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The Supreme Court as a guarantor of ensuring the rights and freedoms of a person and a citizen

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Abstract

The relevance of the chosen topic lies in the fact that Ukraine has been aligning its legislation with that of the European Union since 2022. As part of this process, further improvement of the Supreme Court's activities is essential, as it serves as a guarantor of protecting the fundamental interests of every individual seeking judicial protection. The aim of the research is to review the processes of reforming the Supreme Court, taking into account the conducted Great Judicial Reform and the Eurointegration processes, as well as identifying proposals to increase public trust in the Supreme Court as the highest judicial body responsible for ensuring proper protection of rights and freedoms. The research methods used in the study include systemic-structural, comparative-legal, formal-legal, method of systematisation, as well as synthesis, analysis, and generalisation methods. The results of the study have shown that the Great Judicial Reform initiated in 2014 indicates

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that Ukraine is capable of considering European positive experience to enhance the overall compliance of Ukrainian legislation with European Union legislation while preserving its own age-old traditions in the field of justice and judiciary. It has been clarified that the key task of any transformations is to create conditions for the formation of an independent democratic rule of law state and all its branches of power – legislative, executive, and judicial. Thus, in a state aspiring to become legal, the court must be authoritative, independent, and should not be a bureaucratic institution but a real guarantor of citizens' rights protection. It has been determined that the prerequisites for the implementation of the Great Judicial Reform were: low level of public trust in the judiciary as a whole, and the Supreme Court of Ukraine in particular, the presence of political-state influence on judges, and corrupt aspects. The materials of this work can be used for drafting legislative proposals in the field of the judicial system as a whole and its individual organs

Keywords: judiciary; justice; proceedings; European integration; reformation; European Union

Introduction

Usually, it is the judiciary that enjoys and should enjoy special independence, as the legislative and executive branches of government often interact with each other. This can be explained, for example, by the fact that the Cabinet of Ministers of Ukraine, which is the highest body in the system of executive authorities, often exercises the right of legislative initiative, and the Verkhovna Rada of Ukraine, as the sole legislative body, considers and adopts acts submitted by the Government. The same cannot be said for the judiciary, which consists of courts of general jurisdiction and the Constitutional Court of Ukraine, which are the embodiment of justice and therefore should have a special and independent status.

The Constitution of Ukraine (1996), the main legislative act of Ukraine, stipulates that power in Ukraine is divided into legislative, executive, and judicial branches. Each of these branches of power is independent and should not interfere with each other. In addition, Article 8 of the Constitution of Ukraine (1996) stipulates that every person and citizen is guaranteed the right to apply to the courts to protect their constitutional

rights and freedoms. In this regard, the judicial system of Ukraine has been constantly updated and reformed since independence. As a result, the approaches to the functioning of courts and the activities of judges of all judicial instances have changed. The latest major judicial reform, which began in 2015-2016 and is still ongoing, has shown significant progress and completely changed the existing legal regime in all judicial bodies of Ukraine. The Supreme Court of Ukraine has undergone special transformations, as it has undergone a full-fledged reorganisation and merger with the High Specialised Courts into a single body with separate Chambers within the structure of the new Supreme Court. Thus, the three-tier structure that was created instead of the four-tier structure became the embodiment of the structure of courts operating in most European countries (Chyzhmar *et al.*, 2016).

At the same time, an important aspect should still be the understanding of the legal status of the Supreme Court as a guarantor of human and civil rights and freedoms. That is why, in case of any transformations and/or changes in the judicial

system, the consequences of such an act should be aimed primarily at increasing the level of public confidence in the judicial system in general and the Supreme Court in particular. Thus, almost ten years have passed since the first tasks of the Great Judicial Reform were implemented, and therefore it is possible to draw certain conclusions and analyse the existing gaps and shortcomings in the activities of the Supreme Court. It is also possible to formulate proposals that may negatively affect the overall process of the administration of justice in Ukraine, thereby reducing the level of trust among the Ukrainian population in this institution.

The issues of ongoing reform of the judiciary in general and the Supreme Court in particular continue to be the most discussed in Ukraine. Thus, the academic community mainly focuses on the gradual implementation of measures and mechanisms to improve the status of all judicial institutions in the context of restoring confidence in the judiciary as a whole. Such things were mentioned in her study by N. Parkchomenko (2020), she also pointed out the need to further expand the powers of the Supreme Court in the field of ensuring the unity of judicial practice, the mandatory application of the Supreme Court's opinions, as well as the implementation of opportunities for derogation in the legal professional positions contained in such opinions.

Furthermore, the researchers systematically highlight the need to update the valid legislation in the field of justice and judicial proceedings through the prism of European integration and Ukraine's new status as a candidate for the European Union (EU). Taking into account the principles and requirements for the EU Member States, O. Perederiy (2022) drew attention in his study to the requirements of European partners to reform the system of selection of candidates for vacant judicial positions, which are proposed for

implementation in the judicial system of Ukraine. It is also important to thoroughly study the professional opinions of the Venice Commission on enhancing the role and status of the highest court in the judicial system of Ukraine. A similar analysis of the study is characterised by the work of N. Demchyk (2023), which highlights the key aspects of judicial reform and recognises that such reform is characterised by dynamic aspects of continuous development in the context of economic, political, financial, or social changes that can raise the status of all judicial institutions without exception to a qualitatively new level of justice.

Another significant conclusion for the study is reflected in the article by M.V. Bazarnyk (2022), which states that the Ukrainian legislature is fully focused on further harmonisation of Ukrainian legislation with the EU legislation, which should have a positive impact on the foreign policy vector of the Ukrainian judicial system and the implementation of reforms to ensure the legal support of the functioning of all courts in Ukraine. In the study by L.O. Shapenko and M.V. Raychyk (2020), special attention is paid to the scientific understanding of the organisational principles of the judiciary in order to predict new vectors of development of the justice system and develop a further strategy for judicial reform, in particular, in terms of improving the efficiency of the functioning of general courts. The author examines the main characteristics of the principles of territoriality and specialisation as constitutional principles of the judiciary, which are fundamental for building a system of general courts.

However, it should be noted that the most crucial aspect – how the implementation of the Great Judicial Reform has influenced ensuring the legal status of the Supreme Court as a guarantor of the rights and freedoms of individuals and citizens – is not adequately addressed in the analysed

and existing scientific achievements. Therefore, the purpose of the research was to provide a legal characterisation of the processes of reforming the Supreme Court taking into account the conducted Great Judicial Reform and Eurointegration processes, as well as to identify gaps and shortcomings that reduce the effectiveness of the Supreme Court's activities in the context of fulfilling the important function of protecting the rights and interests of individuals and citizens.

Materials and Methods

The rationale for the choice of methods used is determined by the specifics of the research subject, namely, changes in the activities of guarantors of human and citizen rights and freedoms – the Supreme Court, through the prism of the Great Judicial Reform and the new status of Ukraine. Therefore, in the research process, a range of general scientific and specialised legal methods were used, allowing to reveal the research subject and achieve its goal. Among the general scientific methods, the following were used: methods of analysis and synthesis, generalisation. The basis of the research consists of a complex of specialised methods. These include methods such as systemic-structural, comparative-legal, formal-legal, method of systematisation, typical for scientific research in the field of law. These methods were applied in conjunction, contributing to the completeness, comprehensiveness, and objectivity of scientific enquiry, the justification, and consistency of formulated conclusions, the reliability of the obtained results.

Specifically, methods of analysis, synthesis, and generalisation were applied to disclose the text and determine structured points, identify key points, information, and conclusions related to improving the activities of the Supreme Court. Their use also contributed to the analysis

of complex concepts, ideas, or information for understanding their structure, interrelationships, and important aspects. With the help of these methods, a general analysis of the Great Judicial Reform and its impact on the activities of the Supreme Court was conducted.

Using the systemic-structural method, the key prerequisites, or reasons for reviewing the basic approaches to justice and judicial practise in Ukraine, as well as the interrelation of reform and changes in political power and state structures, were characterised. Using the comparative-legal method, the main distinctive features in the organisational activities of the Supreme Court of Ukraine and the newly created Supreme Court were reflected. By using the formal-legal method, the main normative legal acts that became the basis for the implementation of the Great Judicial Reform were characterised. With the use of the method of systematisation, intermediate and main conclusions were formulated, as well as proposals for further improvement of the activities of the Supreme Court were determined.

In the process of revealing the topic and tasks of the research, a number of such normative legal acts in the field of judiciary and justice were used: Constitution of Ukraine (1996), Association No. 984_011 (2014), Law of Ukraine No. 1402-VIII (2016), Law of Ukraine No. 1401-VIII (2016), Decree of the President of Ukraine No. 64/2022 (2022).

Results and Discussion

The political and legal aspects and prerequisites of reforming the Supreme Court as a guarantor of rights and freedoms. Firstly, it is essential to start with the fact that after the declaration of independence of the Ukrainian state, there was an urgent need to change the existing mechanisms of state management and its

non-state institutions. One of the most important institutions entrusted with the duty of independent and impartial adjudication of disputes arising within the state and among its individual subjects is the courts of Ukraine, which constitute the judicial system. The contemporary period of state formation is characterised by the fact that all processes of reform are somehow provoked by changes in Ukraine's political narratives. It is precisely these political forces that were supposed to ensure the implementation of corresponding changes at the level of normative legal and sub-legal acts, including in the judiciary.

The establishment of Ukrainian statehood necessitated the search for new approaches to the protection of rights and legitimate interests of citizens using a qualitatively new level that would significantly differ from the system formed during the times of the Soviet Union. It is worth agreeing with the position of scholars O.Yu. Tatarov and A.V. Shevchyshen (2011), as well as O. Yara (2024), who noted that transformations in Ukraine's governmental institutions have been taking place since its independence. The main task of such transformations is to create conditions for the formation of an independent democratic rule of law state and all its branches of power – legislative, executive, and judicial. However, the realisation of this goal is impossible without strengthening the legal status of judicial bodies. In a state striving to become legal, the court must be authoritative and independent, representing not a bureaucratic institution but a real guarantee of citizens' rights protection. After the dissolution of the Soviet Union, the functions of the court in Ukraine partially changed, but the judicial system remained Soviet in its structure.

In addition to the position of scholars, it should be noted that any transformations, including those directly related to the realisation

of rights and legitimate interests of individuals and citizens in their protection in judicial procedure, must be based on the constitutional provision that "the individual is the highest social value", and accordingly other aspects, such as changes in the political system, should take a secondary place. Therefore, when adopting any normative legal acts in the sphere of ensuring the activities of the judicial system as a whole, and its institutions in particular, it is necessary first and foremost to take into account that Ukraine is a state with democratic values declared in the Act of Declaration of Independence of Ukraine (Resolution of the Verkhovna Rada of the Ukrainian SSR No. 1427-XII... 1991). From this follows that any transformations should aim at increasing the level of trust of the population in the sense that the courts of Ukraine are guarantors of ensuring the rights and freedoms of individuals and citizens. However, the problem during those times was the unconditional orientation and dependence of Ukrainian legislators on political forces that had authority, including influence on the judicial system. This, in turn, indicated the interdependence of different branches of power and violated the principle of the independence of the judiciary.

T. Kazik (2023) pointed out in her research the reasons for the changes in political power in Ukraine and the destruction of the judicial system in Ukraine in 2010. The unsuccessful implementation of judicial reform in 2010 was a consequence of the complete dependence of the bodies of judicial self-government on political power. Thus, the judicial system was characterised by political narratives regarding the formation of the High Council of Justice, in addition to implicitly formulated grounds for holding judges accountable for disciplinary responsibility. All this ultimately led to the decline of an important component of

judges' activities – independence in carrying out their functions.

It is worth adding that since 2010, judicial activity at all levels, including in the Supreme Court of Ukraine, has faced constant problems related to the ignoring of important constitutional rights and interests of individuals and citizens. This can be explained by the presence of political influence on the then Supreme Court of Ukraine. After the overthrow of the regime with signs of blatant totalitarianism, the ignoring of constitutional values, and the final consolidation of Ukraine's European integration course, society predictably demanded the formation of a new independence from political will and fair judicial authority at all levels of its implementation. This issue was outlined by R.L. Sopilnyk (2017), who emphasised the necessity of a full restart of the judicial system and the guarantee of an important principle related to the right to a fair trial. This was also indicated by slogans after the Revolution of Dignity. An important conclusion to which the author drew attention in his research is that it is necessary to study judicial reform from the perspective of its impact on the legal consciousness of judges and to consider formal aspects. The same conclusion was reached by A.M. Kostenko (2020), adding that by leaving out an analysis of legal consciousness, a global problem can be provoked.

Another reason for implementing the Great Judicial Reform was the European integration actively pursued since 2014 and still ongoing. The European integration and its correlation with the complete overhaul of the judicial system are actively researched by numerous legal theorists. For instance, G.O. Babenko (2022) pointed out that Ukraine's state policy after 2014 became exemplary and aimed at ensuring the formation of unified approaches in norm-setting, thus being based on European narratives. Thus, scholars

highlighted the primary reason for the necessity of changes in the judicial system, which is Euro-integration. It is worth agreeing with L. Grytsaenko's (2004) position that in every historical period of changes and reforms in the judiciary system, certain gaps and shortcomings emerged, which in the future served as primary reasons for revising legislation regulating this sphere of social relations. The researcher also adds that effective justice should be the result of the development of thought and societal experience over many generations. Moreover, such justice should be carried out independently of political and governmental authorities by judicial bodies. That is, courts separately, and other bodies separately.

According to N. Kogut (2020), the key pre-requisites or reasons for the necessity of implementing the Great Judicial Reform were: establishing a reliable mechanism for holding judges accountable for unjust decisions and corrupt legal violations; establishing reliable levers to guarantee the rights of participants in the judicial process; improving the system of enforcing judicial decisions; strengthening the independence of the judicial branch from other branches of power and officials; establishing a balanced relationship between the judicial and law enforcement branches of power; unifying judicial practise and establishing a reliable mechanism for overcoming legal gaps and conflicts; ensuring public access to the judiciary. As for the necessity of reforming the Supreme Court of Ukraine and changing approaches to its activities, the then Chief Justice of the Supreme Court of Ukraine indicated that the liquidation of the Supreme Court of Ukraine was dictated by the demands of the time, where slogans and calls like "cleanse the system by dismissing all judges" had been echoed for a long time (Yaroslav ROMANYUK: "We support...", 2016). The cleansing of the system and the dismissal of

judges of the Supreme Court of Ukraine, among other things, were associated with the existing facts of corruption in the courts, the dependence of judges on political elites, and so on. The events of the Euromaidan and the increased overall level of distrust of Ukrainian society towards state authorities and judicial bodies became reasons for a comprehensive renewal of the judicial system. Thus, it can be summarised that the political and legal aspects of reforming the Supreme Court are directly related to the need for a fundamental change in the existing judiciary system overall, the presence of corrupt manifestations, political or other governmental influences on judges, as well as with Eurointegration processes initiated immediately after the political upheaval in 2014.

Key provisions of the Great Judicial Reform and its impact on the Supreme Court.

First and foremost, it should be noted that after the challenging times of the Euromaidan, Ukraine chose the Eurointegration path and the necessity for further improvement of the judicial system overall and the activities of the Supreme Court in particular within the framework of implementing the Great Judicial Reform. In 2016, the Verkhovna Rada of Ukraine adopted important legislative acts, such as Law of Ukraine No. 1401-VIII (2016) and Law of Ukraine No. 1402-VIII (2016), which contained radical transformations in the existing organisation of the judicial system. Preconditions for changes in certain constitutional provisions had long been ripe, and measures announced by the governing structures began to be gradually implemented in the aforementioned legislative acts. As noted by A.I. Orlenko (2023), judicial reform should not only be declarative but should also initiate the formation of an effective and accessible legal defence, which should satisfy the urgent and expected interests of various social strata of the population.

The Great Judicial Reform is characterised by its comprehensive nature. The drop in public trust in the judiciary to a critical level dictated and demanded appropriate actions. In this context, K. Dashkova and T. Kovaleva (2021) noted that orientation towards the European space, as well as the rebuilding of statehood in Ukraine, require changes in approaches to forming a lawful and fair judicial system in their decisions. Priority should be given to the protection of the rights and freedoms of individuals and citizens. In their opinion, Ukrainian citizens have lost faith in the fairness, balance, and legality of judicial decisions. In order to restore the corresponding level of trust of the Ukrainian population, systemic changes are necessary, as well as changes in the legal consciousness of both the judiciary apparatus and the civilian population of Ukraine.

Regarding the analysis of the main changes that would positively influence the level of trust in judges and the judiciary as a whole, it is worth mentioning some key changes. Firstly, a review of the constitutional powers of the Verkhovna Rada of Ukraine and the President of Ukraine regarding the sphere of justice through the prism of their compliance with international standards in the reformed system was carried out. Secondly, new approaches to the formation and activities of the entities (authorities) responsible for the selection and appointment of judges with high qualifications that meet European standards have been introduced. Thirdly, guarantees regarding the financing and protection of the professional interests of judges have been reviewed and strengthened (Kovalenko & Rubeshov, 2021).

It is worth agreeing with the position of Yu.S. Shemshuchenko (2017), who noted that the adopted changes open up real constitutional and legal possibilities for conducting a fundamental judicial reform in Ukraine, based on its own

experience and European standards of justice. The radical nature of the judicial system reform is quite successfully reflected in the example of the complete renewal of the Supreme Court of Ukraine. As a result of the reform, the Supreme Court of Ukraine was reorganised into the Supreme Court and a three-tier judicial system was created, which takes into account the requirements of the Venice Commission and a number of civil society organisations (Kuybida *et al.*, 2018). Scholars O.Z. Khotynska-Nor (2016) and Yu.V. Bedratyi (2022), critically analysing the provisions of the Great Judicial Reform, pointed out that there was not the application of gradual, as required by the conditions of the time, but rather radical to some extent evolutionary measures. They also noted the peculiar harmfulness of combining technologies and reforms with revolutionary methods, as such changes negatively affect the overall development of public opinion about the judiciary in general and the judiciary corps in particular. Such thoughts are quite debatable, as it was impossible to change the population's opinion about the high level of trust in the judiciary and judges by gradual methods.

One of the complex issues addressed by the working group of the Constitutional Commission was the issue of the court system. Representatives of the Supreme Court of Ukraine insisted on transitioning to a three-tier system (local courts – appellate courts – Supreme Court), as recommended by the Venice Commission. However, representatives (judges) of the Higher Specialised Courts disagreed with such a system, as in that case, they would be subject to liquidation. Regarding this, it is necessary to note that after the actual adoption of Law of Ukraine No. 1401-VIII (2016) and Law of Ukraine No. 1402-VIII (2016), an appeal was filed with the Constitutional Court of Ukraine by the judiciary regarding the constitutionality or

unconstitutionality of the basic legislative changes and novelties. Thus, in the Dissenting Opinion of Judge Serhiy Holovaty in Case No. nb02d710-20 (2020), the constitutional provisions of legislative acts were determined. Although not all members of the Constitutional Court agreed with the above decision, it is necessary to mention the separate (divergent) opinion of Judge S. Holovaty, who rightly pointed out that the laws adopted clearly contradict the Constitution of Ukraine, thus recognising them as unconstitutional. In his opinion, the Supreme Court of Ukraine should not change its functions as the highest judicial institution and should continue to exercise its powers until its actual termination. Further, the judiciary will be exercised by the Supreme Court. He also noted that the Laws in question provide a full launch for the reorganisation of the higher specialised courts, as well as the Supreme Court of Ukraine, which becomes the sole judicial body under the name of the Supreme Court. In general, the judge noted that neither Law of Ukraine No. 1401-VIII nor Law of Ukraine No. 1402-VIII contain any grounds for the termination of the activities and liquidation of the Supreme Court of Ukraine and specialised courts. Moreover, the model proposed for implementation, in his opinion, does not correspond to the established legal procedure for liquidation and essentially introduces the transfer (delegation) of the liquidation function of one court to the judges of another court, which is a direct violation of Article 8, parts one and two of Article 55, as well as parts one, five, and six of Article 126 of the Constitution of Ukraine (point 1.2).

Nevertheless, over the past eight years, Ukraine has had a new judicial system, which is generally positively perceived by the public and has significantly increased the overall level of trust in the Supreme Court as a guarantor of the protection of human and citizen rights and

freedoms. Thus, since 2014, the legislative body of Ukraine has adopted a number of important changes in the field of justice and judicial proceedings aimed at building an independent and European-oriented judicial system in accordance with the basic principle of the rule of law and increasing the independence of the judicial system. The most significant changes have been experienced by the Supreme Court of Ukraine itself, undergoing a restructuring process and becoming the Supreme Court with the following structure: Grand Chamber of the Supreme Court; Cassation Administrative Court; Cassation Economic Court; Cassation Criminal Court; Cassation Civil Court. Such a structure is in line with the structure of Supreme Courts of European states.

Eurointegration and shortcomings that negatively affect the provision of the activity of the Supreme Court regarding the protection of human and citizen rights and freedoms. Eurointegration processes in Ukraine essentially began with the declaration of independence of Ukraine. However, their global development and implementation occurred after the signing of Association No. 984_011 (2014). The Association Agreement, which entered into full force in September 2017, became a landmark event in the relations between Ukraine and the European Union. Its volume is about 1200 pages, which, among other things, sets out certain requirements for reforms in the judiciary and the judicial system sector.

On February 24, 2022, by Decree of the President of Ukraine No. 64/2022, a state of martial law was introduced due to the full-scale invasion by the Russian Federation (Decree of the President of Ukraine No. 64/2022..., 2022). These events prompted a review and acceleration of Ukraine's Eurointegration processes. Therefore, on June 23, 2022, Ukraine received the official status of a candidate country for membership in

the European Union. This was decided by the European Parliament's Resolution on the candidate status of Ukraine, the Republic of Moldova, and Georgia. This document mentions further cooperation and economic integration of Ukrainian legislation with EU legislation. Thus, one of the key requirements of the European Union to the Ukrainian community in terms of candidacy is the implementation of an important block – reforming the normative and organisational principles regarding the capacity of the judicial authority to ensure adequate protection of human and citizen rights and freedoms. It should also be understood that this reform is the most long-term and complex in its implementation. Therefore, in a state that aspires to full membership in the European Union, attention should be paid specifically to the organisational and legal problem of conducting judicial reform (European Parliament Resolution No. 2022/2716(RSP)..., 2022).

Possible agreement can be reached with the position of A. Sybiha (Andriy Sybiha – on EU membership..., 2022), who noted that Ukraine's new status completely changes the vectors of Ukraine's internal and external policies. However, it is necessary to consider that the implementation and adoption of institutional criteria should take into account not only the incorporation of the "acquis communautaire" into Ukrainian national legislation but also effective implementation, including concerning relevant judicial or administrative structures, as noted by V.S. Bilovol and A.O. Bilenko (2020). Considering the Association Agreement, according to M.V. Bazarnyk's position (2022), the requirements in the field of justice are divided into two groups or sectors. The first consists of requirements of a systemic nature, which reflect the Copenhagen criteria. These requirements do not have clear formulations or instructions for achieving the desired result. The

other requirements have more clearly expressed instructions or mechanisms for implementing European standards in the field of justice.

The Venice Commission always emphasises that Ukraine has problems with systematic institutional instability in the legal system. Because the reform of the judicial system accelerates each time the political narratives of Ukraine change. Such actions cannot be justified and are entirely safe for society, which can negatively affect the level of society's trust in the judicial authorities. In this context, it is worth agreeing with I. Kamin-ska (2020), who pointed out that the failure to adhere to the principle of sustainable development of the legal field leads to the fact that society loses the real opportunity to establish an effective mechanism for implementing the idea of sustainable development, and the state is discredited as an institution of economic development and ensuring social justice.

By choosing the Eurointegration course, Ukraine has begun to apply the principles of effective democratic institutions, strengthening judicial power, and generally improving its efficiency, as noted by V.L. Kachuriner and A. Pakhlevanza-de (2022). Therefore, it is important to carry out any reform, including improving the activities of the Supreme Court based on the principles of the rule of law, democracy, and full independence. It is important to note that in difficult conditions of military aggression against Ukraine and the actions of the legal regime of martial law, judges of the Supreme Court pay special attention to ensuring that any reforms related to their activities are consistent with the basic values of Ukraine that have been gained over years of independence. Therefore, it is important to approach further changes in the activities of the Supreme Court rationally through the prism of adapting Ukrainian legislation to EU legislation.

However, there are a number of problems that may negatively affect the activities of the Supreme Court, thereby undermining its legal status. In particular, the following are actively discussed: the expediency of the existence of commercial jurisdiction and the need to join the civil one; the expediency of the existence of appellate courts as part of the Supreme Court and the need to create a separate panel; the need to review mechanisms to reduce the number of judges of the Grand Chamber of the Supreme Court, as well as the need to create new specialised courts, such as an investment court (Constant reforms without..., 2023). It should be noted that respondents still confirm the thesis about the low level of public trust in the Supreme Court. According to the Chairman of the Supreme Court S. Kravchenko (Both the number of cases..., 2024), Ukrainian society continues to perceive negatively all branches of government, including the entire judicial system. Another negative aspect is that the mass media mainly publish negative aspects of the Supreme Court's activities, which contributes to further exacerbating the situation. In addition, there has been an increase in cases with resonant aspects, mostly related to corruption and corrupt practises.

