuel dependence be reduced and the environment substantially improved. Specifically, the development of such technologies will be driven by the rapid development of electric transport. Cherep *et al.* (2019) and M. Vasylenko *et al.* (2024) pointed out that there is an increasing number of old cars with internal combustion engines on Ukrainian roads, which are not even remotely environmentally friendly. In 2023, the average age of cars in Ukraine was approximately 23.2 years, while in the EU it was only 11.8 years on average. According to O. Gulac *et al.* (2019b), one of the key areas for improving environmental governance in Ukraine is to encourage the participation of individuals in solving the country's environmental problems, specifically by motivating vehicle owners to reduce their car emissions.

Fundamental changes, such as the transition from internal combustion engines to electric ones, require not only a positive attitude of society, but also proper legislative support and motivation from the state. Despite the eased taxation for the import of electric vehicles into Ukraine, it is necessary to introduce additional incentives for the development of electric mobility, including the expansion of the network of electric charging stations, as H. Kostenko (2022) concluded in his

SWOT analysis of the prospects for the development of electric transport in Ukraine. According to the study, the key factors include an increase in the coverage of electric charging stations; the introduction of loan programmes for the purchase of new and used electric vehicles; and the extension of zero taxation and duty on the import of electric vehicles into Ukraine. According to N. Kukhtyk and V. Kukhtyk (2023), the issue of development and promotion of electric vehicles should be considered not only from the standpoint of increasing their number on the roads of Ukraine, but also the introduction of production of both electric vehicles and lithium-ion batteries, and an important issue is the modernisation of the energy sector and the installation of charging stations. Furthermore, special attention should also be paid to solving the problem of recycling or disposal of batteries. O. Marynets (2020) also addressed the problem of further processing and disposal, noting that due to the unresolved issue of processing such waste, there is a threat of its accumulation, which will create a negative environmental footprint of electric mobility. L. Golovko *et al.* (2021) investigated and analysed the best European practices for the management of this type of waste, as well as the requirements of Directive 2006/66/EU (2006) on batteries and accumulators and on waste from batteries and accumulators. It is important that the end user should be able to dispose of waste portable batteries or accumulators free of charge at a nearby special collection point.

Exploring this issue, S. Kidalov *et al.* (2020) point out that according to Directive 2012/19/EU (2012) of the European Parliament and Council on Waste Electrical and Electronic Equipment (WEEE), in Europe, obsolete or physically outdated equipment is classified as waste electrical and electronic equipment, which is collected, recycled,

and disposed of separately from other waste, while in Ukraine, for the most part, such waste is not separated from other waste.

The state of development of Ukrainian legislation on the regulation of light electric transport. One of the ways to achieve climate neutrality in the transport sector is to motivate drivers to change their private vehicles to electric public transport or personal light electric transport. This is the name proposed in Draft Law of Ukraine No. 3023 (2020) for electric devices such as electric scooters, electric unicycles, gyroscopes, electric bicycles, segways, and other analogous vehicles. A substantive study of the problem of regulating the rules for the use of electric scooters and analogous electric transport was prescribed within the Action Plan to Implement the Strategy for Improving Road Safety in Ukraine for the Period up to 2024 (2020), which, among its main areas, made provision for the analysis and improvement of legislation by developing legal acts regulating the use of personal light electric transport on the road network.

The first step in the legislative regulation of this issue was an attempt to expand the existing list of road users to include a new category – “users of personal light electric transport” – as well as to define their legal status and legislate their rights, obligations, and liability for violating traffic rules. In fact, it was proposed to introduce rights and obligations for PEV users, as well as liability analogous to that prescribed for cyclists (Draft Law of Ukraine No. 3023, 2020). The proposed amendments to the legislation provoked a broad discussion among researchers, who began to address its shortcomings and offer their suggestions for improving it. M. Spivak (2021) emphasised that the legislator did not make any proposals on the age at which PEVs can be driven and suggested that they should be allowed to be

driven from the age of 18. In her study of the legislative regulation of the rules for the use of PEVs, S. Panova (2023) concluded that each country has its own individual approach to determining the range of rights, obligations, and liability for users of such vehicles, as well as the approach to determining the age limit for being able to drive.

The absence of age restrictions for the use of electric scooters and analogous electric vehicles in the provisions of this Draft Law of Ukraine No. 3023 (2020) allowed children under the age of 14 to obtain unacceptable rights to move, e.g., along the edge of the roadway. Considering PEVs as an alternative to cycling, it is worth noting that according to clause 6.1 of the Road Traffic Rules (2001), people are allowed to ride a bicycle on the road from the age of 14. At the same time, cycling on sidewalks and pedestrian paths is allowed only for children under 7 years of age and under adult supervision.

The National Police of Ukraine, in its letters of comments to draft laws No. 3023 (2020) and No. 3023-1 (2020) (letters No. 3074/01/41-2020 dated 6 March 2020 and No. 4545/01/41-2020 dated 10 April 2020), proposed to prescribe certain age restrictions for the operation of electric vehicles by persons under 7 and 16 years of age (Conclusion of the Committee..., 2020). When regulating the issue of age limits for any category of road users, it is first and foremost necessary to consider the specific features of the national mentality, the level of legal awareness, and the economic well-being of the population. It would be advisable to prescribe in law the right to use a light personal electric vehicle, like a bicycle, from the age of 14, and a low-speed light electric vehicle, like a moped, from the age of 16. This approach to distinguishing between age restrictions and rules of use is consistent with the requirements of Directive of the European Parliament

and of the Council No. 2006/126/EU (2006). The implementation of the proposed changes will not only have a positive impact on the further development of this category of ecologically friendly transport but will also substantially relieve the road network of cars, which will reduce environmental pollution, especially air pollution, by reducing traffic congestion.

Furthermore, the terms and definitions used in the regulations should be clearly described, specifically, the Traffic Rules do not yet contain a definition of the term that would cover vehicles such as electric scooters. Y. Dzyubanovskyi (2023), analysing the proposed draft law, considers it necessary to add a definition of the term PEV to clause 1.10 of the Road Traffic Rules (2001), as it contains a list of all vehicles used in Ukraine. The Road Traffic Rules (2001) should also be amended to define the terms “motor vehicle”, “motorcycle”, and “moped” to cover those vehicles with an electric motor exceeding than 1 kW. Furthermore, the Law of Ukraine No. 2344-III (2001) should define terms related to light electric transport and add a new category of road users – users of light personal electric vehicles.

The definition of such vehicles appeared in the text of Draft Law of Ukraine No. 8172 (2022), which prescribed their division into two subgroups: light personal electric vehicles and low-speed light electric transport, but this draft law did not make provision for the creation of a separate category of road users for such vehicles. Due to the lack of a properly enshrined legal status of PEV users, according to S. Maslyanko (2023), it is impossible to determine their concrete legal capacity. Alternatively, the researcher proposes to equate them with the existing category of road users, such as cyclists or drivers. However, the idea of dividing into two subgroups makes sense only if the rights and responsibilities for their

exploitation are further delineated for each of them, which has not been done. Due to the lack of legislative regulation of the new subgroups, they have effectively taken over all the rights and obligations of vehicle drivers. This opinion is supported by A. Chervinchuk and Y. Atamenko (2022), who support the idea of dividing PEVs into subgroups, considering their technical characteristics, but with the subsequent determination of conditions for each of them for traffic on the road network. P. Khorobrykh (2021), analysing the current version of the Road Traffic Rules (2001), concluded that electric scooters and gyroboards are vehicles of category A1, and therefore, to drive them, one needs to have a driver's licence with the relevant category, and as for monowheels, they cannot be driven on the roads of Ukraine.

Analysing the judicial practice, specifically, cases No. 738/1232/23 (2023) and No. 521/2805/24 (2024), the courts, when issuing rulings, refer to the conclusion of the Resolution of the Cassation Criminal Court in Case No. 278/3362/15-к (2018), which addresses the distinction between the concepts of "motor vehicle" and "vehicle" in the current legislation. Thus, any vehicle with an electric motor of up to 3 kW is not a motor vehicle and therefore does not require a driver's licence to drive. M. Kolodyazhny (2021), analysing the current legislation, conditionally classified such users of the PEVs as pedestrians and addressed the fact that not classifying such a category as road users does not correspond to the spirit of the times and the modern road transport reality. Thus, the issue of legal regulation of the rules for the use of electric scooters and analogous electric vehicles is long overdue and needs to be resolved as soon as possible.

Despite the remarks in the scientific and expert opinion to the Draft Law of Ukraine No. 8172 (2022), which emphasised that "the

law is not a terminology dictionary, but a legal act of the highest legal force aimed at regulating the most important social relations. Definitions of terms are provided in the law not to record a particular concept, but to ensure a clear and unambiguous understanding of the provisions of the law that regulate the relevant social relations. Prescribing in the law the definitions of terms for which no rules have been established is devoid of legal meaning" (Conclusion of the Main Scientific..., 2022), it was voted and adopted without considering the shortcomings identified in it. Notably, the same terms were introduced in the Law of Ukraine No. 2344-III (2001), which also does not regulate the activities of such transport.

With the adoption of the Law of Ukraine No. 2956-IX (2023), the situation with the legal regulation of the rights and obligations, as well as liability of users of such electric wheeled vehicles, has not improved substantially, as Draft Law of Ukraine No. 3023 (2020), which envisaged such regulation, has not yet been put to a vote and is only being prepared for the second reading. Delays in the consideration of this draft law have led to a situation in which users of electric wheeled vehicles have been held liable for violations of the Traffic Code of Ukraine on a par with car drivers. Thus, for driving electric scooters and analogous electric vehicles while intoxicated or refusing to undergo a medical examination, users have been held administratively liable under Article 130 of the Code of Ukraine on Administrative Offences (1984), which prescribes sanctions in the form of a fine of UAH 17,000 and deprivation of the right to drive vehicles for a period of 1 year. Such penalties were applied, specifically, in case No. 498/89/24 (2024). However, if this Draft Law of Ukraine No. 3023 (2020) is adopted, the liability for such an offence would be prescribed in Article 127 of the Code of Ukraine on Administrative

Offences (1984) and would amount to a fine of UAH 680. An analogous conclusion was used to dismiss case No. 390/1734/23 (2023) due to the absence of an administrative offence for driving a wheeled electric vehicle. Until the legislation regulates the rights and obligations of users of vehicles equipped with an electric motor with a capacity of up to 3 kW, they cannot be subject to obligations that are not directly prescribed by law. Such actions violate the principle set out in Article 19 of the Constitution of Ukraine (1996).

To solve this problem, Draft Law of Ukraine No. 8082 (2018) was submitted, which prescribed the introduction of a new category in driver's licences – AM, which would include most vehicles classified as light electric transport. Returning to the question of whether users of wheeled electric vehicles should have a driver's licence, it is worth referring to the international practices. Legislative regulation of the rules for the use of wheeled electric vehicles makes provision for two subgroups, one of which is required to have a driver's licence, and the other is not. That is, based on the terminology of the Law of Ukraine No. 2956-IX (2023), it is logical to assume that to use vehicles classified as a subgroup "light personal electric vehicle", i.e., those equipped with an electric traction motor of up to 1,000 W and a maximum speed of up to 25 km/h, a driver's licence is likely to be unnecessary, and for those classified as a subgroup of "low-speed light electric vehicle", a driver's licence of category A1 is likely to be required, or, in case of adoption of Draft Law of Ukraine No. 8082 (2018) – AM.

Problems with the development of electric transport in Ukraine. Despite the adoption of the Laws cancelling taxation (Law of Ukraine No. 1660-IX, 2021) and customs duties (Law of Ukraine No. 1661-IX, 2021) for the import of electric vehicles, the cost of electric vehicles

is still substantially higher than their internal combustion engine counterparts. The absence of government targeted loans for the purchase of electric vehicles is the main reason many more conventional cars are still purchased in Ukraine than electric ones. The absence of statutory regulation of incentives for switching to environmentally friendly vehicles substantially hinders the development and increase of such vehicles on the country's roads. Thus, the issue of allowing such vehicles to drive in public transport lanes has been raised on several occasions, but this initiative has not been further developed. Theoretically, the situation should be slightly better with the regulation of parking spaces for such vehicles, as the Law of Ukraine No. 2956-IX (2023) stipulates that at least half of the parking and storage spaces for electric vehicles, as well as charging spaces, must be provided during the new construction of multi-storey residential buildings. However, firstly, this rule applies only to new construction and does not prescribe the obligation to modernise old buildings, and secondly, the relevant changes have not been made to the State Construction Norm (SCN). Thus, SCN B.2.2-12:2019 "Planning and Development of Territories" (2019) does not require the developer to provide separate parking spaces for electric vehicles, and SCN B.2.3-15:2007 "Parking lots and garages for cars" (2007) requires at least 5% of the total number of parking spaces to be allocated for electric vehicles.

The situation is no better with the development of the electric charging network, even though the same Law of Ukraine No. 2956-IX (2023) stipulated that state and local authorities should have developed and approved programmes for the development of electric charging infrastructure and made provision for places for charging electric vehicles in existing car parks, garages, and other parking areas by 31 December 2023, and that

these programmes, in most cases, still remain only on paper. Furthermore, despite the opportunity to install such stations on the adjacent territory of condominium associations, without financial support from the state or a targeted loan programme, residents are not interested in implementing such solutions. The increase in the cost of electricity (Resolution of the Cabinet of Ministers of Ukraine No. 632, 2024) also hinders the development and promotion of electric transport, and the lack of any programmes to reduce its cost for charging a car makes such transport less and less cost-effective for users.

Considering the problems with the regulatory framework for light personal electric vehicles, the growth in the number of both electric vehicles and other electric vehicles on Ukrainian roads may not only stop in the near future, but their number may even decrease. The short service life of electric vehicle batteries motivates drivers to change their vehicles more often, and after the first experience of driving such vehicles and facing all the problems, some users may return to internal combustion engines.

Goals and steps to achieve climate neutrality in the transport sector. On 30 May 2024, the Cabinet of Ministers of Ukraine approved the Strategy for the Formation and Implementation of State Policy in the Field of Climate Change for the Period Until 2035 and approved an operational plan for its implementation in 2024-2026 (Decree of the Cabinet of Ministers of Ukraine No. 483-p, 2024). Specifically, during this period, it is planned to develop and adopt the regulations necessary to implement this strategy, as well as to ensure the implementation of the provisions of EU climate change law. M. Dutov (2024) performed a detailed analysis of this legislation. If Ukraine joins the EU, it will be obliged to follow all these regulations, including the European

Climate Law (2021), and therefore any new legislative initiatives in Ukraine to reduce environmental pollution will likely be analogous to those already in place in Europe. The EU's transport policy envisages a half-cut in the use of conventional fuelled transport in urban areas by 2030, and a complete phase-out by 2050. In Ukraine, an analogous provision is prescribed in the Law of Ukraine No. 2956-IX (2023). In terms of personal transport, most European countries have or have had significant incentives for switching to electric vehicles. M. Vasylychenko (2024), analysing the best European practices in the field of sustainable transport development, draws special attention to the experience of Sweden, which can be applied in Ukraine. Specifically, the rapid, coordinated, and most importantly, cost-effective expansion of green transport infrastructure with a wide coverage of charging stations.

When analysing the European experience of developing environmentally friendly transport, it is worth addressing the incentives that states introduce to drivers to motivate them to use electric transport. Thus, in Norway, for a long time, electric cars could charge for free, park in municipal car parks and drive on toll roads and were entitled to use public transport lanes. Over time, after a substantial increase in the number of such vehicles, the incentives were reduced, but it is still much cheaper for electric vehicles to use toll roads and parking lots than internal combustion vehicles. Permission to use public transport lanes on some roads has also been cancelled, as has free charging. Environmentally differentiated fares and parking fees are an effective way to develop and promote electric transport and reduce local air pollution. The fact that petrol and diesel cars pay more than electric cars is in line with the polluter pays principle that underpins their national transport plan. Norway also provides

reduced taxes and fees and affordable loans for the purchase of environmentally friendly vehicles (Norwegian Ministry of Transport, 2021a; 2021b; 2023). In France, apart from free parking and the right to drive in a public transport lane, there is also an environmental bonus of up to EUR 7,000 for the purchase of an electric vehicle, and a substantial conversion bonus of up to EUR 6,000 for exchanging one's old car with an internal combustion engine for an electric vehicle that can be combined with an ecologically friendly one (Resolution of the Cabinet of Ministers of France No. 2022-1761, 2022). As for Ukraine, apart from the absence of taxes and fees when buying an electric car, no other substantial incentives have been provided, and therefore achieving the goals of the National Transport Strategy of Ukraine for the Period Until 2030 (2018) to reduce emissions from mobile sources of greenhouse gases into the atmosphere by up to 60% (from the 1990 level), and total pollutant emissions by up to 70% (from the 2015 level), seems problematic.

Analysing the current state of Ukrainian legislation, it can be concluded that there are no effective incentives for the development and increase in the number of electric vehicles. Considering the best European experience, including that of France and Norway, effective incentives include financial and non-financial incentives, and improved legislative regulation. The former include monetary subsidies for the purchase of an electric vehicle or the exchange of a car with an internal combustion engine for an electric one; continuation of the zero taxation and customs duty policy; introduction of state loan programmes for those who do not own a car and wish to purchase an electric one; reduction or partial compensation of the cost of charging a car during daylight hours. Non-financial – free parking and travel on toll roads, if any, as well as permission to drive in the

public transport lane; increasing the coverage of electric charging stations by requiring their installation in all public authorities where such a need is supported by a petition of citizens that has received a sufficient number of votes.

