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SECTION 1

CURRENT ISSUES OF CONSTITUTIONAL AND LEGAL STATUS OF HUMAN AND CITIZEN

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THE RIGHT TO EDUCATION OR FREEDOM OF EDUCATION: CONSTITUTIONAL AND SECTORAL ASPECTS

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Summary

This article analyses the distinction between the right to education and freedom of education in the decisions of the Constitutional Court of Ukraine and the European Court of Human Rights. The article deals with the issues of legislative regulation of the right to education. The author analyses international and national legal acts on the right to education, problems of reforming education and science in the context of the Association of Ukraine and the European Union. The author considers optimisation of the organisation and conduct of scientific research and general approaches to education reform aimed at innovative development of education.

In modern societies, we often hear that education is associated with the words "right" and "duty", but not everyone knows what this means in practice. Although it seems easy to talk about education nowadays, this was not the case in the past and many reforms have taken place over the years to make this right and duty more and more relevant. First of all, it should be said that the right and obligation to education has modern roots in democratic societies that recognise and guarantee education for all individuals.

Theoretical issues related to the right to education have not yet been the subject of modern legal science have not yet been the subject of a multidimensional study. The study of the of the human right to education usually involves consideration of the issues of implementation as a public service in educational institutions of various types and the protection of the right by the state authorities of Ukraine. The human right to education regulates social relations related to any form of education and upbringing, has a programme and targeted nature, which is expressed in the need for continuous improvement of legislation on education and state activities related to the realisation of the right to to education. This process is carried out on the basis of joint activities of a person, the state and society represented by represented by commercial and state institutions, whose interests are united by a

single focus, and complement each other. Education is a human right in the modern international order. It is one of the so-called second-generation rights, i.e. rights that require the state to ensure positive fulfilment, to act in favour of their observance.

Key words: education; constitutional right to education; Constitutional Court of Ukraine; European Court of Human Rights; constitutional and legal regulation of the right to education; international and European standards of the right to education; Education in Ukraine; constitutional rights of man and citizen.

1. Introduction

Unlike the right to education or the right to education, freedom of education is rarely enshrined as such in international human rights instruments. The European Convention on Human Rights is no exception to the rule. This absence can be explained by the importance of involving public authorities in the establishment and operation of educational institutions, as well as by the caution of state parties regarding the obligations that may be imposed on them in terms of supporting private institutions. However, like other treaties, the European Convention contains provisions that directly or indirectly relate to such freedom. The main provisions are those of Article 2 of Additional Protocol № 1 (the right to education of the child and the obligation to respect the religious beliefs of the parents), but other articles of the Convention can also be mobilised: freedom of conscience and religion (Article 9); freedom of expression (Article 10); freedom of association (Article 11) and even the right to respect for private and family life (Article 8). This multiplicity of sources is due to the fact that freedom of education is of interest simultaneously to: the right to give and receive teaching; the freedom to teach; teaching and freedoms in education; the person being taught; his or her parents; and the teacher.

The following scholars have dealt with the issue of determining the legal nature of the right to education: B. Andrusyshin, V. Babkin, O. Batanov, Yu. Bysaha, S. Bobrovnyk, M. Kozyubra, A. Kolodiy, R. Kovalchuk, A. Krusyan, O. Kulinich, A. Oliynyk, N. Onishchenko, N. Parkhomenko, N. Petretska, V. Pohorilko, P. Rabinovych, O. Skakun, O. Skrypniuk, S. Stetsenko, O. Melnychuk, V. Fedorenko, V. Shapoval, R. Shapoval, Yu. Shemshuchenko and others.

2. Theoretical definitions of the right to education

P. Kovalchuk, argues that in today's globalised and informatised world, education is becoming a decisive factor in social progress and national security, an important component of the full development of the human personality, increasing respect for to human rights and freedoms (Kovalchuk R.L., 2011, p. 292).

The right to education is a fundamental natural human right of the "second generation", a significant sphere of life of individuals, states and the entire world community, the realisation of which contributes to socio-economic development and even the comprehensive development of the individual. The significance of ensuring the right to education is due to the fact that this right is considered in two aspects: as the right to education itself; as a means for the realisation of other human rights in connection with the goals of sustainable development (Pyroha I.S., 2023, p. 172).

The national educational system has traditional features: the decisive role of the state in the field of education; a significant number of academic disciplines and the volume of educational plans and programmes; a large role of education in the educational process (Andryeyeva D. Ye., 2011, p. 13).

The human right to education occupies a special place in the human rights system, being at the same time the core of the cultural segment of human rights, a "second generation" right, and a guarantee of the exercise of all other human rights - from the right to life to the right to healthcare (Yafonkina I.P., 2013, p. 240). It combines elements of "negative" and "positive" human freedom – every individual has the freedom to choose the forms and methods of education, should be protected from discrimination in education (negative aspect), but, in addition, has the right to demand from the state the creation of conditions necessary for the exercise of the right (positive aspect).