Therefore, there is an objective need for further development of mechanisms that ensure the proper implementation by the Supreme Court of its powers to protect the rights and freedoms of individuals and citizens, namely: granting the Plenum of the Supreme Court the right to legislative initiative; introducing a special mechanism that will allow the Plenum of the Supreme Court to provide generalisations and explanations based on judicial practise, not just individual decisions; providing the opportunity for the Plenum of the Supreme Court to provide explanations regarding the application of legal norms; increasing the level of legal responsibility and means of ensuring

it for interference and influence on the Supreme Court; increasing the level of social security for judges to stimulate high standards of their activities and reduce the possibility of pressure from external factors.

Conclusions

The Great Judicial Reform, initiated in 2014, has been indicating for almost a decade that Ukraine is capable of incorporating European best practises to enhance overall compliance of Ukrainian legislation with that of the European Union, while preserving its own legal traditions in the sphere of justice and judiciary. However, a problematic aspect remains the low level of trust among the population in the activities of the Supreme Court as the guarantor of human rights and freedoms.

The political and legal aspects of reforming the Supreme Court are directly related to the necessity of fundamentally changing the existing judicial system as a whole, the presence of corrupt practises, and political or other state influences on judges, as well as the European integration processes initiated immediately after the political upheaval in 2014. The Verkhovna Rada of Ukraine has adopted a number of important changes in the field of justice and judiciary aimed at building an independent and European-oriented judicial system in accordance with the fundamental principle of the rule of law and increasing the degree of independence of the judiciary. As a result of the reorganisation, the most significant changes concerned the Supreme Court of Ukraine, which has the following struc-

ture: The Grand Chamber of the Supreme Court, the Cassation Administrative Court, the Cassation Commercial Court, the Cassation Criminal Court, and the Cassation Civil Court.

Despite Ukraine going through challenging times, it is important to maintain the Euro-integration direction in the sphere of justice and judiciary. Specifically regarding the Supreme Court, it is necessary to introduce some changes, among which granting the right of legislative initiative to the Plenum of the Supreme Court can be highlighted. It is important to establish a special mechanism that will allow the Plenum of the Supreme Court to provide generalisations and explanations based on judicial practise, rather than individual decisions only. It is necessary to empower the Plenum of the Supreme Court to provide explanations on the application of legal norms. Additionally, increasing the level of legal responsibility and means of ensuring it for interference with and influence on the Supreme Court, as well as increasing the level of social security for judges to stimulate high standards of their activities and reduce the possibility of pressure from external factors, are important. Further research may include a comparative analysis of the proposed changes to the Supreme Court and how these changes intersect with various aspects of human rights.

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Conflict of Interest

None.

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Анотація

Актуальність обраної тематики полягає у тому, що Україна з 2022 року приводить своє законодавство у відповідність до законодавства Європейського Союзу. А частиною такого процесу є подальше удосконалення діяльності Верховного Суду, як гаранта забезпечення основних інтересів кожної людини, що звертається до суду за захистом. Метою дослідження виступає огляд процесів реформування Верховного Суду з урахуванням проведеної Великої судової реформи та євроінтеграційних процесів, а також визначення пропозицій з підвищення довіри населення до Верховного Суду, як найвищого судового органу, покликаного забезпечувати належний захист прав і свобод. Методи дослідження, що були використані в роботі: системно-структурний, порівняльно-правовий, формально-юридичний, метод систематизації, а також методи синтезу, аналізу та узагальнення. Результатами дослідження встановлено, що розпочата у 2014 році Велика судова реформа, вказує на те, що Україна є спроможною враховувати європейський позитивний досвід задля підвищення загального рівня відповідності українського законодавства законодавству Європейського Союзу та зберігати власні вікові традиції у сфері правосуддя та судочинства. З'ясовано, що ключове завдання будь-яких перетворень, полягає у створення умов для формування незалежної демократичної правової держави та всіх її гілок влади – законодавчої, виконавчої та судової. Так, у державі, що прагне стати правовою, суд має бути авторитетним, незалежним, в ньому повинна знайти відображення не бюрократична установа, а реальний гарант захисту прав громадян. Визначено, що передумовами для здійснення Великої судової реформи стали: низький рівень довіри населення до судових органів в цілому, та Верховного Суду України, зокрема, наявність політико-державницького впливу на суддів та корупційні аспекти. Матеріали цієї роботи можуть бути використані для опрацювання законопроектів у сфері судової системи в цілому та окремого її органу

Ключові слова: судова влада; правосуддя; судочинство; євроінтеграція; реформування; Європейський Союз



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Peculiarities of conducting economic activity under martial law: Business and human rights

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Abstract

The relevance of the topic of scientific research lies in creating conditions for the necessary level of legal regulation of economic activity, which is the basis for forming national defence interests. The purpose of the research in this article is to establish the features of conducting economic activities during the special regime, namely the regime of martial law, analyse the newly created regulatory legal documents in this area, and provide proposals for improving legislation in the named field. The article utilises a system of methods including systemic analysis, deduction method, inductive method, abstraction method, and formal-logical method. During the writing of the article, an analysis of the valid Ukrainian legislation regarding the peculiarities of conducting economic activities during the martial law regime was conducted. It was established in the article that during the conduct of economic activities under special regimes, it is necessary to consider the features defined in special legislation. Therefore, the articles of the Economic Code of Ukraine and Law of Ukraine No. 389-VIII were analysed. Changes introduced by the Law of Ukraine No. 3219-IX regarding taxation regimes and reporting by economic entities after the introduction of martial law were identified and analysed. An analysis was conducted regarding the fact

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that Ukrainian legislation contains certain contradictory norms regarding the regulation of economic activity during martial law. These contradictions are the main factor in revealing the weakness of the state in the face of actual challenges. Among the measures aimed at protecting workers' rights, termination of employment contracts and ensuring the civil defence of workers during the working day were identified. Ways for necessary reform of the regulatory legal framework for conducting economic activities during martial law were proposed. To ensure the rights of workers in conditions of air raid alert, it is important to develop a new regulatory legal act. It should clearly establish the right of workers not to go to their workplace during such a situation, as well as determine the employer's responsibility for forced labour during this period. The research has practical value since this topic began to be explored only with the start of a full-scale war in Ukraine. The results of the research can be used during the study of the discipline "Commercial Law" and during the conduct of comprehensive research on the peculiarities of state regulation of economic activity after the end of martial law

Keywords: business entities; relocation; entrepreneurship; taxation; State registration

Introduction

Since the beginning of the full-scale invasion of Russia into Ukrainian territory on February 24, 2022, the Ukrainian government was forced to introduce a state of war. The war necessitated the emergence of new legislation to regulate social relations during the state of war. One such aspect of these relations is conducting economic activities. The society's economic activity is a mechanism that supports the country's budget and therefore serves as the foundation for enhancing Ukraine's defence capability. Regardless of how quickly legislation in the field of regulating economic activity develops, systemic changes are possible only through creating effective conditions for protecting the rights of economic entities by increasing the norms of legislation related to judicial protection of the rights of economic entities.

Scientists V.I. Chuyenko and A.A. Kuzmych (2020) explored the prospects of conducting reforms in state regulation of economic activity in Ukraine. They structured the issues of state regulation of economic activity, namely: political issues, problems in international cooperation,

economic issues, problems in legal support, ensuring security of economic activities, social issues, and issues of information support. In her scientific works, T. Melnyk (2023) investigated both the conduct of economic activity in Ukraine as a whole and the peculiarities of introducing entrepreneurial activity during a state of war. The specifics of defining Russia's military aggression as force majeure in economic activity were examined, and conclusions were drawn that this aspect does not determine a mechanism of universal action. Researchers O.V. Artemenko *et al.* (2023) conducted a study of the legal framework for conducting public procurement during a state of war and legislation that ensures such procurement during a state of war. An algorithm of actions for conducting public procurement in conditions of a state of war based on the operation of an electronic catalogue, and open bidding, taking into account the peculiarities of the state of war regime, was established.

Researchers M.V. Mendzhul and A.I. Kalko (2022) identified the problem of access to

the right to work for citizens of Ukraine during the state of war. It was determined that the introduced restrictions related to the state of war are necessary to ensure the effective operation of Ukraine's economy, but they have a negative impact on the rights of workers, for example, the possibility of extending working hours for critical infrastructure workers, limiting workers' rights to leave, etc. Researcher Yu.O. Podolyan (2023) dedicated her research to studying the practise of judicial protection of the rights of economic entities during a state of war. The need for reforming procedural actions to restore the work of economic entities was identified, including improving the mechanism for compensating damages caused by Russian war crimes, reducing pressure on economic entities by law enforcement agencies, and reducing tax obligations of economic entities to facilitate faster recovery of Ukraine's economy. The need to expand the judiciary to ensure faster resolution of cases in defence of the rights of economic entities was identified.

Scientist K.A. Voznyakovska (2022) investigated changes in certifying the occurrence of force majeure. The possibility of not using the mandatory appeal to the Ukrainian Chamber of Commerce and Industry to collect necessary documents during the state of war was established. Changes in the state registration of economic entities during the state of war, consisting of simplifying and automating such registration, were studied. Author D. Augenstein (2022) studied the impact of limited access to justice and effective means of legal protection on the rights of economic entities and individuals as a whole. It was determined that it is necessary to stipulate in international agreements the unilateral imposition of requirements regarding the observance of human rights and fundamental freedoms of business entities related to the European market. This will

help strengthen the primacy of the state's obligations to respect, protect, and fulfil human rights in the context of global business operations. Researcher Yu.I. Ostapenko (2021) identified in her dissertation that the object of legal influence from the state can be both the direct economic activity of an economic entity and through the creation of macroeconomic conditions for the functioning of the market for goods and services in such sectors as national, sectoral, and territorial. The need for establishing and implementing a new economic policy, taking into account the private-law block of economic relations, was determined.

The purpose of writing the article was to identify and study the specific conditions for conducting economic activity in wartime and to provide proposals for reforming legislative norms in this area, identifying the peculiarities of protecting the rights of enterprise workers in the conditions of a state of war.

Materials and Methods

During the research, a system of scientific methods was used, namely: the method of systemic analysis, deduction method, inductive method, concrete-social method, abstraction method, and formal-logical method. The method of systemic analysis was used to analyse the state of valid legislation in the field of economic activity. Also, the analysis method was used during the study of works by scientists in the field of economic activity during a state of war.

The deductive and inductive methods were used to investigate the existing problems in economic activity during a state of war. The deduction method was also used to compare theoretical and practical data regarding state control over economic activity during a state of war. The concrete-social method was used to summarise statistical data on losses suffered by Ukrainian

enterprises during the war and data on international support provided to business entities. The formal-logical method was used to analyse legislative acts and official documents in the field of state regulation of economic activity in Ukraine and the protection of workers' rights. The abstraction method was used to systematise the results of scientific research on conducting economic activity during a state of war.

The main provisions and results of the research were formulated based on the analysis of the norms of Ukrainian legislation. The regulatory framework of the research consisted of legislative acts of Ukraine, namely: Commercial Code of Ukraine (2003), Law of Ukraine No. 389-VIII (2015), Resolution of the Cabinet of Ministers of Ukraine No. 209 (2022), Resolution of the Cabinet of Ministers of Ukraine No. 314 (2022), and Law of Ukraine No. 3219-IX (2022). A comprehensive analysis of the chosen research topic was carried out through a detailed study of legal literature, namely the works of Yu.I. Ostapenko (2021), K.A. Voznyakovska (2022), L.V. Andrushchenko (2022), as well as the works of M.I. Melnyk and I.V. Leshchukh (2022a; 2022b), T. Melnyk (2023). Significant contributions to the research were made by the works of researchers such as O.V. Artemenko *et al.* (2023), and Yu.O. Podolyan (2023). The backbone of the work was the use of a dimensional approach, aimed at examining economic activity from various perspectives. By employing this approach, not only Ukrainian scientific literature was used but also the works of foreign researchers, including D. Augenstein (2022) and J.A. Sonnenfeld *et al.* (2024).

Results and Discussion

According to the definition provided in Article 3 of the Commercial Code of Ukraine (2003), economic activity is defined as the activity of

economic entities in the sphere of social production aimed at the production and sale of products, performance of works, or provision of services of valuable character with a defined price. According to N.I. Verhoglyadova (2022), the development of economic processes in a country that is in a state of war depends on the strategic direction of supporting economic activity, ensuring business security during a state of war is extremely relevant, as it is the basis for the country's overall economic recovery. The basics of conducting economic activity in conditions of martial law are described in Law of Ukraine No. 1647-III (2000), however, due to the Russian invasion in 2014, deficiencies were identified in the existing legislation, and a new Law of Ukraine No. 389-VIII (2015) was adopted. The new law defined the procedure for the establishment and cancellation of the martial law regime; powers and functions of state authorities, local self-government bodies, the military, as well as enterprises, institutions, and organisations during the martial law regime; rights and freedoms of individuals, citizens, and legal entities.

During 2022, Ukrainian businesses lost 32% of their turnover compared to 2021. From January to May 2023, 21.1% of enterprises were forced to stop or suspend operations (0%-30% of the planned indicator) (The state and needs of business..., 2023). With the onset of a full-scale invasion, four possible options for the operation of economic entities emerged: working in conditions of active hostilities, activity in temporarily occupied territories, working in areas where the state has regained control, and relocation of enterprises to safe regions of the country. The safest of these is considered to be the last option. The author agrees with the opinion of T. Melnyk (2023), who identified the following characteristics of the operation of economic entities in a special regime: the presence of a special purpose aimed at

protecting the territorial integrity and inviolability of Ukraine, as well as aimed at protecting the rights and freedoms of individuals and citizens; priority of implementation of special legal norms over general ones; functioning only during mobilisation regime, during martial law regime and in the post-war period of state rebuilding.

With the onset of martial law, peculiarities of the operation regime of economic entities appeared, especially during air raid alerts. According to Article 153 of the Code of Labour Laws (1996), the employer is responsible for ensuring civil protection of employees and therefore has no right to demand that an employee continue to work during conditions endangering his life or health. However, there is no legislation regulating the prohibition of holding an employee accountable for missing work during an air raid alert. The employer cannot be held responsible for the work of employees during an air raid alert under valid law. Based on these factors, there is a need to develop a new regulatory act establishing responsibility for the operation of enterprises during air raid alerts.

It is worth agreeing with the opinion of L.V. Andrushchenko (2022), who noted that due to the impact of war on every sphere of social and economic life, it is necessary to adopt new approaches to legal support for all sectors of the economy, foreign economic activity, and investment. It is noted that reforms in legislation should be aimed at stimulating economic entities to develop effectively. Attention should be paid to encouraging economic entities by providing financial assistance from the state. Therefore, there is a need to establish clear cooperation between the state and economic entities through signing contracts, creating new economic structures, etc. This will accelerate the production processes of necessary goods. To protect the rights of economic entities during the martial law regime, the state

has taken a complex of actions, including granting grants, subsidies, privileges, or exemption from certain types of taxation, simplification of passing state registration, increasing financial assistance, and others (State, needs and prospects..., 2023). These grants include grant support for Ukrainian start-ups, and small and medium-sized businesses "Seeds of Bravery", funded by the European Union, providing grants for business, innovative services, and Ukraine's reconstruction (Seeds of Bravery (UASEEDs), 2024). In the spring of 2024, a grant project "Support for small farmers in Ukraine", initiated by the Howard Graham Buffett Foundation, will be implemented by providing agricultural enterprises with temporary free use of agricultural machinery (Initiated a grant project..., 2024). To ensure the rights of economic entities, Law of Ukraine No. 1555-VII (2014) was adopted. It was concluded that any form of support for economic entities at the expense of the state or local budgets will enable stabilising the level of the economy.

First of all, it is worth considering the changes in the process of state registration of economic entities. After the start of full-scale state intervention, state registration has the following characteristics: only state registrars of legal entities, individual entrepreneurs, state registrars of property rights to real estate and their encumbrances who have labour relations with the subjects of state registration, officials of the Ministry of Justice, its territorial bodies (defined in the list of state registrars and officials approved by the Ministry of Justice, who conduct state registration in conditions of martial law); notaries, state or private executors according to their specified powers in the legislation, can conduct state registration; state registration is carried out automatically; norms requiring the submission or confirmation of data on the ultimate beneficial owner,

as well as documents provided by law for the submission/confirmation of such information, are not applicable, except for the state registration of banking and non-banking financial institutions and citizens providing financial services, as well as for organisations registered under Russian law, or whose ultimate beneficial owner is a Russian citizen; grounds for registration are documents specified in Resolution of the Cabinet of Ministers of Ukraine No. 209 (2022); payment of the administrative fee for registration or payment for obtaining an extract from the Unified State Register can be confirmed by an electronic copy.

To regulate state registration of economic activities during martial law, Resolution of the Cabinet of Ministers of Ukraine No. 209 (2022) was adopted. For an economic entity to be included in the Unified State Register of Enterprises, Organisations, and Institutions within 10 days after its state registration (reregistration) or the adoption of a decision (resolution, order) on creation, including branches, divisions, representative offices, etc., the economic entity must submit to the respective state statistical authority a completed registration card (according to the established form) and its regulatory and founding documents. Then the economic entity receives its own identification code and classification attributes. In conformity with the research conducted by O. Kazak and M. Sulyma (2023), the main problems faced by entrepreneurs in Ukraine during martial law have been identified. These include rising prices for materials and equipment; absence of necessary goods supply network (or its damage due to war); loss of assets; and restrictions on access to finances. To ensure the stabilisation of Ukraine's economy and improve its economic potential, it is necessary to establish cooperation between the state and economic entities. One such form of cooperation is the relocation of economic entities

from temporarily occupied territories. The need for relocation of economic entities arises under the following conditions: disruption of internal and interregional economic ties; logistics problems in the supply or sale of goods; departure of employees abroad; absence or problems in connecting to engineering networks necessary for proper operation, and so on.

As of March 2023, under the programme implemented by the Ministry of Economy of Ukraine, about 700 enterprises were relocated to safer regions of Ukraine (Almost 700 enterprises..., 2022). However, more significant is the relocation of economic entities abroad. Therefore, there is an urgent need for the government to develop a state relocation programme that would provide financial incentives for enterprises, create opportunities for obtaining production equipment through leasing agreements, and conduct activities to promote Ukrainian producers both "nationally" and internationally. There is also a need to subordinate relocated enterprises to the legal regime of existing industrial parks operating in safer regions to which enterprises have been relocated, taking into account their economic and production potential. According to M.I. Melnyk and I.V. Leshchukh (2022b), there is a need to increase the number of regions where business relocation is permitted (at the expense of regions in the central part of Ukraine). It is necessary to agree with this opinion, as such expansion will allow for a more optimal use of the production resources of enterprises affected by relocation.

For regions receiving new enterprises, this becomes an opportunity to improve defence-related expenditures, provide new jobs, including for internally displaced persons, and increase revenues to the local budget. Therefore, local authorities in such areas should create favourable conditions for retaining new economic entities. Thus, it

is worth agreeing with the opinion of M.I. Melnyk and I.V. Leshchukh (2022a) that the most important areas for improving defence capability and living conditions of society are agriculture, retail trade, food production, provision of municipal services, and work of enterprises fulfilling state orders in the defence sector. Under Article 8 of the Law of Ukraine No. 389-VIII (2015), the military administration has the right to use the capacities or labour resources of enterprises, institutions, and organisations of any form of ownership to meet the defence needs of the state. However, there is no regulation governing the methods of implementing such restrictions.

After a full-scale invasion, the number of problems in the economic sphere increased, including disruptions in the supply system, and a decrease in income levels in society, leading to a significant decrease in demand for goods and services, thus necessitating the search for external partners. J.A. Sonnenfeld *et al.* (2024) emphasised the need for businesses to assess their impacts on society, not just investigate the presence of foreign and Ukrainian brands in Russia and Ukraine. Research on this matter is relevant for maintaining ethical standards in business conduct and tax compliance in the country that initiated the war.

Running a business under a state of war always poses certain challenges and risks for economic entities. To stimulate economic development, the government has provided a range of benefits for Ukrainian producers, such as support for internally displaced persons. Employers receive compensation when employing internally displaced persons. As of March 2024, compensation is provided at the minimum wage rate defined by law each month for each internally displaced person employed. This compensation is provided for three months from the date of employment of the internally displaced person, but in the case of

a person with a disability, the compensation period extends to 6 months. (Resolution of the Cabinet of Ministers of Ukraine No. 331, 2022).

Scholars such as A.Yu. Badyda (2022), A.R. Krusian (2022), and K. Popovych (2023) emphasised that the protection of human rights in times of war is the responsibility of the state through constitutionally empowered authorities. It is essential to strike a balance between state-imposed restrictions and the protection of human rights and to conduct an information campaign explaining to Ukrainian citizens the purpose of certain restrictions on rights and freedoms in defence of the right to life. Special attention should be given to protecting the rights of employees during the state of war. According to Article 13 of Law of Ukraine No. 2136-IX (2022), it is possible to suspend labour contracts for the maximum period until the end of the state of war. There is also the possibility of early termination of the suspension of a labour contract with the requirement to notify the employee within ten days. There is a need to improve the provisions of this legal act to ensure the right to suspend labour contracts not only for employers but also for employees.

In addition to the above, there have been changes in the regulation of working hours and rest time, specifically granting employers the right to establish working hours, reducing the annual paid leave to 24 calendar days, and limiting the granting of other types of leave to critical infrastructure workers (Law of Ukraine No. 2136-IX, 2022). S. Tsariuk *et al.* (2022) studied changes in labour contract signing, specifically that the form of the contract is determined by mutual agreement of the parties, and there is the possibility of establishing a probationary period for all categories of employees. Attention should be paid to the study of the peculiarities of terminating a labour contract by the employee.

The Ministry of Economy of Ukraine announced financial support for investors, under which an investor can obtain insurance against war risk from institutions such as the Development Finance Corporation (DFC) or the Multilateral Investment Guarantee Agency (MIGA). These institutions can cover up to 90% of losses (MIGA started providing..., 2023). The Ukrainian government is working to provide potential investors with new opportunities to encourage investment in Ukraine's recovery and economy. Guarantees are provided by G7 countries and the European Union, which also advocate for tax system reforms and reforming the legal framework to enable transparent business operations (Agreement No. 826_001-20, 2020).

International organisations such as the International Finance Corporation, the European Investment Bank, and others plan to provide long-term loans on favourable terms (for example, during the operation of a programme created by the British Export Finance Agency). The financing package includes direct long-term and affordable financing from international financial organisations such as the International Finance Corporation, the European Bank for Reconstruction and Development, or the European Investment Bank, supported by concessional capital, as well as coverage of credit risk by the Export Credit Agency, for example, under the credit programme of the British Export Finance Agency (Financial stability report, 2023).

On January 24, 2024, the National Security and Defence Council of Ukraine announced assistance for Ukrainian entrepreneurs by establishing the Entrepreneurship Support Council through the signing of Presidential Decree No. 30/2024 (2024). This Council should include representatives of the business community. The main goal of the Council is to improve the

economic situation in Ukraine and support Ukrainian producers. Additionally, the Council aims to ensure a proper level of economic security in Ukraine and avoid pressure on legally operating businesses that pay taxes. There is also a grant programme for entrepreneurial financial support called "eWork". This programme provides Ukrainian citizens with the opportunity to receive funds to start their own businesses. Research has been conducted on the peculiarities of mobilisation for economic entities. Law of Ukraine No. 3543-XII (1993) defines the concept of reservists, which refers to the possibility of obtaining a deferment for a certain period (up to six months), granted to critically important workers for the stable operation of enterprises, institutions, or organisations. For example, such enterprises include those that receive orders from the state to meet the needs of the Armed Forces of Ukraine, agricultural enterprises (with an area of more than 500 hectares), pharmaceutical companies (including those producing veterinary medicines), enterprises engaged in the supply of agricultural products, embassies of other states, donor institutions, fuel and energy enterprises, etc. To reserve their employees, a critical infrastructure entrepreneur must apply to the Ministry of Economy of Ukraine. Heads of such institutions and no more than 50% of employees may be subject to reservation (Tyshchenko *et al.*, 2022).

Tax legislation for economic entities during a state of war has also undergone changes. The Government of Ukraine adopted Law of Ukraine No. 3219-IX (2023), according to which individual entrepreneurs are exempted from paying the unified social contribution during the state of war and within a year after its end. Restrictions on tax audits have been introduced, except for audits based on declarations and audits initiated by the taxpayer's complaint, in cases of violations of

currency legislation, violations of deadlines for the receipt of goods under import operations, or currency receipts under export operations. To ensure the protection of the rights of taxpayers – economic entities, a decision was made to suspend the deadlines set in tax legislation. Changes have also been made to reporting requirements for economic entities, as stipulated by Law of Ukraine No. 2115-IX (2022). These changes include:

- Economic entities may not submit financial, accounting, or other reports during a state of war for three months after the end of the state of war;

- If an economic entity is physically unable to submit the required reporting within three months as stipulated by law, it is not subject to administrative or criminal liability for one month from the date of the end of the consequences that made it impossible to do so;

- During a state of war or war, and for three months after its end, taxpayers cannot be subject to administrative or criminal liability for non-submission or late submission of the above-mentioned reporting and/or documents.