Legislative changes should include the introduction of an environmental tax on the use of cars with internal combustion engines, depending on the level of pollution, as well as increased administrative liability for operating vehicles with excessive levels of pollutants in exhaust gases, as prescribed in Article 81 of the Code of Ukraine on Administrative Offences (1984), and the procedure for measuring them by the National Police. It is also important to legislate to allow upgrading a car from petrol/diesel to electric at special service centres, to ban the import of vehicles with internal combustion engines older than 20 years into Ukraine, and to bring state building codes in line with the requirements of the Law of Ukraine No. 2956-IX (2023).

In addition, the lack of clear rules for the use of electric scooters and analogous electric vehicles substantially reduces their popularity and number on Ukrainian roads. Draft Laws of Ukraine No. 3023 (2020) and No. 8082 (2018), which should regulate this, have not yet been adopted and require substantial changes and amendments, specifically due to the need to consider Ukraine's international obligations related to the implementation of the Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part (2017), including the implementation of Directive 2006/126/EU of the European Parliament and of the Council (2006). The Draft Law of Ukraine No. 3023 (2020) should make provision for a distinction between the rights and obligations of users of these two separate categories of vehicles,

adapting it to the terms introduced in the Law of Ukraine No. 2344-III (2001). At the same time, Draft Law of Ukraine No. 8082 (2018) should prescribe a list of vehicles that will not be classified as AM, e.g., those with a maximum design speed of less than or equal to 25 km/h. In this case, all light personal electric vehicles would be exempt.

Overall, the rules for the use of vehicles that fall under the exceptions should be equated to those for bicycles, except for some changes. Thus, to adapt the rules for them with requirements for the equipment of such vehicles, to allow them to drive on the sidewalk, as well as in residential and pedestrian areas at a speed close to the pace of pedestrians. As for low-speed light electric transport, they should be banned from sidewalks and bicycle paths, as well as pedestrian zones, and allowed only on roads with a maximum speed of 50 km/h.

Despite the ecologically friendly nature of the electric car itself, electric mobility still has a negative environmental footprint. First, this is caused by the generation of electricity needed to charge such a car, although by developing renewable energy in parallel, air pollution in this process can be minimised or avoided altogether (Taljegard, 2019). In developing a network of electric vehicle charging stations, it is advisable to develop solar and wind power plants in parallel, which will be able to generate clean electricity to charge such vehicles. The introduction of a special reduced daytime tariff for green electricity will not only help to avoid overloading the power system during peak hours, but also solve the problem of excess electricity during the day and its shortage at night. Secondly, pollution from an electric car results from the accumulation of waste from spent batteries. However, the development and implementation of new battery production technologies will not only increase the service life of batteries, but also make the process of reuse, recycling,

recovery, or disposal more efficient. R. Zhang and S. Fujimori (2020) also point to the economic attractiveness of transport electrification as an opportunity to mitigate economic losses due to the introduction of a carbon tax. Thus, despite certain challenges on the way to mass adoption of electric transport, the results obtained in the end, such as reduced greenhouse gas emissions, improved air quality, reduced noise pollution, fuel independence, and a series of other benefits from replacing old vehicles with electric analogues, are worthy of government support and investment.

Conclusions

This study analysed the current Ukrainian legislation governing the use of electric vehicles. A review of existing regulations, draft laws, and Ukrainian court practice on bringing users of such vehicles to administrative responsibility has revealed some legal conflicts and norms that hinder further development and promotion of such vehicles. Specifically, the level of liability for some violations, such as driving an electric scooter while intoxicated, is analogous to that for driving a car, although not only is a driver's licence not required, but there are no age restrictions. It was also found that the legislation does not clearly define the range of rights and obligations of users of such electric vehicles, nor does it make provision for a separate category of road users, since it is not only impossible but also inappropriate to classify them as existing ones. Furthermore, the legislation does not prescribe the specifics of the movement of such vehicles on roads and sidewalks, including the rules for stopping and parking them.

As a result of the study, recommendations were made to address the identified legislative shortcomings and ideas for the promotion and further development of this mode of transport, which can be used both to draft a new law and to

amend the ones under consideration. It was found that it would be advisable to amend Draft Law No. 8082 to revise the rights and obligations of all categories of road users, to set restrictions on the age of use of certain vehicles, including electric scooters, electric bicycles, and other electric vehicles that do not belong to motor vehicles and should not fall under the proposed category of AM.

The analysis of the Draft Law No. 3023 identified terminological gaps that need to be addressed by covering all possible types of electric vehicles, with their users being classified into different categories of road users, as well as adding a new category – users of personal light electric transport.

Considering the problem of electric transport in the context of the implementation of the Ukrainian Green Deal, it is worth noting that an effective approach to achieving climate neutrality

is to introduce the “polluter pays” principle. That is why the effectiveness of the state’s measures to implement the green transition lies in both stimulating the use of electric vehicles and introducing additional taxes and fees for the use of cars older than 20 years.

The problems with the recycling or disposal of batteries mentioned in the study and the impact of the increase in the number of electric vehicles on the energy system of Ukraine require further research and analysis.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Електротранспорт як один з шляхів досягнення кліматичної нейтральності в Європі: проблеми розвитку та нормативно-правового регулювання в Україні

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Анотація

Дослідження шляхів вдосконалення нормативного регулювання використання зелених технологій актуалізується загостренням кліматичної кризи, яка спонукає до зменшення викидів парникових газів. Мета дослідження полягала у пошуку та описі прогалин чинного законодавства щодо розвитку електротранспорту, а також дослідженні доцільності та ефективності запропонованих змін у цій сфері, які покликані зменшити негативний вплив транспорту на екологію. Методика наукового дослідження включала в себе формально-логічний, формально-правовий, порівняльно-правовий, а також інші загальнонаукові та спеціально-наукові методи пізнання, огляд діючих Законів України та поданих на розгляд до Верховної Ради України законопроектів, які мають на меті удосконалити чинне законодавство щодо електротранспорту, в тому числі врегулювати питання використання персонального легкого електротранспорту. В результаті аналізу діючого законодавства та поданих на розгляд законопроектів виявлено, що деякі закони містять норми, які гальмують розвиток електротранспорту, а прийняття низки проєктів законів може негативно вплинути на економічну вигідність та зручність користування таким транспортом. Надані рекомендації, на основі підходів країн ЄС, щодо популяризації та мотивації водіїв змінювати свої транспортні засоби з двигуном внутрішнього згорання та електричні. За результатами дослідження була сформована низка пропозицій щодо усунення виявлених проблем та недоліків чинного законодавства. Зокрема, запропоновані способи стимулювання водіїв до зміни власного транспортного засобу з двигуном внутрішнього згорання на електричний, проаналізовані шляхи розвитку та популяризації персонального електротранспорту, досліджений поточний стан розвитку зеленої інфраструктури та доступності пунктів зарядки електротранспорту, а також запропоновані підходи щодо вирішення питання утилізації акумуляторів електромобілів. Практична цінність статті полягає у можливості подальшого використання отриманих результатів дослідження та сформованих у ній висновків для усунення прогалин чинного законодавства шляхом подання законопроекту зі запропонованими відповідними змінами

Ключові слова: зелений перехід; екологічний транспортний засіб; безпека дорожнього руху; легкий персональний електротранспорт; розвиток зеленої інфраструктури; пункти зарядки електромобілів; нульове забруднення



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Legal and regulatory framework of environmental initiatives in the Czech Republic as a potential model for green policy implementation in Eastern Europe

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Abstract

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EU countries, in particular the Czech Republic, are developing structural mechanisms to influence the development of their economic model in the environmental sphere. The study of the Czech Republic's experience in implementing environmental reforms is relevant for understanding their impact on the country's economic sustainability and fulfilment of international obligations. The purpose of the study was to analyse the regulatory framework and results of the reforms implemented in the environmental policy of the Czech Republic and their impact on the country's further development. The results were obtained using special legal methods, such as terminological, formal legal and special legal methods. Identification of the main environmental problems, reformed economic sectors and the

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intensity of human activity's impact on nature, determination of stakeholders in the changes and identification of the problems solved allowed us to conclude that the measures taken were rational and varied in their effectiveness. The analysis of the environmental and regulatory framework of environmental policy in the Czech Republic and the adopted environmental legislation, such as CO₂ emission quotas, rational use of natural raw materials, waste management, green taxes, benefits and subsidies for the functioning of markets for environmental goods and services, showed the undeniable advantages of an environmentally oriented economic model over the one focused on profit. The study found that the application of such measures helps to reduce the negative impact on the environment, improve the quality of life of the population and ensure sustainable economic development. Incentives for companies that implement environmentally friendly technologies stimulate innovation and reduce production costs. Legislation plays a significant role in this, in particular, the Law of the Czech Republic No. 165/2012 Sb. The results of the study can be used by researchers from around the world who study the implementation of new methods of environmental policy

Keywords: greening; energy saving; sustainable development; integrated approach; pollutants; green energy

Introduction

Most modern countries have a unique set of environmental problems and mechanisms for solving them. The current system of selling natural resources and manufacturing products has a destructive impact on biological systems. Therefore, it is necessary to improve standards and principles of environmental management, and regularly review environmental policy mechanisms and quality criteria for environmental impact assessment.

The problem of the interaction between the economy and the environment is typical for all countries of the world, and the Czech Republic is no exception. The rapid increase in the level of material well-being in exchange for the quality and length of life of the population through the development of industrial capacities and savings on environmental protection measures leads to improved economic growth at the cost of ecosystem degradation. At the same time, dependence on and impact on the environment is not considered by economics as a science. In this context,

the role of law, which can establish imperatives that may contradict market logic, is increasing.

The willingness of states to neglect the growth of economic characteristics for the sake of a "green future" is studied in a research article by E. Kyselá (2015) from Charles University in Prague. This paper identifies the factors that influence the acceptability of environmental policies. These factors include concern for the environment, the role of the state in environmental protection and trust in the country's political course. The study showed, on the one hand, that the population is interested in solving environmental problems, and at the same time, there is a low willingness to make economic sacrifices. The paper concludes that these two indicators play an important role in the effectiveness of the practical functioning of the reformed environmental policy in the Czech Republic. The commitment of the population to the economical use of natural resources can contribute to the effectiveness of the

implementation of the new environmental model and its beneficial impact on the functioning of a sustainable economy.

I. Cabelkova *et al.* (2021) have taken a more thorough approach to the issue of public support for the government's environmental policy in the Czech Republic. Their research examines factors related to public perceptions of climate change and the impact of environmental policies along with anthropogenic activities. The results showed that older people were less likely than other age groups to have information about the subject of the study and to be willing to act. The authors examine the hypothesis of the influence of state media and Internet technologies, which has not been sufficiently confirmed. The article does not fully address the issue of further research aimed at educating the population using eco-promotion methods.

A new approach to economic development in harmony with the Czech Republic's environmental policy is the introduction of elements of a closed-loop economy. This type of production is a green alternative to the linear economy. The circular economy is based on the reuse and recycling of resources and minimising waste. The study by L. Švecová *et al.* (2020) addressed the need to update the industrial policy of the Czech Republic and a new set of measures within the framework of the closed-loop economy package. The authors describe the positive dynamics of environmental indicators under the influence of elements of the new economic policy, which considers the requirements of modern environmental standards. The article describes the main enterprises of the country that have fully implemented the EU standards. The impact of environmental policy on ecosystem services in the Czech Republic was described by J. Daněk (2017). The paper discusses the results of the positive impact of the new environmental policy on the restoration of ecosystem

services in the region. The study describes the instruments of influence on industrial emissions and production standardisation and shows the relationship between the improvement of economic stability of the Czech Republic's regions and the quality of ecosystem services.

Environmental issues such as climate change are global in nature. Overcoming global environmental problems is impossible without the participation of neighbouring countries. The negative impacts of climate change on economic growth in the Czech Republic are considered by B. Mats (2019). The author assesses the institutional cooperation between the Czech Republic, Hungary, Slovakia and Poland in developing joint protocols to combat the effects of climate change. The Czech Republic is a member state of the European Union with a set of unique environmental and economic characteristics. The European Environment Agency (2020) regularly issues reports on the state of the EU's environmental sector. The most recent report was released in 2020 and was titled "Europe's Environment: state and prospects – 2020". Based on the results of such documents, changes are made to the EU's environmental policy and adjustments are made to interstate environmental relations. The study of the results of the interaction of neighbouring countries in the European Union allows us to reveal the impact of environmental reforms on the sustainable development of the Czech Republic.

The study aimed to examine and analyse environmental policy reforms in the Czech Republic, their compliance with the EU green policy framework, and their impact on the development of a sustainable economy. To determine the impact of the new environmental policy on the dynamic changes in the Czech Republic's economy, it is necessary to examine the region's environmental problems, the goals of environmental policy

reforms and the results achieved. To better understand the specifics of the Czech Republic as a member of the European Union, the results and legislative framework of environmental reforms will be compared with the initiatives of the EU candidate country Ukraine. This helped to identify the challenges and prospects that Ukraine will have to face on its way to implementing a European style “green policy”.

Materials and Methods

A set of general scientific methods of scientific knowledge, such as analysis and synthesis; induction and deduction; analogy; and abstraction, were used in the study. Analysis and synthesis were used to study the links and relationships emerging in the process of implementing environmental policy reforms. The abstraction was used to focus on the results of the reforms and their contribution to the formation of a stress-resilient economic system. Induction and deduction methods were used to study and determine the experience of environmental policy reforms carried out by the EU countries; assess their consequences; and analyse the challenges that the Czech Republic will face on the way to forming a stress-resistant economic system. The systematic approach was used to consider the results of the environmental policy of the Czech Republic in terms of the integrity of the many reforms implemented and the synergy resulting from their implementation, which ensures the stress resistance of the economic system.

The first stage of the study identified areas of environmental policy and reform that have a significant impact on the formation of a stress-resistant economic system in the Czech Republic and are priorities in the framework of environmental cooperation between European countries. The study used data from the European Union Statistical

Office, the European Environment Agency, the Czech Statistical Office, the Czech Environmental Information Agency, the official website of the European Union, the official website of the Organisation for Economic Cooperation and Development, and the European Investment Bank. Data analysis and evaluation of indicators were based on the following documents:

Data analysis and evaluation of indicators were based on the following documents: State Environmental Policy of the Czech Republic until 2030 with a perspective until 2050 (2021), Statistical Yearbook of the Czech Republic – 2021 (Czech Statistical Office, 2021) as well as the report “Air Quality in Europe 2021” (2021). Additionally, the 2019 review of the implementation of EU environmental measures in the Czech Republic country report (European Commission Staff Working Document No. SWD/2019/119 final, 2019) and the briefing “Bathing water quality in Europe in 2021” (2021) were employed. The briefing “European Environment – State and Outlook 2020: Knowledge for the Transition to a Sustainable Europe” (European Environment Agency, 2020) and the country report on the implementation of the 2022 Environmental Protection Project – Czech Republic (European Commission Staff Working Document No. SWD(2022) 264 final, 2022) were also considered. Finally, the report “The European Environment – State and outlook 2020: Knowledge for the Transition to a Sustainable Europe” (2020) was used. Certain legal acts of Ukraine and the Czech Republic were taken for comparative analysis, namely, the Law of Ukraine “On Alternative Energy Sources” (2003), the Law “On Amendments to Certain Laws of Ukraine on the Restoration and Green Transformation of the Energy System of Ukraine” (2023), Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Restoration and Green Transformation of the

Energy System of Ukraine" (2023), Draft Law "On Amendments to Certain Laws of Ukraine on the Restoration and Green Transformation of the Energy System of Ukraine" (2023), Law "On Supported Energy Sources and on Amendments to Certain Acts" (2012), "Resolution No. 16/2016" (2016).

The second stage involved analysing the reforms implemented in the Czech Republic in recent decades; assessing the results achieved; presenting comparable data on the state of the objects under study in the EU; and identifying areas of work to ensure the achievement of the planned results. The Czech Republic's green policy legislation was compared with the similar Ukrainian regulatory framework.

The third stage of the research was a comparison of the legislative frameworks of the Czech Republic and Ukraine on the regulation of green energy development. This kind of research required the use of several special legal methods of scientific knowledge. One of the main methods was the formal legal method, which was used to trace the relationship between the legislative norms on the development of alternative energy sources and their actual implementation. The next special method was the comparative legal method, as mentioned above, at this stage the legal framework of the Czech Republic and Ukraine was considered, so it was necessary to compare specific legislative provisions of the mentioned countries.

At the final stage, the results of the study are considered in terms of their scientific value; a search for alternative points of view substantiating the author's approaches to solving the problems of reforming the environmental policy is carried out; conclusions are formulated and substantiated; directions for further research are presented, which will expand the range of tools, measures and reforms implemented to ensure the stress resistance of the economic system of the Czech Republic.

Results

The formation of a centralised environmental policy for all EU member states took place in the late 20th and early 21st centuries, during the rapid development of the industrial sector and the maximisation of natural capital. This was the first attempt to curb the growing trend of environmental degradation. Environmental policy integration is an ongoing process of introducing an environmental philosophy into the functioning of non-environmental structures, such as agriculture, transport, and the urban economy. Medium-term programmes are the basic regulatory documents for the practical side of the European Union's environmental policy. These programmes are a political and legal document that defines a set of environmental and political measures for the near term, considering the feasibility of its implementation. The main reporting document of the Czech Republic on the current state of the environment is the report of the European Environment Agency, which is presented to the public every 5 years. The latest and most up-to-date report was presented in 2020 (SOER) (European Environment Agency, 2020). The report helps the European Union's governing bodies make decisions on modernising European environmental policy. This flexibility in regular revisions of the environmental strategy contributes to the improvement of environmental performance in the EU member states. The 2020 report builds on the findings of the previous report and draws its conclusions.