The purpose of exercising the human right to education is to form a full-fledged free personality and prepare him or her for life in society through the systematic transfer of knowledge and professional orientations, moral, ethical and legal standards, experience and the development of necessary skills. This goal is common to all participants in relations related to the realisation of the human right to education – the individual, the state and society represented by commercial and non-profit organisations. Educational relations are realised by their subjects jointly, on the basis of the principle of "participation", and the interests of the subjects of educational relations are united by a single focus, complement each other and should not have a hierarchy (Ya.M. Parpan, 2016, p. 94). The human right to education has a programme and targeted nature, i.e. it requires constant improvement of educational legislation, search for new forms and methods of ensuring the principles of of the human

right to education. The main role in the realisation of the human right to education is played by the state, whose duties correspond to the right to education that belongs to each individual.

The constitutional right to education was considered in the context of its importance as a guarantee of personal freedom and development in Ukraine. In particular, the constitutional and legal aspects of this right, its importance for the self-realization of the individual and the support of a democratic society were analyzed, in particular:

– the constitutional right to education is an important element of guaranteeing the personal freedom of every citizen of Ukraine. The latter provides an opportunity to choose education according to one's own interests and needs.

– the right to education is a key factor in the development of the individual, improving his qualifications and participation in public life. Contributes to the formation of civic consciousness and an active civic position.- the current Constitution of Ukraine and legislation guarantee equal rights to education for all citizens, regardless of their origin, status or religious beliefs.

– ensuring accessibility and quality education remains an important task for Ukrainian society and the state. Ensuring access to education for all segments of the population, including persons with special needs (development of inclusive education) remains a priority direction.- the development of education in Ukraine is an integral part of building a democratic society and ensuring human rights to education. Education should be focused on the needs of society and contribute to its development (Bysaha Yu., 2023, p. 99).

3. Analysis of the case law of the Constitutional Court of Ukraine and the European Court of Human Rights

As an element of the constitutional right to education, the Basic Law of Ukraine defines the right of citizens belonging to national minorities to study in their native language or to learn their native language in state and communal educational institutions or through national cultural societies. Therefore, the constitutional provision enshrined in part five of Article 53 defines the essence of the content and scope of the right (as part of the constitutional right to education) to education in the native language in state and municipal educational institutions or through national cultural societies or to study it in these educational institutions or in national cultural societies, which is guaranteed by law (Decision of the Constitutional Court of Ukraine on July 16, 2019 № 10-p/2019).

Complete general secondary education is compulsory (Article 53(2) of the Constitution of Ukraine). This provision imposes a positive obligation on the state to implement a responsible state policy in the field of education. Given the need to implement a responsible state policy in the field of education, to provide educational institutions with qualified teaching staff, the state must create working conditions within the educational process that will encourage both experienced teachers and those who have just started their teaching career to perform their teaching functions creatively. Only by maintaining an optimal balance in the provision of educational institutions with both young qualified and experienced teachers will the state be able to fulfil its function of organising an effective education system (Decision of the Constitutional Court of Ukraine on February 7, 2023 № 1-p/2023). Education is a national priority that ensures innovative, socio-economic and cultural development of society; financing education is an investment in human potential and sustainable development of society and the state.

Given the need to implement a responsible state policy in the field of education, to provide educational institutions with qualified teaching staff, the state should create such working conditions within the educational process that will encourage both experienced teachers and those who have just started their teaching career to perform pedagogical functions creatively. Only by maintaining an optimal balance in the provision of educational institutions with both young qualified and experienced teachers will the state be able to fulfil its function of organising an effective education system.

That is why the state should create appropriate conditions for comprehensive, thorough training of young teachers and for preserving the existing human resource of experienced teachers, in particular those who, regardless of age, meet the qualification requirements and are able to carry out teaching activities due to their physical and mental health.

The Constitutional Court of Ukraine considers that the provisions of Article 53 of the Constitution of Ukraine on ensuring free higher education in state and municipal educational institutions by the state should be considered in the context of the right to education guaranteed by the Basic Law of Ukraine and access of Ukrainian citizens to it in these educational institutions on a competitive basis. The provisions of this Article do not make higher education compulsory. In the Decision of the Constitutional Court of Ukraine of 21 November 2002 No. 18-rp/2002, it is the compulsory nature of complete general secondary education that is linked to its free of charge nature (Decision of the Constitutional Court of Ukraine on March 4, 2004 № 5-рп/2004).

In terms of constitutional interpretation, the provision of part three of Article 53 of the Constitution

of Ukraine "the state shall ensure accessibility and free of charge of pre-school, complete general secondary, vocational and higher education in state and municipal educational institutions" in the context of parts one, two, four of the said article should be understood as follows:

– accessibility of education as a constitutional guarantee of the right to education on the principles of equality defined in Article 24 of the Constitution of Ukraine means that no one can be denied the right to education, and the state must create opportunities for the realisation of this right;

– free education as a constitutional guarantee of the right to education means the possibility of obtaining education in state and municipal educational institutions without paying any form of fee for educational services of the level, content, scope and within the scope of those types of education, free of charge, provided for in part three of Article 53 of the Constitution of Ukraine.

Based on the provisions of parts two and three of Article 53 of the Constitution of Ukraine, which stipulate that complete general secondary education is compulsory and free of charge, the costs of providing the educational process in state and municipal general education institutions are covered on a regulatory basis at the expense of the relevant budgets in full.

Free higher education means that a citizen has the right to receive it in accordance with the standards of higher education without paying a fee in state and municipal educational institutions on a competitive basis (part four of Article 53 of the Constitution of Ukraine) within the scope of training specialists for public needs (state order).