The changes in tax legislation are positive, but it is worth noting the expediency of resuming tax audits related to reinstating deadlines for tax debt repayment or controlling transfer pricing. Judicial protection is considered a special form of protection of the rights of economic entities. Courts are empowered to provide protection to economic entities through state coercion or preventive measures to avoid possible violations of the rights of economic entities. Judicial protection of the rights and freedoms of economic entities includes the legislative right to prevent violations of the rights of economic entities through timely consideration of disputes arising in the courts of a certain jurisdiction (Ustymenko *et al.*, 2019). In order to ensure real access to justice, special

measures should be taken, which M.I. Smokovych (2022) and I. Pokhylenko (2022) include the provision of guarantees of access to adequate protection of the rights of business entities in court and ensuring a sustainable system in the work of public authorities in the administration of justice. It is worth agreeing with these theses and adding a measure on the urgency of court cases concerning violations of the rights of business entities.

Thus, the conducted research on the peculiarities of conducting economic activities during a state of war allowed for the systematisation and analysis of the features of this activity and identified priority problems that need to be addressed, primarily establishing communication between the state and economic entities to expedite the development and recovery of damaged economic entities, granting tax incentives for activities during a state of war, attracting foreign investments to support Ukrainian businesses, which will contribute to a faster stabilisation of the Ukrainian economy. One of the important aspects of enterprise activity during a state of war is the protection of the rights and freedoms of workers. The working conditions of enterprises during a state of war include peculiarities of protecting the rights of workers, such as the possibility of suspending labour contracts, changes in working hours, and so on.

Conclusions

The level of legal regulation of economic activity should be improved to ensure effective interaction between the state and economic entities. Their activities are the basis for the development of the economy and the country's defence capability. The regulatory framework for economic activity during a state of war is constantly being optimised to promote entrepreneurship and strengthen the economy. Therefore, there is a

need for the development by the state authorities of appropriate legislative and subordinate legal acts in such areas as providing financial assistance to economic entities, reforming the process of state registration of legal entities and individual entrepreneurs, organisational and economic support for businesses, attracting foreign investments to promote the development of economic activity in Ukraine, changes in tax legislation for economic entities.

The author includes the following measures taken by the state to protect the rights of economic entities during a state of war: simplification of tax conditions for individual entrepreneurs, provision of subsidies, benefits, and grants for economic entities, simplification of the licencing system, measures for enterprise relocation, changes in labour legislation, provision of tax incentives. There is a need for the development of legal acts regulating restrictions on the use of enterprise capacity and alienation of enterprise property. Measures aimed at protecting the rights of workers include the possibility of suspending a labour contract by both the employer and the employee, the employer's duty to provide civil protection for workers during their working day, and compensation for employers for hiring internally displaced persons. Human rights during a state of war have been subject to many restrictions introduced to protect the lives and health of the civilian population. Such restrictions in the field of economic activity include, for example, the reduction of

annual leave and special working regimes for critical infrastructure workers. There is a need to create a new legal act that would regulate the rights of workers not to go to their workplace during an air alarm and establish employer liability for forced labour during an air alarm.

Providing state and foreign support to economic entities is a necessary tool for the state to restore the economy during the full-scale invasion, as such actions will help create new jobs, including for internally displaced persons, ensure food security, and improve the performance of agricultural goods and services producers. In addition to financial assistance, conditions have been created for the possibility of reserving military personnel by enterprises to support critical businesses. Further research should focus on studying changes in conducting economic activities, as the conditions and guarantees provided by the state to support economic entities are constantly changing. It is also worth focusing on researching the conduct of economic activity on a territorial basis, as economic entities in each region have been affected differently by full-scale invasion, including the need for state support for relocated enterprises.

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None.

Conflict of Interest

None.

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Особливості ведення господарської діяльності в умовах воєнного стану: бізнес і права людини

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Анотація

Актуальність теми наукового дослідження полягає в тому, що створення умов для необхідного рівня правового регулювання ведення господарської діяльності це основа при формуванні національних оборонних інтересів. Метою дослідження у даній статті є встановлення особливостей ведення господарської діяльності під час дії спеціального режиму, а саме режиму воєнного стану, аналіз створених нових нормативно-правових документів у даній тематиці та надання пропозицій щодо вдосконалення законодавства у названій галузі. При написанні статті було використано систему методів: метод системного аналізу, метод дедукції, індуктивний метод, метод абстрагування, формально-логічний метод. Під час написання статті було проведено аналіз діючого українського законодавства щодо особливостей ведення господарської діяльності під час дії режиму воєнного стану. У статті встановлено, що під час ведення господарської діяльності в умовах спеціального режиму необхідно враховувати особливості визначені у спеціальному законодавстві. Через це було проаналізовано статті Господарського кодексу України та Закон України № 389-VIII. Визначено та проаналізовано зміни, що були внесені Законом України № 3219-IX щодо режимів оподаткування та ведення звітності суб'єктами господарювання після введення режиму воєнного стану. Проведено аналіз щодо того, що законодавство України містить певні суперечливі норми, що стосуються регулювання ведення господарської діяльності під час режиму воєнного стану. Ці суперечності є основним фактором виявлення слабкості держави перед актуальними викликами. Серед заходів, що спрямовані на захист прав працівників виділено припинення трудового договору та забезпечення цивільного захисту працівників протягом робочого дня. Запропоновано шляхи для необхідного реформування нормативно-правової бази зі здійснення господарської діяльності під час дії воєнного стану. Для забезпечення прав працівників в умовах повітряної тривоги важливо розробити новий нормативно-правовий акт. Він повинен чітко встановлювати право працівників не виходити на робоче місце під час такої ситуації, а також визначати відповідальність роботодавця за примусову роботу в цей період. Дослідження має практичну цінність, оскільки дана тематика почала досліджуватися лише з початком повномасштабної війни в Україні. Результати дослідження можуть бути використані під час вивчення дисципліни «Господарське право», під час проведення комплексних досліджень особливостей державного регулювання господарської діяльності після закінчення дії режиму воєнного стану

Ключові слова: суб'єкти господарювання; релокація; підприємництво; оподаткування; державна реєстрація



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International practices in the development of administrative legal relations in the field of child protection

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Abstract

Ensuring and protecting children's rights is a priority in building harmonious legal relations in every civilised country. The study of the experience of different countries regarding the specifics of the development of administrative legal relations in the field of child protection allows analysing the problematic aspects and identifying positive developments that should be adopted and disseminated. The purpose of this study is to investigate administrative legal relations in the area of child rights protection in certain countries of the world. A set of methods was employed, including methods of induction and deduction, analysis and synthesis, comparison and generalisation, etc. The study examined the content of certain provisions of the Convention on the Rights of the Child, as well as the specific features of legal relations existing between the bodies and institutions of the United Nations. The study analysed the specifics of the development of administrative legal relations in the countries of the Anglo-Saxon and Romano-Germanic legal systems. It was emphasised that in each of the countries under consideration, ensuring and protecting children's rights is a priority for the state. Even though an effective mechanism for ensuring children's rights has been developed in countries with highly developed economies and legal culture, certain

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elements of ensuring children's rights still need to be improved. The legal relations between different state structures for the protection of children's rights in the United States of America, England, Germany, France, and Romania are investigated and systematised. Based on the study conducted, a classification of the system of development of administrative legal relations in the area under study was proposed. In addition, the similarities and differences in the development of administrative legal relations for the protection of children's rights in countries with different legal systems, legal cultures, levels of economic development and mentality were generalised, with author's generalisations and proposals. The proposed scientific study can be used by researchers as a basis for further scientific investigations, by teachers of higher education institutions, as well as by employees of social services for children and representatives of public authorities who influence the development of state policy on the protection of children's rights

Keywords: public authorities; international mechanism for the protection of children's rights; specificity of legal relations; legal system; countries of the world

Introduction

The international community recognises a child as a particularly vulnerable person who needs additional protection. Protection and promotion of children's rights is one of the crucial activities of every civilised state. Most countries in the world have well-established administrative legal mechanisms for the protection of human rights, including those of the child, the effectiveness of which largely depends on the correct development of administrative legal relations in this area. That is why it has become important to study the peculiarities of the development of legal relations at the international level and in certain countries of the world.

World and Ukrainian researchers are constantly investigating this area. However, the study of foreign practices in the development of administrative legal relations is still relevant. Some researchers have studied the problems of defining international standards for the protection of children's rights. Specifically, the existing international mechanisms for the protection of children's rights were analysed on the example of existing European systems, and the basic rights of children were

identified. I.O. Pozigun (2022) examined global arrangements for the defence of children's rights and the specific features of the legal relations of the United Nations (UN) Committee on the Rights of the Child, the UN Children's Fund (UNICEF), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO). Separately, the researcher identified the European Court of Human Rights as part of the mechanism for protecting children's rights. Of importance is also a comprehensive study by O. Moroz and K. Kostovska (2022), who considered the specifics of administrative legal relations for the protection of children's rights in Ukraine and synthesised the achievements of world scientists in the administration of foreign practices in the field of child protection.

N.V. Kolomoets (2019) investigated issues of administrative and legal defence of children's rights in Ukraine, as well as in some countries of the world, and compared gaps and controversial interrelationships. The researcher identified concrete proposals for improving administrative

legal relations for the protection of children's rights in Ukraine, considering the positive practices of foreign countries, the relevance of which should be agreed upon. T. Spirina and A. Tsvigun (2023) considered administrative legal relations in a rather specific manner. In most of their studies, researchers have identified the social phenomena of domestic violence against children and adolescents, as well as the specifics of the development of administrative legal relations to overcome such violence. Scientists from different countries are studying the mechanisms of combating violence against children.

One of the new areas of violence is its manifestation on the Internet. To prevent violence on the Internet, A. Ladinda *et al.* (2023) conducted a study of the problems of legal regulation of the protection of children from the negative impact of the Internet. The researchers examined the international practices of addressing this issue at the regulatory level. Furthermore, V.M. Steshenko (2019) conducted an in-depth and comprehensive study of the legal framework that ensures the protection of the rights of children and adolescents and a safe digital environment. The analysis included international norms and standards and outlined a list of the rights of children and adolescents in Ukraine. The existing mechanism for the protection of children's rights in Ukraine was formed.

V.F. Gasay (2020) conducted a retrospective analysis of the state policy in the field of child protection and welfare. The researcher systematised the sequence of development and chronology of adoption of the key legislative acts and identified the stages of establishment and development of the state policy on the protection of children's rights in Ukraine. N.V. Linnyk (2020) analysed the national and foreign practices of the functioning of the child ombudsman institution. Specifically, the researcher objectively examined and

highlighted the prerequisites and specific features of establishing the institution of the Ombudsman for Children's Rights in Ukraine and the problems of its modern functioning. The author expresses her opinion on the expediency of drafting a Law "On the Commissioner for Children's Rights in Ukraine". In modern world, the problem of protecting children's rights during armed conflict is becoming increasingly relevant, and therefore O.G. Turchenko (2019) outlined the specific features of administrative legal relations in ensuring the child's right to safety in armed conflict.

The analysis of modern research confirms that each of the researchers has their own vision of the development of administrative legal relations for the protection of children's rights in different countries of the world. A key component is the concrete scientific achievements of each author mentioned, as they help to cover the topic in full. That is why the purpose of this study was to provide a comprehensive investigation of the practices of different countries of the world in the development of administrative legal relations in the field of child protection.

Materials and Methods

The legal basis for this paper included the following regulations: United Nations Convention "On the Rights of the Child", Code of Ukraine on Administrative Offences, Law of Ukraine "On Protection of Childhood", Children's Online Privacy Protection Act of 1998, 18 U.S. Code § 1841 "Protection of Unborn Children", etc. Furthermore, the author used information from the official websites of Ukrainian, American, German, and Romanian public authorities to analyse their powers. This study also examined the controversial opinions of researchers on understanding the essence of administrative legal relations and their interpretation in the legislation of certain foreign countries,

considering international standards and specific national features.

It is important to determine the correct methodology of cognition for the study of the topic. That is why, to obtain reliable results and fulfil the purpose of the study, a set of general scientific and specific scientific methods was employed, which were applied in an integrated manner. Thus, using the methods of analysis and synthesis, the study identified theoretical gaps and practical problems of development of administrative legal relations in the field of child rights protection in foreign countries. The study analysed the concept of administrative legal relations for the protection of children's rights in different countries and analysed the regulations and powers of public authorities in this area. Using the method of synthesis, the study synthesised the scientific achievements of researchers from different countries into one concept of child rights protection. Using the methods of induction and deduction, the subject of the study was investigated from the general to the concrete and from the concrete to the general. That is, an investigation was conducted from the general principles of development of administrative legal relations for the protection of children's rights to individual elements of the mechanism of development of such legal relations and vice versa, outlining each element and the system as a whole.

The comparative legal method was used to compare administrative legal relations in different countries of the world. A comparative analysis of the legislation and powers of public authorities to protect children's rights in Ukraine, the USA (United States of America), England, Germany, and Romania was carried out. In addition, using the method of comparison, the study conducted a comparative analysis of scientific research on the outlined issues by scientists around the world.

Furthermore, the use of the abstraction method proved to be successful, as it helped to focus on the key elements of the study. The method of generalisation helped to penetrate into the essence of analogous features of the phenomenon under study and to unite them by common properties. The conclusions were drawn using the methods of abstraction and generalisation. The study employed a systematic approach to investigating the problem outlined, which entailed cognition of an object as a set of its components and interrelationships between them.

Results

The problems of protecting children's rights have reached a new level in the 21st century. Each country has chosen its own vector for the development of institutions to ensure and protect children's rights. First of all, it is worth considering the practices of the United States of America, one of the most democratic countries in the world, where administrative legal relations are built on the liberal model (Myerson, 2015). There is no centralisation in the governmental mechanism. Administrative legal relations in the field of child protection are mostly "horizontal", they are formed within the framework of various social programmes for children with different needs, both at the federal and state levels. Specifically, at the federal level, there are the following authorities dealing with children's issues: the Children's Bureau, the Administration for Children and Families of the Department of Health and Human Services. This department was established as the Department of Health, Education and Welfare (HEW) in 1953 at the cabinet level. In 1979, the Department of Education Law established a separate Education Division. The remaining agencies were reorganised into the Department of Health and Social Services on 4 May 1980. Most often,

the content of administrative legal relations for the protection of children's rights of this state body focuses on the adoption of children and improvement of social and living conditions of families with children. Furthermore, this government agency controls and supervises the proper treatment of children by their parents or legal representatives and makes administrative decisions in cases of child abuse or neglect (U.S. Department of Health..., 2022).

The Office of Children and Family Services (OCFS) and its regional offices, Child Protective Services (CPS), have the broadest powers to influence the creation of a safe environment for children. Most often, administrative legal relations between representatives of these bodies are formed in relation to responding to complaints of child abuse. To address these issues, each state has specialised professionals who are trained and have a defined procedure for interacting with employees of various state institutions: doctors, psychologists, social workers, teachers, law enforcement officials, volunteers, etc. These persons are obliged by the state to immediately report cases of cruelty or abuse, even if they suspect such facts (Office for children..., n.d.). Such a powerful mechanism for protecting children's rights is effectively functioning in the United States. The administrative legal boundaries of interaction between various state institutions to achieve the goals set by the state are positive.

Apart from the defined mechanism for the protection of children's rights, the United States is doing a significant amount of work to protect unborn children. Thus, in US (United States) law, a pregnant woman and her unborn child are legally two different entities. Therefore, if an expectant mother leads a lifestyle that is harmful to her child, law enforcement agencies have the power to enforce such a person (18 U.S. Code § 1841..., 2004).

This means that a specific legal relationship arises between such a woman and law enforcement officers. Most often, such cases occur when preventing the use of drugs, alcohol, or smoking.

The US pays special attention to children who are prone to conflicts with the law. Special educational programmes are organised for such problematic children. The most widely used of these programmes was The Big Beginning, which reached over 400,000 children from socially disadvantaged groups and disadvantaged children (Kozubovska *et al.*, 2019). Police in the United States have a duty to respond promptly to child abuse and have the authority to prevent and stop any negative behaviour towards children. If necessary, the police inform the child protection service, which takes further measures to work with children. Representatives of the service work with parents to prevent violations of children's rights in the family, and the service staff also provide recommendations to the court on the need to deprive parents of parental rights in cases provided for by law. Service workers can forcibly remove a child from the family and place them with relatives or an orphanage (Zagumenna, 2019).

Despite the considerable work of government agencies at various levels to provide and protect children's rights, as of 2023, the United States has not ratified the United Nations Convention on the Rights of the Child (1995). Having analysed the problems that are still inherent in American society, it can be noted that the conceptual framework of this document could make positive changes to the development of administrative legal relations in the children's environment. The United States is one of the few countries in the world that has not acceded to the provisions of the Convention, although it shares the legal values reflected in it.

The practices of England in the area of administrative legal relations to ensure children's rights

are no less progressive. The study of the mechanism for protecting children's rights in England suggests that both the state, represented by various institutions, and the population as a whole, as civil society, are endowed with the obligation to protect children from cruelty and exploitation, as well as from various forms of violence. The Department for Education (DfE) is responsible for protecting children's rights in England. It sets policy and legislative guidelines for how the child protection system should work. At the local level, the following are obliged to protect children's rights: local authorities, the Integrated Care Board (ICB, formerly the Clinical Commissioning Group or CCG) and the police (Child protection system..., 2023).

Local authority social care services have the greatest powers to protect children's rights in England. Service staff are obliged to monitor the fulfilment of parental responsibilities for the proper upbringing of children, as well as to take preventive measures to prevent child delinquency (Martovytska, 2013). The high standards of childcare required by English law often lead to the legal relocation of children from their families and placement with other families. The institution of foster families, i.e., families where children are placed, began in 1562, when the Poor Act was adopted, which approved the procedure for placing children in foster families until they reach the age of majority (Belo, 2021). There are specific features of administrative legal relations that arise both horizontally and vertically. Specifically, such legal relations are formed between state authorities and foster families.

European countries have some features and analogous principles that form the basis for the development of administrative legal relations in the field of child protection. As in the United States, European countries have a clear administrative legal mechanism for preventing and

detecting child abuse. About 40 years ago, physical punishment of children was banned in Switzerland for the first time at the legislative level (Call to outlaw corporal..., 2009). Since 1979, the law has prohibited any violent acts against children, including in the home. Physical violence against a child is punishable by criminal law. In 2021, 62 countries introduced such norms (Stop corporal punishment!, 2021).

France is also a country where the priority of the state authorities is to ensure and protect the rights of the child. The rights of the child, as defined by the United Nations Convention "On the Rights of the Child" (1995), are protected and implemented by the state. The legislation in France prescribes unobstructed access to education for children. Students from low-income families are guaranteed adequate financial support by the state. Furthermore, the state provides financial support for babysitting services for a child under the age of three whose mother has returned to work after giving birth. France also prohibits child abuse and any form of violence against children. Administrative legal relations for the protection of children's rights are built on the basis of internal legislation, considering international standards (Defend and promote..., 2023).

Furthermore, in France, there is an organisation called the Defender of Rights (n.d.), which is dedicated to ensuring respect for the "best interests of the child" and ensuring that the interests of the child are considered primary and overriding all others. The government's representative is the independent Defender of Rights, who can be approached by children under 18 who believe their rights have been violated. These can be French children and foreign children living in France, or French children living abroad. Apart from children, the Defender of Rights can be contacted by anyone:

- family members or legal representatives of the child;

- employees of the medical or social service sector;

- NGOs (non-governmental organisations) whose charter prescribes the protection of children's rights;

- French parliamentarian or elected French representative to the European Parliament;

- a foreign institution that performs the same functions as the Defender of Rights.

The Defender of Rights covers child health protection and care for children with disabilities, criminal justice issues concerning children, adoption issues, educational disabilities, and violations of the rights of foreign children. The French government is constantly working to improve the living conditions of children.

Despite the creation of a powerful mechanism for combating violence against children, there are cases of its manifestations in the world and in Germany (The child protection centres, n.d.). In the Federal Republic of Germany, a legal framework and a system of state bodies have been established to ensure the rights of the child. The system of administrative legal relations in this area is built on the principle of profound understanding of each individual and the unity of the entire society to help the population. Professionalism and practicality in the work of government representatives underlie the development of administrative legal relations for the protection of children's rights (Gedik & Wolff, 2021). The main responsibilities for the protection of children's rights lie with parents or persons in loco parentis (Social Code (SGB)..., 2021). In the case of family problems, specialists from the youth service are involved to protect the rights of the child. If specialists identify violations of a child's rights, they apply to the Family Court, which has the authority

to remove the child and place them in the care of other persons (Münder & Trenzcek, 2015).

Generally, according to the legislation of Germany, parents have a duty to protect the interests and needs of their children. Parents and persons in loco parentis should take care of the child's development (Solodovnikova, 2020). The task of the state, represented by its bodies, is to supervise the exercise of parental rights. Institutions for supervision and oversight are established to monitor, ensure, and protect the interests of the child and threats to the child's welfare. Such institutions function as a state union – an association of the federal state and its institutions (Wiesner, 2006). The main content of the administrative jurisdiction of public authorities, the specific features of their legal relations in cases of overloading of activities or change of functions under the influence of objectively formed circumstances are summarised in depth (Rennert, 2022). This practice is very similar to the model that exists in France. The conservative model of development of administrative legal relations for the protection of children's rights in Germany is embodied in the well-coordinated functioning of the juvenile justice system, whose bodies, empowered to intervene in family relations for the benefit of the child, prioritise ensuring the best interests of the child. The 1988 Juvenile Justice Act (JGG (Jugendgerichtsgesetz), which literally translates as the Juvenile Courts Act), prescribes a differentiated approach to juvenile offenders. The state's activities are aimed at providing psycho-corrective influence on the child offender to prevent them from committing other unlawful acts (Youth Courts Act § 62 "JGG Entry...", 1990).

The German juvenile justice system consists of specialised juvenile courts and juvenile prosecutors. Furthermore, in large cities such as Berlin, Hamburg, or Stuttgart, there are specialised youth

police units. The social workers of the youth affairs department are responsible for assisting the juvenile prosecutor and judge. In some rural areas, there are problems with defining specialisation, and therefore “juvenile” judges also work in other judicial areas (general criminal law, civil law, etc.). Therefore, German juvenile courts cover the entire range of minors and young people aged 14 to 21. This practice ensures a wide range of specialisation, which distinguishes the German juvenile justice model from other countries where juvenile courts handle only juvenile cases (Dunkel, 2016). Accordingly, the system of administrative legal relations between juvenile justice authorities and public authorities in Germany requires constant legal improvement. The diverse activities of judges can lead to a prominent level of professional workload, which can provoke staffing problems.

It is important to consider the system of administrative legal relations for the protection of children's rights in the neighbouring state of Romania. The basis for the development of administrative and legal relations in Romania is the principles of democracy and the rule of law. The centralised approach is determined by the highest body in the development of state policy in this area – the Ministry of Family, Youth and Equal Opportunities. At the central level, there is also the National Department for the Protection of Children's Rights and Adoption, which is charged by the state with the responsibility of protecting children's rights and monitoring adoption procedures. At the district level, an important public authority is the General Directorate for Social Assistance and Child Protection, which is subordinated to local councils, respectively to the councils of Bucharest municipality. At the local level, there are state social assistance services organised at the level of municipalities and cities or persons entrusted with the responsibility of

providing social assistance from within the local councils' own staff. The organisation of a suitable system of interconnections creates a clear procedure for administrative legal relations for children in difficult life circumstances, vulnerable children, refugee children, children with disabilities, children belonging to national minorities, and children in armed conflict zones (Ministry of family..., n.d.). In recent years, the decentralisation of the mechanism of state and local government has become increasingly widespread. Analysing this process, some researchers identify a range of positive features of the decentralisation process (Chernezhenko, 2018).

Generally, legal arrangements for the defence of children's rights have been created by humankind to organise the best conditions for the development and care of children (Uchitel *et al.*, 2019). This conclusion is confirmed by the conducted study. The development of administrative legal relations in the field of child protection, both at the international level and in individual countries, is based on a centralised approach to the activities of human rights institutions. This approach factors in the child's own interests, the procedure for ensuring which is defined in the regulatory framework.

Thus, having analysed the mechanisms for protecting children's rights in the United States and some European countries, it can be argued that the governments of each of them are constantly working to enhance the system of child protection. State authorities, representatives of public organisations, and parents of children in most countries have a duty to protect and ensure the rights of the child. The specific features of the functioning of child protection mechanisms are shaped by mental and economic preconditions. Based on the above, it is advisable to classify the system of development of administrative legal relations in the following areas:

1. Development of administrative legal relations within single-level state bodies (e.g., administrative legal relations between healthcare and educational authorities within one state in the United States);

2. Development of administrative legal relations within higher and lower-level state bodies (e.g., administrative legal relations between the National Office for Child Protection and Adoption and state social assistance services organised at the level of municipalities and cities in Romania);

3. Development of administrative legal relations between public authorities and parents or persons *in loco parentis* (e.g., in Germany);

4. Development of administrative legal relations for the protection of children's rights within one country (in each country with its own specific features);

5. Development of administrative legal relations at the level of international organisations for the protection of children's rights (e.g., within the UN, European Union (EU)).

The author of the present research considers that such a classification allows systematising the specific features of administrative legal relations with a view to their convenient study and use.