In the Czech Republic, the document that incorporates the conclusions and forecasts of SOER 2020 is the State Environmental Policy of the Czech Republic 2030 with a vision to 2050 (2021) (SEP2030), which formulates environmental objectives and addresses current environmental issues. SEP 2030 is a framework document whose planning horizon is not limited to 2030, it formulates

a comprehensive vision of the State Environmental Policy of the Czech Republic until 2050.

The main directions of the Czech Republic's environmental policy are as follows: more effective implementation of legislation; better information through an improved knowledge base; reasonable investments; and integration of environmental interests into other policies (Directive of the European Parliament and of the Council No. (EU) 2015/2193, 2015). Priority goals include rational use of natural resources, protection of natural landscapes, a safe environment for the population, combating climate change, and improving air quality.

The main problems identified for the Czech Republic in the implementation of environmental policy and EU legislation that need to be addressed based on the results of the Environmental Impact Review (EIR) (European Commission Staff Working Document No. SWD(2022) 264 final, 2022; Environmental Implementation Review, 2022) are as follows:

- intensifying efforts to create the necessary infrastructure and conditions for the transition to a circular economy;
- improving air quality in critical areas of the country, especially in urban areas, and reducing the burden on water and natural ecosystems;
- establishing transparent and efficient permitting procedures necessary to ensure compliance with EU legislation, especially concerning public participation and access to justice.

Air quality remains a serious problem in the Czech Republic. Despite the overall improvement in air quality and the steady decline in air pollution, the health of people living in the Czech Republic is still at risk of exceeding the limits for certain pollutants (e.g. particulate matter, nitrogen dioxide, ozone). The data published by the European Environment Agency estimates the

number of premature deaths related to exposure to particulate matter (in this case $PM_{2.5}$), nitrogen dioxide (NO_2) and ozone (O_3) in the Czech Republic at 8500, 190 and 460 deaths, respectively (Air quality in Europe..., 2021). The main cause of dirty air in the Czech Republic is anthropogenic activity. The combustion of fossil fuels and the operation of internal combustion engines releases a huge number of pollutants into the atmosphere, such as particulate matter (PM_{10} and $PM_{2.5}$), nitrogen dioxide (NO_2), ozone (O_3) and carbon dioxide (CO_2), methane (CH_4) and various heavy metals (Air quality in Europe..., 2021). Polluted air causes direct economic damage to the population and the country's economy. Dirty air is a source of a wide range of diseases in humans, which affects the ability of the population to work and increases the number of people incapacitated by disability. In addition, acid rain from hazardous emissions causes economic damage to the agricultural and municipal sectors, destroying plants and damaging urban infrastructure. Particulate matter concentrations in the air show a downward trend; for example, the level of fine particulate matter exceeding the European Union limit value in the Czech Republic decreased from 16% to 5% (Directive of the European Parliament and of the Council No. (EU) 2015/2193, 2015). The energy and agricultural sectors also demonstrate a reduction in CH_4 emissions. Thus, it is possible to state that the Czech Republic has made progress in reducing the concentration of pollutants in the last decade.

The total emissions of the main pollutants into the atmosphere, according to the statistical yearbook of the Czech Republic published in 2021 (Czech Statistical Office, 2021), are shown in the graph (Fig. 1). The information on pollutant emissions currently available from open sources, such as the Czech Statistical Office, is limited to 2019. The data is based on the country

report on the implementation of the environmental project for 2022 – Czech Republic, which contains information for 2020 inclusive (European

Commission Staff Working Document No. SWD (2022) 264 final, 2022), which is reflected in the study materials.

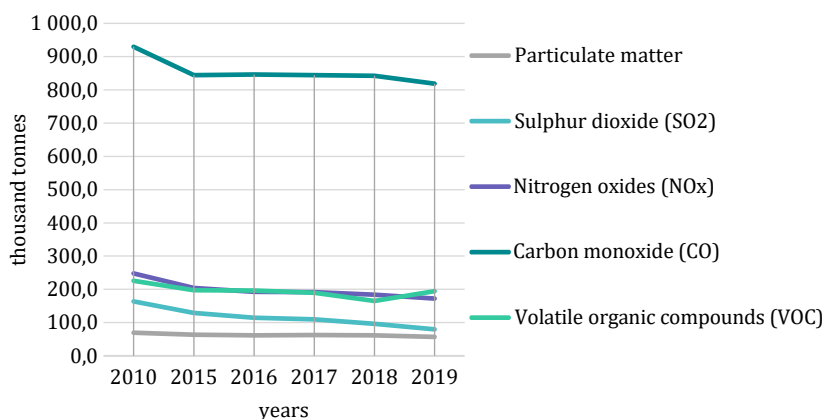


Figure 1. Total emissions of major pollutants, 2015-2019

Source: European Commission Staff Working Document No. SWD(2022) 264 final (2022)

In addition, the impact of environmental policy on air quality standards has been evident since 2000 in all sectors, including nitrogen dioxide emissions. The dynamics of the indicators demonstrate the effectiveness of the New Directive on National Emission Limit Values (The EU Environmental Implementation..., 2019) for sulphur dioxide, nitrogen oxides, ammonia and particulate matter. Additional actions are needed to ensure full compliance with EU air quality legislation in the Czech Republic, with the following as priorities: implementation of measures to reduce emissions from major sources as part of the National Air Pollution Control Programme (NAPCP); ensuring full compliance with EU air quality standards and maintaining a downward trend in air pollutant emissions to reduce their adverse health and economic impacts to reach the values recommended by the World Health Organisation (WHO) in the future.

An important area of work to ensure a stress-resilient economic system is to reduce

greenhouse gas emissions and transition to a climate-neutral and sustainable economy. The EU is working comprehensively to reduce greenhouse gas emissions and transition to a climate-neutral and sustainable economy, as well as to address the inevitable consequences of climate change. EU climate legislation encourages the reduction of emissions from power generation, industry, transport, the maritime sector and fluorinated gases (F-gases) used in products.

The Czech Republic has an integrated National Energy and Climate Plan (NECP) for 2021-2030, according to which the national goal for 2030 is to reduce greenhouse gas emissions by 30% compared to 2005 levels (European Environment Agency, 2020). The Czech Republic adheres to EU regulations on combustion plants and emissions from passenger cars and light-duty vehicles (the Medium-duty Combustion Plant Directive) (European Environment Agency, 2018a). This innovation reduced emissions from cars and

harmonised performance with European standards. The dynamics of pollutant emission reduction demonstrate the effectiveness of the measures taken to ensure public access to clean air at the local, regional and national levels. However, the greenhouse effect that has already been formed will not be compensated for several decades. The ability of these substances to create a greenhouse effect has led to climate change on a global scale.

Adaptation measures to the adverse effects of climate change are very important for the European Union and its member states. To combat climate change, the European Union has developed an international emissions trading system – the EU Emissions Trading System (EU ETS) (European Environment Agency, 2023). It covers the energy, industrial and aviation sectors and is used in all EU member states. From 1990 to 2020, the Czech Republic demonstrated a 43% reduction in greenhouse gas emissions in the country, as illustrated in the figure (Fig. 2). The Czech Republic has developed and successfully implemented several sectoral strategies at the state level to ensure low greenhouse gas emissions. The EU Strategy on Climate Change

Adaptation, adopted in 2013, has enabled a comprehensive, coherent approach to the problem and ensured highly effective coordination between EU member states. The goals and actual greenhouse gas emissions of the Czech Republic according to the Effort Allocation Decision and the Effort Allocation Regulation are presented in the figure (Fig. 3).

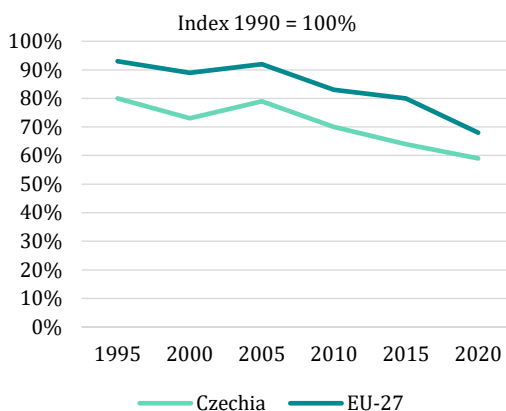


Figure 2. Changes in total greenhouse gas emissions in the Czech Republic, 1990-2020

Source: European Environment Agency (2015), OECD, (2018), European Commission Staff Working Document No. SWD(2022) 264 (2022)

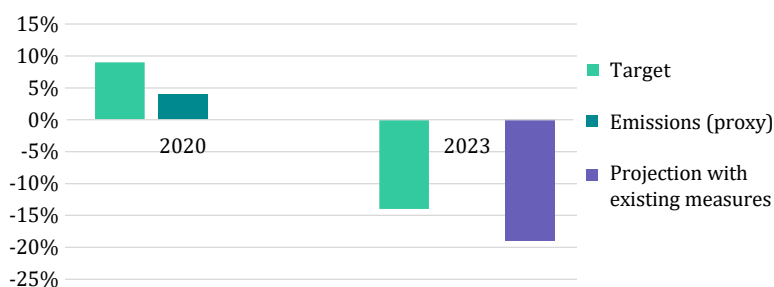


Figure 3. Goals and emissions of the Czech Republic following the Effort Allocation Decision and the Effort Allocation Regulation

Source: European bathing water quality (2021), European Environment Agency (2023)

Based on the Climate Change Adaptation Strategy, the Czech Republic adopted the National

Action Plan for Climate Change Adaptation in 2017 (European Environment Agency, 2023). The

strategy covers such environmental policy sectors as forest management, water regime, agricultural land, biodiversity, transport, industry, energy, and emergencies. The total revenue from the sale of emission permits under the EU emissions trading system over the past five years has amounted to approximately 566 million EUR, of which 37 million EUR was generated in the Czech Republic. At the same time, 88% of the proceeds were spent on climate and energy goals, which contributed to strengthening the economy of the Czech Republic (European Environment Agency, 2015; OECD, 2018). Positive changes in the environment and economy caused by the impact of the new environmental policy have affected the industrial and municipal waste sectors. After the European Union adopted the Circular Economy Action Plan in 2015 (Eurostat, 2020), the main tasks are:

1. Make environmentally friendly products the norm in the EU;
2. To expand the purchasing power of consumers;
3. Focus efforts on sectors that use the most

resources and have high circular economy potential, such as electronics, batteries and automobiles, packaging, plastics, textiles, construction, food waste, water;

4. Guarantee less waste;
5. Make waste recycling accessible to the public;
6. Improve the infrastructure of regions and cities;
7. Lead global efforts on the circular economy.

In 2016, the reuse of materials in the Czech Republic was 7.6%, but this figure has been steadily increasing and by 2020 it was already 13.4% (European Commission Staff Working Document No. SWD(2022) 264 final, 2022; European Environment Agency, 2023). In 2020, the Czech Republic's performance in terms of resource recycling (1.19 euros/kg) was below the EU average (2.09 euros/kg). A comparison of EU and Czech productivity in the period from 2010 to 2020 is shown in the figure (Fig. 4). Resource productivity is defined as the ratio of gross domestic product to domestic material intensity.

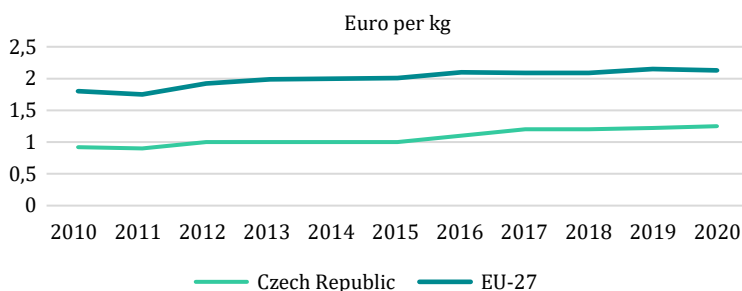


Figure 4. Comparison of waste recycling productivity in the EU and the Czech Republic 2010-2020

Source: European Commission Staff Working Document No. SWD(2022) 264 (2022), European Environment Agency, (2023)

The philosophy of treating waste as a valuable resource has not only reduced the negative impact of waste on the biosphere but also created new jobs. In the hierarchical model of household

waste management in the Czech Republic, the model of waste prevention is at the top of the list. This is followed by preparation for reuse without recycling, reuse with recycling, ecological

disposal (with a minimum ecological footprint on the ecosystem when incinerated) and landfill disposal. The economy was positively impacted by environmental policy in recycling household and industrial waste. The creation of new jobs and environmental taxes have contributed to the formation of a stress-resilient economy. In 2015, 8,000 jobs were created related to the recovery of recyclable materials from mixed waste types at pretreatment plants (Salveti, 2018). The new environmental policy of the Czech Republic effectively uses economic instruments to build the sustainability of the national economy in the process of transition to a circular economy. Taxes are applied on landfilling, incineration and storage of waste at landfill sites. Green subsidies are provided to businesses and households for proper waste sorting and recycling.

The EU Ecolabel and the Eco-Management and Audit Scheme (EMAS) are licensed organisations that assess the transition of the public economy to a circular economy. They also show the extent to which companies are committed to eco-policy and circular economy. As of September 2021, 5,187 products and 22 licences under the EU ecolabel scheme were registered in the Czech Republic out of 83590 products and 2057 licences

in the EU, which indicates a low use of these licences (Salveti, 2018; European Commission Staff Working Document No. SWD(2022) 264 final, 2022). The number of companies in the Czech Republic that have adopted a strategy of increased resource efficiency is gradually increasing, as there are 18 organisations registered with EMAS. The tendency to involve a wide range of stakeholders for better financing of eco-innovation also continues. The high motivation of companies for environmental reforms opens the prospect of a confident full transition to a circular economy in the coming decades. The transition process could be faster if the Czech Republic reduces its dependence on fossil fuels, as highlighted in the Environmental Performance Review 2018 (European Environment Agency, 2019). The Czech Republic's use of coal as an energy resource not only hinders the greening of production but also creates obstacles to a successful early transition to a circular economy. Specific data from Eurostat and the Environmental Policy Implementation Report show that household waste recycling in the Czech Republic accounts for 34% of all waste, while the EU average is 46%. A comparison of waste recycling rates in the Czech Republic and the European Union for 2010-2020 is shown in the figure (Fig. 5).

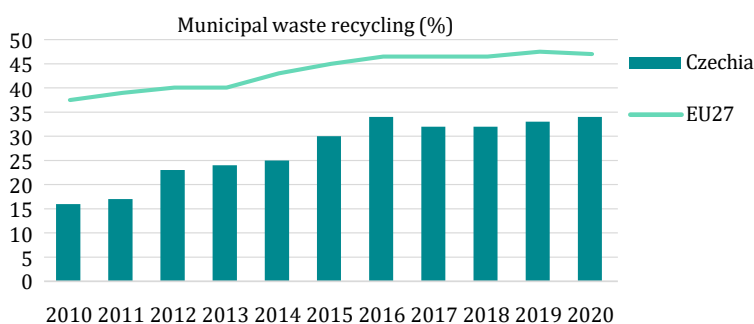


Figure 5. Household waste recycling rate, 2010-2020

Source: The EU Environmental Implementation Review. Czech Republic (2019), European Commission Staff Working Document No. SWD(2022) 264 final (2022).

The prospects for increasing the stress resistance of the economy and improving environmental performance in the Czech Republic are described in the National Waste Management Plan for 2015-2024 (The EU Environmental Implementation..., 2019). Key actions to achieve these goals: increase the existing tax on waste disposal; increase funding for waste processing companies; increase the existing tax on incineration of recyclable waste; improving the efficiency of separate waste collection and storage.

The problem of waste recycling is closely related to the problem of land degradation in the Czech Republic. The annual rate of withdrawal of natural land in the Czech Republic was 0.43% for the period 2006-2012 and 0.41% for the period 2012-2018, according to CORINE Land Cover (Eurostat, 2020). This dynamic is illustrated by the successful implementation of an amendment to the Soil Protection Act in 2015 as part of environmental policy reforms in the Czech Republic. This reduced the anthropogenic pressure on the country's agricultural land. Pollution of soil resources not only negatively affects the vital activity of flora and fauna, it can also dramatically reduce the quality of groundwater and surface water, thereby endangering human life and health. Soil erosion is a natural process, but due to human interference in natural processes, the rate of destruction of fertile soil is accelerating. Forest fires, deforestation, urbanisation and intensive land reclamation are exacerbating the situation. Since 2012, according to Eurostat, the rate of soil loss due to water erosion in the Czech Republic has been 1.64 tonnes per hectare per year (The EU Environmental Implementation Review..., 2019; Directive of the European Parliament and of the Council No. 2006/7/EC, 2006). Measures taken by the Czech Republic to reduce the anthropogenic impact on land have not yet achieved their

economic and environmental goals. Out of 9300 contaminated land plots, only 257 have been restored as of 2018 (Directive of the European Parliament and of the Council No. 2006/7/EC, 2006). This means that it is necessary to further improve land protection mechanisms, as the loss of fertile soil affects the country's economic well-being and environmental profile. Fertile soil is a valuable resource for any country, and its loss means fewer jobs and less space for growing crops.

Modern EU legislation requires a reduction in the anthropogenic impact on water resources. The European Union's water legislation (European Environment Agency, 2018b) provides high standards of protection for all types of water in the territory of the EU member states. Mechanisms to counteract water degradation are primarily aimed at sources of pollution, such as chemical and food industries, utilities, and agriculture. The main sources of pollution in the rivers of the Czech Republic are municipal wastewater accounts for 38%, while agricultural water and acidic precipitation are sources of 22% of pollution. Overall, there has been an improvement in water pollution. In 2021, 332 or 1.5% of bathing places in the EU were of poor quality. Environmental reforms have improved the algorithms for monitoring surface and groundwater (European Environment Agency, 2018b). As of 2021, 81.3% of surface waters in the Czech Republic are in excellent condition; 9.7% are in good condition; 6.5% are not classified; 1.9% and 0.6% are in fair and poor condition, respectively (European bathing water..., 2021). This is evidence that the Czech Republic has many obstacles to overcome on the way to greening the country.