Therefore, in order to give an idea of the European Court of Human Rights' case law in this area, it is necessary to present it in relation to the right to education, the right of parents to respect for their religious and philosophical beliefs and the freedom of teachers (G. Gonzalez, 2021, p. 1003–1010). The first Additional Protocol of 20 March 1952, in its Article 2, at the end of a difficult genesis that testifies to the fierceness of the debate that existed at the time regarding the establishment and financial support of private schools, confirms this by reading the numerous interpretative declarations and reservations of the Contracting States. The generalised wording used in Additional Protocol №. 1 ("No one shall be denied the right to education") does not prevent it from being regarded as a declaration of a genuine right, a "fundamental right" (ECHR, 7 November 1976, Kjeldsen et al. v. Denmark, App. № 5095/71, para. 50), which "in a democratic society ... [is] indispensable for the enjoyment of human rights" (ECHR, Grand Chamber, 10 November 2005, Leyla Shahin v. Turkey, Application no. 44774/98, para. 137). The study of European case law shows the broad scope of application of the first sentence of Article 2 of Protocol №. 1 and the importance of the regulatory power of the state.

However, the Convention does not enshrine an absolute right to all forms of education: "The Contracting Parties do not recognise a right to education which would oblige them to organise at their own expense or to subsidise education of a given form or level", but only the right "to make use, in principle, of the means of instruction currently available" - which does not mean "that the State does not have a positive obligation to ensure respect for this right" – and "to obtain in accordance with the rules in force in each State and in some form of official recognition of the studies completed" for the purpose of using the diplomas at a professional level (ECHR, 23 July 1968, Belgian Language Case, Application no. 1474/62, § 3-4). Isn't the state obliged to subsidise the creation and management of private education? Although Article 2 of Protocol № 1 "essentially defines access to primary and secondary schools, there is no clear division between higher education and the field of training" (Leyla Sahin, op. cit., § 136). Although the Convention "does not oblige Contracting States to establish institutions of higher education", if they do so, they are "obliged to ensure that individuals enjoy the right of effective access to them" (ibid., § 137). Although the right to education includes "the right to education in the national language or one of the national languages", it does not guarantee, even in conjunction with Article 14 (the right to non-discrimination), the right to education in the language of one's choice (Belgian Language Case, op.cit., §§ 3 and 11). The Court enshrines the positive obligation of states to take reasonable accommodation measures to enable children with disabilities to attend school (ECtHR, 23 February 2016, Cham v. Turkey, 23 February 2016, Application no. 51500/08: discriminatory refusal to enrol a blind child in a conservatory despite passing a competitive examination). Similarly, they should facilitate access to educational programmes in prisons, where they exist, including access to computer equipment (ECtHR, 18 June 2019, Mehmet Resit Arslan and Orhan Bingel v. Turkey, Application no. 47121/06).

The state may regulate the right to education, provided that it "never violates its essence" or "does not interfere with other rights enshrined in the Convention". Such rules "may vary in time and space according to the needs and resources of the community and individuals" (Belgian Language Case, § 5), and the definition and organisation of programmes present "a problem of expediency on which the Court is not bound to rule and the solution of which may legitimately vary from country to country and from

time to time" (Kjeldsen et al., § 53). This breadth cannot justify discrimination in the exercise of the right to education on the grounds of ethnic origin (ECHR, Grand Chamber, 13 November 2007, D.H. et al. v. Czech Republic, App. № 57325/00, § 201; Grand Chamber, 16 March 2010, Orsus and Others v. Croatia, App. № 15766/03; 30 March 2023, Szolczan v. Hungary, App. No. 24408/16) (Roma students). The state may introduce compulsory schooling. The right to education "does not, in principle, exclude the application of disciplinary measures, including temporary or permanent exclusion from an educational institution" (Leyla Sahin, § 156). Aimed at "developing and moulding the character and mind" of pupils, discipline "constitutes an integral, even indispensable element of any educational system" (ECHR, 25 February 1982, Campbell and Cosans v. the United Kingdom, Application № 7511/76, paras. 33-34). In a broader sense, Article 2 of Protocol № 1 refers – whether in the case of public institutions or, by virtue of the principle of horizontal effect, private institutions – to "functions relating to the internal management of the school" which "cannot be regarded as ancillary to the educational process" (ECHR, 25 March 1993, Costello-Roberts v. the United Kingdom, App. № 13134/87, § 27). The European judge is sympathetic to states that invoke democratic values to justify, in certain contexts, prohibiting students from wearing conspicuous religious symbols. States may "limit the freedom to manifest a religion, such as the wearing of the Islamic headscarf, if the exercise of that freedom undermines the aim of protecting the rights and freedoms of others, public order and security" (ECHR, Grand Chamber, 13 February 2003, Refah Partisi et al. v. Turkey, application №. 413440/98, para. 92).