Discussion

The present study conducted a comprehensive overview of the mechanisms for protecting children's rights in different countries of the world. The study identified the most progressive models which can serve as a basis for the development of administrative legal relations in Ukraine and worldwide. Most researchers focus on international arrangements for the defence of the rights of children, while only a few investigate the specifics of the development of administrative legal relations in different countries. Thus, I.E. Borysiuk (2021) studied the development of the

global normative mechanism for the defence of the rights of the child, noting that the problem of child protection is international and requires consolidation of efforts of all states. The researcher also pointed out that the international mechanism is a standard for the establishment of national mechanisms for the protection of children's rights. It is worth agreeing with such conclusions, as the scale of the problem concerns all civilised countries. However, most researchers in the world study concrete mechanisms for protecting children's rights in individual countries. In her study, the author examined their main achievements. Representatives of Ukrainian science have also studied the outlined issues. Furthermore, researchers substantiate different approaches to understanding administrative legal relations. A comprehensive investigation of the development of administrative legal relations for the protection of children's rights has not yet been conducted. That is why the present study provided an objective investigation and a modern reinterpretation of the issues highlighted.

Globalisation processes have expanded the possibilities of learning the specifics of the development of public legal relations, including in this area. Each country has a specific system of administrative legal relations in the field of child protection. Even the understanding of administrative legal relations is somewhat different. For instance, in the USA, the subject of study of administrative law includes: 1) interaction of state bodies in various fields; 2) manifestations of theoretical activity (Waldo, 1954). This is different from the position in Ukraine. Therefore, the present study was based on an understanding of administrative legal relations in Ukraine.

Generally, in the theory of modern administrative law of Ukraine, researchers are debating the definition of the concept of administrative

legal relations. V.B. Averyanov *et al.* (2009) interpret them as social relations regulated by administrative law and having interconnected parties (subjects) that interact based on guarantees defined by administrative law. An analogous definition is substantiated by V.V. Kovalenko (2012), who considers administrative legal relations as relations arising for the performance of administrative obligations by public administration. An important feature is the right to make management decisions by public administration bodies. O.V. Maksymenko (2014) also shows that administrative legal relations are a component of legal relations, but have specific features of manifestation. They are regulated by administrative law and may arise between entities in the executive branch. The subjects of administrative legal relations include state bodies (legislative, executive and judicial authorities, prosecutors, administrations of state-owned enterprises and institutions); structural subdivisions of state bodies, officials of state bodies; the owner (representative, manager, authorised owner); associations of citizens, cooperatives, self-government bodies, amateur organisations; citizens of Ukraine, foreign citizens, stateless persons. Furthermore, the author considered it appropriate to include international organisations and their bodies as such subjects. The theoretical foundations of understanding the essence of administrative legal relations formed the basis for the development of administrative legal relations for ensuring and protecting children's rights in different countries of the world, including Ukraine. The Ukrainian model of child protection is also based on international standards of the UN and EU countries. Having analysed the scientific achievements of Ukrainian and foreign researchers, the author of the study believes that despite the differences in the legislation of democratic countries, the principles and values of

child protection are common. Just as each country has its own system of administrative legal relations for the protection of children's rights, so at the international level, the system of international organisations and their bodies, which have a mutual influence on each other, is successfully functioning. Their specific interaction also has "horizontal" and "vertical" legal relations.

Based on an understanding of the content of administrative legal relations, their types and specifics, it is worth distinguishing them at the international level, where international regulations define the procedure for interaction between international organisations and their institutions. The most imperfect are the legal relations that regulate the process of ensuring the rights of refugee children guaranteed by the United Nations Convention "On the Rights of the Child" (1995). These processes have been considered by researchers, for instance, J.A. Lawrence *et al.* (2019) conducted a study in relation to the rights related to the living conditions of refugee children and the State's obligations towards them. Based on the activities carried out, the specifics of the development of legal relations at the international and national levels were determined.

Furthermore, according to J.E. Durrant *et al.* (2020) the provisions of the Convention encourage states to create an appropriate mechanism to protect children's rights against violence in all its forms. The idea behind the Convention already identifies the child as a human being in need of protection of their rights. To implement each provision, the states that have ratified the Convention are obliged to create appropriate administrative legal mechanisms and regulate administrative legal relations between them. The problem of domestic violence against children is a pressing issue in the modern world. According to M.P. Zambon (2012), children are often witnesses

or victims of violence, which can be traumatic for their psyche. According to the results of research, R. Assaad *et al.* (2017) stated that violence has a negative impact on child development and education. These negative phenomena in the children's environment are a challenge to improve administrative legal relations. Therefore, the population of all civilised countries creates mechanisms to counteract violence in all its manifestations. However, the reality of life shows that the idea of eradicating it is utopian.

According to J. Njelesani (2019), no less urgent is the need for each country to create an effective mechanism to combat violence against children with disabilities, as well as the development of administrative legal relations to respond to such cases. This position, like the previous one, emphasises the urgency of the problems of violence against different categories of children in the modern world. According to some researchers, the distortion of the idea of ensuring children's rights in each country is influenced by the specifics of its legal system, customs, and other features of society. That is why the author of the present study agrees with the position of T.M. Collins and L.H.V. Wright (2022), who believe that in the modern world there is a need to investigate the complex interaction between local and global interpretations of children's rights. One such study is the work of E. Marrus and P. Laufer-Ukelles (2022) on the rights of the child, which is based on the basic principles and detailed analysis of the implementation of the provisions of the Convention on the Rights of the Child in those countries that have acceded to it.

Furthermore, as A. Walsh (2016) noted, it is important to investigate the decisions of the International Criminal Court to understand the gaps in the area of child rights and to create an effective system of legal relations. That is, the study of

international documents should be the basis for improving national mechanisms for ensuring children's rights. Therefore, the problem under study is quite relevant and requires further research.

Conclusions

The study of foreign practices in the development of administrative legal relations in the field of child protection has made it possible to formulate a general concept and provide an expanded view of the mechanism of child protection in certain countries of the world. Based on the findings of the study, it can be argued that the protection of children's rights is given a lot of attention by the governments of democratic countries. The elements of the international mechanism discussed in this study are a reminder of the foundations of the Convention on the Rights of the Child and the system of UN bodies. Based on certain international standards, each country has established national mechanisms for the protection of children's rights, which are centralised (Germany, France, Romania) and decentralised (the USA, England). Therefore, to summarise this study, it can be assumed that the study of foreign practices in the development of administrative legal relations is important for carrying out quality reforms and improving Ukrainian legislation. However, when using the achievements of individual countries, it is necessary to factor in their political system, religious beliefs, mentality, legal system, culture, level of economic development, and other specific features.

In reforming Ukrainian legislation in the area of child protection, it is necessary to introduce certain elements of German practices regarding the professionalism of persons exercising control over parents or persons in loco parentis in ensuring and exercising the rights of the child. It is also worth creating a Family Court, following

the example of Germany, whose functioning affects the achievement of high results in the field under study. The influence of international organisations on the protection of children's rights in Ukraine is evident in Ukrainian legislation. Specifically, a positive aspect is the consolidation of the principle "best interests of the child" in the Law of Ukraine "On Protection of Childhood", which overlaps with analogous norms defined in European countries, and the administrative legal relations in the field of child protection that have been studied. This principle is fundamental and should be implemented in all countries of the world.

Considering the mechanisms of child rights protection in some countries, this study presented the author's classification of the system of development of administrative legal relations in the field of child rights protection. The use of such a classification for conducting more in-depth research is substantiated. A review of the scientific literature suggests that in the scientific space, research is constantly being conducted on certain elements of the mechanism for protecting children's rights in different countries of the world. Among the fundamental research issues, it is worth highlighting the problems of protecting children's rights from various types of violence, as well as the problems of protecting the rights of children in conflict with the law. No less relevant are the studies of researchers who have investigated the specific features of administrative legal relations between parents or persons in loco parentis with state authorities at various levels, as well as the problems of adoption and upbringing of children. Apart from the discussion

of scholarly positions, this study examined the existing administrative legal mechanisms for the protection of children's rights at different levels in different countries.

Thus, among the outlined practical developments and theoretical generalisations, the study emphasised the main vectors of development of administrative legal relations in the field of child protection, which are based on different planes – of international importance or only for a particular country. Proposals for considering the practices of the closest foreign countries in terms of social outlook and political system should form the basis of guarantees for ensuring and protecting children's rights and building democracy in Ukraine. The conducted study suggests that there is a need for further investigation of the practices of other countries in the development of administrative legal relations in the area of child protection with a view to sharing positive achievements and implementing them into the administrative legal mechanism.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Міжнародний досвід формування адміністративних правовідносин у сфері захисту прав дитини

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Анотація

Забезпечення та захист прав дитини є пріоритетом у формуванні гармонічних правовідносин у кожній цивілізованій країні. Вивчення досвіду різних країн світу щодо специфіки формування адміністративних правовідносин у сфері захисту прав дитини дає можливість проаналізувати проблемні аспекти та виокремити позитивні напрацювання, які варто запозичити та поширити. Метою проведеного дослідження є дослідження адміністративних правовідносин у сфері захисту прав дитини в окремих країнах світу. Задля досягнення поставленої мети використано комплекс методів, серед яких: методи індукції та дедукції, аналізу та синтезу, порівняння та узагальнення, і інші. У статті було розглянуто зміст окремих норм Конвенції про права дитини, а також особливості правовідносин, які існують між органами та інституціями Організації Об'єднаних Націй. Проаналізовано специфіку формування адміністративних правовідносин у країнах англосаксонської та романо-германської правової системи. Наголошено, що у кожній із розглянутих країн, забезпечення та захист прав дитини є пріоритетним напрямом діяльності держави. Не дивлячись на розроблений ефективний механізм забезпечення прав дитини у країнах із високорозвинутою економікою та рівнем правової культури, донині окремі елементи забезпечення прав дитини потребують удосконалення. Досліджено та систематизовано правовідносини між різними державними структурами по захисту прав дітей в Сполучених Штатах Америки, Англії, Німеччині, Франції та Румунії. На основі проведеної роботи запропоновано авторську класифікацію системи формування адміністративних правовідносин у досліджуваній сфері, а також узагальнено подібності й розбіжності у формуванні адміністративних правовідносин щодо захисту прав дітей у країнах із різною правовою системою, правовою культурою, рівнем економічного розвитку та ментальністю, а також зроблено авторські узагальнення і пропозиції. Запропоноване наукове дослідження може бути використане науковцями як основа для проведення подальших наукових досліджень, викладачами вищих навчальних закладів, а також працівниками соціальних служб по роботі із дітьми та представниками органів державної влади, які впливають на формування державної політики щодо захисту прав дитини

Ключові слова: органи державної влади; міжнародний механізм захисту прав дитини; специфіка правовідносин; правова система; країни світу



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The modern state of regulatory and legal support for plant protection and its improvement in the context of legislative activity

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Abstract

The relevance of the chosen topic lies in the fact that in recent years in Ukraine, there has been a tendency to work on changes to the valid legislation in the field of plant protection, which is due to the need to adapt Ukrainian legislation to the legislation of the European Union. The purpose of the study is to conduct a comprehensive analysis of the modern and prospective state of regulatory and legal support for plant protection in Ukraine. Research methods used in the work include comparative legal, systemic-structural, formal-logical, and doctrinal methods. The system of legislation regulating environmental and economic security in the agricultural sector of Ukraine is based on constitutional and general norms, environmental legislation, international treaties, as well as subordinate acts that ensure their practical implementation. The research results have established that the modern state of regulatory and legal support for plant protection in Ukraine requires revision and updating due to the presence of outdated, imperfect, and Soviet-influenced legal norms in the field of plant protection, as well as Ukraine's European integration prospects. Conclusions have been drawn regarding the need to revise conflicting and overlapping provisions of the draft Law of Ukraine "On State

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Regulation in the Field of Plant Protection” and to make relevant amendments during the preparation of the bill for the second reading. Emphasis is placed on the need to focus specifically on the further implementation of such a bill and the inexpediency of adopting the Draft Law of Ukraine “On Amending Certain Laws of Ukraine to Eliminate Inconsistencies in the Areas of Legislation on Plant Protection and State Control”. The research materials may serve as a theoretical basis for filling gaps in Ukrainian legislation and may also be useful for students and teachers in the process of preparing for disciplines such as “Environmental Law of Ukraine”, “Natural Resource Law of Ukraine”, “Floristic Law of Ukraine”, etc

Keywords: plant life; phytosanitary measures; quarantine; pesticides; agrochemicals; regulatory and legal support; plant passport; legislation

Introduction

The chosen topic becomes relevant due to the observed trend starting from the 2000s in Ukraine towards amending the valid legislation in the field of plant protection. This trend arises, in particular, from the need to adapt Ukrainian legislation to the norms of the European Union (EU) legislation. It is anticipated that such adaptation will not only contribute to the approximation to the legislation of EU member states but is also driven by the presence of several outdated legislative provisions regulating the sphere of plant protection. Among such provisions, ineffective legal norms regarding liability for violations of legislation in the field of plant protection, as well as contradictory provisions of legal norms in the fundamental legislative acts, can be mentioned, which quite often conflict with each other.

Plant protection issues are important and sensitive for Ukraine, which is explained by the fact that Ukrainian exports include plant-based products at the level of 11.9%, which is almost four times higher than the world average, as highlighted in the work of I. Burakovskiy *et al.* (2016). That is why the question of ensuring proper and effective protection of plants and plant products in Ukraine is under constant scrutiny. It should be noted that Ukraine, after the adoption of the Act

on the Declaration of Independence and Sovereignty of its territory (Resolution of the Verkhovna Rada of the Ukrainian SSR No. 1427-XII, 1991), actively began to update its legislation, including that related to plant protection. Thus, during the 1990s, several important regulatory legal acts were adopted, such as Law of Ukraine No. 3348-XII (1993), Law of Ukraine No. 86/95-VR (1995), and Law of Ukraine No. 180-XIV (1998).

An important aspect will always be the priority in the constant improvement of outdated and updating already outdated legal norms that may relate to plant protection in Ukraine. In this case, legislative activity in the field of plant protection, considering Ukraine’s European integration direction, can take place through the prism of such processes, which is reflected in the registered Draft Laws of Ukraine. Such draft laws, according to their explanatory notes, have the primary goal of bringing the valid legislation in the field of plant protection into line with the European model of plant protection. However, it is important to consider the need to preserve the mechanisms already acquired and successfully implemented in the field of plant protection.

The analysis of recent research and publications has confirmed the relevance of the chosen

topic, although there are no works directly dedicated to the analysis of legislative activities in plant protection. Therefore, within this study, it is possible to mention general scientific research related to the mentioned topic, in which the scientific community indicates the need to review the valid legislation in the field of plant protection. Thus, in the article by Yu.P. Bosnyuk (2022), it is pointed out that it is necessary not to copy the norms and mechanisms of international aspects of phytosanitary measures, but to gradually approximate and implement them in the national legislation of Ukraine. The study of S.I. Marchenko (2023) identified key changes in the field of sanitary and phytosanitary measures due to the introduction of the martial law regime. Thus, the researcher thoroughly analysed such measures and conditionally divided them into three categories: 1) measures related to creating adequate safe conditions for carrying out phytosanitary procedures under the conditions of the legal regime of martial law; 2) measures related to the uninterrupted functioning of agribusiness; 3) measures related to the implementation of exclusive phytosanitary procedures for exported objects. In turn, according to S.O. Kostenko (2021), in practice, such requirements as informing the population about the place, time, and methods of applying plant protection products are often ignored, which is due to the lack of proper state control and an effective institute of legal responsibility. The scientist also points out that conducting a deep analysis of regulatory acts makes it possible to argue about the presence of problems in the legal regulation of “smart boundaries” used in the application of pesticides and agrochemicals, and therefore the problem is complex. Therefore, it is necessary to update the valid legislation comprehensively rather than selectively.

In the research by N.V. Karpinska (2021), arguments were given for the need to update phytosanitary legislation due to the further development of relations between Ukraine and the World Trade Organisation (WTO). Specifically, the researcher rightly notes that Ukraine has constant obligations regarding the mandatory transformation of Ukrainian legislation. The author also added that there are significant inconsistencies and gaps in the valid legislation that require urgent resolution, such as outdated and ineffective legal norms that do not take into account the modern state of application of relevant plant protection measures. In turn, N. Vdovenko *et al.* (2022), during the legal analysis of plant protection measures, proposed amendments to the Law of Ukraine No. 180-XIV regarding the importance of increasing legal liability in case of the use of counterfeit plant protection products, especially those with chemical compositions that do not meet the requirements established at the level of world legislation.

The purpose of the study was to determine the main aspects of legislative activities in the field of plant protection in Ukraine. To achieve this goal, the following tasks were set: 1) to determine the modern state of regulatory and legal support for plant protection in Ukraine; 2) to disclose the prerequisites for reviewing legislation in the field of plant protection; 3) to analyse the main provisions of legislative projects in the field of plant protection registered in the Verkhovna Rada of Ukraine during 2021-2023.

Materials and Methods

The choice of methods used is justified by the specificity of this research, namely the necessity of providing a legal characterisation of legislative activity in the field of plant protection. Throughout the research, a range of general scientific and

specialised legal methods were employed, including systemic-structural, formal-logical, and dogmatic methods, which aided in achieving the set objectives. Among the general scientific methods utilised were: analysis, synthesis, and generalisation. For instance, the analysis method was employed to characterise the works of scholars over the past five years that have a similar or identical subject of scientific research. Utilising the synthesis method, relationships between the main legislative acts regulating the sphere of plant protection were depicted. Through the generalisation method, key prerequisites for reviewing the existing legislation in the field of plant protection in Ukraine were identified. The systemic-structural method was employed to depict the modern state of legislative provision for plant protection, particularly the coherence of legislative, sub-legislative, and international agreements, regulations, and standards. The formal-logical method was used to analyse key provisions of draft laws relating to plant protection. Furthermore, the dogmatic method serves as the immediate methodological basis, allowing for the disclosure of the content of normative provisions in the field of plant protection. Utilising the dogmatic method, conclusions, and suggestions regarding the need for refinement of conflicting provisions of Draft Law of Ukraine No. 8340 (2023) were formulated.

In the process of elucidating the purpose and objectives of the research, a variety of legislative acts in the field of plant protection were utilised: Law of Ukraine No. 3348-XII (1993), Law of Ukraine No. 86/95-VR (1995), Constitution of Ukraine (1996), Law of Ukraine No. 180-XIV (1998), Law of Ukraine No. 591-XIV (1999), Law of Ukraine No. 877-V (2007), Draft Law of Ukraine No. 4600 (2021), Draft Law of Ukraine No. 8340 (2023), Draft Law of Ukraine No. 10314 (2023), as well as sub-legislative

acts (Resolutions of the Cabinet of Ministers of Ukraine and Orders of the Ministry of Agrarian Policy of Ukraine).

Results and Discussion

The modern state of legal support for plant protection in Ukraine. Typically, the legal support of a particular sector or institution describes a series of legal norms enshrined in legislative acts that define the basic provisions for regulating such a sector or institution. For example, O.V. Pishchenko (2019) and O. Kartashova (2021), examining the legal support for ecological and economic security in the agricultural sector of Ukraine, noted that the existing system of legislation consists of certain levels of legislative acts that generally maintain an adequate level of eco-economic security in the agricultural sector. The authors identified the following norms: 1) constitutional norms (i.e., norms enshrined in the Constitution of Ukraine); 2) norms of a general nature (i.e., norms enshrined in the main profile act – the Law of Ukraine “On the Foundations of National Security of Ukraine”); 3) norms in the field of environmental legislation; 4) special or separate legal norms defined in areas adjacent to agricultural legislation. Additionally, scholars also pay attention to norms defined at the international legal level and part of Ukrainian legislation, including international treaties, conventions, directives, and regulations of the European Union. An important aspect is also ensuring the implementation of legislative acts after their adoption, which is possible precisely through sub-legal regulatory acts, which also have a corresponding gradation in terms of legal force. Sub-legal regulatory acts include decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, various orders of central executive authorities and their subdivisions, decisions of local

authorities, orders of executive bodies of local self-government, local (territorial) acts or orders adopted by specific subjects of the agricultural sector. Additionally, it is worth noting that judicial decisions are also considered sources of legal support.

According to A.S. Yaroshenko (2019), the entire sphere of legal support for plant protection in Ukraine is aimed at regulating social relations related to the protection of individual plants, namely agricultural, including plant-derived products and forest products, shrubs, trees, and closed-ground vegetation, from any external and negative influences, as well as defining the system of rights and obligations of all natural resource users without exception. National legislation and regulatory acts are fundamental for providing a regulatory framework for protecting agricultural, forest, and other plant resources from alien pests or for managing such threats, as noted by R. Eschen *et al.* (2015). Thus, the legal support for plant protection in Ukraine should be considered through the prism of the main legislative acts in this area, among which, it is worth mentioning: Law of Ukraine No. 3348-XII (1993), Law of Ukraine No. 86/95-VR (1995), and Law of Ukraine No. 180-XIV (1998).

As for Law of Ukraine No. 180-XIV (1998), this law regulates legal relations related to the protection of plants for agricultural and other purposes, perennial and forest plantations, trees, shrubs, closed-ground vegetation, plant-derived products from pests, diseases, and weeds. This law also defines the rights and obligations of enterprises, institutions, and organisations of all forms of ownership and citizens, as well as the powers of executive authorities and officials in this area. Unlike Law of Ukraine No. 180-XIV (1998), Law of Ukraine No. 3348-XII (1993) establishes the organisational and legal principles and powers of competent authorities regarding pests and other

organisms that can negatively affect plants and plant products, which are absent in Ukraine.

Therefore, the difference between the first and second legislative acts is determined by the subject of their legal regulation. In the case of Law of Ukraine No. 3348-XII (1993), it is the prevention of the spread and introduction of absent harmful organisms in Ukraine, while in the case of the application of Law of Ukraine No. 180-XIV (1998), it is the definition of legal principles for protecting plants from pests that are already widespread in Ukraine. Another aforementioned legislative act is Law of Ukraine No. 86/95-VR (1995). Analysing this legislative act, it is possible to determine the scope of its application – legal relations related to the use of pesticides and agrochemicals, i.e., chemical substances actively used to combat pests and other harmful organisms. In particular, this legislative act establishes the procedure for the state registration of pesticides and agrochemicals, their transportation, trade, and storage, as well as the rights and obligations of subjects using such substances in this area.

If comparing the Law of Ukraine No. 86/95-VR (1995) and the Law of Ukraine No. 180-XIV (1998), they are usually considered in terms of their general and specific relationships. However, even such a thesis is not entirely accurate, as noted by N.V. Karpinska (2021) in her work. The scholar also added that the main purpose of the Law of Ukraine “On Plant Protection” is to regulate relations regarding the protection of plants from weeds, diseases, and other harmful substances to plants. It follows that the Law of Ukraine “On Pesticides and Agrochemicals” will be specific, and more detailed regarding specific objects and concerning the Law of Ukraine “On Plant Protection”, as the regulation of activities related to pesticides and pesticides themselves is one of the tools for combating harmful organisms. The author also

added that the Law of Ukraine “On Pesticides and Agrochemicals” does not duplicate the provisions of the legislative act on plant protection, and the purpose of such an act is not to combat pests as a whole but to increase the quantitative and qualitative indicators of crop yield.

In addition to the mentioned legislative acts, it is also necessary to mention several subordinate legislative acts, such as Resolution of the Cabinet of Ministers of Ukraine No. 881-95-p (1995), Order of the Ministry of Agrarian Policy and Food of Ukraine No. z0380-13 (2013), Order of the Ministry of Agrarian Policy and Food of Ukraine No. z1657-13 (2013), Resolution of the Cabinet of Ministers of Ukraine No. 34-2019-p (2019), Order of the Ministry of Agrarian Policy and Food of Ukraine No. z0560-19 (2019), Resolution of the Cabinet of Ministers of Ukraine No. 458-2023-p (2023).

A crucial role in the legal provision of plant protection in Ukraine also belongs to international legal acts. First and foremost, it is necessary to mention the International Convention for the Protection of Plants, to which Ukraine acceded in 2006 (Decree of the President of Ukraine No. 81/2006..., 2006). Based on the basic provisions of the Convention, states that have ratified it are granted sovereign rights to protect their borders and also have the right to independently establish specific requirements for the object of legal regulation. Therefore, members of the World Trade Organisation (WTO) must ensure timely processes of publication of legislative acts adopted in the field of sanitary and phytosanitary measures so that all WTO members have the opportunity to familiarise themselves with them in more detail. An important aspect is also that all WTO members are obliged to comply with reasonable periods or intervals between the official publication of normative documents related to

sanitary or phytosanitary measures and the entry into force of such documents. This requirement is justified by the fact that manufacturers in exporting WTO member countries and developing countries should be able to review and update their production methods and provide goods that would meet the requirements of the importing WTO member (International Plant Protection Convention, 1997).

In conclusion, it is worth noting that this is not an exhaustive list of legislative and subordinate legislative acts that define the peculiarities of plant protection in Ukraine; however, such regulatory sources allow for an overall reflection of the legal institution of plant protection.

Prerequisites for revising and updating legislation in the field of plant protection. In June 2022, despite the imposition of martial law, Ukraine was granted official candidate status for membership in the European Union (Ukraine has been granted..., 2022). This status brings new challenges and requirements for Ukraine to adapt its legislation to that of the European Union, paving the way to eventually becoming a full member. This adaptation extends to various areas, including plant protection, necessitating revisions and amendments to valid legislation.