Since 2014, there has been an improvement in the environmental performance of bathing waters. The compliance of bathing waters with environmental standards contributes to the

sustainable development of the tourism sector and the improvement of the Czech economy.

Figure 6 demonstrates the quality indicators of Czech bathing waters in 2017-2020.

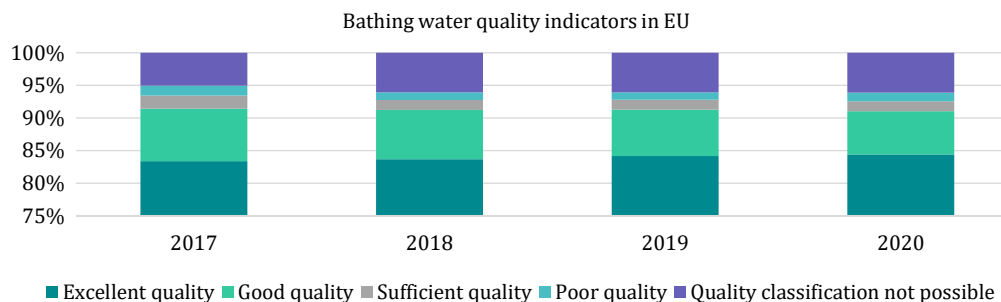


Figure 6. Bathing water quality indicators in the Czech Republic, 2017-2020

Source: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions No. COM(2017) 749 final (2017), European bathing water quality in 2021 (2021)

According to the latest published data, 90% of municipal wastewater in the Czech Republic is treated. The remaining 10% require investment. According to the report of the Council Directive 91/271/EEC on urban wastewater treatment, the allocated 26 million EUR does not fully cover the costs of modernising urban wastewater treatment facilities (European Commission, 2021). To build a stress-resilient economy in the context of environmental policy modernisation, it is rational to use economic mechanisms in the form of financial incentives and green taxation. These methods are effective in achieving the goals of the Czech Republic's environmental policy. Since 2015, the Czech Republic has achieved few qualitative changes in the reform of environmental taxes. Although there has been a natural increase in the amount of tax revenue as a percentage of GDP, environmental taxes in the Czech Republic remain among the lowest in the European Union. In 2020, Czech environmental tax revenues totalled 1.93% of GDP, which is below the EU average of 2.24% (European Commission Staff Working Document No. SWD(2022) 264 final, 2022). Of this amount,

energy taxes account for the largest share (94% compared to the EU average of 77.5%). The share of transport taxes in total environmental tax revenues was 5.7%, while pollution and resource taxes remained below 1% (0.7%), which is much lower than the EU average. Thus, the most profitable environmental tax in the Czech Republic is the air pollution tax. Since 1967, fees have increased by 37%. As the Czech Republic gradually reduces its dependence on fossil fuels, subsidies for non-green energy sources are being reduced. The excise tax refund on diesel fuel was phased out. The diesel market has reached a new low: in 2021, only 20% of cars were sold in the EU, and it will continue to fall. Positive changes have been seen in the purchase of cars running on alternative fuels. The market for electric vehicles will grow in the Czech Republic in the coming years as EU member states continue to pursue policies to reduce CO₂ emissions.

The Czech Republic uses private sources of funding and financial grants from EU institutions to achieve its environmental goals without damaging the economy. This successfully integrates

environmental objectives into various areas of environmental policy. From 2014 to 2020, the Czech Republic received 23.9 billion EUR from the European Investment Bank's funds (European Commission, 2020). Together with the state contribution of 7.88 billion EUR, the Czech Republic's total environmental budget totalled 32.8 billion EUR. This has helped to finance various areas of environmental policy impact, such as environmental research and innovation, job creation, environmental protection, modernisation of production, climate change, waste recycling, and social inclusion (The Czech Republic and the EIB, 2022). As part of the new environmental policy, investments were made to improve air quality. According to the European Commission (2020) report, the programme period from 2014 to 2020 showed an increase in the rational use of EU funds

for investments in strengthening the environmental integration of the Czech Republic. The company has improved product competitiveness and increased the number of jobs.

Between 2014 and 2020, the European Investment Bank allocated 25.46 billion EUR of *ESI* funds to the Czech Republic to invest in job creation, a sustainable and healthy European economy and the environment. In 2021, the European Investment Bank and the European Investment Fund provided financing for projects in the Czech Republic in priority areas (Fig. 7) (The Czech Republic and the EIB, 2022). Direct EU investments in environmental protection in the Czech Republic totalled 2.36 billion EUR, with an additional 1.91 billion EUR designated as indirect environmental investments, bringing the total investment in environmental protection to 4.27 billion EUR.

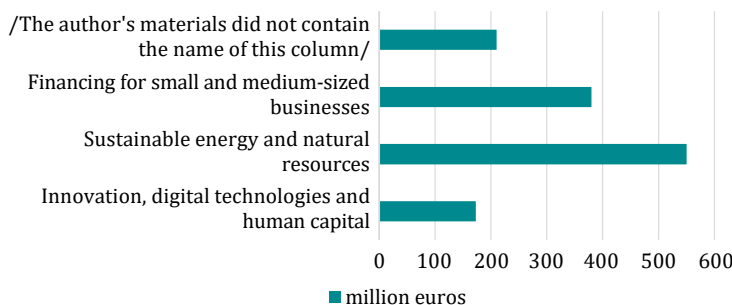


Figure 7. EIB loans to the Czech Republic in 2021, EUR million

Source: The Czech Republic and the EIB (2022)

The identification of the main beneficiary groups and their involvement as partners contributed to the positive impact of the new environmental policy on the environmental and economic transformation of the Czech Republic. The commitment and participation of key stakeholders in the development of the new environmental policy contributed to the effective implementation of the environmental policy objectives. The

key stakeholders in the reformed environmental policy of the Czech Republic are NGOs, industry and business, farmers, local authorities, labour unions and the scientific and technical community. These groups of people and structures have helped environmental policy mechanisms to reach local, regional and national levels. One of the most useful functions of stakeholders is to monitor and evaluate. This played a role in raising

public awareness and helped to assess the results of environmental policy.

For a deeper understanding of the advantages and disadvantages of government action in the context of green economy development, it is important to consider the actions and measures taken by the Czech Republic with another country. An illustrative example in this case is Ukraine, which is not currently a member of the European Union but is actively implementing several mechanisms for developing a green economy. In Ukraine, several legislative decisions have been made to stimulate the development of alternative energy sources, which can be compared to Czech policy.

The Law of Ukraine "On Alternative Energy Sources" (2003) was adopted in 2003 and is the first and main law that defines the direction of development of alternative energy sources in Ukraine. This law defined the main terms and concepts related to this area and stated that the state takes a leading role in the development of renewable energy sources and delegates these powers to the Cabinet of Ministers of Ukraine. One of the key provisions of the law is the information set out in Article 9, which stipulates that the production and consumption of energy from alternative sources shall be stimulated through economic levers, the creation of favourable conditions for the construction of alternative energy facilities and recommendations for the installation of energy-saving and hybrid installations. However, specific steps and measures for the development of green energy are spelt out in the Law of Ukraine No. 3220-IX (2023), which provides for the promotion of renewable energy through several mechanisms. Firstly, it provides guarantees of origin for "green" electricity, which allows for avoiding additional taxation of Ukrainian goods when imported into the EU from 2026. Secondly, it entitles renewable electricity producers to

sell their electricity on the market at a feed-in tariff, with the additional payment being made by the State Enterprise Guaranteed Buyer. This surcharge is defined as the difference between the feed-in tariff and the market price, which promotes market development and improves competition. The project also provides an additional incentive for distributed generation on the consumer side through a self-generation mechanism, which increases the number of generating units and the resilience of the power system.

In the Czech Republic, support for renewable energy is regulated by the Supported Energy Sources Act (SESAct) (Law of Czech Republic No. 165/2012 Sb., 2012). This law establishes mechanisms to support renewable energy, including a tariff system and state support. The SESAct establishes the conditions for environmental impact assessment for renewable energy projects (Art. 4-7), which makes environmental impact assessments mandatory for certain types of renewable energy, such as hydroelectric power plants or wind farms. In addition, according to Czech law, renewable energy projects must comply with all the operation and maintenance requirements set out in the SESAct and other laws, otherwise, producers face fines and other sanctions. For example, Article 6c of the law defines the basic conditions of production and requirements for certain aspects of setting up electricity production from gases generated by biomass. In particular, the article states that a power plant must be located at a distance of more than 5 km from a possible connection to a gas facility of the operator or gas producer when using at least 40% of the heat produced, or less than 5 km when using at least 50%, with the impossibility of connecting to the nearest gas facility confirmed by a capacity provision protocol (Law of Czech Republic No. 165/2012 Sb., 2012).

The Ukrainian legal framework includes regulations aimed at reducing the environmental impact of the energy sector and promoting the use of renewable energy sources. The above-mentioned Law of Ukraine No. 3220-IX (2023) provides for the promotion of renewable energy through guarantees of the origin of “green” electricity and the right of producers to sell electricity on the market at a “green” fare. In addition, the requirements for the development of alternative energy in Ukraine are determined by the Law of Ukraine No. 3460-IX (2023). This document defines, among other things, areas for the construction of renewable energy facilities, maximum capacities to be supported at auctions, proposed land plots and lease of roofs and building facades with technical conditions for connection to the electricity grid.

It should also be noted that the Ukrainian legislative framework for the development of green energy is evolving in line with European standards. In particular, the Draft Law No. 3056-IX (2023) ensures that Ukraine introduces legal regulation of guarantees of the origin of electricity from renewable sources, which meets the requirements of the mandatory Directive 2018/2021 of the European Parliament and the Council (Proposal for a Directive of the European Parliament and of the Council No. COM(2021) 557 final, 2021). The Guarantee of Origin confirms the amount of electricity produced from renewable sources and is issued for each 1 MWh, and its ownership can be transferred separately from the electricity. Guarantees of origin are valid for 12 months from the date of generation of the relevant electricity. A separate register of guarantees of origin will be created, which will be integrated into the regional register of the Energy Community, and the National Energy and Utilities Regulatory Commission (NEURC) will act as the authorised body to issue these guarantees.

The procedure for issuing, circulating and redeeming guarantees of origin will be approved by the Cabinet of Ministers of Ukraine. The introduction of a system of guarantees of origin will facilitate the export of green energy and stimulate the use of renewable energy sources within the country. However, it should be noted that this is only a draft law and it has not yet been adopted and entered into force. Therefore, only a gradual transition to European norms should be mentioned, not full compliance with them.

The Czech Republic also has a system of environmental standards and requirements governing energy use and environmental impact. The Czech Republic regulates environmental impact assessments for renewable energy projects, such as hydroelectric power plants or wind farms, to ensure environmental safety and compliance with environmental performance standards. In addition, requirements for the operation of renewable energy projects are also set out in Czech law, in particular in the Supported Energy Sources Act (SESAct) (Law of Ukraine No. 3460-IX, 2023), an example of which was mentioned in Article 6c above.

The connection of individual users to the centralised electricity system in the Czech Republic is regulated by Decree of the Energy Regulatory Office of the Czech Republic No. 16/2016 Sb. (2016). The conditions for the connection of the applicant’s equipment to the transmission system or distribution system are the submission of a connection request, the examination of connectivity following paragraphs 6 and 7 a, and the conclusion of a connection agreement between the applicant and the transmission system operator or the distribution system operator or the amendment of an existing connection agreement. Paragraph 1 shall not apply and the only condition for connection shall be the connection agreement between the applicant and the transmission

or distribution system operator unless there is a change in the technical conditions of connection in the cases: change of the licensee without interrupting the connection of the production plant, replacement or modification of the production plant without exceeding the current reserved capacity, change of the natural or legal person entitled to use the electrical equipment, reduction of the reserved capacity or consumption of the equipment, change of customer identification data. The reserved capacity at the connection point of a production plant or the connection point of a consumption point may be stipulated in the connection contract in a range of up to 1.2 times the installed capacity of all plants connected to the connection point. For transmission points at the high voltage level, the reserved capacity may be specified in the connection agreement within the range from the highest reserved capacity of all connection points to the sum of the reserved capacities of all connection points. At the low voltage level, the reserved power is matched according to the current rating of the main circuit breaker in front of the electricity meter or the current rating of the nearest front circuit breaker if there is no main circuit breaker.

The Ukrainian and Czech systems of green energy development have their peculiarities, advantages and disadvantages that determine their efficiency and development prospects. In Ukraine, green energy incentives are based on feed-in tariffs, which guarantee producers of electricity from renewable sources a stable and profitable income. The Law of Ukraine No. 3220-IX (2023) provides mechanisms to guarantee the origin of “green” electricity and the right of producers to sell their electricity on the market. This creates attractive conditions for investors and promotes the active development of renewable energy. In addition, Ukraine

is introducing a market premium mechanism to compensate for the difference between the feed-in tariff and the market price and to support its citizens who develop the renewable energy sector.

The main disadvantage of the Ukrainian system compared to the Czech system is the complexity and bureaucracy of the processes associated with the connection and operation of renewable energy sources. High costs of project documentation and other investment expenses can hinder the rapid development of new projects. Thus, both systems have their strengths and weaknesses, and the exchange of experience between Ukraine and the Czech Republic can help improve approaches to green energy development, ensuring more sustainable and efficient use of renewable energy sources.

Discussion

A fundamental condition for the effective implementation and functioning of environmental policy is the degree of commitment to environmental policy by stakeholders. In general, the acceptance of the ecological model of economic development by the population of the Czech Republic was high (Kyselá, 2015). Comparison of the results of this study on the importance of stakeholder adoption of eco-policy with the works of foreign authors shows similarities in the main conclusions regarding this aspect of the issue. For example, A. Jordan and A. Lenschow (2010) concluded that with the support of society, the implemented eco-policy functions better and achieves its goals faster than the eco-policy functioning without such support.

A. Wijkman and K. Skånberg (2020) addressed the success of the transition to a circular economy through the prism of increasing the number of jobs and reducing carbon emissions in the example of the Czech Republic and Poland. The analysis demonstrates the implementation of

circular economy principles in the Czech Republic by assessing job growth and waste management principles. Both strategies have led to similar conclusions that the Czech Republic has benefited environmentally and economically from the gradual transition of its economy to a closed-loop economy. In addition, the study models various possible options for economic development after its full transition to the principles of sustainable development. The shortcoming of the cited work is the lack of data on waste recycling in the Czech Republic and the impact of quality recycling or disposal methods on the economy.

The Czech Republic has made greater progress in preserving its environmental potential in water resources management. Environmental reforms have improved algorithms for monitoring surface and groundwater. This has improved the safety of bathing waters, which has contributed to the stable development of the tourism sector and improved the economic performance of the Czech Republic. In her study I. Herová (2007) addressed the management of natural exhaustible resources in the context of sustainable economic development. The author concludes that natural resources such as groundwater, surface water and land are the driving force of the agricultural economy, without stable development the sustainable development of the Czech Republic is impossible. The results of the study confirm the author's conclusions about the importance of environmental protection measures and the conservation of natural resources, as well as their impact on economic stability at the state level. The cited article fully discloses the practical side of green environmental management, and the author draws similar conclusions about the importance of preserving the purity of natural resources for the sake of a stress-resistant economy in the Czech Republic.

A study of various information sources has led to the conclusion that the new environmental

policy has maximised the effectiveness of investments in improving air quality. P. Blaschke (2022) concluded that green finance helps to reduce unemployment and described the importance of identifying the main groups of beneficiaries when developing environmental policies. These results are comparable to the results of this study, but the conclusions about the undeniable benefits of environmental investments do not fully coincide with the work of P. Blaschke (2022). The author argues that the expectations associated with investment incentives for the green economy prevail over the final results. Therefore, it is not reasonable to give green finance a central place in the environmental reform of the Czech Republic.

Thus, a comparison of the approaches of scientists to the problem of ensuring the effectiveness of environmental reforms allows us to conclude not only that the chosen topic is relevant, but also that a huge number of specialists from various scientific circles are keenly interested in it. A thorough study of scientific publications and comparison of the results obtained with the published results demonstrates similarities with the main conclusions formulated in this paper. The minor differences are explained by the choice of different methodologies and the fact that some authors have extended the results of other countries to the Czech economy.

The environmental situation in the Czech Republic was studied by I. Hunova (2020), who, based on the analysis of relevant key documents and reports, provides a historical perspective on air pollution and the development of air quality in the modern Czech Republic (CR) over the past seven decades, from the 1950s to the present day. It discusses the main problems of air pollution, identifies the key problem areas and regions, and indicates the main air pollutants in the Czech Republic. Air pollution is considered in the broader context of its impact on human health and the

environment in the Czech Republic. The review consists of three main stages: (1) the period before the Velvet Revolution of 1989, (2) the transition period of the 1990s, and (3) the modern period after 2000. Air quality has improved significantly since the 1970s and 1980s, when pollution in former Czechoslovakia peaked, but the situation is now deteriorating again. One should disagree with the thesis that the air pollution situation in the Czech Republic has been deteriorating in recent years. As has already been demonstrated in the results of this study, in the graph presented in Figure 1, the total emissions of air pollutants in the Czech Republic have been gradually decreasing between 2010 and 2019. In addition, as already mentioned, the Czech Republic has been experiencing a downward trend in the concentration of particulate matter in the air; for example, the level of fine particulate matter exceeding the EU limit values in the Czech Republic has fallen from 16% to 5%. The energy and agricultural sectors also show a decrease in CH₄ emissions. Thus, it is possible to deny the thesis that the overall level of air pollution in the Czech Republic is increasing. However, I. Hunova (2020) also states that at this stage of development, new challenges have arisen due to the increasing concentration of certain substances in the air, in particular, fine aerosol, benzo(a)pyrene and ground-level ozone, the levels of which are still well above the permissible limits. In addition, despite the overall decline in emissions, atmospheric nitrogen deposition remains high in some individual regions.