They may therefore deny access to students wearing the Islamic headscarf if the aim is to "preserve the secular character of the educational institutions" (Leyla Sahin, § 158), subject to a check that "the decision-making process for the application of internal rules [...] satisfies [...] the balance of the various interests at stake" (willingness to seek dialogue and negotiated solutions) and includes safeguards (principle of legality and judicial review) "appropriate to protect the interests" of the parties concerned (Leyla Sahin, § 159). The Leila Shaheen judgment confirms the existence of a great deal of autonomy for the state, as "the meaning or impact of acts consistent with the public expression of cooperation between religious institutions is not the same depending on time and context" and the regulation of the wearing of religious symbols in educational institutions "varies according to national traditions", "European countries do not have a common understanding of the requirements of protection of the rights of others and public order'" (§ 109). Paying close attention to the principle of subsidiarity, the Strasbourg judge declared invalid the French measures aimed at banning the wearing of religious symbols in primary and secondary education (ECtHR, 4 December 2008, Dogru v. France, application №. 27058/05; judgment of 30 June 2009, Aktas v. France, application № 43563/08). The judgment in Dogru notes that "in France, as in Turkey or Switzerland, secularism is a constitutional principle, the foundation of the Republic" (§ 72), specifying that it is the duty of the public authorities to "ensure with great vigilance that, while respecting pluralism and the freedom of others students' manifestation of their religious beliefs in schools does not turn into an ostentatious act that would constitute a source of pressure and exclusion" (§ 71) and notes that the persons concerned have "the opportunity to continue (their) education at a distance learning institution" (§ 76). However, the measure of temporary exclusion of a child who refuses to submit to corporal punishment in a public school, whose exclusion would mean that his parents are acting "against their convictions" (ECHR, 25 February 1982, Campbell and Cosans, op.cit., § 40: caning in Scottish state schools), the autonomy of the state finds a clear limit here to the extent that children should be able to exercise their right to education in accordance with their parents' religious and philosophical beliefs.

4. Conclusions

Thus, the right to education is a fundamental right. At the universal level, there is a tendency for active international cooperation in various areas of the right to education, but the problem of ensuring access to education at all levels, from preschool to higher education and "third generation" education for all, remains unresolved. Numerous international legal instruments and mechanisms for ensuring the right to education do not fully reflect the multidimensional nature of the right to education and do not establish a single model of lifelong learning at different levels. It is believed that freedom of education implies the existence of private education that differs significantly from that provided by the state in terms of its content, content or methods. Freedom to organise and provide education is a manifestation of freedom of expression.

Education is the set of knowledge, skills and abilities that enable an individual to achieve high cultural levels, which society guarantees to the whole community through specialised bodies, both public and private, thereby enabling the individual to access and be included, in conditions of equality, in social life and the world of work.

Ukraine has a well-developed system of general secondary, higher and postgraduate education, which

provides opportunities for study at various levels and specialisations. In recent years, the Ukrainian education system has been actively has been actively introducing digital technologies into the educational process. Online courses, electronic resources and distance learning are becoming increasingly popular among students and adults.

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ПРАВО НА ОСВІТУ АБО СВОБОДА ОСВІТИ: КОНСТИТУЦІЙНІ ТА ГАЛУЗЕВІ АСПЕКТИ

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Анотація

У статті проаналізовано розмежування права на освіту та свободи освіти у рішеннях Конституційного Суду України та Європейського суду з прав людини. Розглядаються питання законодавчого регулювання права на освіту. Автор аналізує міжнародні та національні правові акти щодо права на освіту, проблеми реформування освіти і науки в контексті асоціації України з Європейським Союзом. Розглянуто питання оптимізації організації та проведення наукових досліджень, а також загальні підходи до реформування освіти, спрямовані на інноваційний розвиток освіти.

У сучасному суспільстві ми часто чуємо, що освіта асоціюється зі словами "право" та "обов'язок", але не всі знають, що це означає на практиці. Хоча сьогодні говорити про освіту, здається, легко, в минулому це було не так, і за ці роки відбулося багато реформ, які зробили це право і обов'язок все більш і більш актуальними. Перш за все, слід сказати, що право і обов'язок на освіту мають сучасне коріння в демократичних суспільствах, які визнають і гарантують освіту для всіх людей.

Теоретичні питання, пов'язані з правом на освіту, ще не стали предметом багатоаспектного дослідження сучасної юридичної науки. Дослідження права людини на освіту зазвичай передбачає розгляд питань його реалізації як публічної послуги в навчальних закладах різних типів та захисту цього права органами державної влади України. Право людини на освіту регулює суспільні відносини, пов'язані з будь-якими формами навчання і виховання, має програмно-цільовий характер, що виражається в необхідності постійного вдосконалення законодавства про освіту і діяльності держави, пов'язаної з реалізацією права на освіту. Цей процес здійснюється на основі спільної діяльності людини, держави і суспільства в особі комерційних і державних інституцій, інтереси яких об'єднані єдиною спрямованістю і доповнюють один одного. У сучасному міжнародному порядку освіта є правом людини. Воно належить до так званих прав другого покоління, тобто прав, які вимагають від держави забезпечення позитивної реалізації, дій на користь їх дотримання.

Ключові слова: освіта; конституційне право на освіту; Конституційний Суд України; Європейський суд з прав людини; конституційно-правове регулювання права на освіту; міжнародні та європейські стандарти права на освіту; освіта в Україні; конституційні права людини і громадянина.

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NATIONAL STRATEGIES FOR THE DEVELOPMENT AND REGULATION OF ARTIFICIAL INTELLIGENCE IN THE FIELD OF HUMAN RIGHTS PROTECTION

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Summary

The purpose of the article is to research national strategies for the development of artificial intelligence and regulation of its use in the field of human rights protection; the study of modern challenges and trends related to the implementation of artificial intelligence technologies that have an impact on humans.