Given that Ukraine recognises itself as a state that is oriented towards recognition as a part of the international community, issues related to the need to take into account international experience when updating Ukrainian legislation and improving regulatory and legal regulation, including environmental and environmental protection legislation, are increasingly arising. In fact, such a definition of issues is extremely important and necessary given the conditions of deepening and increasing processes of legal globalisation. However, it should also be agreed that the modern state of the environment and the low

level of its legal protection provoke a significant deterioration in the conditions that provide for the proper support of human life, as well as help to accelerate the processes and attempts of the state to develop mechanisms for the effective implementation of environmental protection and preventive measures (Boychuk, 2018).

It should be noted that the existing danger provoked by the presence of pests for agricultural plant products and agriculture is becoming the primary reason for Ukraine to study and implement positive international experience, as well as to implement international law in the field of phytosanitary protection and security (Godyak, 2018). Thus, in January 1994, Ukraine joined the European and Mediterranean Plant Protection Organisation, and in 2003, Ukraine joined the Food and Agriculture Organisation of the United Nations (FAO) (Decree of the Cabinet of Ministers of Ukraine No. 38, 1994; Resolution of the Cabinet of Ministers of Ukraine No. 1661-2003-p, 2003). At the beginning of 2006, Ukraine acceded to the International Plant Protection Convention by the Decree of the President of Ukraine, and since 2008, Ukraine is a member of the WTO and has to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (Decree of the President of Ukraine No. 81/2006, 2006; Law of Ukraine No. 250-VI, 2008).

According to N.O. Bahai (2021), the process of adapting Ukraine's agricultural legislation to EU law aims to gradually align or adapt regulatory acts governing agricultural legal relations with those of the EU, ultimately aimed at furthering agricultural development and rural area development. The key directions concerning the adaptation of Ukraine's agricultural legislation to the "acquis communautaire" requirements are defined in a separate Eurointegration document –

the Association Agreement between Ukraine and the European Union.

It was Chapter 4 (Sanitary and Phytosanitary Measures) of Association No. 984_011 (2014) that defined the key provisions of the basic standards in accordance with which plant protection should be implemented in Ukraine. After the signing of the Association Agreement, the process of drafting legislation aimed at fully updating the regulatory framework for plant protection began. It is worth agreeing with the position of Yu.P. Bosnyuk (2023), who noted that this process, despite its significant advantages, also has disadvantages. After all, such processes lead to a significant rejection of the Ukrainian, and to some extent the positive legal experience that has been formed over the past thirty years. However, the Association Agreement also stipulates the introduction of an equivalence mechanism for phytosanitary and sanitary measures as a separate principle. This is the provision referred to in Article 5 of the WTO Agreement, namely, that WTO Members must recognise phytosanitary and sanitary measures of other Members that are actively applied by the latter. It should also be agreed that healthy and disease-free plants are important for the economy and society of the European Union, and therefore are regulated at the level of the European Union (Plant Health..., 2024).

Therefore, one of the primary reasons for the revision of plant protection legislation was the European integration processes in Ukraine, which began in 2014 and continues to be implemented. In addition to the European integration component of the need to update the plant protection legislation, attention should also be paid to the presence of outdated, imperfect, and Soviet-influenced legal norms. There is also a dispersion and, in some cases, contradiction of certain legal provisions on plant protection in the three basic legal

acts: Law of Ukraine No. 3348-XII (1993), Law of Ukraine No. 86/95-VR (1995) and Law of Ukraine No. 180-XIV (1998).

In this context, it is possible to agree with L.V. Vasylenko (2018), who notes that Ukraine still has a significant number of unsuitable and objectively outdated pesticides that are impossible to use, which may also pose a threat to public health, cause damage to the environment, and generally do not comply with existing phytosanitary and sanitary measures in Ukraine. The process of irreversible accumulation of pesticides and agrochemicals began in the 1970s when several pesticides were banned by law. In addition, constant changes of owners using unsuitable pesticides led to the destruction of documents containing information about such substances and, the destruction of containers and warehouses, which resulted in a significant amount of unsuitable and unknown plant protection chemicals, including a steadily increasing number of mismanaged pesticides.

Foreign scientists have also drawn attention to this problem. According to K. Karstensen *et al.* (2016), the presence of obsolete pesticides and other hazardous chemicals and their inadequate management pose a threat to health and the environment at the local, regional, and global levels. Estimates show that more than 500,000 tonnes of obsolete pesticides have been accumulated worldwide, especially in developing countries. The Food and Agriculture Organisation of the United Nations is addressing this problem and has disposed of approximately 3,000 tonnes of obsolete pesticides in Africa and the Middle East since the early 1990s. This pesticide waste was mainly shipped to Europe for high-temperature incineration in special incinerators, a treatment option that is not usually available in developing countries. However, there remains considerable

uncertainty about the true environmental contamination of such pesticides, their dynamics, and the risks of contamination of the food chain. Organic operators can take certain measures to reduce the risk of pesticide contamination of their products, but a certain degree of pesticide contamination is technically unavoidable, according to M. Schleiffer and B. Speiser (2022).

Most studies argue that agrochemicals and pesticides may not worsen the overall quality of the crop if they are used within the limits of legal and phytosanitary regulations. However, it is worth remembering that further emphasis on the use of outdated substances and preparations may irrevocably lead not only to a decrease in the quantity of agricultural products, but may also negatively affect the quality of life of the population, the environment, animals, plants, etc. At the same time, it is not possible to completely abandon the use of pesticides, and in this case, it is only possible to work towards improving the quality and technological characteristics of the use of harmful substances, revising the mechanism of their doses, as pointed out by L.V. Vasylenko and O.A. Korchynska (2020).

In this context, it is also worth noting that further updating of the valid legislation in the field of plant protection will also be conditioned by the presence of environmental threats and hazards, including those resulting from active hostilities on the territory of Ukraine. It should be agreed that the use of weapons of mass destruction, the explosion of the Kakhovka hydroelectric power plant and other environmental disasters that remain unexplored and unacknowledged can lead to a global environmental crisis and genocide, as noted in their study by O.H. Ruvin and K.O. Dubova (2024). And this, in turn, certainly requires the introduction of new mechanisms and approaches to regulating the protection of important natural

objects – plants. According to M.M. Sirant (2021), such mechanisms may include the use of persuasive methods, which is due to the formulation of internal conviction and awareness of strict compliance with the law, as well as the implementation of key requirements that will have a new application within the framework of environmental law.

Thus, there are two main prerequisites for the development of draft laws in the field of plant protection, namely the need to update outdated, imperfect, and Soviet-influenced plant protection regulations and Ukraine's European integration prospects, which necessitate the adaptation of Ukrainian legislation to the EU legislation. It is also necessary to take into account the consequences of the ongoing military operations on the territory of Ukraine, which will certainly affect the change of approaches to the legal regulation of plant protection.

Legal characteristics of the main provisions of draft legislative acts aimed at plant protection. From 2020 to 2023, a series of legislative acts aimed at consolidating provisions regarding plant protection, contained in three basic legal acts, were actively registered in the Ukrainian parliament. Among such draft laws, it is possible to mention Draft Law of Ukraine No. 4600 (2021), Draft Law of Ukraine No. 8340 (2023), and Draft Law of Ukraine No. 10314 (2023). Regarding Draft Law of Ukraine No. 4600, it should be noted that this draft law was registered back in 2021 and actively worked on within the parliament, including providing proposals and remarks, but was never brought for consideration for adoption, even in the first reading. The draft law was supposed to consolidate the provisions of the Laws of Ukraine "On Plant Protection" and "On Plant Quarantine" within a single document, as well as parts of the provisions of the Law of Ukraine "On Pesticides and Agrochemicals" related to the circulation and

use of plant protection products. Overall, as stated in the Explanatory Note to Draft Law of Ukraine No. 4600 (2021), it was intended to systematically and comprehensively improve the regulatory framework of the plant protection legal relations and to implement Article 64 of Association No. 984_011 (2014), aimed at further harmonising Ukrainian legislation with the legislation of the European Union, as mentioned earlier.

As for the peculiarities of Draft Law of Ukraine No. 4600 (2021), it is worth highlighting some important aspects that were intended to comprehensively change the existing plant protection system in Ukraine. Firstly, it was proposed to create a model for digitalising the procedure of state registration of plant protection products, which in turn involves launching an electronic registry consisting of four modules. Thus, the first module identified official registrants authorised to export and import plant protection products. The next module defined the procedure for registering laboratories conducting research. The third one involved organising educational events on plant protection, including technical supervision of equipment. The last one concerned the registration of quarantine stations and other designated isolated facilities. Secondly, only those permission documents defined in conformity with international obligations (i.e., phytosanitary certificate and re-export phytosanitary certificate) were to remain, while it was proposed to abolish the quarantine certificate as such, which does not comply with European standards and has not been used in other countries for a long time. Thirdly, the draft law defined a liberal European supervision model – through a plant passport in accordance with European Parliament and Council Regulation (EU) No. 2016/2031 (2016), and the introduction of such a document eliminates the need for obtaining a quarantine certificate.

However, the Draft Law of Ukraine No. 4600 triggered many discussions and objections regarding the establishment of additional mechanisms for state supervision and control, which in turn could negatively affect Ukrainian enterprises. In particular, this concerns the presence in Draft Law of Ukraine No. 4600 of defined physical and documentary inspections with a certain frequency, which takes into account a risk-oriented approach. This approach, in general, should correspond to the European experience, as control rules will be formed through the prism of the volumes and quantity of recorded violations already at the border. However, the specific cases established by the legislation in the project are not specified. It is quite logical that this refers to Article 5 of the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" (On the Basic Principles). The absence of mention of this legislative act and the inconsistency of certain provisions of the draft law with the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" could, according to some experts' opinions, have led to the fact that the draft law was not adopted (FAU insists on taking..., 2021).

In Draft Law of Ukraine No. 4600 (2021), unlike Law of Ukraine No. 877-V (2007), such important provisions as norms regarding the delegation of powers to competent authorities; norms regarding the responsibility of officials; the absence of mention of the main measures of state control, including the absence of a list of measures that could refute or confirm violations or excesses of authority by the competent authority during the inspection process, are absent. Despite the attempts of the legislator to harmonise Ukrainian legislation on plant protection with the legislation of the European Union in the form of

Draft Law of Ukraine No. 4600, this draft law had several shortcomings and legal collisions, which in turn did not allow parliamentarians to adopt such a Eurointegration document.

Already in February 2023, Draft Law of Ukraine No. 8340 (2023) was registered, and in July 2023, it was adopted as the basis for the first reading. This draft law, like the previous Draft Law of Ukraine No. 4600 (2021), aims to consolidate the provisions of the Law of Ukraine "On Plant Protection", the Law of Ukraine "On Plant Quarantine", and part of the Law of Ukraine "On Pesticides and Agrochemicals" concerning state control over plant protection products into a single regulatory document, which also entails the repeal of the Laws of Ukraine "On Plant Protection" and "On Plant Quarantine". According to the provisions of the Explanatory Note to Draft Law of Ukraine No. 8340 (2023), the main goal is to regulate the processes of carrying out phytosanitary procedures that comply with European Regulations, namely European Parliament and Council Regulation (EU) No. 2016/2031 (2016). A progressive aspect is that instead of two almost identical or very similar procedures of inspection and surveillance, only surveillance remains, although, during this procedure, sampling will be carried out. Another innovation that significantly distinguishes Draft Law of Ukraine No. 8340 from Draft Law of Ukraine No. 4600 is the possibility of using drones (unmanned aerial vehicles) for the application of plant protection products. Additionally, requirements for mandatory periodic technical equipment used for the application of plant protection products are introduced in the draft law. Moreover, the draft law extensively reflects the requirement for mandatory notification of the application of plant protection products within the specified period, namely no less than forty-eight hours before such work.

In the Draft Law of Ukraine No. 8340 (2023), as in the previous Draft Law of Ukraine No. 4600 (2021), the concept of a “plant passport” is introduced. With the plant passport, there will be no need for an additional quarantine certificate. Additionally, certain functions of the state in the field of plant protection will be delegated to private individuals who will be authorised to carry out such activities. Another new document will be a permit for the importation of certain regulated harmful objects (organisms) onto the customs territory of Ukraine, including plant species or plant products. These objects will be used solely for testing purposes or educational or scientific purposes. It should be noted that the main shortcomings of Draft Law of Ukraine No. 4600, namely its inconsistency with the provisions of Law of Ukraine No. 877-V (2007), have been addressed in Draft Law of Ukraine No. 8340. In particular, Part 3 of Article 83 of Draft Law of Ukraine No. 8340 specifies that any unplanned measures may be taken in cases provided for by Ukrainian legislation on control in the field of economic activity.

The unresolved issues are that the Law of Ukraine No. 180-XIV (1998) reflects in detail the issues of plant protection against weeds and diseases, and the legal and social protection of plant protection specialists. In addition, the measures envisaged in Law of Ukraine No. 3348-XII (1993), but absent from Draft Law of Ukraine No. 8340 (2023), namely the publication and implementation of phytosanitary measures and notification of such measures, are also not taken into account. Article 40 of the draft law, which defines exceptional cases for the import of pests, is characterised by a rather arbitrary interpretation, namely: “importation (shipment) to the customs territory of Ukraine or movement within its borders of regulated non-quarantine pests and seed and/or planting material infected with them”, in

particular, for state testing, scientific or educational purposes, varietal selection or reproduction (clause 1 of this part). It is not entirely clear what the importation of such organisms for the purpose of their “reproduction” and further use means, which may pose risks to the biological and environmental safety of the territory of Ukraine. Another significant drawback of the Draft Law of Ukraine No. 8340 is that the measures introduced to establish liability for market operators for violations of plant protection legislation are not consistent with the provisions of the Code of Ukraine on Administrative Offences (1984). This may lead to cases of arbitrary interpretation of legislative norms and ultimately create acceptable conditions for avoiding administrative liability for those guilty of violating the valid plant protection legislation. This is not an exhaustive list of comments and shortcomings of the Draft Law of Ukraine No. 8340, but these are important aspects that need to be improved in the course of preparing the draft law for the second reading.

Regarding the latest analysed within this study, Draft Law of Ukraine No. 10314 (2023), it should be noted that this bill was registered in December 2023, after the actual adoption in the first reading of Draft Law of Ukraine No. 8340 (2023). Analysing the provisions of Draft Law of Ukraine No. 10314, the bill proposes solutions to the following issues: 1) harmonise legislation in the field of plant protection (namely the Laws of Ukraine “On Plant Protection” and “On Plant Quarantine”) with the provisions of Law of Ukraine No. 2073-IX (2022), which in turn will enable the proper provision of administrative services to economic entities related to plant protection; 2) determination of the Ministry of Agrarian Policy of Ukraine as the authorised body (subject) responsible for approving the procedure for forecasts of the development and

possible spread of harmful organisms; 3) authorisation of the Chief State Phytosanitary Inspector and the chief state phytosanitary inspectors to conduct and organise training for individuals wishing to engage in activities related to pesticides and other harmful substances, etc.

Overall, analysing Draft Law of Ukraine No. 10314 (2023), it is necessary to point out that its provisions somewhat contradict Draft Law of Ukraine No. 8340 (2023), as indicated in the Conclusion on the Draft Law of Ukraine No. 10314 (2023). Its adoption in the future seems entirely illogical. Hence, it is more pertinent to refine certain provisions of Draft Law of Ukraine No. 8340 during its preparation for the second reading and adoption as a whole.

Thus, the legal framework for plant protection in Ukraine is based on a complex of laws and bylaws, including constitutional principles, general norms, environmental legislation, and special provisions for the agricultural sector. International law plays an important role through treaties that become part of national legislation. Judicial decisions are also an important source of legal support. Ukraine, as a candidate country for the European Union, requires a review and update of legislation in this area to adapt to European standards and ensure compliance with international norms.

Conclusions

Adapting valid Ukrainian legislation to European Union law is a mandatory factor in the gradual and proper implementation of Ukraine's priority goals and tasks aimed at gaining European recognition in the form of EU membership. Understanding the significance of this process, and constructive interaction among all branches of government, business groups, civil society organisations, and relevant authorities in this field is

essential, and all of this will yield positive results. Therefore, when generating ideas for changing and improving valid legislation in the field of plant protection, including developing progressive and new approaches to regulating such a sphere, it is necessary to first consolidate the proposals of all interested parties without exception.

The analysis of Draft Law of Ukraine No. 4600 and Draft Law of Ukraine No. 8340 confirms Ukraine's efforts to align national legislation with international standards in the field of plant protection. However, successful mechanisms developed over the years of independence regarding such protection should not be overlooked. Quite often, Ukraine chooses the wrong path by literally quoting all provisions of international treaties, regulations, and standards by mentioning them in its legislative acts. Although, considering the subject of research – the field of plant protection – international treaties envisage the necessity of preserving sovereign rights to protect one's territory from the introduction of quarantine organisms by establishing specific requirements for regulating a particular object.

In this regard, emphasis should be placed on the need to refine conflicting provisions of Draft Law of Ukraine No. 8340 and make corresponding amendments during the preparation process of the bill for the second reading. In particular, this concerns: 1) disregarding the provisions of the valid Law of Ukraine No. 180-XIV regarding plant protection from harmful organisms (weeds, diseases) and the uncertainty of legal and social protection for plant protection specialists, which is not reflected in Draft Law of Ukraine No. 8340; 2) disregarding some measures reflected in Law of Ukraine No. 3348-XII, namely: the necessity of timely notification of phytosanitary measures and its subsequent publication; 3) the need to harmonise the specified measures of legal liability in

Draft Law of Ukraine No. 8340 with the Code of Ukraine on Administrative Offences. Prospects for further research may include a legal analysis of Draft Law of Ukraine No. 8340, which will be prepared for the second reading.

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Conflict of Interest

None.

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Сучасний стан нормативно-правового забезпечення захисту рослин та його удосконалення у контексті законопроектної діяльності

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Анотація

Актуальність обраної тематики полягає в тому, що протягом останніх років в Україні спостерігається тенденція напрацювання змін до чинного законодавства у сфері захисту рослин, що, в тому числі обумовлено необхідністю адаптації українського законодавства до законодавства Європейського Союзу. Метою дослідження виступає комплексний аналіз сучасного та перспективного стану нормативно-правового забезпечення захисту рослин в Україні. Методи дослідження, що були використані в роботі: порівняльно-правовий, системно-структурний, формально-логічний та догматичний методи. Система законодавства, що регулює екологічну та економічну безпеку в аграрному секторі України, ґрунтується на конституційних та загальних нормах, екологічному законодавстві, міжнародних договорах, а також підзаконних актах, які забезпечують їхню практичну реалізацію. Результатами дослідження встановлено, що сучасний стан нормативно-правового забезпечення захисту рослин в Україні потребує перегляду та оновлення у зв'язку з наявністю застарілих, недосконалих та сформованих під радянським впливом правових норм у сфері захисту рослин, а також євроінтеграційними перспективами України. Зроблено висновки щодо необхідності доопрацювання суперечливих та колізійних положень проекту Закону України «Про державне регулювання сфери захисту рослин» та внесення відповідних правок у процесі підготовки законопроекту до другого читання. Наголошено на необхідності зосередження уваги саме на подальшому впровадженні такого законопроекту та недоцільності прийняття проекту Закону України «Про внесення змін до деяких законів України щодо усунення неузгодженостей у сферах законодавства про захист рослин та державний контроль». Матеріали дослідження можуть стати теоретичним підґрунтям для усунення прогалин в українському законодавстві, а також можуть бути корисними для студентів, викладачів у процесі підготовки до таких дисциплін як: «Екологічне право України», «Природоресурсне право України», «Флористичне право України» тощо

Ключові слова: рослинний світ; фітосанітарні заходи; карантин; пестициди; агрохімікати; нормативно-правове забезпечення; паспорт рослин; законотворчість



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Consideration of intellectual property law in the context of European Union practice

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Abstract

The development of effective legislation on intellectual property in the context of shaping a digital society is an important issue for ensuring the stable development of innovation and protecting creators' rights. The aim of the work is to analyse the constitutional and international principles of legislative regulation in the field of intellectual property law in the European Union to improve its legal regulation in Ukraine. The scientific basis was the application of the dialectical method as a way to delve deeper into the issues of intellectual property law, as well as the use of methods such as detailing and synthesis, abstraction, analysis and synthesis, and comparative legal method. The peculiarities of legislation on intellectual property in Ukraine and the European Union have been studied, revealing the lack of unified legal regulation of intellectual property issues. Experience confirms that institutional support is necessary for the field of intellectual property in Ukraine. To determine an effective state policy, it is necessary to develop and implement new terminology in the field of copyright protection. In the past, insufficient international cooperation has led to Ukrainian legislation not meeting modern requirements, especially in actively developing areas that require special terms and designations for the protection of intellectual

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work results. Based on the results of the conducted research, it has been established that the system of intellectual property protection in Ukraine is developing and requires constant improvement. The existence of violations of intellectual property rights indicates the need for the implementation of a programme to improve this system, as state protection of intellectual property is the main aspect of developing an innovative economy and increasing Ukraine's competitiveness. In other words, due to significant gaps in legislation, manufacturers of innovative products will not rush to introduce them to the Ukrainian market, and high-tech start-ups are not protected from unfair copying of ideas. Also, based on the research results, gaps have been identified in the regulation of legal regimes for texts, music, and images generated by artificial intelligence. The research results can be useful for legislators working on improving legislation on intellectual property and for the development of strategies for managing intellectual property, which will contribute to increasing competitiveness and innovative development of business

Keywords: protection of rights; protection of rights; legal regulation; legal support; Artificial Intelligence; normative legal acts; useful model

Introduction

In modern conditions of shaping the digital society, there is a pressing issue of forming effective legislation concerning the regulation of intellectual property matters in all spheres of human activity. Unlike previous decades, there is a production of tens of times more copyrighted works, the rights to use of which are easier to compromise due to the availability of their digital copies. Consequently, it becomes more challenging for copyright holders to track violations and prove them in court. This challenge is particularly pronounced due to the widespread use of artificial intelligence, as legally such systems operate as they are – placing all risks and copyright responsibilities on users.

To thoroughly examine the problematic nature of the issue, it's worth noting that intellectual property rights essentially constitute a set of legal norms that define what can be considered intellectual property, as well as the grounds for the emergence, modification, and termination of rights (Chepis *et al.*, 2023). Additionally, it

describes the procedures and methods for protecting intellectual property rights and the specifics of state regulation policies in the field of intellectual property rights protection. Essentially, this whole set of measures arises when creative activity results in the emergence of non-property or property rights to a newly created unique object.

Researching the fundamentals of defining and forming the right to intellectual property at the constitutional level establishes the theoretical prerequisites for further scientific research into the practical aspects of this field. Such studies can only be conducted by combining a thorough analysis of the constitutional principles of the functioning of the institution of intellectual property rights, the establishment of its principles within the framework of constitutional provisions, and further reconsideration of the peculiarities of contemporary democratisation of society, as well as the growth and adaptation of the economy to new socio-economic standards of legal society formation (Topolevsky & Fedina, 2020; Stetsiuk, 2022).

In Ukraine, the main law that defines the directions and foundations of the use of its provisions is primarily the Constitution. According to paragraph 3 of Article 8 of the Constitution of Ukraine, the direct effect of its norms allows recourse to the court in cases of violation of at least one provision. Thus, the Constitution of Ukraine stands out for its extensive regulation and influence. This leads to an examination of the state's attitude and its ideological influence on intellectual and creative activity through the prism of constitutional legal foundations. The basic principles of developing the legislative framework in this area are determined by individual provisions of the Constitution, namely those highlighted in articles: 15, 23, 26, 34-37, 41, 54, 55, 124 (Constitution of Ukraine, 1996).

According to paragraph 1 of Article 54 of the Constitution, in Ukraine, there is the possibility to engage in creative and intellectual activities without limitations in scientific, artistic, literary, and technical spheres. In cases where there are grounds for the formation of unique objects of intellectual property, measures are taken at the state level to protect, ensuring the legal interests of creators that arise in the implementation of these objects and their copyrights. It is important to consider the political, economic, and ideological diversity in Ukraine, according to Article 15 of the Constitution of Ukraine, which manifests in the freedom of speech and expression of thoughts and words, as well as the opportunity to freely express personal beliefs and views, in line with Article 34, paragraph 1 of the Constitution of Ukraine, supported by the absence of censorship at the state level, according to Article 15 of the Constitution of Ukraine. Thus, the possibility for the existence of various independent ideas is created, as conditions are formed for the accumulation, collection, and

dissemination of information without restrictions (Valle, 2010).

Furthermore, the Constitution establishes the principle of free circulation of property objects related to creative and intellectual activities (according to Article 41), while the legal aspects of ownership, use, and disposal of property objects are guaranteed under Article 54 of the Constitution of Ukraine, paragraph 2, which ensures everyone's right to the results of creative or intellectual work. This includes ownership, use, and various ways of dissemination and use by third parties, as the same paragraph of the article prohibits unauthorised use of such materials without the consent of the creator or their authorised person, except as provided by law. In addition, Article 55, paragraph 6 of the Constitution of Ukraine defines the right to take action related to the protection of rights and freedoms of individuals from unlawful actions in judicial proceedings. According to paragraph 5 of Article 55, if a person has already exhausted all possible legal protection at the national level, they may apply to the relevant international judicial organisation for the protection of rights and freedoms (Komarnytska & Butsyak, 2023; Kravchenko & Kuznetsova, 2023).