Another important issue raised in this research paper is the establishment of a waste recycling process. This issue was studied in detail by B. Mikušová Meričková *et al.* (2020). The author argues that contractual waste management services are one of the most common methods of providing this service, and this topic has attracted considerable attention in scientific research. The

study aimed to analyse the trends in municipal solid waste collection and disposal in the Czech Republic and Slovakia over the past 20 years, with a particular focus on the share of inter-municipal cooperation in the provision of this service. In contrast to Western European countries that are in the process of re-municipalisation, data collected for Slovakia and the Czech Republic over the past two decades show that contractual services dominate solid waste management, with an increasing share of contracted services over this period. This reflects the high level of fragmentation of municipal structures and the low willingness of municipalities to cooperate. The data collected also shows that the use of external suppliers provides only marginal cost savings that could be much greater; potential efficiency gains through contracting are limited by the poor quality of contract management. Concerning the main question, the author found that the share of inter-municipal cooperation in service delivery did not increase significantly during the study period. The study has identified three main factors that negatively affect waste management policies and overcoming them can increase the effectiveness of these activities. These factors are high transaction costs, lack of regular comparison of best practices and limited motivation to choose the best ways to provide services. It is necessary to agree with the results of this scientific work, since, as noted in the study, waste recycling is a multifaceted process that requires the cooperation and participation of many actors, including municipal authorities.

Conclusions

Having examined the impact of environmental policy reforms on the formation of a stress-resilient economy in the Czech Republic, it can be concluded that there is a direct correlation between the effects achieved as a result of the implementation of environmental policy and their impact

on the stability of the state's economy. The study showed that the protection of natural resources, social stability and economic sustainability go hand in hand.

The level of air quality has a significant impact on the environmental and economic potential of the Czech Republic. Thanks to the implementation of environmental policy measures since 2000, we have managed to significantly reduce pollution levels, which led to a 16% reduction in toxic emissions below the EU average between 2012 and 2019. This has had a positive impact on public health, productivity and agriculture. The introduction of circular economy principles created 8,000 new jobs and increased environmental tax revenues. Despite progress in pollution control and water use, land protection remains insufficiently effective. Access to financing for environmental initiatives has helped reduce the financial burden on the budget and support sustainable development programmes. It should be noted that environmental reforms in the Czech Republic are fully compliant with EU legislation. The introduction of an emissions trading system and compliance with toxic emission standards demonstrate the Czech Republic's commitment to meeting EU environmental requirements.

Ukraine's green policy legislation is inferior to that of the Czech Republic in several key respects. Firstly, Ukrainian legislation is highly dependent on government regulation and subsidies, which can lead to instability in times of economic

crisis. This makes the system less stable and predictable compared to the Czech Republic. Second, Ukraine pays less attention to integration with European energy markets. This limits the possibilities for exporting green electricity and reduces the attractiveness to international investors. In addition, the process of connecting and operating renewable energy sources in Ukraine is often less regulated and transparent, which can lead to bureaucratic difficulties and delays.

Ukraine can learn several lessons from the Czech experience to improve its green energy sector: increase transparency and predictability through regulated tariffs, including distribution prices; strengthen integration with European energy markets through market premium and guarantee of origin mechanisms; simplify bureaucratic procedures for connecting and operating renewable energy sources, reduce project documentation costs; attract investment through a stable legal framework and create favourable conditions for investors.

The study of the results of the 8th Environmental Action Programme until 2030 under the European Union's Environmental Policy can serve as a benchmark for further research.

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None.

Conflict of Interest

None.

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Нормативно-правова база екологічних ініціатив у Чеській Республіці як потенційна модель для впровадження зеленої політики у Східній Європі

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Анотація

Країни ЄС, зокрема Чеська Республіка, розробляють структурні механізми впливу на розвиток своєї економічної моделі в екологічній сфері. Вивчення досвіду Чеської Республіки у впровадженні екологічних реформ є актуальним для розуміння їх впливу на економічну стійкість країни та виконання міжнародних зобов'язань. Метою дослідження був аналіз нормативного забезпечення та результатів реформ, впроваджених в екологічній політиці Чеської Республіки, та їхнього впливу на подальший розвиток країни. Результати були отримані за допомогою спеціальних юридичних методів, таких як термінологічний, формально-юридичний та спеціально-юридичний методи. Визначення основних екологічних проблем, секторів економіки, що реформуються, та інтенсивності впливу людської діяльності на природу, визначення зацікавлених сторін у змінах та ідентифікація вирішених проблем дозволили зробити висновок про раціональність та варіативність ефективності вжитих заходів. Аналіз природоохоронних та регуляторних засад екологічної політики в Чеській Республіці та прийнятого природоохоронного законодавства, таких як квоти на викиди CO₂, раціональне використання природної сировини, утилізація відходів, зелені податки, пільги та субсидії для функціонування ринків екологічних товарів та послуг, показав беззаперечні переваги екологічно орієнтованої економічної моделі над тією, яка орієнтована на отримання прибутку. Проведене дослідження виявило, що застосування таких заходів сприяє зниженню негативного впливу на довкілля, покращенню якості життя населення та сталому розвитку економіки. Пільги для компаній, які впроваджують екологічно безпечні технології, стимулюють інновації та знижують витрати на виробництво. Значну роль в цьому грає законодавство, зокрема Закон Чеської Республіки No. 165/2012 Sb. Результати дослідження можуть бути використані науковцями з різних країн світу, які вивчають питання впровадження нових методів екологічної політики

Ключові слова: екологізація; енергозбереження; сталий розвиток; комплексний підхід; забруднюючі речовини; зелена енергетика



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The legal and penitentiary system as repressive apparatus: Legal methods of protecting a civil and political rights

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Abstract

The relevance of the study lies in the growing role of legal and penitentiary systems in the conditions of modern challenges, in particular, the state of war in Ukraine, which necessitates a clear understanding of the mechanisms of legal regulation of the execution of criminal punishments, taking into account the principles of protection of human rights, namely prisoners. The purpose of the research was to carry out a comprehensive study of the mechanism of legal and penitentiary systems, which includes the disclosure of concepts, features and principles of their functioning. The theoretical and methodological approach, the method of synthesis, legal hermeneutics and others were used to conduct the research. The results of the study demonstrated that the combination of theoretical and practical aspects of work in the field of legal and penitentiary systems allows creating a holistic view of the mechanisms that are based on the change in the social orientation

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of criminal punishment and contribute to the further development of paradigms of treatment of convicts. In the course of conducting this study, the impact of martial law on the legal and penitentiary systems was characterized. The peculiarities of the legal regulation of execution of criminal punishments in the conditions of martial law in Ukraine are determined. In addition, the practice of applying measures of criminal enforcement influence on convicts was analysed and, accordingly, the experience of foreign countries in ensuring the rights and freedoms of convicts was summarized. The results obtained during the research can be used by state authorities, penitentiary institutions, scientific and public organizations to improve the legal regulation of the execution of punishments, ensure the rights and freedoms of convicts, and humanize their detention

Keywords: civil society; human rights; management; public control; prison service; executive criminal justice

Introduction

The study of legal and penitentiary systems in the context of the protection of human rights and freedoms acquires special importance in the conditions of martial law in Ukraine. The growing role of these systems, on the one hand, is due to the need to ensure the safety of society, and on the other hand, it carries risks of violation of human rights, especially of prisoners. The war in Ukraine significantly affects the functioning of the penitentiary system. In accordance with the Law of Ukraine No. 3687-IX (2024) on the introduction of the institution of conditional release of persons from serving their sentences for direct participation in the defense of the country, adopted on 8 May 2024, a mechanism for the mobilization of convicts into the ranks of the Armed Forces of Ukraine has been implemented. This decision, in addition to ethical aspects, carries risks of violation of human rights, because it can lead to deterioration of the conditions of detention of convicts, discrimination and other violations. In such conditions, a critical study of the mechanisms of legal regulation of execution of criminal punishments and methods of protection of human rights in the penitentiary system

becomes extremely necessary. This will allow not only to ensure that the rights of convicts are respected, but also to minimize the risks associated with martial law and preserve the humanitarian principles of treatment of people deprived of their liberty. Convicted persons constitute a large category of persons to whom restrictions on their rights, freedoms and interests are lawful. On this basis, the issue of studying an effective mechanism that will act as a legal regulator on the execution of criminal sanctions, taking into account the peculiarities and achievements of convicts in the field of protection of their rights is quite topical and important.

From 2020 to the present, many important works related to the study of various aspects of the observance of the rights of convicts have been published. P.C. Traverso *et al.* (2021) presented the results of an extensive field study conducted in penitentiaries in six Chilean regions, which consisted of observations of interrogations, examination of criminal cases, interviews with officials and prisoners, and examination of x-rays. Scientists have come to the conclusion that the problem of non-observance of the rights of

prisoners will not be resolved until a law on prisons is developed. Until then, the protection of those held in prisons depends on the discretion of the administrative authorities. N.E.A. Santiago and M.F. de Paula Pessoa (2021) asked whether the emergency measures and legal guarantees enshrined in the American Convention on Human Rights are respected for persons deprived of their liberty in Brazil, given the instability of the Brazilian penitentiary system. I. Renzulli (2022) is exploring the normative prerequisites for the abolition of prisons as the dominant form of punishment and the search for alternative approaches to holding people who have committed serious crimes accountable. M. Bolcato *et al.* (2023) dealt with the issue of prison medicine in Italy, namely the search for opportunities for prisoners to undergo rehabilitation after illness, that is, to realize the right to health and an adequate level of treatment. V. Ottone (2022) investigated the problem of overcrowding in prisons in European countries, in particular in Italy, during the coronavirus pandemic. G. de Angelucci *et al.* (2021) studied the attitude of the judiciary towards mothers and pregnant women in a prison in the Brazilian state of Parana. F.R. Trabucco (2021) considered the issue of force-feeding prisoners on a hunger strike: whether this is a violation of human rights. M.C.R.F. de Souza *et al.* (2020) investigated the issue of ensuring the right to schooling of women incarcerated in Brazil. How freedom of religion is exercised in the penitentiary systems of various European countries, including Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Montenegro, the Netherlands, Norway and Poland, found out authors of the collective work "Religion and prison: An overview of contemporary Europe" (Martínez-Ariño & Zwilling, 2020). O.V. Haltsova *et al.* (2020) analysed the issue of

how Ukraine complies with the recommendations of the Council of Europe on the observance of rights in the penitentiary system, aimed at the application of alternative sanctions and measures, which ultimately should reduce the number of people held in prisons. O. Kolb's *et al.* (2023) research showed that those sentenced to life imprisonment in Ukraine currently do not have the right to temporary release due to legal restrictions. The researcher is a supporter of such a strict regime, as he believes that it is aimed at preventing future crimes and ensuring public safety.

Therefore, in order to consider this effective mechanism, it is necessary to consider the experience of foreign countries, which will allow identifying their advantages and disadvantages in order to avoid mistakes in Ukrainian law enforcement practice. Despite the fact that the law of States reflects national traditions, but the stated desire in Ukraine to continue the reform processes in the socio-cultural and political direction requires a critical approach in the form of an analysis of positive experience of others.

The purpose of the research was to conduct a comprehensive study of the mechanisms of the legal and penitentiary systems, including the exploration of their concepts, features, and principles of operation. The activity of this mechanism is the basis of the change in the social orientation of criminal punishment, as well as will contribute to the further development and establishment of scientific paradigms in the field of preventive and corrective action of the State on the offender. A study of the functioning of the Ukrainian penitentiary system and penitentiary system in other European countries will highlight the advantages and disadvantages of the mechanisms under study, which will therefore help to promote the development of penitentiary reform of the Ukrainian penitentiary system by implementing

the recommendations received on the basis of the experience of the European states. As a result, this will lead to more effective implementation of the penitentiary systems in Ukraine.

Materials and Methods

The scientific study, which was carried out as part of the study of the legal and penitentiary system and the identification of legal ways of protecting a citizen from the State, was carried out thanks to methodological approaches, which help in the disclosure of the theoretical and practical component of scientific work. The disclosure of the theoretical aspect of the study, which can be achieved through a theoretical methodological approach, is an issue of great importance for a meaningful analysis. This phase involves the analysis of the concepts of legal and penitentiary systems, the identification of their characteristics and the principles of the operation of these systems. The legal hermeneutics method allows for a more detailed knowledge of the legal norms that govern the legal and penitentiary systems, which, helps to examine their characteristics. In this case, the use of a systemic and structural methodological approach plays an important role; it allows considering the legal norms established by the legislator through the prism of their study in the form of a system. The functional methodological approach in the provided research was used to study the legitimate ways of protecting a citizen from the State, thus highlighting the types of these methods and features of their implementation. In general, using the induction method, it is possible to study the holistic mechanism of legal and penitentiary systems implementation on the basis of their inherent elements of functioning. Since the subject of the study is the analysis of legal ways of protecting a citizen from the State, the question of the use of

the cultural method becomes particularly important, which helps to examine this branch of law through the lens of viewing it as a regulator of social interaction.

In the course of the research, the content of a number of normative legal acts was analysed and studied, namely: Decree of the President of Ukraine No. 392/2020 "On the Decision of the National Security and Defense Council of Ukraine" dated September 14, 2020 "On the National Security Strategy of Ukraine" (2020); Decree of the Cabinet of Ministers of Ukraine No. 654-p "On Approval of the Concept of Reform (Development) of the Penitentiary System of Ukraine" (2017); UK Prison Act (1952); Criminal Code of the Republic of Hungary (2012); Recommendation of the Parliamentary Assembly No. 1741 "Social Reintegration of Prisoners" (2006); The Prisons and Young Offenders Institutions (2011); Federal Constitution of the Swiss Confederation (1999); Swiss Criminal Procedure Code (2007); Special report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (2024); Analytical report on the results of monitoring the state of compliance with the rights of persons detained in the institutions of the State Penitentiary Service of the Executive Service of Ukraine (2022); Standard Minimum Rules for the Treatment of Prisoners (1955); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1992); Resolution 45/111 of the UN General Assembly "Basic Principles of the Treatment of Prisoners" (1992); European Penitentiary (Prison) Rules (1987). The sources provided critical insights into the legal and penitentiary systems, highlighting how they can function as repressive apparatuses and exploring legal methods for protecting civil and political rights.

Results and Discussion

The protection and realization of the rights, freedoms and legitimate interests of citizens is one of the priorities of the modern world community. This right is enshrined in article 3 of the Constitution of Ukraine (1996). It states that a person, his/her rights and freedoms are defined as the highest value, and their consolidation, realization and protection are the responsibility of the state. In carrying out the penitentiary enforcement study of the functioning of penitentiary systems, it is first necessary to examine the theoretical component, which constitutes the basic theoretical and methodological character.

Considering the correctness of the use of the term “penitentiary system”, it should be noted that this emphasizes civility and the use of a historical approach to the treatment of prisoners who are in detention, and also focuses on the system of institutions that enforce criminal sanctions related to isolation from society (Melossi & Pavarini, 2018; Abderhalden *et al.*, 2021). In this context, it is important to note that the penitentiary system is not merely about housing prisoners in facilities. Rather, it is a correctional system focused on implementing imprisonment sentences and employing various legal measures and methods to rehabilitate convicted individuals, restore social justice, and prevent further criminal activity.

Distinguishing the main types of penitentiary systems, it is complex constructions that are located in a taxonomic social continuum. This type is a special object, which is formed by abstract highlighting of some characteristic features of penitentiary systems, which are conditioned by predetermined criteria of typologization, with leveling of others (Peterman, 2021). That is, the ideal type allows you to ensure the expediency of using a large number of multi-factor models.

Based on the content of the criteria, we can distinguish morphological, empirical, theoretical, cultural-geographical, historical, structural and other typologies (Frank *et al.*, 2020). Of the above typologies, the most important is theoretical, as it sets the contours of knowledge of the object, aims at the formation of an ideal design and fixes the idea of taxonomic coverage of the set of investigated features of the object. That is, this typology considers an object as a system with intrinsic elements of structure and is a way to create theories of a private nature.

Correctional intervention is based on the typology of appropriate forms, means and approaches to the penitentiary system in the State. Thus, the general characteristic of the European penitentiary system shows the marginal model in the humane treatment of convicts. Other types of European penitentiary systems provide structural models for such treatment of convicted persons. On this basis, the European penitentiary system is an abstract structure that reflects the originality and logic of its formation, as well as the transformation processes and development of the penitentiary systems in the countries, which are located within the respective geographical space (Piotrowski *et al.*, 2020). As a result, the penitentiary system is an ideal object of social reality.

Over the past two centuries, the attitude towards prisoners has undergone significant changes. Historically, their conditions of detention and treatment were often cruel and inhumane. Fortunately, over time, an understanding of the importance of protecting human rights, including those deprived of their liberty, has developed. This development led to the creation of international standards for the treatment of convicts. One of the first international documents dealing with the rights of prisoners was the Standard Minimum Rules for the Treatment of Prisoners (1955) (also

known as the “Mandela Rules”), approved by the United Nations. These rules became the first comprehensive international document defining the standards of treatment of prisoners. The Mandela Rules cover a wide range of issues such as living conditions, health care, work, education, religion and family contact. Since then, a number of other important documents have been adopted, developing and supplementing the “Mandela Rules”. Including: Recommendation of the Parliamentary Assembly No. 1741 “Social reintegration of prisoners” (2006), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Resolution of the UN General Assembly No. 45/111 “Basic principles of the treatment of prisoners” (1990), European Penitentiary (Prison) Rules (1987). These documents establish the principles of humane and respectful treatment of all persons deprived of their liberty, regardless of their crimes or status. They also set minimum standards for conditions of detention, medical care, nutrition, education and other aspects of prisoners’ lives.