Research methods. In order to achieve the defined goal and fulfill the set tasks, a set of general scientific and special legal methods of scientific knowledge were used in the research process: dialectical, systemic-structural, logical-semantic, formal-logical, formal-legal, comparative-legal, analysis and synthesis.

Results and conclusions. Today, regulation of artificial intelligence (AI) is being discussed all over the world, including Ukraine. Artificial intelligence, with significant potential for rapid growth, is becoming one of the most influential technologies in today's world. At the same time, the question arises about the ethical and legal use of these technologies. Against the background of globalization processes, the latest technologies of AI systems, penetrating into various fields, become the reality of every person's life, even at the household level. It was emphasized that the governments of various states understand the importance of using modern information and communication technologies, including artificial intelligence technologies. Attention is focused on the fact that if AI is not controlled, it can lead to problems in the field of human rights. That is why the governments of many countries around the world are trying to protect users of digital services from threats and negative effects when using AI, developing their strategies for the development and regulation of artificial intelligence for this purpose. It was noted that the national strategies for the development of AI differ from each other in terms of their goals, but they all have a common goal – the introduction of safe AI technologies into all spheres of human life. To better understand the impact of artificial intelligence on humans and to find solutions to the challenges it creates, international collaboration, supported by the GPAI (Global Partnership on Artificial Intelligence), is needed. On the basis of the conducted research, the need to increase interest in solving the problems of human protection against potential AI threats at the international level has been proven. The main directions of the development of safe artificial intelligence, which were discussed at the first ever summit held in Great Britain, are described. The safe development of artificial intelligence will allow the use of its technologies for the benefit of humanity. The main regulatory legal

acts are decisive for the formation of both international and national policy of each state, which regulate the sphere of human rights protection in the field of AI use, have been identified. The formation of international and European standards in the field of application of artificial intelligence is highlighted. The normative legal documents that establish and regulate the implementation of AI technologies in Ukraine have been analyzed.

It was concluded that today no state in the world is able to work on the creation and implementation of AI in isolation from others: only international cooperation of scientists can ensure the development of high AI technologies. Ukraine, as a part of the European Community of States and a member of the Special Committee on Artificial Intelligence at the Council of Europe, should focus primarily on the standards of the European Union, the Council of Europe and other pan-European institutions regarding the development of AI. Legal regulation of the use of artificial intelligence in Ukraine is at the stage of development. The strategy for the development of artificial intelligence for 2022–2030 should become the basis for the preparation of state programs and legal acts related to the development of AI in Ukraine. In order to eliminate the risks of artificial intelligence, it is proposed to rely on European and global strategies for the development and regulation of AI, taking into account international standards and ethical principles in its use, when developing national legal acts.

Key words: artificial intelligence, human rights, threats, security, development strategies, international standards, ethical principles.

1. Introduction.

The topic of artificial intelligence (AI) is relevant not only in Ukraine, but also throughout the world. Today it is discussed at different levels. However, there are currently no comprehensive regulations at the international level. The purpose of the article is Recognizing the potential challenges associated with the risks of artificial intelligence, given the global nature of such challenges, the European Union and the United States recognize that they cannot currently find the same approaches to regulating the use of artificial intelligence. As for national regulation, AI standards are currently being developed. More than 50 countries of the world have already created and adopted strategies for the development of artificial intelligence, but only in the form of recommendations from governments. Ukraine does not remain aloof from these processes either. In recent decades, problems of the development and application of artificial intelligence in various fields have been actively investigated in domestic legal science. The number of scientific works devoted to the normative and legal regulation of artificial intelligence, which include the moral and legal aspects of its application, is constantly increasing. Recently, there have been heated discussions about the threats of AI to human rights. The scientific investigations of leading domestic scientists are devoted to these problems, in particular: O.A Baranova, D.M. Belova, M.V. Belova, Yu. M. Bysagy, B.V. Ostrovskaya, V.Yu. Shepitko, M.V. Shepitko et al. Leading Ukrainian researchers in the field of artificial intelligence, under the leadership of Professor Anatoliy Shevchenko of the Institute of Artificial Intelligence Problems, have joined together to develop a joint strategic plan for the development and use of safe artificial intelligence in Ukraine by 2030. The directions for the development of artificial intelligence in Ukraine, stated in the strategy, are correlated with the current global directions for regulating the use of AI. The strategy is aligned with NATO's strategy for the development of AI, including its legal and responsible use, and also pays attention to the risks that arise from the use of artificial intelligence technologies. The developed strategy for the development of artificial intelligence in Ukraine will help our country maintain a worthy position in the global scientific and technical process.

2. International national strategies for the development of artificial intelligence

Canada is the first country in the world to create a National AI Strategy (Pan-Canadian AI Strategy) at the government level. The Government of Canada has introduced the comprehensive federal bill C-27 "On the implementation of the Digital Charter 2022" to Parliament, the main purpose of which is to introduce new rules for the development and application of AI. Canada is a co-founder of the Global Partnership on Artificial Intelligence (Joint Statement from founding members of the Global Partnership on Artificial Intelligence, June 15, 2020). 29 countries have come together to support the responsible and human-centred development and use of artificial intelligence (GPAI or Gee-Pay) in a manner consistent with human rights, fundamental freedoms and shared democratic values, as detailed in the OECD Recommendation on artificial intelligence.