Taking into account the issues of international legislative formation and studying practical mistakes and experience in implementing the system of rights protection in other countries, the state is capable of developing a more effective legal framework for rights protection. By implementing international principles and standards of regulation in the field of intellectual property into its legislation, Ukraine promotes the powerful development of this area in the context of creating perfect mechanisms for the protection of intellectual property rights. The purpose of the study was to analyse the constitutional and international principles of legislative regulation in the

field of intellectual property law in the European Union (EU) in order to improve its legal regulation in Ukraine.

Literature Review

In the global context, intellectual property law is subject to numerous international agreements, each of which is based on principles that define the system of protecting rights to intellectual works at the international, intergovernmental level. Understanding the context of these agreements is the basis for the formation of effective national legislation in the field of intellectual property protection. In particular, one of the key agreements in the field of copyright and intellectual property is the Berne Convention for the Protection of Literary and Artistic Works, which was essentially formed in 1886. It envisages the principle of national treatment, under which creative results created in a member country are automatically protected within the competence of all states that have signed the convention. Importantly, the convention also guarantees automatic protection of intellectual property rights for all participating states, meaning that protection is automatically recognised by national treatment, without the need for formal registration. Another important principle is independent protection, which ensures that protection is provided to member countries regardless of whether protection exists in the country where the work originates (Berne Convention for the Protection..., 1886).

The Hague Agreement concerning the International Deposit of Industrial Designs regulates all issues related to one-time patenting. It eliminates the need to file a patent application for an industrial design in various countries to ensure its legal protection, and it is sufficient to file a single application for the right to an industrial design in one of the member countries (The Hague

Agreement..., 1925). On the other hand, the Universal Copyright Convention, adopted in 1952, establishes the allocation of issues concerning the observance of copyright based on the principle of preference for the author's country, where the work first published is subject to protection. This convention establishes the use of a special symbol, the "©" mark, as evidence of copyright protection for a product or work (Universal Copyright Convention, 1952).

It is also essential to mention that the foundation of the International Convention regulating issues of copyright protection and the interests of performers, producers of phonograms, and broadcasting organisations, adopted in 1961, is based on the principle of national treatment. Therefore, it is considered that for a country to accede to the Rome Convention, it must be a member not only of the United Nations (UN) but also of the Berne Union, as effective protection of neighbouring rights is possible only in the presence of effective copyright protection (Rome Convention, 1961: International Convention for the Protection..., 1961; Kosiachenko, 2022).

Furthermore, in 1994, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) began operating on a global scale, regulating intellectual property rights in trade relations. Signing this agreement is a mandatory condition for countries to join the World Trade Organisation. The TRIPS Agreement defines interactions related to the protection of patents, copyrights, related rights, geographical indications, industrial designs, integrated circuits, and trade secrets – objects that can be commercialised – and provide owners with a competitive advantage in their commercial sales for profit. It is important to mention that the TRIPS Agreement also establishes principles for regulating discriminatory issues, provided that foreign persons own

and dispose of intellectual property rights in other countries (Agreement on Trade-Related..., 1994).

According to the text of the Madrid Agreement, which regulates international registration of trademarks, adopted in 1891, the country of origin of the trademark is considered to be the state that is a member of the Special Union. It is particularly important that the applicant in this state has a genuine, not fictitious industrial or commercial enterprise (Article 5 of the Agreement, paragraph 3). The Agreement establishes twenty years of validity for international registration of a trademark. Under the terms of registration, trademarks for goods or services acquire international status and are effective in the territories of countries that have signed the agreement (Madrid Agreement..., 1891). The Paris Convention for the Protection of Industrial Property plays a significant role in shaping the list of objects that may be considered industrial property in national legislation. It considers objects such as agriculture, mining, and objects of natural or industrial origin (Paris Convention for the Protection..., 1883). V.D. Bazilevich and V.V. Ilyin (2008) indicated in their study that member countries are granted the right to conclude agreements and treaties that do not contradict the key issues highlighted in the Paris Convention. The principle of national treatment, enshrined in the Convention, plays a significant role in resolving disputes related to the protection of industrial property. Obviously, the idea that the Paris Convention contributed to the development of the international system of legal protection of industrial property objects is correct.

Materials and Methods

The scientific foundation and methodological basis for the study of the issue was the application of the dialectical method as a way to delve more deeply into and comprehend the issues of

intellectual property rights from the perspective of forming their constitutional principles and interrelationships. During the research, the following methods were also used: detailing and synthesis to explore the subject of intellectual property law and the relationship of its components: constitutional and international principles of legislative regulation; abstraction, which revealed the legal principles of international agreements on intellectual property rights; analysis and synthesis, including the formal-legal method for analysing cases of the Constitutional Court of Ukraine and the Court of the European Union; comparative legal method, which involved a comparative assessment of the features of legislative regulation of intellectual property rights in Ukraine.

Furthermore, the question of the various aspects of the legal study of the manifestation of intellectual property rights and their protection is widely represented in the works of scholars such as H.O. Androshchuk and L.I. Rabotiahova (2019), O.M. Korotun (2019), Yu.L. Boshyt-skyi (2020), and others. The works of these scholars formed the material base during the preparation of the research. In Ukraine, the following laws are directly in force: Law of Ukraine No. 3116-XII (1993), Law of Ukraine No. 3688-XII (1993), Law of Ukraine No. 3689-XII (1994), Law of Ukraine No. 3687-XII (1994), Law of Ukraine No. 621/97-VR (1997), Law of Ukraine No. 752-XIV (1999), Law of Ukraine No. 2811-IX (2022), which relate to various aspects of the protection of copyright and related rights. Therefore, relevant legislative acts were used to study the issue. Norms regulating intellectual property relations and being part of Ukrainian legislation were also used. In particular, these norms are contained in the laws Law of Ukraine No. 3322-XII (1993), Law of Ukraine No. 3691-XII (1993),

Law of Ukraine No. 123/96-VR (1996), Law of Ukraine No. 1587-III (2000), Law of Ukraine No. 2953-III (2002).

Moreover, for the study of aspects of regulating intellectual property relations, it should be noted that in cases of necessity, international treaties in this field are used, to which the Verkhovna Rada of Ukraine gives its consent to be binding. The list of such treaties can be found in Information Letter No. 01-8/1199 of the Supreme Economic Court of Ukraine (2003). Additionally, in the Civil Code of Ukraine (2003), the section “Intellectual Property Law” contains the majority of norms on the protection of intellectual property rights, which were also taken into account during the research.

Results and Discussion

The EU (European Union) is implementing the principles of a single policy aimed at creating a single market, forming the prerequisites for free activity for all market participants, and special economic zones of the EU. This is achieved, in particular, by creating a single legislative system and judiciary, including the Court of Justice of the European Union, which consolidates the judicial power of the EU. According to Article 19 of the Treaty on the European Union, “The Court of Justice of the European Union shall comprise the Court of Justice, the General Court, and specialised courts”. The term “Court of Justice of the European Union” encompasses the entire judicial system of the EU, including the European Court of Justice – the highest level of the EU’s judicial system, and the General Court.

The key task of the European Court is to ensure compliance with the norms of law in the application of treaties. In other words, the European Court is the highest court of the European Union in matters of Union law, but not national law.

Decisions of national courts cannot be appealed to the European Court, but national courts refer questions of EU law to the ECJ (European Court of Justice) for consideration. It is the national court that must apply the interpretation received to the facts of any specific case, although only courts of final appeal are obliged to refer to questions of EU law when they are being considered. At present, Ukraine is harmonising its legislation for accession to the European Union, and on June 23, 2022, the European Council recognised Ukraine as a candidate country with certain obligations, including orientation towards the decisions of the European Court and the creation and implementation of relevant legislation (Haliantych & Harmash, 2023).

European Union legislation, in comparison with Ukrainian laws in the field of intellectual property, meets modern needs, so national legislation is being harmonised with EU requirements. Following the conclusion of the EU-Ukraine Association Agreement, the state has a list of secondary EU legislation whose provisions are to be implemented in Ukrainian legislation. The decisions of the EU Court of Justice on intellectual property rights are of particular importance, as the European Union has achieved significant results in this area, and the legislation of EU member states is adapted to modern realities (Androshchuk & Rabotiahova, 2019). For example, Law of Ukraine No. 2811-IX (2022) requires the indication of the name of the author and the source of the work (Article 21), while Directive 2001/29/EC (2001) allows for restrictions unless this is not possible (Article 5). In the case of copyright infringement in Ukraine, lawsuits are considered under the domestic legislation of the country. Only when the state refers to the case law of the EU Court of Justice can it respond more flexibly to potential copyright infringements than is provided for in the Law of Ukraine “On Copyright and Related

Rights". Thus, according to the materials of the claim against Auto-Optimal LLC (Limited Liability Company) from PJSC (Private Joint Stock Company) Research and Development Institute of Enamelled Chemical Equipment and New Technologies Kolan, a case was considered to stop the infringement of intellectual property rights during the sale of M FILTER TF23 oil filters. The Commercial Court of Cassation as part of the Supreme Court found that the sale of goods manufactured abroad is not evidence of a violation of the plaintiff's right due to the validity of the Ukrainian patent for the invention, the permission to use which was obtained by the plaintiff (Resolution of the Supreme Court in Case No. 910/5438/17, 2019).

An example of this is the case of Mrs. Eva Maria Painer, where the European Court ruled that societal needs may outweigh the interests of the author. In Mrs. Painer's case, photographs of children in orphanages and preschools were used to search for missing children. The European Court recognised that portrait photos may be protected by copyright, but an exception regarding reproduction allows for citation under the condition of "fair use" and within the limits of a specific purpose (Judgement of the European Court..., 2011).

In the context of the formation of Ukrainian legislation on the protection of intellectual property rights in Ukraine, there is a practise of forming and improving the regulatory framework as issues of intellectual property are addressed in response to individuals' appeals (Bilousova *et al.*, 2021). This means that not all legal norms are regulated in the presence of contradictions, sometimes it is necessary to establish the constitutionality of legal norms, detail the application of certain provisions, or explain the peculiarities of their application in practise. In such cases, it becomes evident that key terms used in the legal practise of European countries are absent in the

valid legislation. Therefore, due to the absence of many necessary terms in the valid legislation (Law of Ukraine No. 1315-VII, 2014), it is recommended to start forming a specialised terminological dictionary for objects falling under the scope of intellectual property law. This will help avoid collisions in the development of new legislative projects with relevant sectoral codes and will also avoid the need for a new reconsideration of the system of definitions for the protection of such objects. The creation of a regulatory act that establishes official definitions and interpretations of intellectual property terms will simplify the procedure for developing legislation on the protection of these objects.

Considering the practise of the Constitutional Court of Ukraine, it can be noted that it would be expedient to create new terminology for copyright. The Constitutional Court does not address violations of copyright to objects of material and non-material intellectual property. Thus, in 2020, the court adopted 507 acts related to the judiciary and the judicial system, law enforcement agencies, anti-corruption policy, and human rights violations. In 2021, the Constitutional Court of Ukraine adopted 609 acts related to constitutional appeals and complaints, while in 2022, no such materials were submitted to the court, and it continued to consider cases from previous years that were pending in constitutional proceedings (Annual information report..., 2022).

In contrast to the Constitutional Court, consideration of the practise of the Supreme Court is impossible, as this court is not capable of independently determining the constitutionality of individual articles or laws and other legal acts, but only acts as a subject of constitutional referral to the Constitutional Court. It is also important to note that several issues related to the protection of copyright are regulated by various legislative

acts of Ukraine, including the Economic Procedural Code, the Code of Administrative Offences, the Criminal Procedural Code, as well as the Civil Procedural and Criminal, Civil, Customs Codes of Ukraine, the Code of Administrative Procedure, the Labour Code of Ukraine, as well as laws such as the Law "On Protection of Rights to Trade-marks for Goods and Services", "On Protection of Rights to Industrial Designs", "On Effective Management of Property Rights of Copyright and Related Rights Holders", "On Legal Protection of Geographical Indications", "On Protection of Rights to Inventions and Utility Models", "On Copyright and Related Rights", "On Protection of Rights to Semiconductor Topographies", "On Protection of Rights to Plant Varieties" (Korotun, 2019).

Regarding the definition of the concepts of "protection" and "defence" of rights, even scholars have not developed a unified approach to resolving their classification, with some identifying concepts while others include one studied concept in the composition of another. Others emphasise that these are different terms (Bulat & Pichko, 2020; Dobrovolska, 2021). Indeed, the concepts of "defence" and "protection", as well as "legal assistance" and "representation", define the functioning of state bodies, public and other organisations aimed at preventing or overcoming harm, or in another version, one can consider "protection of rights" as a complex of measures aimed at preventing violations of intellectual property rights in various forms, while the term "defence" includes measures aimed at restoring the rights of intellectual property owners (Boshytskyi, 2020). There is also the opinion of scholars that "legal protection" and "legal defence" are subsequent steps of one stage when from the protection of copyright, the respective structures move on to the active phase of their defence (Kravchenko & Kuznetsova, 2023). It

is considered that legal defence is a form of restoring violated legal relations, while protection involves the resolution of a narrower issue – the protection of a specific object, in this case – copyright. In this interpretation of terms, one can fully agree; moreover, according to the decision of the Cassation Economic Court as part of the Supreme Court, the method of protecting one's rights and legitimate interests is chosen at the discretion of the person concerned, depending on the possibility of effectively eliminating infringements of rights to inventions (Resolution of the Supreme Court in Case No. 910/17205/17..., 2019). Thus, the court already assumes based on its decisions that in case of violation of rights and interests, the affected person chooses the method of their defence, not protection.

Concerning ownership of intellectual property rights, there is a certain degree of uncertainty because it is not always possible to unequivocally determine whether the rights to intellectual property themselves, the object, or the protective document for it should be registered (Popelyushko, 2010). An illustrative example of this can be a plant variety, as an object of intellectual property created by a breeder, whereby in Ukraine there is a Registry of applications for plant varieties (Law of Ukraine No. 757-2018-p, 2018), a Registry of patents for plant varieties (Law of Ukraine No. 755-2018-p, 2018), and the issue of authorship of the variety is regulated by Law of Ukraine No. 3116-XII (1993). Additionally, Ukraine has acceded to the International Convention for the Protection of New Varieties of Plants (Law of Ukraine No. 60-V, 2006), which clearly declares that for inclusion in the Registry, a variety must be: new, distinct, uniform, and stable. Furthermore, intellectual property rights extend to both the creation of the variety as a unique material and to the variety's name. The legal collision lies in the fact that the

right to distribute the variety is considered separately from personal intellectual property rights to the plant variety and to the initial material from which this variety was created. Registration of the initial material of the variety is voluntary, and in cases of unfair competition, it is difficult for the breeder to prove ownership rights specifically to the genetic material of the variety. There are also cases where counterfeit goods are sold under the name of a well-known and widespread variety, which does not correspond in quality to the original. Therefore, it is necessary to develop a unified approach where registration is specifically for intellectual property rights, and it is important to precisely define registration procedures.

It is also worth mentioning that patents for utility models are granted without undergoing qualification examination procedures, limiting the assessment solely to the novelty of the patent application itself rather than its essence (Soroka, 2017). This leads to a significant number of excessive intellectual property rights and effectively reduces the level of protection for honest patent owners. It is also considered that in every scientific discovery, there is a fundamental and applied component, which should be registered as a utility model or invention (Bulat & Pichko, 2020). According to the authors of this research, this is not entirely correct, as sometimes the theoretical component is much more valuable than the applied aspect reflected in the finished product.

Thus, the legal framework for intellectual property rights in Ukraine includes a series of regulatory acts, including those harmonised with international standards (Normative legislative acts..., n.d.). However, in modern legislation, the main attention is paid to material norms, while digital works and copyrights remain overlooked. Evidence of this is the issue of copyright regarding texts, music, and images created by artificial

intelligence (AI), which in Ukraine may be considered as information and require grounds for regulating property rights (Kapitsa, 2021a; 2021b; Butnik-Siverskyi, 2023). Even in international law, these works are perceived ambiguously because it is impossible to endow artificial intelligence with property rights, and the declaration by many platforms of transferring authorship rights to the user who created it using artificial intelligence is questionable from a legal point of view.

According to the basic principles of copyright – freedom of creativity, automatic protection, independence, and exclusivity of copyright – the person who created a certain work using artificial intelligence should automatically acquire copyright to it (Shtefan, 2022). However, according to the authors, the generation of texts by a student in artificial intelligence systems does not lead to successful learning and serves only to deceive teachers. Systems for checking works for plagiarism are equipped with modules capable of establishing the authorship of a text. However, Ukrainian legislation does not provide legal recognition of a work by the person who generated it or a legally correct definition of borrowed intellectual works created using artificial intelligence. Also, an effective solution to the presented problem has not been found in the legislation of the European Union.

A relevant issue, which also belongs to the problems of regulating intellectual property rights, is the functioning of various technological start-ups and idea incubators in Ukraine, where ideas of varying degrees of embodiment in a finished product are evaluated. Various start-up competitions, idea incubators, and schools involve not only exchanging ideas but also generating commercially viable ideas of non-material and material intellectual property by teams. At the same time, it is difficult to prove the priority of the idea's emergence in specific authors if there is no

practise of documenting these ideas, patenting, or embodying them in finished products. Therefore, as society becomes more active in terms of generating new ideas and high-tech solutions, the issue of establishing copyright for these ideas becomes more complicated. Thus, alongside the harmonisation of Ukrainian legislation in the field of copyright protection for intellectual property, work should be carried out on creating new directions for the legal protection of authorship. Even the example of the rapid development of artificial intelligence shows the weaknesses of traditional regulation of authorship issues.

Conclusions

In modern conditions, the issue of research and the creation of effective legislation on intellectual property becomes relevant. This can be achieved through a thorough analysis of constitutional intellectual property law, taking into account the processes of forming its constitutional principles. In the context of shaping and spreading the digital economy and democratisation of society, as well as building a rule of law state, a detailed study of this issue is of paramount importance. Although the Constitution of Ukraine serves as the basic law, guaranteeing a free space for the realisation of intellectual creative potential, a comparative analysis of intellectual property legislation of Ukraine and the European Union reveals the absence of unified legal regulation of intellectual property issues. Experience confirms the need for institutional support for the field of intellectual property in Ukraine, in order to define an effective state policy, it is necessary to develop and implement new terminology in

the field of copyright protection. Insufficient cooperation with other countries in the past has led to Ukrainian legislation not meeting the requirements of modernity, particularly in the areas of protecting the results of intellectual work in rapidly developing fields that require the use of special terms and designations.

The results of the research indicate that the system of intellectual property protection in Ukraine is in the stage of formation and requires constant improvement. The presence of numerous violations of intellectual property rights indicates the need for the implementation of a programme to improve this system, as state protection of intellectual property is a key aspect of the development of an innovative economy and increasing the competitiveness of Ukraine. In other words, due to significant gaps in legislation, manufacturers of innovative products will not rush to distribute them in the Ukrainian market, and high-tech start-ups are not protected from unfair copying of ideas. Urgent resolution is also needed regarding the regulation of legal regimes for texts, music, and images generated by artificial intelligence. Further research into the harmonisation of Ukrainian legislation in the field of intellectual property with international standards, the development of modern terminology, and new directions in the legal protection of authorship are crucial.

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Conflict of Interest

None.

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Розгляд права інтелектуальної власності в контексті практики Європейського Союзу

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Анотація

Розробка ефективного законодавства з питань інтелектуальної власності в контексті формування цифрового суспільства є важливим питанням для забезпечення стабільного розвитку інновацій та захисту прав творців. Мета роботи – проаналізувати конституційні та міжнародні принципи законодавчого регулювання сфери права інтелектуальної власності в Європейському Союзі з метою удосконалення його правового врегулювання в Україні. Науковим підґрунтям було застосування діалектичного методу як способу більш глибоко опрацювати питання права інтелектуальної власності, а також застосовували такі методи: деталізація та синтез, абстрагування, аналіз та синтез, порівняльно-правовий метод. Вивчено особливості законодавства про інтелектуальну власність України та Європейського Союзу, виявлено відсутність єдиного правового регулювання питань інтелектуальної власності. Досвід підтверджує, що для галузі інтелектуальної власності в Україні необхідне інституційне забезпечення. Для визначення ефективної державної політики слід розробляти та впроваджувати нову термінологію у сфері охорони авторського права. У минулому недостатня міжнародна співпраця призвела до того, що українське законодавство не відповідає сучасним вимогам, особливо у сферах, що активно розвиваються, і потребують спеціальних термінів та позначень для охорони результатів інтелектуальної праці. На основі результатів проведеного дослідження встановлено, що система захисту інтелектуальної власності в Україні розвивається і потребує постійного вдосконалення. Наявність порушень прав інтелектуальної власності свідчить про необхідність впровадження програми для поліпшення цієї системи, оскільки державна охорона інтелектуальної власності є головним аспектом розвитку саме інноваційної економіки та збільшення конкурентоспроможності України. Іншими словами – за значних прогалин в законодавстві виробники інноваційних продуктів не поспішатимуть поширювати їх на ринок України, а хай тек стартапи не захищені від недобросовісного копіювання ідей. Також за результатами досліджень виявлено прогалини в питаннях регулювання правових режимів текстів, музики, зображень генерованої штучним інтелектом. Результати дослідження можуть бути корисні для законодавців, які працюють над удосконаленням законодавства з питань інтелектуальної власності, а також для розробки стратегій управління інтелектуальною власністю, що сприятиме збільшенню конкурентоспроможності та інноваційного розвитку бізнесу

Ключові слова: захист прав; охорона прав; правове регулювання; правове забезпечення; штучний інтелект; нормативно-правові акти; корисна модель



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Impact of the full-scale war in Ukraine on the environment: Environmental damage assessment

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Abstract

The full-scale invasion of the Russian Federation has threatened not only the sovereignty and integrity of Ukraine but also the state of the environment, as military operations have a direct impact on the quality of natural resources, which makes this topic relevant. The study aims to determine the impact of the war on the state of the environment in Ukraine, as well as on the environmental rights of citizens. The methods used in the study included statistical, legal hermeneutics, induction, comparative methods, and others. The study results are the essence of environmental protection and the main components of this category, namely, soil, land, water resources, atmosphere, and biodiversity. The author clarifies the essence of the environmental rights of Ukrainian citizens and what they consist of, as well as how they can be violated. It is pointed out that in the context of military confrontation, Ukrainians are limited in their ability to stay in an environment that is safe for health and life. An estimate of the environmental damage caused by the hostilities is provided, which amounts to \$59.7 billion, but is not entirely accurate or definitive, given the obstacles to data collection and lack of access to the occupied territories. The most common negative consequences of military operations and the environmental damage they cause are illustrated, examines in more detail such an environmental crime as the destruction of the Kakhovka hydroelectric power plant, and provides an estimate of material damage to various sectors, as well as the impact on the environment in the region. The differences between the Ukrainian methodology for assessing environmental damage and the American and European ones are noted. The article emphasises the need to take into account international recommendations and the use of the latest technologies to collect data on the long-term consequences of environmental damage caused by a full-scale invasion. The results of the study can be used for further work and practical improvements to the methodology for assessing environmental damage by lawyers and environmentalists

Keywords: damage; natural resources; ecocide; pollution; climate change

Introduction

Among the most common environmental problems caused by Russian aggression against Ukraine are: air pollution due to the shelling of industrial facilities and oil depots; destruction of forests due to fires; loss of biodiversity; and depletion of water resources. The environmental pollution caused by the war will have a long-term impact not only on the environment but also on the economy and gene pool of the country, which determines the relevance of the topic, as the assessment and study of environmental damage is

an urgent and urgent need, given the high intensity of hostilities and Russian missile attacks. The problem of this work is the limited access to information on the damage caused in the occupied territories and in the area of intense hostilities, paying insufficient attention to the topic of environmental damage may lead to ignoring the problem and untimely response, and without a clear assessment of damage, it will be difficult to obtain the necessary financial and technical assistance for environmental restoration, which may lead

to the recurrence of environmental disasters and their negative impact on the environment.

As for the consequences of military operations, V. Antonenko *et al.* (2022) pointed out that the focus of the Ukrainian authorities has shifted from assessing and compensating for environmental damage, which is understandable, to other tasks, but the need to restore the country's environment and industrial potential should also be addressed. The authors also emphasised that restoration processes are needed in the Donetsk region, which has been in a state of depletion of environmental resources and environmental pollution due to constant hostilities for years. As a result, ecosystems are being destroyed and changed, making their conditions unsuitable for the existence of some organisms and populations.

The factors that determine the critical environmental situation in Ukraine are described by A.V. Hrytsenko and O.G. Vasenko (2022). The authors pointed to the Russian armed aggression, environmental terrorism by the aggressor state, as well as other aspects that may be caused by military operations on the territory of Ukraine. The problems of environmental pollution as a result of a full-scale invasion are a force majeure circumstance, the occurrence of which does not depend on the will of the parties, but its existence generates several negative consequences, the impact of which cannot be minimised without the end of hostilities. The legal aspect of environmental damage was considered by R.S. Kirin *et al.* (2022). The authors pointed out that it is necessary to distinguish between the categories of "damage" and "losses", as they are not identical. Damage includes several components, namely tangible and intangible. At the same time, losses relate exclusively to the material component, as they are a monetary expression of damage caused to property as a result of unlawful actions. Therefore, in the context of Russian

aggression as a cause of environmental pollution, it is more appropriate to use the category of "losses".