Special attention should be paid to the development of standards for the treatment of prisoners abroad, in particular the UK Prison Act (1952) defines the legal framework for the management and administration of prisons in England and Wales. It covers aspects such as the treatment of prisoners, their rights and responsibilities, and the responsibilities of prison staff. An analysis of this law can be useful for understanding the particular national approach to prison management and comparing it with international standards. The Criminal Code of the Republic of Hungary (2012) defines the types of criminal penalties applicable in Hungary, including imprisonment. It is likely to specify different sentences for different crimes and conditions attached to them. Studying this code can be helpful in understanding how

Hungary classifies crimes and the potential relationship between crimes and prison sentences. The Federal Constitution of the Swiss Confederation (1999) and the Swiss Criminal Procedure Code (2007) provide the legal framework for the Swiss criminal justice system. The Constitution enshrines fundamental rights that apply even to persons in prison. The Swiss Criminal Procedure Code (2007) details the legal procedures for criminal investigation, trial and sentencing. Analysis of these documents allows us to identify Switzerland’s approaches to integrating human rights principles into its criminal justice system, which potentially affects the treatment of prisoners.

One of the problems in the European penitentiary systems is to find on a permanent basis new ways and variants of legal means of execution of punishments, which are connected with isolation from society to such a category of persons as reformed criminals, recidivists and persons who do not have the desire to pass the stage of correction (Cuadrado *et al.*, 2021). This problem is most acute in the area of long-term and life imprisonment. This is a problematic aspect, since this category of convicted persons is characterized by profound social disadaptation combined with the social danger of the convicted person and a high degree of criminalization.

Despite the fact that Ukraine has taken a step forward in the direction of compliance with international standards for the treatment of prisoners, significant problems remain. National documents, such as Decree of the President of Ukraine No. 392/2020 (2020), and Decree of the Cabinet of Ministers of Ukraine No. 654-p (2017), which defines the Concept of Reforming the Penitentiary System, both recognize the need for improvement. These documents emphasize the importance of humane treatment and improvement of rehabilitation conditions. However, the reports of

human rights organizations indicate a negative situation. The Special report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (2024) raises concerns about the continuation of torture and other ill-treatment in some places of deprivation of liberty. Similarly, the Analytical report on the results of monitoring the state of compliance with the rights of persons detained in the institutions of the State Penitentiary Service of the Executive Service of Ukraine (2022) detailed observations of inadequate living conditions, limited access to medical care, and potential due process violations. These reports highlight the gap between aspirations and reality. Despite the fact that Ukrainian legislation recognizes the need for reform, its implementation seems to be lagging behind.

Analysing the above-mentioned documents, it is possible to single out the main factors that negatively affect the level of compliance with the rights of convicts in Ukraine. First of all, it should be noted about the overcrowding of places of deprivation of liberty. As a result, this leads to unsanitary conditions, limiting access to personal space and medical care, and also complicates the implementation of resocialization programs. In addition, there is an acute lack of resources in penitentiary institutions, which, accordingly, negatively affects the conditions of detention, nutrition, medical care and psychological assistance for prisoners. Particular attention is paid to outdated infrastructure in the above-mentioned documents. Many places of deprivation of liberty in Ukraine need repair and modernization, which negatively affects the conditions of detention and security. Equally important is the imperfection of the rehabilitation system, in particular, in connection with poorly developed programs of resocialization and prevention of recidivism, the process of returning prisoners to a full life in society is complicated. In

addition, despite the official prohibition of torture and ill-treatment, this practice still occurs in some places of deprivation of liberty. These problems indicate that Ukraine needs systemic changes in the field of the penitentiary system.

It is important to bridge this gap. Continued monitoring by human rights organizations and international pressure are essential to ensure accountability and progress. In addition, there is a need to increase investment in the penitentiary system to improve living conditions, health care and rehabilitation programs. Ultimately, a more humane, rights-respecting approach to incarceration not only benefits prisoners, but also contributes to a safer and more just society.

In examining the punitive measures that emerged at the end of the 20th century, the goal is not only to provide alternatives to short-term imprisonment but also to shield offenders from its detrimental effects. The essence of such punitive measures is to get the offender to comply with certain requirements that help in one way or another to become a full member of society again (Mroz, 2019). That is, by imposing such social sanctions, the legislator gives the court the right to choose one or the other punishment that is different from the traditional one. For example, the criminal measure of probation is an alternative to traditional punitive measures in general, such as a fine, but not necessarily a substitute for imprisonment. This measure is autonomous and self-serving.

In analysing the current state of the Ukrainian penitentiary system, the idea of a gradual reduction of the minimum sentences that are necessary for parole should be constructively considered. The minimum terms of the sentence may be the lower limit of the sentence, which is provided in the corresponding sanction of the criminal law rule for which the sentence is prescribed. This is

because the limit of the punitive measures, which is regulated in the corresponding sanction, can reflect the essence of a material nature and show its social danger. The minimum limits of punishment demonstrate the minimum punitive procedures necessary to meet the objective of restoring and enforcing social justice.

It has recently been noted that judicial practice tends to reduce criminal punitive measures, regardless of the seriousness of the offence committed and the limits established by the legal nature of the criminal penalty provided. Programs for the correction of convicted persons to deprivation of liberty help to achieve the goal of correction of convicted persons, based on the optimal organization of their life in the conditions of execution of criminal punishment (Eshetu & Admasu, 2020). A set of measures, the evaluation of which is based on the knowledge of trends in the reform of convicted persons, is based on the recording of results through a correction system for this category of persons. Thus, the recording of the results of the convicted person's personality will not be a completed process unless the stimulation measures, which are based on the results of the evaluation, are determined.

Considering such basic criteria for the assessment of the convicted person's actions as his attitude to the crime committed by him, to socially useful work, to training, or the behavior of the convicted person while serving his sentence, it is worth noting that they allow to characterise only the main part of the structure of the personality of this category of persons. Therefore, by assessing the personality of the convicted person, it is possible to obtain information on his attitude to the requirements of the administration of the institution where he is serving his sentence. This information may provide information about the alleged form of behavior of a convicted person no longer

in isolation, but in freedom (Morgan, 2019). The program should be entirely voluntary for prisoners who have reached the age of majority and should not have negative consequences if the prisoner refuses to be incarcerated. On the basis of this assertion, the aim of the correctional task of convicted persons is to bring this category of persons to true freedom and to make it capable of making informed behavioral decisions.

At present, organised work with individual convicted persons is fragmented. Its purpose is to solve individual tasks with this category of persons, namely, solving social problems related to labor adaptation, correction of mental condition, as well as planning educational work with specific categories of convicted persons (James, 2018). The diary of individual work of an educational nature with the studied category of persons in a correctional institution does not allow consolidating the expedient interests of the convicted person and allow building educational work on parity basis, while work in this segment should be properly structured with the possibility of parole being granted to the convicted person. Supervision of the behavior of persons who have been released from penal institutions and assistance in their social adaptation should be carried out by a specialized post-penitentiary institution. Post-penitentiary measures should be understood as criminal coercion, which is a variation of the existing system of security measures, the prospect of which reflects a shift from ideal rehabilitation to the concept of control (Dumont *et al.*, 2021).

In the process of considering the comparison of restriction of liberty with the obligations of probation, the experience of European countries should be considered here. This institute in European countries is called probation institute, by which should be understood "testing". But, for example, in British Ukrainian law, this means

conditional enforcement with the appointment of a specialized official, who is authorized to monitor the behavior of the convicted person and compliance with the duties and conditions for the granting of probation (Karthaus *et al.*, 2019). In general, probation requires compliance with such conditions and obligations as the performance of duties, which are stipulated in the verdict, in the case of which the consequence is the complete release of the prisoner from any form of punishment for the wrongful act committed and the absence of a criminal record as a certain restriction of rights, and the other condition is that the new unlawful acts are not committed.

In the process of the analysing the duties that underlie the probation period and are imposed on the convicted person during probation, the classical form of conviction of this category of persons does not include any specific obligations, except the inadmissibility of repeated commission of a crime. For example, in Hungary, supervision by a probation officer is mandatory only for recidivists or juveniles, in other cases the appointment is subject to judicial discretion. The purpose of this form of conditional imprisonment is to protect the offender from the harmful effects of serving a sentence in prison. In Italy, for example, this is criticized by supporters of simple postponement, as it does not provide for general measures of restraint, but is perceived by supporters as a sort of free pardon of a legal nature. This undermines public confidence in the criminal justice system.

The examination of the general mechanism for the implementation of the penitentiary system does not show the main trends in its functioning, but reflects only a private nature. It is therefore of particular importance to study the international framework for the functioning of the penitentiary system in Europe, which will allow a more detailed analysis of the penitentiary system as a whole.

In the course of the development and establishment of the European penitentiary systems, the basic requirements for the operation of the penitentiary systems as a whole have been elaborated. These requirements include the distribution of prisoners according to their legal characteristics of the crime committed, correctional work on the behavior of the prisoner, the educational process of the prisoners through religious, pedagogical influence, as well as vocational and general training, changing the orientation and impact depending on the results achieved in the transformation of the behavior of prisoners, supervisory supervision of the prison regime by specialized personnel staff. The work of convicted persons should be the main way of changing the behavior of this category of persons and their socialisation, as well as providing assistance to prisoners until their full rehabilitation (Standard Minimum Rules..., 1955). These requirements are still commonly referred to as the seven universal maximums of adequate penitentiary conditions.

European penitentiary systems should be characterised as a set of interconnected elements that have a theoretical and normative character. They combine prison policy, which includes strategic regulations, penitentiary doctrine and world view, which reflects the culture of legal orientation of the society, specialized legislation in this field, the system of bodies and institutions responsible for the implementation of punitive measures, as well as the peculiarities of law-making and law-enforcement practice and the range of appropriate means and methods; which help to achieve the goals and objectives of the penitentiary system (Analytical report on the results..., 2022). That is, these characteristic features reflect the broad meaning of the studied category.

European Council and United Nations resolutions mandate the monitoring of the content

and implementation of international standards, which aids in maintaining high political status and credibility on the global stage (Abderhalden *et al.*, 2021). For example, prison policy in Wales and England does not have a strong focus on the adoption of many international standards for the enforcement of sentences and on the implementation of standards for the treatment of convicted persons (Resolution of the UN General Assembly No. 45/111, 1992). It cannot be said that the States in question have a low level of penitentiary technology or that there has been a lack of progress in the ideas on the treatment of the subject in their national systems. The reason is that British legislation and prison practice is a universally recognized standard of the world's penitentiary system. This state has a great historical experience in the researched sphere, which has received worldwide recognition and fame. The United Kingdom therefore supported its own criminal law policy and did not intend to change it at the present time to conform to completely different standards of prevention.

The need to consider international standards and European penitentiary norms in addressing internal issues arises from the development of international penitentiary law, a subset of international criminal law. This branch encompasses principles and norms that define the legal status of convicted individuals, establish international standards for various punitive measures, and regulate international cooperation within the penitentiary sphere (Swiss Criminal Procedure Code, 2007).

The Anglo-Irish penitentiary system is characterised by a highly progressive system. For example, The Prisons and Young Offenders Institutions (Scotland) Rules 2011 paragraph 17, provides for three levels of control and supervision of prisoners, namely low, medium and high

(Peterman *et al.*, 2021). The transition of a convicted person from a high to a medium to a low level is possible only after a period of at least six months of detention at a certain level, in the absence of warnings from the administration of prisons and institutions. Retrograde movement, from low to medium and from medium to high levels, is possible with at least three disciplinary warnings or with more severe punitive measures, as, for example, solitary confinement for up to three days. The choice of the initial level of the convicted person depends on the seriousness of the wrongful act committed, the existence of a previous criminal record, the late payment of any type, the length of pre-trial detention and the behavior of the convicted person during detention and other criteria, which are determined by administration of prison institution (Peterman *et al.*, 2021). At the same time, when this category of persons enters specialised institutions for serving their sentence, it is generally possible to place them at the lower or middle level. There are four levels in Wales and England, namely reduced, basic, standard and improved (Resolution of the UN General Assembly No. 45/111, 1992). What is equally important for this system is to cultivate the idea of building one's own positive qualities. In the Northern Ireland Prison Rules and Juvenile Centre, the basic principles in the treatment of prisoners are support for their welfare, health, self-esteem, personal responsibility, as well as allowing convicted persons to make individual decisions about their time in prison (Frank, 2020).

The German type of penitentiary system, which is characteristic of States such as Germany, Liechtenstein, Switzerland and Austria, is characterized by the introduction of the penitentiary system by two prisons, with the exception of Liechtenstein, which has one prison. Article 76 of the Swiss Constitution (1999) provides for two

types of correctional institutions, namely, safe and open prisons. Under article 56 of the Swiss Constitution, safe prisons also have a section that can operate in an open prison; open prisons have a section that can operate in a secure prison (Piotrowski *et al.*, 2020). The difference between these species is in the degree of providing security. Open prisons are characterized by the absence of external fences, the territory is designated conditional and, with the permission of the administration, convicted persons have the right to work outside the institution. Closed prisons are characterized by the fact that the category of convicted persons is supervised and does not have the right to go beyond the established territory (Recommendation of the Parliamentary Assembly No. 1741, 2006). It is also worth noting that the German-type penitentiary systems are characterized by the absence of uniform legislation on the enforcement of punitive measures. In Switzerland, for example, each canton has the right to establish it independently, but on the basis of the State's criminal law. The law establishes the cantonal system of punitive measures (Cuadrado *et al.*, 2021).

This type of penitentiary system also has a high incarceration rate, which is slightly lower than the standard penitentiary occupancy rate. This means that the Slavic type of penitentiary system has traditionally had a large number and size of penitentiary institutions in the national penitentiary system. When examining the peculiarities of the penitentiary system, it should be noted that it does not adequately organize the security requirements and accommodation of prisoners in multi-bed sleeping area rather than dormitories.

Equally important is the demilitarisation of the penitentiary system and its humanisation. The current penitentiary system should introduce additional human rights guarantees for the serving of sentences, in the form of the exclusion of

the vulture from the acts regulating the rights and obligations of convicted persons, as well as the expansion of methods and techniques to support social communication. It should also be noted that Slavic-type penitentiary systems are characterized by inhuman or degrading treatment or execution of punishment towards convicted persons, which indicates violations of the rights of convicted persons. On this basis, an important stage in the study is the provision of recommendations to improve the effectiveness of the Ukrainian penitentiary systems and their compliance with international standards.

First of all, strict observance of the principle of separation of convicted persons with different degrees of danger to society is proposed. This principle should also be applied in the execution of criminal sanctions by extending the types of punishment. It should be noted that it is important to build a functional basis for corrective action on convicted persons, which will be based on a system of individual influence on this category of persons. The focus will be on the full social adaptation of the former offender through the provision of employment opportunities and the re-establishment of social networks.

To improve efficiency, it is worth mentioning the reform of the institutional framework of the penitentiary system, taking into account the experience of the European penitentiary systems. It is necessary to develop a concept that will aim at improving the quality of the work of the authorities and institutions that implement the punitive measures, regulating their activities in accordance with European standards in the treatment of convicted persons and moving towards improving the activities of these bodies in accordance with international standards. These recommendations will contribute not only to improving the quality and efficiency of the treatment of convicted

persons, but also to the work of the penitentiary system as a whole.

Conclusions

The importance and relevance of the study of legal and penitentiary systems was highlighted by a scientific study of the subject. This is because the realisation and protection of the rights, freedoms and legitimate interests of citizens are among the priorities and objectives of modern civilization and the world community, and convicted persons are the category of persons whose rights and freedoms are most often restricted. The penitentiary system is a correctional framework focused on administering punishment through deprivation of freedom, utilizing various legal measures to influence convicted individuals. Its primary aims are to restore social justice, rehabilitate offenders, and prevent future crimes. Key aspects of the studied penitentiary systems include classifying prisoners based on the legal nature of their crimes, implementing correctional programs to modify prisoner behavior, providing educational and religious guidance, and assisting prisoners until they achieve full rehabilitation.

The analysis of the current situation with the observance of the rights of convicts in Ukraine shows a number of systemic problems that require a comprehensive solution. Overcrowding in prisons, a lack of resources, outdated infrastructure, an imperfect rehabilitation system and a culture of abuse were identified as key obstacles, the study

found. All of the above factors lead to unsanitary conditions, limited access to medical care and personal space, and also complicate the process of resocialization of prisoners. It has been established that the presence of these problems violates not only humanitarian principles, but also negatively affects society in general, contributing to the increase in the level of recidivism and undermining trust in the law enforcement system. Based on this, it was established that it is possible to achieve the goals of punishment and resocialization, as well as to strengthen the rule of law in Ukraine, only if proper conditions of detention and treatment of prisoners are ensured. In this connection, the experience of European penitentiary systems, namely Anglo-Irish and German, was examined, each with its own characteristics. For the first system there is widespread use of the system of serving sentences, as well as their separation into levels. The German-type penitentiary system is characterized by the representation of the penitentiary system by two prisons, with the exception of Liechtenstein, which has one prison. In the following scientific works, it is advisable to investigate the gender aspects of ensuring the rights of convicts in the modern penitentiary system of Ukraine.

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Conflict of Interest

None.