In the United States of America, in 2021, the National Strategy for Artificial Intelligence (Artificial Intelligence Index Report, 2021) was developed, which talks about the need to support international cooperation in research and development of AI systems. In October 2022, the Office of Science and Technology Policy of the White House published the Blueprint for an AI Bill of Rights (2022), which outlines the principles that should protect society from threats and negative impacts when using AI. An

AI Bill of Rights was also developed in the field of artificial intelligence, which aims to protect citizens from neural networks (AI Bill of Rights, 2022). The document approves 5 fundamental principles: safety and efficiency of the system, protection against discrimination, data confidentiality, purposes of use explanation, as alternatives decision-making human.

Certain guidelines for the implementation of AI regulation and basic state standards are outlined in the National AI Strategy prepared by the UK government in 2021. This is, for example, the White Paper in the United Kingdom, as well as the document "Creating a pro-innovation approach to the regulation of AI" presented in 2022. In 2023, the British government added artificial intelligence to the list of threats in the National Risk Register. One such threat was the increase in misinformation when AI systems are mishandled. In order to protect users of digital technologies from negative impacts, the UK government held the first global summit on AI safety in November 2023 (AI Safety in London, 2023). Britain's artificial intelligence summit has brought together heads of state and tech giants amid concerns that the new technology could pose a threat to humanity. During the AI Safety Summit in London, Elon Musk said that artificial intelligence is the biggest threat to the modern world: "For the first time in human history, we have something that will be much smarter than us. So it is not clear to me (how) such a thing can be controlled, but I think we can strive to steer it in a direction that will benefit humanity. But I think it's one of the existential risks we face, potentially the most pressing." The main focus was on developing a strategy for a global coordinated effort to eliminate the risks and misuse of AI technologies. The summit discussed 5 areas: risks associated with artificial intelligence; international cooperation on AI security issues; identifying ways to improve security through actions coordinated at the international level; evaluation of directions and standards for management of the industry; safe development of artificial intelligence, which will allow the use of technology for the benefit of humanity. The participating countries of the summit, including Ukraine, signed the "Bletchley Declaration" – a document whose main purpose is to intensify international cooperation in the research of artificial intelligence (AI) security. The declaration calls for the guarantee of respect for human rights, data protection, ethics and safety in the development of artificial intelligence, and also emphasizes the importance of controlling the use of its technologies.

3. European ethical standards for artificial intelligence

The priority of the European approach is to establish ethical standards for the implementation of AI. The goal of the European Union is to promote the development of reliable and ethical AI, which must comply with legal regulations. The European Union, taking into account the new trends and challenges associated with the rapid development of artificial intelligence technologies, is developing ethical principles and legal norms regarding the use of AI, which are outlined in the document "Ethical Guidelines for Trusted AI" (2019). At the UNESCO General Conference in November 2021, 193 countries, including Ukraine, adopted the first-ever global ethical standards for artificial intelligence, which allow maximizing the benefits of scientific discoveries while minimizing the risks of their use. The recommendation identifies four main directions:

1) data protection (the document calls on governments to guarantee citizens the security of personal data and freedom of action, in particular, every person should be able to view or delete information about himself);

2) prohibition of social evaluation and monitoring of people (UNESCO prohibits the use of such AI technologies, as they violate basic human rights and freedoms);

3) control and assessment (It is envisaged to create tools that will help assess the ethical impact of AI on people, society and the environment to help countries develop safe systems);

4) environmental protection (According to the recommendation, developers should give preference to economic and safe methods that will allow the use of AI to fight climate change and other environmental problems. In particular: take care of reducing the carbon footprint, consume as little energy as possible and use safe raw materials).

Therefore, such directions are extremely important at the present time, because the proposed ethical standards for the use of general purpose technologies change not only the way of working with them, but also the way of life. AI technologies have significant benefits in many areas, but without ethical barriers, they can lead to discrimination in the real world and threaten basic human rights and freedoms. The stated basic principles, focused on human rights, provide the states with recommendations for the formation of an effective policy in the field of AI.

In the European Union, there is an important Digital Services Act (DSA, 2020). This Law entered into force on August 25, 2023 and is directly applicable in the European Union. The main slogan of this legislative act sounds like this: "what is illegal offline should be illegal online." The purpose of this law is the EU's intention to protect the fundamental rights of users by creating a safer digital space. This will allow users to flag illegal content and report it to the online platform. It also includes the right to block it.

As a response to the latest developments in digital technologies, in particular – to the emergence of general purpose artificial intelligence and generative artificial intelligence, the first intergovernmental standard on AI was adopted. On March 5, 2024, the

OECD Council of Ministers adopted changes to the principles on Artificial Intelligence at its meeting. The updated principles address AI-related challenges such as privacy, intellectual property rights, security and information integrity. They are aimed at solving security problems, since artificial intelligence systems carry the risk of causing significant harm to society, therefore, reliable mechanisms and precautions are needed for their configuration and/or decommissioning (anti-disinformation, the need to preserve the integrity of information, responsible business behavior throughout the entire life cycle AI systems, cooperation with AI systems users and other stakeholders, transparency and responsible disclosure of information about AI systems, the need for cross-jurisdictional cooperation to promote an interoperable AI policy environment (Updated principles of artificial intelligence, 2024).

Thus, the updated principles effectively create a framework for addressing AI risks and can serve as a basis for AI policymaking.