It is important not only to assess the environmental damage caused by Russian aggression, but also to create mechanisms to hold those responsible for illegal actions accountable. O. Pchelina and V. Pchelin (2022) noted that this requires the development of a proper methodology for investigating this type of crime, the gradual systematisation of the circumstances to be clarified in the field of these offences, and the establishment of a clear algorithm for law enforcement officials at all stages of the investigation. It is also necessary to build up specialised knowledge of the specifics of the investigation. According to B.B. Bandurian *et al.* (2022), the areas that were under the Russian occupation even before the full-scale invasion, are on the verge of an environmental catastrophe. A significant threat is posed by strikes on energy facilities, water supply systems, and residential areas, which cause technological accidents that directly affect the environment. The destruction of surface soil layers occurs due to explosions, fires, movement of equipment and various types of weapons, and massive mining and land damage caused by explosions requires further demining and reclamation.

The analysed studies show a high level of focus on environmental issues due to Russian aggression, but insufficient consideration is given to the study of not only environmental damage but also to further steps to be taken to compensate and bring those responsible to justice. Given the above, the study aim was to determine the environmental damage and ways to bring to justice those responsible for illegal actions against the environment.

Materials and Methods

The study was conducted using a range of methods of scientific cognition. First, it is worth highlighting the method of legal hermeneutics,

which allowed to interpret and understand the legal aspects of the research object, and to determine the content of legal provisions and the specifics of their application within the institute of environmental damage. Thus, the objects of research, based on this method, are Law of Ukraine No. 1264-XII (1991) and Criminal Code of Ukraine (2001), Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (2002), Directive 2004/35/EC of the European Parliament and of the Council (2004), Resolution of the Cabinet of Ministers of Ukraine No. 326-2022-p (2022), Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 167 (2022a), Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 252 (2022b), as well as Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 175 (2022c).

The statistical method, based on the collection and interpretation of statistical data, was useful in clarifying and assessing the damage caused by Russia to Ukrainian water resources, soil, land, and atmosphere, and in detailing the damage caused by the destruction of the Kakhovka hydroelectric power station. The source of the latest data was the website of the Ministry of Environmental Protection and Natural Resources (n.d.). It is worth noting that the systemic and structural approach made it possible to characterise the methodology for assessing damages according to the Ukrainian approach and to identify the main criteria considered when making conclusions about material damage in material terms. The author also identified the range of actors responsible for the process of such calculation at the national and international levels. This approach was used to characterise the shortcomings of the Ukrainian methodology of damage assessment and controversial aspects. The systemic and structural

approach was used in conjunction with the comparative method based on the comparison of different objects, in particular, the Ukrainian, American and European approaches to environmental damage assessment, and was used to identify the differences between the objects under study.

The analytical method was used to study the characteristics of the American approach to understanding loss and damage, as well as the European experience in understanding pure environmental damage and its main types, the specifics of damage assessment and the need to consider the causal relationship in this matter. The analysis method was used to outline the issues of liability of those responsible for environmental crimes and the possibility of establishing an international tribunal. The analysis method was also used to examine the shortcomings of the Ukrainian approach and the main reasons for the differences between the World Bank's assessment and the Ukrainian working group on the material embodiment of the environmental consequences of the war. The main problems that cause inaccuracies in the final calculation are outlined. The impact of the Russian-Ukrainian war on the environment not only in Ukraine but also abroad was also studied. The analysis method was used to formulate recommendations and ways to improve the Ukrainian methodology for assessing environmental damage in the context of military confrontation. In addition to the analysis method, the induction method was also used to investigate the opinions of various authors and scholars on the general aspects of environmental damage, which were used to form the conclusion.

Results

The protection and use of natural resources covers the areas of water, forest, land, subsoil, air, flora and fauna. The essence of environmental

protection is a system of measures aimed at preserving natural resources, i.e. rational use and restoration of resources such as water, soil, forests, minerals; preventing resource depletion and pollution; promoting the protection of ecosystems and biodiversity; ensuring environmental safety; preventing and eliminating the consequences of environmental disasters; controlling the impact of economic activity on the environment; preserving natural heritage, which consists in protecting unique natural complexes, landscapes and objects, creating nature reserves and national parks; creating favourable conditions for people's lives and reducing risks to their health (Prins, 2022).

These provisions are in line with the principles contained in Law of Ukraine No. 1264-XII (1991) and create a framework for environmental protection activities. Article 9 of this law also stipulates that every citizen of Ukraine has environmental rights and obligations, thus, unauthorised encroachment on environmental

protection facilities becomes an encroachment on the environmental rights of an individual. In this context, the Russian full-scale invasion of Ukraine violates the principles of environmental protection and violates the environmental rights of citizens, including the right to a clean environment through air, water and soil pollution, the right to access information on the state of the environment, as such access may not be provided or may be complicated in the occupied territories or territories where active hostilities are taking place. This also affects the right of citizens to participate in environmental decision-making, the right to a safe environment is violated due to increased health risks arising from hostilities and the destruction of infrastructure, and the process of compensation for damage and losses caused to the environment and human rights in particular is also complicated. The damage to the Ukrainian environment in material terms caused by the Russian invasion is illustrated in Figure 1.

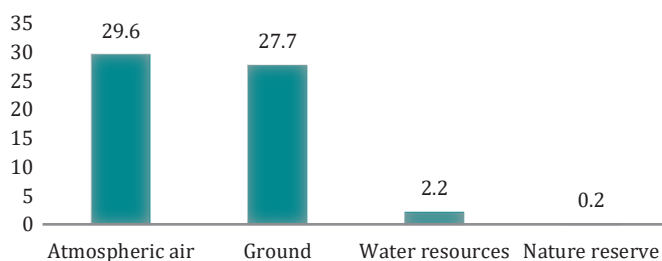


Figure 1. Total losses for the Ukrainian environment as of 2023, USD billion

Source: Ministry of Environmental Protection and Natural Resources (n.d.)

Thus, Ukraine's ecology has suffered \$59.7 billion in damage, but this figure cannot be recognised as accurate or final, in particular, because it is impossible to calculate the amount in some Ukrainian territories due to occupation or active hostilities, and the duration of the war also affects the final amount, as military clashes occur every

day. Such calculations are carried out by both the Ministry of Environmental Protection and Natural Resources of Ukraine and the State Environmental Inspectorate.

It is worth analysing in more detail the specific damage caused by the Russian invasion. Firstly, it is the waste from the destroyed equipment of the

aggressor state, for example, more than 700,000 tonnes of waste and 70,000 tonnes of air emissions were obtained from about 40,000 units of destroyed equipment (Ministry of Environmental..., n.d.). Attacks on large industrial enterprises also cause damage, in particular, because of the toxicity of the substances released during combustion. The detonation and explosion of various types of munitions cause most fires, the combustible substances from which also pollute the atmosphere, and the consequences damage biodiversity and plantations, as well as soils (Imran *et al.*, 2022). All of this violates the human right to a safe and healthy environment, including through water, air and land pollution, as well as diseases that can develop from the decomposition of unburied bodies and cause contamination of soil and groundwater.

The hostilities also affect general climate change, in particular greenhouse gas emissions, which amounted to about 150 million tonnes over the 18 months of the Russian invasion (Ministry of Environmental..., n.d.). This figure is driven by the need for both ongoing and future reconstruction of the infrastructure that has been destroyed, as well as direct hostilities, fires, leaks of hazardous substances due to damage to the

Nord Stream pipeline, increased flight distances for civil aviation to avoid the aggressor state, and the movement of people who have been forced to leave their homes as a result of the war (Padányi & Földi, 2022; Smith, 2022). Another significant impact on the environment was the explosion of the Kakhovka hydroelectric power station, which led to several catastrophic consequences, including disruption of the ecosystem of water bodies associated with hydroelectric power stations (HPPs); water quality disruption due to the massive death of aquatic organisms and the natural environment in which these organisms existed; flooding of land areas poses a threat to the existence of rodents and other animals living in the respective environment. The consequences of the hydroelectric power plant explosion also disrupted the habitat of vegetation, particularly in coastal areas, as well as in steppe and forest-steppe complexes, polluted river and sea waters, disrupted water supplies in the surrounding areas, flooded houses, businesses and livestock, causing hazardous substances to leak into the water, and affected the local climate. The environmental damage caused by the destruction of the Kakhovka HPP is illustrated in Figure 2.

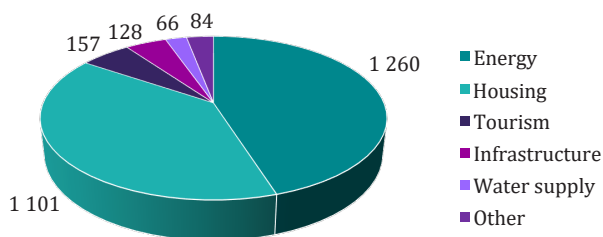


Figure 2. Losses due to the explosion of the Kakhovka HPP, 2023, USD million

Source: Ministry of Environmental Protection and Natural Resources (n.d.)

The total losses shown in Figure 2 are approximately \$2.8 billion. The “Other” category includes the social sphere, the destruction of

businesses, and agriculture. The habitat of about 1,000 species of flora and more than 1,000 species of fauna was also destroyed, almost 64,000

hectares of forests were flooded, and 700,000 people were left without water supply (Ministry of Environmental..., n.d.).

The study analyses the main methods of assessing the damage caused to Ukraine's environment as a result of Russian military aggression. First, it is worth noting the Resolution of the Cabinet of Ministers of Ukraine No. 326-2022-p (2022), which specifies the procedure for determining the damage caused by the military actions of the Russian Federation. Thus, the main indicators that are assessed in the case of damage to land resources are the following: the costs necessary to ensure land reclamation; damage to landowners; damage to soils that may affect their fertility due to pollution by substances, as well as contamination by foreign objects. Damage caused to water resources is assessed in terms of water pollution, unauthorised use, and damage to the environment within the sea. The assessment of damage to atmospheric air depends on the volume of emissions. Losses to the forestry fund are assessed through restrictions on the rights of forestry users, loss of income due to lack of access to land plots, and loss of production in the forestry sector. Damage is calculated by the authorised bodies, including the Ministry of Environmental Protection and Natural Resources and the State Environmental Inspectorate. The basis for calculating the damage caused to soils is the monetary value of the land plot within which the soil was contaminated (Order of the Ministry..., 2022a). The assessment of water pollution, except for marine waters, is carried out according to certain categories, in particular, by the affected water, by its type, and by the amount of substance that caused the pollution (Order of the Ministry..., 2022c). Concerning atmospheric air, the type of substance that caused the pollution, the emission rate of such substance, and its mass are considered; the

tax rate for unauthorised emissions, the hazard level of the substance, and the environmental impact are also taken into account (Order of the Ministry..., 2022b).

It is worth noting that the assessment of environmental damage calculated by the authorised bodies of the Ukrainian authorities is significantly different from the damage assessment carried out by the World Bank as part of the RDNA2 (Rapid Damage and Needs Assessment). Thus, as of 24.02.2023, the damage to forestry and the environment amounted to 2 billion dollars. The RDNA2 analysis, which focuses exclusively on the restoration of physical assets and infrastructure, does not consider the spillover effects on the environment, which may include pollution caused by damaged or inoperable facilities (Ukraine rapid damage..., 2023). It also does not address lost ecological functions due to forest destruction or water pollution. Thus, this assessment considers only the damage caused at the moment, while the Ukrainian loss and damage analysis takes into account the indirect lost profits and subsequent costs of rebuilding and restoring lost ecological functions (Rexhepi *et al.*, 2022).

At the same time, the Ukrainian methodology cannot be considered perfect. For example, the methodology assesses environmental losses and damage by analogy with the concept of damage in civil law and does not consider several international and European recommendations. For example, the US (United States) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) defines the fundamental concepts, including damage (injury) as an observable or measurable negative change in a natural resource or deterioration in the quality of services related to natural resources; compensation for damages (losses) as compensation for damage, destruction, loss or inability to use natural resources,

including reasonable costs of assessing damages; restoration as actions aimed at returning damaged natural resources or services to their baseline condition – the condition that would have existed if the incident had not occurred (Comprehensive environmental response..., 2002).

It is also advisable to cover Directive 2004/35/EC, where environmental damage covers various forms of harm, through the impact on protected species and habitats, including significant harm that prevents the establishment or maintenance of a favourable environmental status for these protected sites. Deterioration of water resources, which is manifested in significant adverse effects on the ecological, chemical or quantitative state or potential of water resources. Soil degradation, which includes any pollution that creates a significant risk of adverse effects on human health because of direct or indirect penetration of substances, preparations, organisms or microorganisms into the soil. The document also emphasises the need to investigate the existence of a causal relationship, which is calculated according to a scheme based on the presence of such elements as driving force, pressure, state, exposure and, accordingly, reaction (Directive 2004/35/EC of..., 2004).

For instance, hostilities can complicate data collection, access to affected areas, restrictions on monitoring equipment and the movement of personnel, and the full extent of environmental damage often takes years to manifest, making it almost impossible to properly account for long-term effects such as changes in groundwater levels, species migration or persistence of pollutants, while ongoing active hostilities cause damage and losses to increase almost every day (Saktiawan *et al.*, 2022; Haque *et al.*, 2022; Barchielli *et al.*, 2022). At the same time, military operations cause a shortage of resources and therefore create limited

opportunities for a comprehensive assessment of the environmental impact of a particular disaster or ecocide crime. It would be advisable to engage international experts in cooperation to create standardised and accurate data collection protocols for further assessment of losses and damage, considering the practical experience of the process of compensation for environmental damage in the framework of the American and European experience. Given the advancement of technology, it is also possible to develop artificial intelligence-based models to simulate the long-term consequences of the war, considering all possible negative impacts on the environment and natural resources, to assess and estimate the costs of further restoration of Ukraine's environment.

The liability of those responsible for causing damage to the Ukrainian environment should also be addressed. The actions of the Russian Federation fall under the Rome Statute of the International Criminal Court (1998), which defines a crime against the environment as an attack that causes serious damage to the environment and natural resources and is not related to military superiority. Ukrainian legislation, namely the Criminal Code of Ukraine (2001), also defines mass destruction of the environment or actions that may provoke an environmental disaster as a crime of ecocide. Russian actions as an aggressor state fall under this offence. However, the practical component of bringing Russia to justice can be implemented with the establishment of a separate military tribunal for war criminals, following the example of the Nuremberg Tribunal.

Discussion

The damage caused to the environment by Russia's armed aggression is measured in billions of dollars and has a significant impact not only on the condition of soil, water quality, land and air,

but also on human health and safety, and thus on their right to live in a safe environment. Environmental pollution, as pointed out by D. Rawtani *et al.* (2022), has various sources of origin, including shelling of industrial facilities, explosions releasing harmful chemicals, and massive fires. These pollutants pose a significant risk to public health and threaten long-term environmental damage. The authors also pointed to the potential threat of unexploded mines, which not only pose a physical danger to civilians but also hinder environmental recovery and reconstruction efforts. In the article, the authors emphasised the importance of addressing environmental issues, which is to be agreed upon, but it is necessary to consider not only the existing but also the long-term environmental impact of the war. Thus, this requires a more qualitative and comprehensive approach to identify the priority and urgent needs to restore certain environmental functions, as well as to develop a plan for the gradual restoration of areas that are less in need of urgent response.

R.J. Wenning and T.D. Tomasi (2022) suggested that the assessment should be based on the provisions of the US law – Natural Resource Damage Assessment (NRDA). This legal act defines the nature of the damage, i.e., the types of environmental resources that have been affected (e.g., air, water, soil, wildlife) and the extent of damage to each of them. These characteristics are crucial for planning and budgeting for remediation or economic strategies. Furthermore, quantification of damage creates opportunities to hold the responsible party accountable and provide resources for future environmental restoration. The authors' results do not fully correspond to the findings in this paper, but the authors agree with the researchers on the need for a qualitative assessment of environmental damage. However, the use of American experience in this area may be

problematic given that the NRDA was created under the American legal system and therefore does not consider the specifics of data collection and assessment in the Ukrainian environment, which is affected by hostilities and limited access to certain areas, raising questions about the accuracy of the data collected. Despite these limitations, the authors argue that even a modified and adapted approach inspired by NRDA principles can be valuable. This statement is valid, as the law can provide an effective theoretical framework for specific types of environmental damage.

K.H. Harada *et al.* (2022) highlight the close relationship between war and environmental and human health damage. The article discusses the potential health risks associated with environmental damage caused by the ongoing war in Ukraine. These risks include exposure to pollutants, including the risk of air, water and soil contamination due to damaged infrastructure, explosions and industrial facilities, and increased risk of infectious diseases due to problems in healthcare systems, as well as a shortage of clean drinking water. The authors also pointed to the negative impact of war on mental health, which can be exacerbated by environmental damage. The researchers emphasise that overcoming such damage and subsequent health consequences requires concerted efforts by the international community. This includes providing resources for environmental clean-up, conducting health assessments, and supporting long-term recovery efforts; it also notes the importance of strengthening international law to hold perpetrators accountable for environmental damage caused during conflicts. It is important to note that the results of this work are in line with the conclusions of the authors, in particular in terms of cooperation and joint efforts to create a reliable and effective system of prosecution of those

responsible for creating environmental disasters in Ukraine and committing ecocide.

It is also worth noting the study by F. Racioppi *et al.* (2022) on the impact of war on the environment and health. Environmental damage poses significant threats to the health of the Ukrainian population, in particular, polluted air from industrial destruction, explosions and fires can cause respiratory diseases such as asthma, bronchitis and lung cancer. Disrupted water treatment systems and contaminated water sources increase the risk of waterborne diseases. Contamination of both water and soil with hazardous materials can lead to poisoning and long-term health problems. The author's findings are important and consistent with the conclusions of this paper, but it is also worth noting that understanding the extent and nature of the damage that exists is problematic due to the limited data that can be collected, as well as the lack of access to occupied territories or areas where active fighting is ongoing.

The Russian-Ukrainian war has dealt a devastating blow to the environment with widespread and long-lasting consequences, as P. Pereira *et al.* (2022) pointed out. The authors highlighted air pollution caused by fires, deterioration of water quality due to damage to water treatment plants, soil degradation due to chemical and explosive contamination, and loss of biodiversity. In addition, the environmental impact of the war goes beyond Ukraine's borders. Disruptions to global food supplies and the potential for cross-border air and water pollution pose challenges for the entire world. A similar opinion is shared by K. Mahreen (2022), who pointed out that damage to power plants, wastewater treatment plants and industrial facilities can cause spills and leaks of hazardous substances, which pollute both air and soil. The article also highlights the indirect impact of war on the environment, for example, through

violations of environmental regulations, as law enforcement is weakened during hostilities, and compliance with environmental rights and obligations sometimes becomes impossible. Environmental damage caused by war has long-term consequences. Contaminated land can take decades or even centuries to remediate, hampering agricultural productivity and negatively impacting food security. In addition, the environmental impacts of war can transcend national borders. Air and water pollution can spread over long distances, affecting neighbouring countries and regions, through additional carbon emissions due to the increased flight distance of civilian aircraft flying around the territory of the parties to the conflict. In general, the authors' conclusions on the research topic are consistent with those of this paper. It is worth noting that the emphasis of the scholars is on the need to create effective international norms to restore the damaged ecological functions of the environment, as well as to establish a mechanism for bringing perpetrators to justice, by forming a special tribunal for war criminals.

As for the impact of the war on the air quality in Ukraine, R. Zalakeviciute *et al.* (2022) pointed out that in some regions there has been an improvement in air quality due to a decrease in industrial activity, which in turn has led to a decrease in emissions from factories and power plants. The war has also caused a sharp decline in traffic due to reduced active movement and curfews. This resulted in lower concentrations of air pollutants usually associated with vehicle emissions, such as nitrogen dioxide (NO₂). At the same time, military activities, such as rocket attacks and fires, have exacerbated existing air quality problems in most parts of Ukraine, as they result in the release of significant amounts of air pollutants, including particulate matter, nitrogen oxides and volatile organic compounds. Although

the authors' study does not confirm the results of this paper; it provides an understanding of the complex impact of Russian armed aggression on air quality, which is crucial for developing strategies to reduce this impact on the life and health of the Ukrainian population.

Russian military aggression has serious consequences for Ukraine. This concerns not only natural resources, such as soil, water, land and air quality, but also human health and safety, which violates their right to live in a safe environment. Compensation for damages caused by environmental pollution during shelling, explosions and fires requires a systematic assessment similar to the US law on natural resource damage assessment. This will allow for the efficient use of recovery resources and the involvement of those responsible for recovery efforts. It is essential to address unexploded mines that complicate environmental rehabilitation. To restore the environment and reduce the effects of the war, it is necessary not only to clean up the environment and support from the international community, but also to bring those responsible to justice.

Conclusions

Russian aggression has caused significant damage to the Ukrainian environment and natural resources. The Ukrainian authorities estimate that the damage was worth \$59.7 billion. However, the process of collecting data to arrive at the final figure makes it impossible to determine it as accurate, in part because experts' access to some areas was restricted due to occupation or active hostilities. The environmental damage is also caused by the disposal and destruction of the aggressor state's equipment, strikes and destruction of industrial facilities, energy companies, fires, and mines that impede land reclamation. Thus, all areas of the environment are affected: soil, water

resources, atmosphere and biodiversity. Environmental pollution also affects the protection of human environmental rights and freedoms, including the right to a clean and safe environment, as the conditions in which some Ukrainians live cannot be described as completely safe for their health due to air and water pollution.

One of the biggest environmental crimes was the destruction of the Kakhovka hydroelectric power station. This process resulted in a decline in water quality, flooding of economic facilities, and disruption of the living conditions of land and water species. Thus, the total amount of damage caused by the destruction of the hydroelectric power plant was \$2.8 billion. Russian armed aggression causes environmental pollution not only in Ukraine but also provokes an increase in greenhouse gas emissions around the world, in particular through the disruption of gas transportation systems and the displacement of people. Ukraine's system of environmental damage and loss assessment differs significantly from international standards and practises, with RDNA2 estimating environmental damage at \$2 billion, compared to Ukraine's \$59.7 billion. This difference is caused by various approaches to the concepts of damage and loss, as well as what these concepts include.

The European experience of determining environmental damage under Directive 2004/35/EC, in particular the recommendations on establishing a causal link between the damage caused and the action that caused it, should be adopted. It is also necessary to involve international organisations in the process of developing effective methods for assessing damage and losses, as well as to use the possibilities of modern technologies, including artificial intelligence, to collect and interpret data on the long-term effects of the war on the Ukrainian environment. Topics for further research include the possibility of establishing a

special tribunal to try war crimes related to environmental damage, the development of international law on environmental protection during armed conflicts, and the impact of environmental damage on the Ukrainian economy.

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Conflict of Interest

None.