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Судова та пенітенціарна система як репресивний апарат: правові способи захисту громадянських і політичних прав

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Анотація

Актуальність дослідження полягає у зростанні ролі правової та пенітенціарної систем в умовах сучасних викликів, зокрема, стану війни в Україні, що зумовлює необхідність чіткого розуміння механізмів правового регулювання виконання кримінальних покарань з урахуванням принципів захисту прав людини, а саме засуджених. Метою дослідження стало проведення комплексного дослідження механізму правової та пенітенціарної систем, що включає розкриття понять, особливостей та принципів їх функціонування. Для проведення дослідження було використано теоретико-методологічний підхід, метод синтезу, юридичної герменевтики та інші. Результати дослідження показали, що поєднання теоретичних і практичних аспектів роботи у сфері правової та пенітенціарної систем дозволяє створити цілісне уявлення про механізми, які лежать в основі зміни соціальної спрямованості кримінального покарання і сприяють подальшому розвитку парадигм поводження із засудженими. У ході проведення цього дослідження було охарактеризовано вплив воєнного стану на правову та пенітенціарну системи. Визначено особливості правового регулювання виконання кримінальних покарань в умовах воєнного стану в Україні. Крім того, проаналізовано практику застосування заходів кримінально-виконавчого впливу на засуджених та, відповідно, узагальнено досвід зарубіжних країн щодо забезпечення прав і свобод засуджених. Результати, отримані в ході дослідження, можуть бути використані органами державної влади, установами виконання покарань, науковими та громадськими організаціями для вдосконалення правового регулювання виконання покарань, забезпечення прав і свобод засуджених, гуманізації їх тримання

Ключові слова: громадянське суспільство; права людини; управління; громадський контроль; пенітенціарна служба; виконавча кримінальна юстиція



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Features of the administrative activity of the psychological service of penitentiary institutions in the context of ensuring the rights of convicts

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Abstract

The relevance of this study is conditioned by the search for effective ways to influence the process of optimising the administrative activities of psychological services of the penitentiary system in connection with the ongoing reform of the penitentiary system of Ukraine as of 2024. This determined the purpose of this study, which was to identify current problems of the psychological service in the system of penitentiary organisation and to identify approaches to their transformation according to the world's leading practices, aimed at ensuring humane treatment of prisoners and securing their rights. The theoretical and methodological framework of this study included the use of qualitative methods of structural and functional analysis of the problem of psychological support services in penitentiary institutions and analytical research of the professional competence of a

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psychologist in working with convicts. The findings of the study reflect the problem of management and administration of psychological services of the penal system. The study also highlighted the issues of the specifics of professional activity of correctional facility staff, approaches and ways to improve the administrative legal methods of the psychological service and forms of implementation of staff competencies in professional activity. Specifically, the findings covered the issues of developing the professional competence of practical psychologists of correctional institutions, their responsibilities in working with prisoners and the problems associated with psychological support for staff regarding professional burnout and their subjective safety. The obtained data also covered the specific features of resocialisation of convicts and the problems of their rehabilitation in penal institutions. Furthermore, the study presented a model of the process of improving the administrative activities of psychological departments of the penitentiary system. The results obtained during the study can be used by psychologists of correctional institutions and the management of such institutions to improve the work of psychological services, develop training programmes for specialists

Keywords: penitentiary system; resocialisation; executive authorities; legislative regulations; professional competence

Introduction

Ensuring the effective functioning of psychological services of penal institutions is carried out in the context of executive and administrative actions, specifically through compliance with administrative legal forms and methods of work aimed at developing and making decisions to improve the activities of departments of the state penitentiary service. Furthermore, it is important to provide these services with information, coordinate and control them on the part of the state, as well as to attract competent personnel and optimise the material and technical base. Therewith, the successful administrative activity of the psychological service is characterised by management processes in the systematisation of legal relations, where professional training of specialists is necessary (Almeida *et al.*, 2022).

Investigating the problem of forming competence in future employees of criminal executive services, O.S. Sklyar (2020) identified the need to create relevant psychological and pedagogical

conditions for students in their educational activities, specifically the integration of social, humanitarian, legal, and specialised subjects. O.A. Gerasymenko and T.G. Kharina (2021), in their study of the problem of professional training of personnel of executive authorities, note that an integrated approach to the formation of professional competence in future specialists is needed, where significant elements are the acquisition of theoretical knowledge, practical experience, personal development, as well as the development of certain psychological qualities in the practical training of specialists. At the same time, investigating the problem of professional development of penitentiary system employees, O.V. Oksenyuk (2020) emphasised the need to develop specialised communication skills and practical training in typical emotionally charged situations that may occur in the work of a future specialist.

According to V.S. Medvedev *et al.* (2022), the ability to manage psychological processes in the

team and cooperate with other services of the penitentiary system is important in the professional activity of specialists of the psychological service of penitentiary institutions. Investigating the specific features of the functioning of the psychological service in the law enforcement system, the researcher notes that these organisations are called upon to assess the mental health of convicts, predict the risks of committing new crimes, provide psychological support to employees, and implement research on the penitentiary system. Studying the problem of administrative support in this context, V.V. Nagorniy (2022) noted that apart from these areas of work, psychological services carry out organisational and coordination activities. According to the researcher, the administrative activity of social and psychological services involves developing strategies and planning the work of their organisations, defining their tasks and functions, implementing training and professional development of psychologists of the service and monitoring compliance with the requirements for ensuring psychological safety in institutions. Thus, studying the role of the psychological climate in correctional institutions, specifically the atmosphere in the team and in the work of staff with convicts, H. Palmen *et al.* (2022) noted that the effective performance of the duties assigned to the psychological service largely depends on the sense of security of the staff. The researcher emphasised that the level of subjective security of employees of these services is interrelated with the stability of a person's mental health, where stress and burnout can lead to incorrect work with prisoners, increased anxiety, aggression, hostility, and reduced performance in general.

The problem of successful administrative activity of psychological services of penitentiary institutions is made relevant by the issues of professional staffing, specifically, high-quality

specialised training of specialists, improvement of professional skills and knowledge of employees, their motivation, and the need for safe performance of their duties. This determines the relevance of investigating the content of modern problems in the professional activity of a psychologist in correctional institutions and determines the primary purpose of the study, which was to cover the specific features of psychological services' implementation of their goals, objectives, and functions, as well as to develop a model for improving the work of these organisations to better ensure the exercise of the right of convicts to medical care.

Materials and Methods

The leading aspect of the theoretical and methodological approach to determining the peculiarities of the management activities of psychological services of penitentiary institutions was a qualitative combination of methods of systematic analysis of the work of psychological services of penitentiary institutions, in particular, the study of issues related to the performance of their duties, tasks and functions, as well as the analytical method of determining the cause and effect relationships of the process of developing the professional competence of a psychologist in the penitentiary system. This involved identifying the conditions for the development of professional competencies of psychological service staff and the specifics of their work with prisoners in penal institutions. Specifically, the study was planned and its tasks were implemented through the systematisation, unification, and structuring of the world experience of investigating the problem of administrative activities of psychological services of correctional institutions, which helped to investigate the specific features of providing psychological support to convicts and became the fundamental basis

or covering the content of modern approaches to addressing issues related to the level of recidivism and suicide prevention in penal institutions.

The organisational structure of the research was based on the concept of identifying the factors that influence the decrease in the effectiveness of psychologists' work in these institutions and ways to improve approaches to performing the requirements for resocialisation and correction of convicts defined by the legislation. The formulated purpose of the study and theoretical analysis of sources on the functioning of executive authorities in the context of the penitentiary system determined the vector of the study, which involved the use of abstraction and induction methods. This facilitated a comparative analysis of the data obtained with the conclusions of scientists who were engaged in practical research on the problem of administrative activities of the psychological service in correctional institutions and the identification of ways to improve the work of psychologists with prisoners. Furthermore, the content and provisions of various legislative documents related to ensuring the solution of the problems of the penitentiary system in Ukraine were investigated, specifically the Criminal and Executive Code of Ukraine (2003), Order of the Ministry of Justice of Ukraine No. 921/5 "On the Approval of the List of Names of Bodies, Penal Institutions, Pre-trial Detention Centres, Educational Institutions and Medical Rehabilitation Centres Belonging to the Sphere of Administration of the State Criminal Enforcement Service of Ukraine, in the New Edition" (2020). The study also analysed the regulations governing the internal activities of the state correctional institutions, specifically Order of the Ministry of Justice of Ukraine No. 145/34428 "On the Approval of the Instruction on Organisational and Staff Work in Penal Institutions, Pre-trial Detention Centres,

Paramilitary Formations, Educational Institutions, other Enterprises, Institutions and Organisations Created to Ensure the Fulfilment of the Tasks of the State Criminal Enforcement Service of Ukraine" (2020), as well as Order of the Ministry of Justice of Ukraine No. 1010/32462 "On Approval of the Rules of Internal Procedure of Penitentiary Institutions" (2018). To identify promising vectors for the development of the penitentiary system of Ukraine, the Order of the Cabinet of Ministers of Ukraine No. 1153-p "On the Approval of the Penitentiary System Reform Strategy for the Period Until 2026 and the Approval of the Operational Plan for its Implementation in 2022-2024" (2022), as well as "Strategy for Reforming the Penitentiary System until 2026" (2023) were considered. Thus, it contributed to the analysis of the regulatory framework of penitentiary institutions and their units, specifically the psychological service departments of the state correctional institutions.

The scientific approach used in this study helped to substantiate the key areas and leading methods of work of psychological organisations in penitentiary institutions, as well as to identify the negative consequences of reducing the subjective safety of employees and professional burnout of psychologists in practical activity. The study also helped to identify ways to improve the effectiveness of psychologists in educational institutions and to develop a model for improving the administrative activities of psychological services.

Results

The psychological support and maintenance of the execution of sentences is the responsibility of the psychologist. However, apart from providing psychological support to convicts, a psychological service specialist also needs to support the staff of the correctional institution. This involves

implementing a set of measures based on scientific, methodological, and practical recommendations for working with different categories of people. Thus, the professional activity of a psychologist in correctional facilities is aimed at helping prisoners reduce psychological problems at the beginning and during the process of serving their sentence (depression, fear, etc.), facilitate the preservation and restoration of family ties, and develop skills in prisoners that will help them avoid recidivism in the future. Furthermore, the psychologist's work should ensure understanding of the reasons that led to the crime, provide support in the development of the convict's social skills (communication, cooperation), help to form internal resources for the transformation of destructive behavioural patterns and restore self-respect and self-esteem (Johnson *et al.*, 2021).

At the same time, the psychologist is also responsible for conducting preventive conversations and activities for the staff of the correctional facility to prevent the negative impact of working conditions on the psyche of employees and to prevent professional burnout and psycho-emotional changes in the personality structure (Malik *et al.*, 2023).

For the international community, the issue of the spread of crime is of exceptional significance (Crime Rate by Country..., 2023). Preventing future recidivism is particularly important in this regard. This is what makes the issue of psychological support to prisoners in penitentiary institutions so important. The rapid pace of transformation processes in the legislative system, its digitalisation and modernisation in line with the current conditions of society opens the possibility of innovative approaches to psychological support in the penitentiary system. The role and significance of psychological services is growing rapidly. Thus, forensic psychological examination

helps law enforcement officers to obtain a conclusion about a person's mental state at the time of the offence (affect, self-defence, depression, frustration, etc.), understand the nature of the actions committed, establish the motives for destructive behaviour and identify individual psychological characteristics (Van Es *et al.*, 2023).

Investigating the problem of the administrative activities of psychological services in the system of penitentiary institutions, P.R.S. Burton (2021), M.S. Johnston *et al.* (2022) considered the activities of a psychologist in correctional institutions and their work with prisoners as a process of the latter's correction and resocialisation. At the same time, the researchers emphasised that the administrative activity of psychological support services consists in the exercise by these organisations of executive and administrative powers, which should be ensured by streamlining the activities of the penitentiary system departments. Researchers also see the administrative work of psychological services as a form of activity regulated by law and implemented within the administrative and legal system. However, the success of the psychological service of correctional institutions is viewed not only through the lens of performing its legal duties, but also through the achievement of goals to prevent complications of the stay of convicts in institutions and optimise the work of employees. Thus, when investigating the provision of psychological support to prisoners and staff of penitentiary institutions, Kothari *et al.* (2020), K.L. Appelbaum *et al.* (2021) and H. Palmen *et al.* (2022) point out that psychological work is a rather complex and lengthy process that requires a prominent level of professional qualification, patience, and the ability to individualise approaches and methods for each person. Furthermore, the researchers believe that a psychologist needs to possess the skills of

ethical standards regardless of the client's identity. At the same time, the researchers emphasise that it is significant to ensure confidentiality and build trusting relationships in psychological work. Considering the prevalence of crime in the world, it is important to understand the process of psychological support in penal institutions (Crime rate by country..., 2023).

The key goals of social and educational work in correctional facilities are the correction of convicts and their resocialisation. This is regulated by penal legislation and is achieved through educational (correction of behavioural patterns, influence on spiritual development), social (support in solving social problems), and psychological work (reduction of the traumatic impact of isolation, psychological support) (Duwe, 2017). Specifically, social and educational activities are aimed at correcting the destructive behaviour of prisoners, developing their respect for life and other people, fostering a desire for legal work, initiative in employment and motivation in educational work following the rules of conduct in society, the constitution, and laws. Therewith, it is important to consider the characteristics of the prisoner's nature, their mental state and psychological specificity, the level of social neglect and the crime committed (Testoni, 2021). The organisation of social and educational work in correctional facilities is entrusted to psychological services and is based on the development of specialised methodological recommendations by specialists in the psychological and pedagogical fields, as well as specialists in criminal executive law.

The work of a psychologist in the penitentiary system involves investigating the behaviour of prisoners, conducting psychodiagnostics and correctional work, as well as preventing suicide among prisoners. Therewith, the purpose of the specialist's psychological work is to create a positive impact on the convict's mind to repent and

prevent recidivism (Lo *et al.*, 2020). At the same time, psychological work requires increased attention from a specialist in relation to prisoners with a tendency to mental personality disorders, narcotic substance addiction, self-harm (eating disorders, auto-aggression) or suicide, conflict, hostility towards others, and antagonism towards administrative staff. These categories of prisoners are subject to increased control of psychological services (psychodiagnostics, correction, individual counselling) to ensure the prevention of negative events in the environment of the correctional facility (Luke *et al.*, 2021). Therewith, adherence to clear principles of psychological support to prisoners allows achieving the goals set for the penitentiary system.

The rights of convicts to receive psychological support are clearly regulated by the legislation of Ukraine. According to Article 107 of the Penal Code of Ukraine (2003), convicts have the right to psychological support, including rehabilitation and psycho-correctional programmes, psychological counselling, opportunities for independent mastery of psychological knowledge and skills, etc. Furthermore, Item 7.3 of the Internal Regulations of Penitentiary Institutions guarantees convicts the right to psychological counselling and individual support (Order of the Ministry of Justice of Ukraine No. 1010/32462, 2018).

An important aspect is the mechanisms for protecting the rights of convicts in case of inadequate psychological support. An example of judicial protection of this right is the Judgement of the Sixth Court of Appeal in Case No. 826/17689/18 (2023). In this case, the convict appealed against the inaction of the administration of the penal colony, which consisted of not providing him with psychological support for a long time. The court upheld the claim and ordered the colony administration to provide the convict with the necessary psychological support.

Another example is the Decision of Vinnytsia District Administrative Court in Case No. 120/8688/23 (2024). In this case, the convict appealed against the refusal of the administration of the penal colony to provide him with individual psychological counselling. The court found the administration's inaction to be unlawful and ordered it to provide the convict with the necessary psychological support in the form of individual counselling. Apart from judicial protection, the rights of prisoners to psychological support can be protected by appealing to human rights organisations, such as the European Committee for the Prevention of Torture (CPT). In its reports, the CPT has repeatedly stressed the significance of ensuring adequate psychological support for prisoners and provided recommendations for improving the situation.

In 2023, The Ministry of Health of Ukraine approved a new Procedure for the provision of psychological care in inpatient settings (Order of the Ministry of Health of Ukraine No. 122/41467, 2023). This document defines the requirements for the organisation and provision of psychological support to persons in inpatient healthcare facilities, including penitentiary institutions. The implementation of the new Procedure should help improve the quality and accessibility of psychological support for convicts. However, despite the legislative regulation and protection mechanisms, the implementation of the right of convicts to psychological support in Ukraine still faces problems. Judicial practice and reports of human rights defenders document cases of violations due to understaffing of psychological services in colonies, inadequate working conditions, etc. This requires further improvement of the system of psychological support in penal institutions.

Ensuring the right of convicts to psychological support is critical considering the goals of the execution of their sentence – resocialisation and

the development of skills necessary for successful reintegration into society after release. Violation of this right can undermine the effectiveness of the process of correction of convicts. Therefore, the provision of proper psychological support should be based on compliance with the current legislation and include effective mechanisms for monitoring and protecting the rights of convicts. The court decisions analysed above demonstrate that in case of violation of their rights, convicts can protect their right to psychological support by applying to the court. At the same time, court practice also shows that there are systematic problems in this area in Ukraine that need to be addressed systematically.

Ensuring an adequate level of psychological support to prisoners is an important task for penal authorities and institutions. This requires allocating sufficient resources to staff psychological services with qualified specialists, creating suitable conditions for their work, establishing effective procedures for providing psychological support and introducing effective mechanisms for monitoring the observance of prisoners' rights in this area. Only through a comprehensive approach to solving the existing problems can the full realisation of the legally consolidated right of prisoners to receive psychological support in prisons be achieved. This, in turn, will help to increase the effectiveness of the process of correction and resocialisation of convicts, which is a key purpose of the penitentiary system. The analysed previous studies indicate that the objects of administrative activity of the psychological service are convicts and employees of correctional institutions. At the same time, essential elements of administrative work are the ways of influencing them and the goals that should be achieved in the activity of the psychological service. The structure of the administrative activities of the psychological service is presented in Table 1.