On March 13, 2024, the European Union adopted the Artificial Intelligence Law (Artificial Intelligence Law, 2024), which became the world's first comprehensive law to regulate artificial intelligence (AI) to reduce risks, create opportunities to fight discrimination and ensure transparency. Thanks to the Parliament, unacceptable AI practices will be banned in Europe and citizens' rights will be protected. As stated in the press release of the European Parliament, the goal of regulation is "to protect fundamental rights, democracy, the rule of law and environmental sustainability from extremely risky artificial intelligence, as well as to stimulate innovation and establish Europe as a leader in this field." It further states that "Untargeted copying of facial images from CCTV footage for the creation of facial recognition databases will be prohibited. The new rules ban certain AI applications that threaten citizens' rights. Emotion recognition in the workplace and schools, social assessment, predictive policing, and artificial intelligence that manipulates human behavior or exploits people's vulnerabilities will also be banned." Citizens will have the right to file complaints against artificial intelligence systems and receive explanations for decisions based on high-risk artificial intelligence systems that affect their rights (Saakov V., Krokman V., 2024).

The President of the European Commission, Ursula von der Leyen, said: "Artificial intelligence is already changing our daily lives. And this is just the beginning. Smart and widespread use of AI promises enormous benefits for our economy and society. I therefore very much want to welcome today's political agreement between the European Parliament and the Council on the New Era Artificial Intelligence Act. The EU Law on Artificial Intelligence is the first comprehensive legal framework for artificial intelligence worldwide. So, this is a historical moment. The AI Act brings European values into a new era. By focusing regulation on identifiable risks, today's agreement will promote responsible innovation in Europe. By guaranteeing the safety and fundamental rights of people and companies, it will support the development, deployment and implementation of reliable AI in the EU. Our Artificial Intelligence Act will make a significant contribution to the development of global rules and principles for human-centered AI" (Statement by President Ursula von der Leyen, 2023).

The formation of the regulatory framework for the regulation of AI technologies in the European Union takes place both at the European level and in the member states. The European Commission on Artificial Intelligence, which serves as a platform for public discussions, is responsible for all developments in this area. Within the framework of the European Commission, in 2024, the European Union created the AI Office (European AI Office, 2024) – an artificial intelligence expertise center that will be responsible for compliance with the rules of the AI Law, ensuring its implementation in all member states. The AI Office is the basis for a single European artificial intelligence management system. As soon as the Law on Artificial Intelligence enters into force, it must also be adopted by all candidate countries for joining the European Union, including Ukraine.

4. Strategies for the development and regu-lation of artificial intelligence in Ukraine

For the Ukrainian legislator, the term "artificial intelligence" is a relatively new term, therefore an unambiguous legal definition, and even more so legal regulation, is currently absent in the current legislation. Currently, the issue of the development of artificial intelligence is quite actively discussed in Ukraine. The Ministry of Digital Transformation is working on the development of the legislative framework for the regulation of AI. During development, the issue of creating and spreading disinformation with the help of AI was also taken into account. In 2020, the Cabinet of Ministers approved the Concept for the Development of Artificial Intelligence in Ukraine (On the Approval of the Concept for the Development of Artificial Intelligence in Ukraine, 2020), the purpose of which is to determine the priority directions for the development of AI to satisfy the rights and interests of people, namely: in education, science, economy, cyber security, defense, information security, public administration, legal regulation and ethics, justice. In October 2023, the Ministry of Digital Transformation presented the Roadmap for the Legislative Regulation of Artificial Intelligence in Ukraine, which focuses on the rights of Ukrainians in the digital space.

With the participation of experts, government officials, people's deputies and lawyers, Ukraine began work on the development of its own strategy for the

regulation of artificial intelligence, which became the beginning of work on the regulatory field for artificial intelligence. Currently, two main strategies for the development of legal regulation are possible: 1) development of own legal regulation; 2) implementation (full or gradual) of the EU AI Act. The implementation of European legislation may cause certain difficulties, but it is the EU standards in this area that should become a reference point for Ukraine, especially since the course of European integration is enshrined in the Constitution of Ukraine.

The Ukrainian Scientific School of Artificial Intelligence presented an alternative project "Strategy for the Development of Artificial Intelligence in Ukraine for 2023-2030" for discussion and suggestions. The purpose of this strategy is to create the foundations for a new technological system that will lead Ukraine to a leading position in the world in the field of information and computer technologies, thanks to the effective use of the advantages and opportunities of the wide implementation of AI in all spheres of public life. Scientists have proposed a parallel direction of scientific research, which involves the creation of a breakthrough technology in the field of artificial intelligence in Ukraine – the creation of a next-generation computer based on the application of the principles and mechanisms of the functioning as human brain, in particular, its consciousness. For the functioning of such a machine, a necessary condition is taking into account the laws of nature, spiritual, moral and legal laws and rules adopted in the international community and in a separate state. Only with such an approach can the interests of a specific person and humanity as a whole be ensured (Shevchenko, 2022).