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Вплив повномасштабної війни в Україні на довкілля: оцінка екологічних збитків

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Анотація

Повномасштабне вторгнення Російської Федерації поставило під загрозу не лише суверенітет та цілісність української держави, але й стан навколишнього середовища, адже військові дії мають прямий вплив на якість природних ресурсів, що і зумовлює актуальність дослідження даної теми. Метою наукової роботи є визначення впливу війни на стан екології в Україні, а

також на екологічні права громадян. У дослідженні використано такі методи, як статистичний, юридичної герменевтики, індукції, порівняльний метод та інші. Основні результати науково-дослідної роботи полягають у розкритті суті охорони навколишнього середовища та основних складових даної категорії, а саме ґрунтів, земельних, водних ресурсів, атмосфери, біорізноманіття. З'ясовано суть екологічних прав громадян України та в чому вони полягають, а також яким чином вони можуть бути порушені. Вказується, що в умовах воєнного протистояння українці обмежені у можливості перебувати у безпечному для здоров'я та життя навколишньому середовищі. Окреслено оцінку збитків для довкілля, що були спричинені військовими діями, така оцінка складає 59,7 млрд доларів, однак не виявляється цілком точною чи остаточною, зважаючи на перешкоди у процесі збору даних та відсутності доступу до окупованих територій. Проілюстровано найбільш поширені негативні наслідки ведення воєнних дій та в якій шкоді для довкілля вони постають, детальніше розглянуто такий екологічний злочин, як руйнування Каховської гідроелектростанції, наведено оцінку матеріальних збитків для різних сфер, а також вплив на стан довкілля у регіоні. Зазначаються відмінності між українською методикою оцінки збитків для довкілля та американською і європейською. Акцентовано на необхідності врахування міжнародних рекомендацій і долучення новітніх технологій для збору даних щодо довгострокових наслідків шкоди, завданої довкіллю через повномасштабне вторгнення. Результати дослідження можуть бути використані для подальших робіт і практичних вдосконалень методики оцінки екологічної шкоди правознавцями та екологами

Ключові слова: шкода; природні ресурси; екоцид; забруднення; кліматичні зміни



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Law enforcement function of the state in the field of intellectual property protection

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Abstract

In the conditions of innovative development of economic relations, the role of the law enforcement function of the state is increasing, which requires its authorised bodies and officials to ensure the guaranteed rights of citizens to protect their property and personal non-property rights in the field of intellectual property according to the Constitution and laws of Ukraine. This problematic issue remains relevant for the majority of intellectual property rights holders. The purpose of the study is to reveal the peculiarities of the law enforcement function of the state in ensuring the protection of certain objects of intellectual property. The methodological basis of the research consists of a set of general scientific and special methods and techniques of scientific cognition, including philosophical, metaphysical, deductive and inductive methods, methods of abstraction, modelling, and forecasting, which in combination helped to achieve the set goal. Based on the analysis of a significant number of regulatory legal acts and scientific opinions, research on the law enforcement function of the state in the field of intellectual property, which covers a wide range of private and public interests, has been conducted. The implementation of these constitutional provisions lies in creating proper and effective economic conditions for

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attracting investments in innovative product creation, and in case of their violation, the state, through its authorised bodies, is obliged to ensure the protection of violated rights. Attention is drawn to the specifics of the main law enforcement functions of the state, which provide for the creation of necessary conditions and stimulation of authors (creators) to obtain the result of creative activity, promote the free use (circulation) of the results of intellectual activity, protection of violated or contested intellectual property rights. It is emphasised that national legislation contains a list of actions that constitute a violation of intellectual property rights, which provide grounds for administrative or judicial protection. Existing gaps in legal protection of intellectual property are analysed. Attention is paid to the state of legislative reflection of the interests of participants in relations in the field of artificial intelligence, determination of the grounds and consequences of legal regulation in the European Union and Ukraine. The results of the work can be used by lawyers as well as by officials of state bodies ensuring the law enforcement function of the state in the researched sphere of relations

Keywords: innovation; breed of animals; trademarks; artificial intelligence; protection; court

Introduction

In modern conditions of economic and innovative development, processes in the field of intellectual property play an increasingly important role in Ukraine, where the state and its authorised public bodies are responsible for enforcing law enforcement functions. An important feature of law enforcement is that the state and its authorised bodies guarantee not only the provision of proper conditions for creating intellectual products but also respond to all manifestations of infringed or contested rights of illegal or unfair use of intellectual property objects. This places the responsibility on authorised state bodies to perform the tasks assigned in the researched area of relations in accordance with the defined legal powers. Issues of intellectual property protection constantly attract the attention of scientists, as evidenced by a significant number of scientific works. In particular, D.I. Kurbatov (2023) emphasised the importance of scientific, scientific-technical, and innovative activities, which, in his opinion, should play a leading role in addressing the challenges facing the state and overcoming the consequences of war.

Considering the limited state finances, the author believes it is necessary to create favourable conditions and remove regulatory barriers for wide involvement of non-budget funds in research and innovation development. Furthermore, the author proposes to establish an Agency for Defence Technologies as a separate body for shaping state orders in the defence and security sector.

The importance of protecting intellectual property rights in Ukraine, particularly considering the national system, is highlighted by I.O. Kravchenko and M.Yu. Kuznetsova (2023). The researchers concluded that in the conditions of technological progress and external threats, legislative updates should meet modern requirements for combating infringements. V.G. Pylypchuk *et al.* (2022) drew attention to the advantages and disadvantages of legal regulation in the field of artificial intelligence relations. They believe it is necessary to ensure a balance of interaction between humans and artificial intelligence, provide specific legal status for AI (artificial intelligence) robots, and apply electronic legal personality in

cases where robots make autonomous decisions or interact independently with third parties. P.R. Gould (2020), a lecturer at the London Metropolitan University, analysed issues of patent rights infringement, which is a growing problem in the information age. As intellectual property rights expand, companies and individuals find it increasingly easier to unintentionally infringe patents, thus patent law imposes strict liability on infringers. The author recommends reforming liability rules only in cases of direct patent infringement.

Researcher T. Headdon (Copyright exception for text..., 2023) drew attention to tackling problematic issues of using copyright for research and commercial purposes. In modern conditions, when main discussions focus on licencing copyright, the UK needs to address the exponential growth of generative artificial intelligence. E. Bonadio and L. McDonagh (2020) examined issues of machine learning through the use of artificial intelligence. The scholars pointed out that such a process lacks significant human intervention or assistance after the programme's work and relies on algorithms, namely sequences of instructions aimed at solving a problem or performing calculations, which should be protected by copyright.

Analysis of scientific works has enabled the identification of predominantly researched issues related to artificial intelligence in recent years. Despite the importance of studying artificial intelligence, there are also problematic issues in the field of intellectual property protection that require resolution. These circumstances underscore the need for research into the law enforcement function of the state in the field of intellectual property protection.

The purpose of the article was to investigate the theoretical and practical aspects of the state's performance of functions in the field of intellectual property protection. To achieve this goal, the

following tasks were set: characterise the state's law enforcement function, analyse the existing state of legislative regulation of intellectual property, disclose the definition of the concept of "artificial intelligence", and provide an author's vision of ways to develop this legal phenomenon.

Materials and Methods

During the study of the state's law enforcement function in the field of intellectual property protection, a system of scientific methods was used. In particular, the philosophical method enabled the examination of complex issues of the state's law enforcement function in the field of intellectual property protection in their legal development and contradictions, as well as the scientific transformation of individual materials into scientific quality. The metaphysical method was used to analyse fundamental categories, including the law enforcement function. By applying the metaphysical method, it was possible to form a static picture of the state's law enforcement function and its structural elements. The deduction and induction methods were applied to analyse the definition of the state of regulatory regulation of intellectual property protection relations. With the help of these methods, specific results were identified, and conclusions were drawn regarding the state of legislation in the field of intellectual property protection.

The abstraction method allowed for the identification of features of the implementation of the state's law enforcement function by authorised bodies, distinguishing them from each other, and substantiating the expediency and elimination of various state bodies. Modelling and forecasting methods were used in shaping the directions for improving the state's law enforcement function, which helped identify shortcomings in regulatory regulation of relations in the field of protection of

animal breeding achievements and artificial intelligence. The normative basis of the article consists of valid legislative and subordinate legal acts regulating the legal protection of intellectual property: Law of Ukraine No. 3691-XII (1993), Constitution of Ukraine (1996), Resolution of the Cabinet of Ministers of Ukraine No. 459 (2014), Order of the Cabinet of Ministers of Ukraine No. 1556-r (2020), Law of Ukraine No. 2811-IX (2022). Various publicistic materials were used in the research, such as the Resolution of the Supreme Court in Case No. 910/1759/19 (2020), Resolution of the Supreme Court in Case No. 922/1966/18 (2020), Information materials of the Ministry of Economy of Ukraine (Information materials..., 2023), and analytical materials, which collectively helped to uncover the state's law enforcement function.

Results and Discussion

Article 54 of the Constitution of Ukraine (1996) designated the guarantee of intellectual property rights as one of the most important functions of the state. This constitutional norm is imperative and must be adhered to by all participants in social relations, which has led to the peculiarities of legal regulation of intellectual activity. It indicates that the state ensures the guarantee of these rights through a combination of legally defined protection systems, without which ensuring proper protection of intellectual property would be impossible. Scholars S.I. Zapara and I.O. Kravchenko (2022) also drew attention to the state guarantee of intellectual property protection as provided by the Constitution of Ukraine. They argue that such an approach is a justified step for a state capable of guaranteeing the protection of intellectual property, particularly amidst economic and technological developments that may lead to intellectual property violations on the Internet.

Due to the fact that intellectual property relations affect various interests, state regulation gives rise to a set of relationships that constitute personal non-property and property rights of intellectual property, which the law provides legal protection for, as a result of which the state defines the rules of conduct for a significant number of participants in this process involving numerous subjects of private and public law. It is worth noting that in legal science, issues related to the state and its role in regulating social relations provoke a considerable amount of ambiguous and debatable opinions. This is because the state is the main regulator of all internal and external functions, and all processes that take place within it. Social relations largely affect the interests of citizens and society first and foremost, and as a result, they influence the functions of the state (Byelov, 2020). The modern law enforcement function of the state is also characterised through the prism of ensuring the protection of the rights and freedoms of individuals and citizens, which is one of the main functions of the state, carried out through the proper form by which social relations are regulated (Terekhov, 2021).

Analysing scholarly sources reveals that researchers focus on the important role of the state, its internal and external functions, among which law enforcement plays a leading role in the sphere of intellectual property. Primarily, it aims to protect the rights and legitimate interests of citizens, in accordance with the norms of the Constitution and laws of Ukraine, against any encroachments, restoring the legal status in case of violations of property and personal non-property rights of intellectual property rights holders. To achieve the tasks assigned to authorised bodies, they employ legal and non-legal forms of management activities, depending on the nature of legal consequences.

Protective legal relations are essential for authorised individuals or bodies performing law enforcement functions. In case of violations of personal non-property and/or property rights of intellectual property, the authorised person is obligated to document unauthorised use of the intellectual property object, appropriation of rights to this object, or any other intentional violation of subjective rights of intellectual property rights holders by drawing up a protocol, as noted by O.M. Korotun (2020). If alternative approaches prove unsuccessful or insufficiently effective, the individual may resort to the court, which will make decisions regarding infringement, non-recognition, or appeal of their rights. Court decisions are mandatory and ensure effective protection of intellectual property rights (Strelnyk *et al.*, 2023). These opinions demonstrate that ensuring proper protection and defence of intellectual property is an integral process of state functions.

In modern conditions, the law enforcement function of the state is influenced by external factors, such as military aggression, resulting in significant internal changes in the law enforcement function of the state due to the need to ensure the legal regime of martial law. This has affected the law enforcement activities of state bodies, according to O. Yara and O. Svitlychny (2023). This is confirmed by a series of laws and subordinate legal acts adopted in 2022 and 2023, including Law of Ukraine No. 2174-IX (2022), Law of Ukraine No. 2811-IX (2022), Resolution of the Cabinet of Ministers of Ukraine No. 859-2023-p (2023). These normative legal acts are primarily aimed at resolving existing problematic issues in the field of intellectual property and innovation, ensuring proper protection of rights holders of individual objects of intellectual property, which in complex economic conditions is an important tool for ensuring the proper functioning of the innovation system.

In conditions of war and under the legal regime of martial law, scholars unanimously point out that, despite the existing situation, it is important to ensure economic growth and the proper functioning of all mechanisms related to the acquisition, protection, and defence of both intellectual property and investment entities (Bondarenko, 2023). In this regard, a group of scholars concludes that the state should ensure not only its own security but also the protection of the rights of other participants in innovative and investment processes. Preserving intellectual property involves implementing effective security measures, such as protecting research laboratories and production units from unauthorised access, theft, or damage to intellectual property. This also involves protecting computer technologies and databases. Additionally, there should be sufficient legal means of protection against any infringements of intellectual property rights, ensuring inventors and creators access to fair and timely justice, as noted by researchers A.O. Shapovalova *et al.* (2023).

It is known that intellectual property is a specific area that affects the economic security of a country (Baranov *et al.*, 2020). On the other hand, for the national economy, the development of science and technology, and the innovative economy, intellectual property serves as a significant lever for economic growth and may be considered an indicator of the financial well-being of a country's economy. The implementation of innovations in the production process signifies economic growth for many countries worldwide. Moreover, innovative knowledge and achievements in economic development through the commercialisation of intellectual products are recognised as a model of economic development in the European Union, as indicated in the research by O. Svitlychny *et al.* (2022).

Emphasising the attention on economic relations, which have become an integral attribute of military aggression, it is worth noting the high level of intellectual potential of Ukrainian citizens and the development of investment activities. Specialists point out that this and other tasks are also related to the establishment of the Ukrainian National Intellectual Property and Innovation Office. The office should not only contribute to the effective protection of intellectual property but also ensure innovation processes at a proper level, which positively impacts not only the operation of enterprises and their employees but also increases tax contributions to the state budget (Olena Orlyuk: "Striving for progress...", 2023). S. Khalymon *et al.* (2019) pointed out that this is also driven by the creation of a single accessible global economic space under the influence of globalisation, which countries in Eastern Europe are striving to fully integrate into.

The foregoing indicates that the functions of the state in the field of intellectual property protection manifest in various forms and methods of state regulation. Even under conditions of martial law, the state guarantees the protection of intellectual property rights and investment security. Intellectual property and innovative developments are integral processes of creating the corresponding creative product. The authors agree with the opinion of N.P. Khrystynchenko (2022) that objects of intellectual property created in accordance with the law are subject to legal protection. The World Intellectual Property Organisation's Innovation Index, which represents the latest global innovation trends and the annual innovation rankings, indicates that in most rankings in 2022, Ukraine deteriorated its ranking and occupied the 57th position (in 2021, it was in the 49th position) in the Global Innovation Index among 132 countries, as well as the 34th

place among 39 economies of European countries (Information materials..., 2023). This suggests, according to researchers S. Dutta *et al.* (2022), that Ukraine does not ensure a sufficient level of development of innovative and technological processes. Therefore, scientists I.V. Aristova and M.Yu. Kuznetsova (2023), when studying ways to improve the protection of intellectual property under the conditions of martial law, focused on two components: protection and counteraction to violations in this sphere. They believe that this can be achieved through criminal legal protection and judicial defence. They also noted that such protection is relatively satisfactory. In addition to criminal legislation, significant weight in countering illegal or unfair use of intellectual property rights belongs to administrative, economic, and civil legislation.

It is worth noting that the position of the legislator in the investigated sphere of relations is not unequivocal. The question arises about the adoption of special legislative acts or substantial amendments to existing laws, the norms of which should correspond to the provisions of the Civil Code of Ukraine (2003) and international legislation. The importance of applying effective technological measures to protect copyright in the online environment is emphasised by foreign scholars as well. Specifically, in the work of N.Th.N. Tuyen (2024), it is noted that Vietnam has created a special agency to protect copyright, aiming to clearly and swiftly prevent actions that violate copyright in the online environment, thus providing effective control mechanisms to be exercised by separate entities of the state.

A characteristic feature of the law enforcement function of the state in the field of intellectual property protection is that the norms of special laws and subordinate regulatory legal acts, such as Resolution of the Cabinet of Ministers of

Ukraine No. 459 (2014), define that the Ministry of Economy is the state body responsible for implementing the law enforcement function of the state. Considering these provisions, the state has delegated to the Ministry of Economy of Ukraine the function of implementing state policy and exercising control over subordinate entities in the field of intellectual property protection.

At the same time, it should be noted that one of the functions of the state is to develop a consistent legal policy regarding the protection of intellectual property rights. Thus, in the absence of a special law providing protection for intellectual property rights on a commercial name, in practice, commercial names are often equated with trademarks, leading to disputes being considered in court. A notable example of such disputes is the case of the company "Icynene Inc.", which in 2015 filed a lawsuit seeking to invalidate trademarks reproducing its commercial name and potentially misleading consumers regarding the manufacturer (Decision of the District Administrative Court of Kyiv No. 826/21704/15, 2015). The absence of a special law and the unfinished judicial reform indicate that the incomplete judicial reform hinders the improvement of the judiciary's functioning and the administration of justice in Ukraine (Popovych, 2023). Especially when it comes to electronic proceedings, which should effectively safeguard the rights and interests of all participants in the judicial process. Characterising the Strategy for the Development of the Judicial System and Constitutional Proceedings for 2021-2023 in the context of ensuring the development of electronic proceedings, scholars consider it appropriate to introduce full-fledged electronic proceedings in Ukraine given the state of emergency (Teremetskyi *et al.*, 2023).

Regarding the use of commercial names and trademarks, it is also worth noting that their use

often leads to confusion between these objects and the entities using them, resulting in ambiguous judicial decisions, for which the higher courts must provide appropriate explanations (Resolution of the Supreme Court in Case No. 910/1759/19, 2020). Additionally, in the absence of a special legislative act, the regulation of relations related to trade secrets is mostly governed by the provisions of civil, commercial, and criminal legislation, other legislative acts, as well as subordinate normative acts. The state's position on this issue is unclear, particularly as the legislator has not fully regulated the issue of proper protection of animal breeds, as the provisions of Law of Ukraine No. 3691-XII (1993), regulating relations in this area, are outdated. This law not only does not comply with the provisions of the Civil Code but also fails to ensure compliance with the requirements of state registration of breeding achievements in animal husbandry. In the absence of information on the state registration of breeding achievements in animal husbandry, the provisions of this law effectively do not ensure compliance with the requirements of legal protection of breeding achievements, thus violating the intellectual property rights of animal breeds. The absence of a special judicial body, which should be the Higher Court for Intellectual Property Matters, tasked with professionally and competently resolving judicial disputes in case of infringement of intellectual property rights, for various reasons, has not been operational for over six years since its establishment by law. This negatively affects the law enforcement function of the state and is accompanied by significant image losses for the state.

The examples provided indicate that the law enforcement function of the state has its shortcomings; it does not fully meet the conditions of legal protection. There is a need to improve

existing legislative acts and adopt new special laws. They would address the need for the adoption of appropriate laws in the near future, which would correspond to the interests of the participants in the relevant legal relations and also reflect the proper state of the law enforcement function of the state in the field of intellectual property protection. In modern complex conditions of Ukrainian state activity, the issue of its law enforcement function is an important tool for ensuring the full functioning of the entire intellectual property protection system. However, the aforementioned problems do not meet the requirements of European and international standards in the field of intellectual property protection. These circumstances do not contribute to the adequate protection of creators of intellectual products, their legitimate users, and the functioning of the innovation system.

Along with the above, attention should be paid to other issues that are important in clarifying the consequences of the legal mechanism for protecting such a legal phenomenon as artificial intelligence. Judicial systems worldwide are increasingly adopting technologies that assist parties in predicting judicial decisions and judges in determining case outcomes. The integration of AI into the judicial process can enhance the efficiency of judicial proceedings, reduce their duration, save resources, and expand access to justice. However, there are concerns that the use of artificial intelligence systems in the judiciary sector may jeopardise the transparency of decision-making, contribute to discriminatory practises, threaten fundamental human rights, and hinder legal development, as noted by lawyer M. Voynov (Artificial intelligence and the legal sphere..., 2024).

Creativity in artificial intelligence is often judged by the results it produces. One advantage of AI-generated results is that the content

it creates can be of higher quality, accuracy, and informativeness compared to content created by humans. This is because AI models can learn from large volumes of data and identify patterns that may be invisible to humans. AI models can generate diverse content, including text, images, and videos, as noted by Th.H. Davenport and N. Mittal (How generative AI..., 2022). It is important to consider that business projects dictate their requirements, and therefore AI technologies are most often used to increase the efficiency of technological processes, a wide range of product and goods output, and when providing various types of services. At the same time, increasingly complex computer programmes can create works that are subject to copyright protection if created by a human author. In the modern world, discussions revolve around the issue of ownership rights to intellectual products created by artificial intelligence. This issue remains open.

Regarding the concept of “artificial intelligence”, debates arise not only about defining this concept through official documents but also based on legal doctrinal approaches. The European Commission is considering the existing risks of artificial intelligence; however, it believes that Europe plays a leading role in the world regarding AI. In April 2021, the Commission proposed the Regulation on Artificial Intelligence. It aims to address the risks associated with specific uses of AI. In doing so, the AI Regulation ensures that Europeans can trust the AI they use. The Regulation is also key to building an ecosystem of excellence in AI and strengthening the EU’s ability to compete globally (Proposal of the European Commission No. COM/2021/206 final, 2021).

Concerning the use of AI in various instances, including judicial ones, there are ambiguous positions. The issue of AI usage is associated not only with regulatory legal regulation, but also

with resolving many technical issues. In the USA (United States of America) there are numerous lawsuits against companies using AI, resulting in, according to the plaintiffs, violations of their copyright and related rights. However, most of these lawsuits are dismissed by US courts. Based on an analysis of scientific and other sources, it can be said that there is no judicial practise in resolving disputes related to AI. Additionally, the main regulatory act approving the Concept of AI Development in Ukraine is Order of the Cabinet of Ministers of Ukraine No. 1556-r (2020), which considers AI issues and provides a definition of this concept. Since these relations constitute an intersection of a wide range of interests regarding the legal protection of AI, it primarily concerns the nature of the grounds for recognising or not recognising a patent as valid. Therefore, the question arises about the need to resolve existing problems in this area of AI relations through the adoption of a legislative act that should ensure legal protection of inventions, the interests of other participants in this process, from possible problems. The above indicates that the law enforcement function of the state should influence all processes related to the protection and defence of intellectual property, as the essence of the law enforcement function of the state is organically linked to all processes of organisational and legal mechanisms of state governance, especially when it comes to mechanisms for implementing the state function (Khlivna *et al.*, 2020).

Therefore, the law enforcement function of the state in the field of intellectual property protection is a certain direction of state activity, which, in accordance with the provisions of the Constitution, laws of Ukraine, and other regulatory legal acts, recognises the right of a person to the result of intellectual, creative activity or to another object of intellectual property rights that

meets the requirements of the law and to which legal protection is provided, which includes the fixed possibility for a person to protect subjective rights in public administration bodies or in court.

Conclusions

In this way, based on normative legal acts, legal doctrinal approaches to the legal category of “law enforcement function of the state”, it can be noted that the law enforcement function is implemented through the adoption of management decisions based on constitutional and legislative imperative norms, expressed in categorical directives of authorised state bodies, their officials who establish rules of conduct for participants in legal relations, which is of great importance for the interests of the state and society. The law enforcement function of the state in the researched sphere of relations is not constant; under the influence of internal and external factors, it may undergo changes. The law enforcement function of the state is directly or indirectly entrusted to subjects of public law, whose activity aims to ensure the protection of intellectual property. The performance of the law enforcement function of the state is an indicator of constitutional guarantees for the protection of the results of intellectual creative activity, which comply with the requirements of the law. Considering the specifics of the law enforcement function of the state in the field of intellectual property, it performs all functions directly or indirectly related to the sphere of intellectual property.

In the domain of intellectual property, the state not only creates conditions for the realisation of basic values enshrined in the Constitution of Ukraine and other normative legal acts regarding the results of intellectual creative activity but also acts as a guarantor of the protection and defence of property and personal non-property

rights of intellectual property. Since the role of the state and its authorised bodies in the mentioned relations is crucial, the state is not always able to ensure a complex of organisational, economic, and legal measures to protect the right to intellectual property, to promote proper conditions for innovation activity.

Considering the provisions of legislative norms establishing the legal regime of commercial designation and trademark as means of individualisation of participants in economic relations, which often leads in practise to the confusion of these concepts by subjects of entrepreneurial activity, with the aim of eliminating existing shortcomings, it is advisable to adopt a special Law of Ukraine "On the Protection of Rights to Commercial Designation". The variety of possible ways to establish legal protection of

artificial intelligence, regarding which there are various opinions among specialists, requires a creative process of searching, systematising the necessary information regarding the protection of intellectual property rights in this complex field of relations. Considering that the provisions of the Law of Ukraine "On Breeding Business in Animal Husbandry" do not meet the conditions for the legal protection of breeding achievements in animal husbandry, the issue of applying norms in this field requires improvement and further research.

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None.

Conflict of Interest

None.

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Правоохоронна функція держави у сфері охорони інтелектуальної власності

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Анотація

В умовах інноваційного розвитку економічних відносин зростає роль правоохоронної функції держави, що потребує від її уповноважених органів та їхніх посадових осіб забезпечити гарантовані конституцією та законами України права громадян на захист їх майнових та особистих немайнових прав у сфері інтелектуальної власності. Це проблемне питання залишається актуальним для більшості правовласників об'єктів права інтелектуальної власності. Метою дослідження є розкриття особливостей правоохоронної функції держави в контексті забезпечення охорони окремих об'єктів інтелектуальної власності. Методологічну основу дослідження склали сукупність загальнонаукових та спеціальних методів і прийомів наукового пізнання, зокрема, було використано загальнофілософський, метафізичний, методи дедукції та індукції, методи абстрагування, моделювання і прогнозування, які у своєму поєднанні допомогли досягти виконання поставленої мети. На підставі аналізу значної кількості нормативно-правових актів та наукових думок здійснено дослідження правоохоронної функції держави у сфері інтелектуальної власності, яка охоплює широке коло приватних та публічних інтересів. Реалізація цих конституційних положень полягає у створенні належних і ефективних економічних умов залучення інвестицій у створення інноваційного продукту, а у разі їх порушення держава в особі уповноважених органів зобов'язана забезпечити захист порушених прав. Звертається увага на специфіку основних правоохоронних функцій держави, яка забезпечує створення необхідних умов та стимулювання авторів (творців) на отримання результату творчої діяльності, сприяє вільному використанню (обігу) результатів інтелектуальної діяльності, захисту порушеного або оспорюваного права інтелектуальної власності. Підкреслено, що національне законодавство містить перелік дій, вчинення яких є порушенням права інтелектуальної власності, що дає підстави для адміністративного або судового захисту. Проаналізовано існуючі прогалини правової охорони інтелектуальної власності. Приділена увага стану законодавчого відображення інтересів учасників відносин у галузі штучного інтелекту, визначення підстав і наслідків правового регулювання в Європейському Союзі та Україні. Результати роботи можуть бути використані як юристами, так і посадовими особами державних органів, що забезпечують правоохоронну функцію держави у дослідженій сфері відносин

Ключові слова: інновації; порода тварин; торговельні марки; штучний інтелект; захист; суд

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