Table 1. Administrative activities of the psychological service of correctional institutions

Object	Purpose	Method of influence	Means of achievement
Convicts	Resocialisation; Suicide prevention; Adaptation to new conditions; Reducing recidivism; Transforming behaviour	Consultation Psychodiagnostics Prevention Forecasting Education Research Correction	Individual and group psychotherapy; Educational activities; Social and educational work
Employees	Ensuring objective security; Increasing psychological stability; Reducing the risk of professional burnout		Trainings; Individual counselling; Situation modelling

Source: compiled by the authors based on J. Lo (2020), H. Palmen *et al.* (2022), M.S. Johnston *et al.* (2022), I. Testoni *et al.* (2023)

At the same time, the work of a psychologist in correctional institutions covers a number of job tasks, including the development and implementation (together with other psychological service staff) of psychocorrection programmes for individual and group counselling, improving the psychological skills of staff, introducing the latest methods of influencing the mental activity of prisoners, assessing the risks of recidivism and preventing it. Furthermore, the psychological service worker is obliged to know and follow the legal requirements for the regulation of their professional activities, provide psychological characteristics and professional recommendations for the development of individual programmes of psychodiagnosis, rehabilitation and correction of the convict's personality (Testoni *et al.*, 2023).

When formulating an individual programme of psychodiagnosis and correction for each

convicted person, the psychologist should determine the goals of work with them, the measures and responsible persons for their implementation and monitoring, as well as clear terms of psychological support or therapy. Therewith, responsibility for the implementation of the social and educational individual programme rests with the convict, the staff of the correctional facility, as well as additional participants from state or non-state institutions involved in the work with the prisoner. Thus, the analysis of scientific sources (Sulitsky, 2020) and the study of legislative documents (Order of the Ministry of Justice of Ukraine No. 921/5, 2020; Order of the Ministry of Justice of Ukraine No. 145/34428, 2020) on the subject of the study indicates that in Ukraine, correctional facilities employ an average of one to several practical psychologists, depending on the number of convicts in the institution. These indicators are presented in greater detail in Table 2.

Table 2. Typical staffing standards for practical psychologists of psychological services departments in correctional facilities in Ukraine

The average number of persons on the list of persons in P, PTDC, and PI	Number of full-time employees	Department of social, educational, and psychological work with convicts		Human resources department
		Number of practical psychologists for P and PTDC	Number of practical psychologists for PI	Number of practical psychologists
under 300	89	2	1	1

Table 2. Continued

The average number of persons on the list of persons in P, PTDC, and PI	Number of full-time employees	Department of social, educational, and psychological work with convicts		Human resources department
		Number of practical psychologists for P and PTDC	Number of practical psychologists for PI	Number of practical psychologists
301-600	112	2	1-2	1
601-900	139	2	2-3	1
901-1,200	152	For institutions with more than 1,000 inmates, an additional position of a practical psychologist is introduced for every 450 inmates	2-3	1
1,201-1,500	155		2-3	1
1,501-2,000	161		3-4	1
2,001-2,500	71 (P only)		4-5	1
Over 2,501	73 (P only)		5-6	1

Notes: P – prisons; PTDC – pre-trial detention centres; PI – penal institutions

Source: compiled by the authors based on Order of the Ministry of Justice of Ukraine No. 1010/32462 (2018)

Thus, the results of the study of the issue of staffing of penitentiary institutions show a discrepancy in the number of psychological staff to the number of inmates in the penitentiary institution. However, the problem of staffing correctional facilities is not based solely on the high workload per specialist. Furthermore, it is also difficult to attract highly qualified staff who can ensure the effectiveness of rehabilitation, correction, and resocialisation of prisoners. At the same time, challenging working conditions and lack of professional development can also be attributed to the reasons for unwillingness to work as a full-time psychologist in penal institutions. However, this problem can be solved through a set of measures aimed at increasing the motivation of qualified professionals, including the introduction of a system of professional development for employees, the involvement of experts, thematic seminars and trainings, sufficient salaries, and adequate logistical and methodological support (Fletcher *et al.*, 2022). Furthermore, the low staffing of practical psychologists in penitentiary institutions raises the need to cover the specific

features of the professional competence of psychological workers and the risks of their professional burnout. This issue also raises the question of employee self-regulation and their objective safety in performing their professional duties.

The administrative activities of psychological services ensure that psychologists follow administrative legal norms and use modern methods, tools, and technologies in their work with prisoners. Thus, the work of a psychologist involves the use of various techniques to influence the behavioural and emotional determinants of deviations in prisoners, individual and group consultations, trainings, and psychotherapy sessions using various methods of influence (art therapy, cognitive behavioural therapy, etc.). This allows changing not only the convicted person's views on the crime committed, but also helping them restore adequate ties with society.

Particular attention should be paid to international practices in the development of penitentiary systems and, accordingly, the activities of psychological services in correctional institutions. Thus, in Norway's correctional facilities,

administrative activities are based on the principles of security, transparency and innovation, where the performance of social tasks related to the correction of prisoners is at the heart of the penitentiary system (Higgins, 2021). Specifically, the proper enforcement of sentences is based on the safety of all citizens and an attempt to prevent future recidivism, and the initiative to change criminal behaviour is vested in the offender. However, strategic operational plans are based on a dynamic approach and involve close cooperation between all departments of the correctional institution, including the psychological service. Therewith, the purpose of punishment is to transform a person's criminal behaviour, thinking, perception of reality, and conscious attitude towards causes and consequences. In this country, administrative activities are organised according to the needs, requirements, and expectations of the external environment. Notably, Norway has an electronic monitoring system (introduced in 2014), where the target group is persons who have been sentenced to imprisonment for up to 4 months or those who have 4 months left to serve their sentence. In Denmark, the Department of Prisons and Probation is responsible for monitoring the execution of sentences, where court decisions are categorised according to the criteria of electronic monitoring, supervised release, supervised probation, community sentences, supervision of persons with mental disorders, and supervision with alcohol treatment (Arbour *et al.*, 2021). Electronic monitoring involves serving a sentence outside a penal institution, but with the establishment of the accused's place of residence, occupation (work, school, etc.), and prohibition of alcohol or narcotic substance use. Electronic equipment is used to monitor prisoners in the country (introduced in 2005), which allows recording violations of certain restrictions. As of the beginning of 2023, Italy was experiencing an excess of operational

capacity in penitentiary institutions. Therewith, the country has experience of changing the sentence for some categories of convicts (Zhang & Wang, 2021). Thus, in 2021, due to the COVID-19 pandemic crisis in Taranto, the government decided to release some prisoners under supervision to reduce overcrowding and the risk of infection. Notably, in 2017, the country revised its Criminal Code and introduced a special crime prohibiting the torture of prisoners, which helped to reduce ill-treatment of prisoners and rethink the method of solving social problems and problematic situations in penitentiary institutions (About the Norwegian Correctional..., 2024). The country also has an organisation that investigates the treatment of prisoners and issues periodic reports and impartial proposals for reforming the penal system.

In contrast to Italy, in Thailand, prison conditions are still below international standards (Kristoffersen, 2022). The penitentiary system of this country, apart from overcrowding in correctional facilities, has problems of inadequate accommodation of prisoners, ill-treatment, unsanitary accommodation of prisoners with poor quality drinking water and food. It is also difficult for convicts to receive medical care in penal institutions, and human rights organisations have limited access to monitor their conditions of detention. With the advent of the COVID-19 pandemic, Thailand's prisons have managed release some prisoners early, which has helped reduce not only the spread of the disease but also prison overcrowding. However, as of 2023, most of the measures have been eased or cancelled.

The Italian penitentiary system has many problems related to the maintenance of prisoners (Prison population and capacity..., 2023). Specifically, correctional facilities, under the guise of treatment and rehabilitation, use violent methods without offering convicts opportunities for correction and positive change. The country's

penitentiary institutions do not follow legal norms to prevent violence and eradicate racism and evade rehabilitation measures to correct prisoners and reintegrate them into the community after release. In Italy, the situation with the penitentiary system has a number of complications, including the absence of a unified criminal justice system, instead the country has federal, state, local, and tribal systems (Bitetto, 2021).

Based on the successful practices of foreign countries, Ukraine has developed a modern Strategy for Reforming the Penitentiary System until 2026 (2023). The key goal of this Strategy is to create a humanistic penal system that can ensure the social adaptation of offenders and guarantee public safety. The implementation of the Reform Strategy in the country's penal system should guarantee the creation of appropriate conditions in penal institutions, counteract ill-treatment of convicts, increase the development of probation bodies, improve methods of influencing the process of correction and resocialisation of convicts, as well as expand the possibilities of digitalisation of executive authorities, create an appropriate level of security in correctional facilities and develop effective models for training and retraining of penitentiary system employees. This legislative document also identifies the problems to be solved after the Strategy is implemented. Specifically, these problems include the formal approach to social, educational, and psychological work with prisoners, which reduces the probability of the effectiveness of correction and resocialisation of detainees. Notably, there is a certain inconsistency in the use of psychodiagnostic tools for the study and assessment of prisoners, which also complicates the educational impact on them. Therewith, modern approaches to research methods and impact on prisoners are only beginning to emerge (Magaletta *et al.*, 2020). Digitalisation and the need to analyse large information flows,

including the positive experience of other countries in reforming the penitentiary system, require the introduction of new methods and tools in the work of penitentiary services. This raises the issue of raising the level of information and digital literacy of penitentiary system employees, introducing modern software solutions (databases, online platforms) for the secure exchange of information, its processing, structuring, and analysis. The Ministry of Justice of Ukraine is responsible for developing the operational plan, monitoring the implementation and evaluation of the Strategy for Reforming the Penitentiary System (Strategy for Reforming the Penitentiary..., 2023). This allows the executive body to involve representatives of other state bodies (MPs, human rights commissioners, NGOs, etc.) to effectively monitor, analyse, and control the implementation of the Strategy. The state is responsible for financing the implementation of this strategy, with the right to raise funds from other sources not prohibited by Ukrainian legislation.

Proceeding from the above, the administrative activities of the psychological service of a correctional institution are aimed specifically at solving the psychological problems of institution staff and prisoners, where an essential element of this activity is the regulation of their relationships and interaction with other units of the penitentiary system.

Discussion

The problem of administrative activity of psychological services operating on the basis of correctional institutions raises the issue of providing professional psychological support to convicts for their rehabilitation and resocialisation. Insufficient staffing of psychological services in penitentiary institutions can lead to an increase in recidivism and a decrease in the performance of other employees of the penitentiary institution (professional

burnout, mental disorders, phobias, stress, etc.). However, this is not the only problem with the psychological departments of the penitentiary system. Specifically, psychological services may face difficulties in interacting with other correctional units or ethical dilemmas regarding the performance of professional duties by other staff.

Resocialisation and correction of convicts as processes of transformation of pathological behavioural patterns are considered in many modern studies. Thus, G. Duwe (2017) and I. Testoni *et al.* (2023), who investigated the problem of correction, resocialisation, and rehabilitation of prisoners, indicate that the involvement of psychological services in the penitentiary system plays a key role in achieving the goals of reducing recidivism and restoring social ties with society. In common with the findings of the present study is the conclusion that working with a psychologist on resocialisation allows a person to return to normal life in society after serving a sentence for a crime. M. Ma (2022) argues that the correction of convicts is aimed at transforming the individual and developing practical skills of self-regulation. In this case, it should be emphasised that psychological support in both processes allows the convicted person to understand the problem of their destructive behaviour, its cause and effect, and to plan step-by-step actions to avoid the temptation of relapse.

According to K. Heseltine *et al.* (2011), correctional and resocialisation processes are designed to ensure the rehabilitation of the prisoner by teaching them new skills, developing their sporting abilities and culture. This study emphasised that the rehabilitation of offenders in prison should be clearly planned and systematic. In this regard, the general conclusion is that the involvement of interdisciplinary specialists (social and psychological workers, doctors, lawyers) contributes to the fulfilment of the purpose of

resocialisation and correction. At the same time, M. Arcuri (2021) emphasised that an individualised approach to the development of a rehabilitation programme is important in reforming a convicted person, where the specific features of a person's mental activity, needs, and goals should be considered. Both studies emphasised the close relationship between education and rehabilitation in the context of correctional institutions. Thus, it is possible to identify commonalities between the studies, specifically, the fact that restoring connections with family or close people is important for the correction of a convicted person. Furthermore, the study examined the effectiveness and targeting of prisoner rehabilitation programmes. By comparing the findings, it can be determined that individual rehabilitation programmes for convicts contribute to ensuring security in penal institutions. It was also found that this helps to highlight the features of individualised programmes for convicts. These features include an assessment of the needs and potential of the prisoner, a targeted outcome, an individual approach, the involvement of interdisciplinary specialists, an assessment of the rehabilitation process, preparation for adaptation in society after serving a sentence, flexibility and adaptability to the emotional and behavioural changes of the prisoner, and psychological support after release. The correlation of the findings obtained is also observed in the studies of I. Testoni *et al.* (2023), M.S. Johnston *et al.* (2022), where the researchers emphasise the need to adapt the convict to new living conditions and psychological work with them in the context of improving and restoring the mental health of the prisoner during the sentence and in their resocialisation.

The findings also indicate the need to introduce an effective model for improving the administrative activities of psychological services in the penitentiary system. This includes creating conditions under which a practical psychologist can

individualise the correction of a prisoner, adapting methods and approaches to the concrete needs of each individual. Such a model will enable psychologists to perform a comprehensive assessment of the psycho-emotional state of prisoners, develop individual therapy and counselling plans, accommodating the personal characteristics and life experience of prisoners.

Conclusions

The specificity of cognition of the objects of the penitentiary system is determined by the complex nature of correctional work with prisoners, the specific features of the professional activity of social and psychological workers who study the mental processes of prisoners, as well as by the features of approaches to educational influence on them and tools for correction and resocialisation of prisoners.

The study indicated that the administrative activities of psychological services in penitentiary institutions are aimed at providing psychological support to staff and prisoners. Thus, administrative activities are designed to prevent complications in the work of employees and difficulties in serving sentences by prisoners. Specifically, the work of a correctional psychologist should help prisoners adapt to new conditions, reduce recidivism, ensure the objective safety of staff, increase psychological stability, and reduce the risk of burnout among staff. Another key aspect of the administrative work of the psychological service in penitentiary institutions is to change the mindset of the prisoner and transform their behavioural patterns. Improvement of the administrative activities of psychological services should take place in the context of staff development, individualisation of rehabilitation programmes for prisoners, and the development of a clear plan for cooperation between the service and other departments of the penitentiary system.

Furthermore, it was found that the psychological service plays a key role in ensuring that the rights of prisoners in penal institutions are respected. Psychologists facilitate the adaptation of prisoners to the conditions of detention, help them overcome psychological difficulties and provide access to the necessary rehabilitation programmes. Therewith, as of 2024, there are certain problems in the field of ensuring the rights of convicts, such as overcrowding in penitentiary institutions, lack of resources for psychological support and rehabilitation, as well as cases of ill-treatment of prisoners. Improving the efficiency of the psychological service, expanding its powers, and strengthening cooperation with other structures of the penitentiary system are necessary to address these problems and fully exercise the rights of prisoners.

The investigation of international practices on the research problem contributed to the development of a model for the improvement of the administrative activities of psychological services in correctional institutions, specifically, to ensure their effective functioning and implementation of their obligations to reform convicts and reduce recidivism in the country. However, in the context of investigating the problem of administrative activity of the psychological service, the study of programmes for the rehabilitation of convicts stays relevant. This creates the prospect of further research related to the analysis of individual programmes of psychological work with prisoners and the evaluation of their effectiveness after therapeutic intervention.

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None.

Conflict of Interest

The authors of this study declare no conflict of interest.

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Особливості адміністративної діяльності психологічної служби установ виконання покарань в контексті забезпечення прав засуджених

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Анотація

Актуальність дослідження зумовлена пошуком ефективних шляхів впливу на процес оптимізації адміністративної діяльності психологічних служб пенітенціарної системи у зв'язку з триваючою станом на 2024 рік реформою пенітенціарної системи України. Це обумовило мету науково-дослідної роботи, яка полягала у визначенні сучасних проблем функціонування психологічної служби в системі організації здійснення покарань та виявлення підходів щодо їх трансформації відповідно до провідних світових практик, метою яких є забезпечення гуманного ставлення до засуджених та забезпечення їх прав. Теоретико-методологічною основою даної наукової статті постало використання якісних методів структурно-функціонального аналізу проблеми діяльності служб психологічної допомоги в закладах виконання покарань та аналітичного дослідження професійної компетентності психолога в роботі із засудженими. Результати дослідження відображують проблему управління та адміністрування психологічних служб кримінально-виконавчої системи. У статті були висвітлені питання специфіки професійної діяльності персоналу виправних закладів, підходи й шляхи покращення адміністративно-правових методів роботи психологічної служби та форми реалізації компетенцій персоналу в професійній діяльності. Зокрема одержані результати розкривають питання формування фахової компетентності практичних психологів виправних закладів, їх обов'язків в роботі із засудженими та проблем, які пов'язані з психологічною підтримкою персоналу щодо професійного вигорання співробітників та їх суб'єктивної безпеки. Отримані дані розкривають особливості ресоціалізації засуджених та проблеми їх реабілітації в установах виконання покарань. Окрім цього в науково-дослідній роботі представлена модель процесу вдосконалення адміністративної діяльності психологічних відділів пенітенціарної системи. Отримані під час дослідження результати можуть бути використаними психологами виправних закладів та керівництвом таких установ для вдосконалення роботи психологічних служб, розробки програм підготовки фахівців

Ключові слова: пенітенціарна система; ресоціалізація; органи виконавчої влади; законодавчі розпорядження; професійна компетентність

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