"Artificial intelligence is developing every day, so our goal is to create a safe environment in which AI will help society and not create additional threats... We must keep up with the world and lead the AI trend. Understand what is happening, react quickly and have your own strategy. It is impossible to talk about a digital state if we do not form a progressive policy in the direction of artificial intelligence and an agenda for the world. Already today in Ukraine, AI is actively used in various directions. The use of artificial intelligence is especially important in the field of military technology. It helps to record the movement of equipment and personnel of the occupiers, shoot down enemy missiles, guide UAVs more effectively to targets, etc. Work on the regulatory field for AI is important for the development of the country and will enable us to move faster in this direction," said the Deputy Prime Minister for Innovation, Development of Education, Science and Technology, Minister of Digital Transformation Mykhailo Fedorov (Regulation of Artificial Intelligence in Ukraine, 2023). In Ukraine, the issue of legal regulation of artificial intelligence is on the agenda of the Verkhovna Rada Committee on Digital Transformation. When developing normative legal acts related to the field of AI, Ukraine must adhere to the global pace of development of this field and protection of the rights and freedoms of citizens. When deciding which way to move in Ukraine in matters of legal regulation of artificial intelligence, it is necessary to study the best European and world experience.

In order to discuss global trends and features of legal regulation of artificial intelligence, the Center for Democracy and the Rule of Law (CEDEM) together with the Digital Security Laboratory held the forum "Artificial Intelligence 2.0: Regulation and Work in Time of War" in Kyiv (Forum, 2023). At this forum, the OSCE representative on media freedom, Teresa Ribeiro, noted that "The situation is very sad now, because war has returned to Europe. And this war is waged not only with conventional weapons, Russia's war against Ukraine is a hybrid one. It uses various means, such as distortion of facts and various propaganda methods. To protect human rights, we need to use artificial intelligence to facilitate access to reliable information for society and prevent misinformation". Denise Wagner, adviser to the office of the OSCE representative on media freedom, also spoke about the use of artificial intelligence for the purpose of malicious actions. The speaker emphasized that one of the areas that should be paid attention to from the point of view of regulation is the spread of disinformation, the main means of which are recommendation systems and targeted advertising. Some content needs to be restricted or removed, but it is much better when disinformation is countered by the users themselves, not just by the regulator. She emphasized that what is important now is not only freedom of speech, but also the freedom to be free from misinformation.

5. Conclusions.

Summarizing all of the above, it should be noted that today no state in the world is able to work on the creation and implementation of AI in isolation from others: only international cooperation of scientists can ensure the development of high AI technologies. Ukraine, as a part of the European Community of States and a member of the Special Committee on Artificial Intelligence at the Council of Europe, should focus primarily on the standards of the European Union, the Council of Europe and other pan-European institutions regarding the development of AI.

Legal regulation of the use of artificial intelligence in Ukraine is at the stage of development. The first steps towards its regulation have been taken – the Concept of the Development of Artificial Intelligence has been approved, the Roadmap for the Regulation of Artificial Intelligence has been presented, and the Strategy for the Development of Artificial Intelligence in Ukraine until 2030 has been developed. The strategy for the development of artificial intelligence in Ukraine is the basis for the preparation of

state programs and legal acts related to the development of AI in Ukraine. However, the steps taken do not allow establishing generally accepted rules and norms for the use of artificial intelligence. Therefore, it is necessary to join the already existing international treaties and conventions. Taking into account the rapid development of artificial intelligence technologies, we believe it is appropriate to apply a comprehensive approach to take into account world standards for the use of artificial intelligence. In addition to the development of the main Law "On Artificial Intelligence", which should define the rights and responsibilities of users in the application of its technologies, regulate legal relations in the field of the use of artificial intelligence and establish responsibility for violating the rules of its application, it is necessary to develop and implement by-laws and instructions, and as well as relevant resolutions of the executive authorities. In order to eliminate the risks of artificial intelligence, it is necessary to rely on European and global strategies for the development and regulation of AI, taking into account ethical principles and legal norms regarding its use, when developing national legal acts.

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НАЦІОНАЛЬНІ СТРАТЕГІЇ РОЗВИТКУ ТА РЕГУЛЮВАННЯ ШТУЧНОГО ІНТЕЛЕКТУ У СФЕРІ ЗАХИСТУ ПРАВ ЛЮДИНИ

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Анотація

Мета статті – дослідження національних стратегій розвитку та регулювання штучного інтелекту у сфері захисту прав людини; дослідження сучасних викликів та тенденцій, пов'язаних із використанням технологій штучного інтелекту, які мають вплив на людину.

Методи дослідження. Для досягнення окресленої мети й виконання поставлених завдань у процесі дослідження використано комплекс загальнонаукових та спеціально-юридичних методів наукового пізнання: діалектичний, системно-структурний, логіко-семантичний, формально-логічний, формально-юридичний, порівняльно-правовий, методи аналізу та синтезу.

Результати та висновки. Сьогодні у всьому світі, включаючи Україну, обговорюють регулювання штучного інтелекту (ШІ). Штучний інтелект, маючи значний потенціал для швидкого зростання, стає однією з найвпливовіших технологій у сучасному світі. Водночас постає питання про етичне та правове використання цих технологій. На тлі глобалізаційних процесів новітні технології систем ШІ, проникаючи у різні галузі, стають реальністю життя кожної людини, навіть на побутовому рівні. Наголошено, що уряди різних держав розуміють важливість застосування сучасних інформаційно-комунікаційних технологій, в тому числі і технологій штучного інтелекту. Акцентовано увагу на тому, що якщо не контролювати ШІ, то це може призвести до проблем у сфері прав людини. Саме тому уряди багатьох країн світу намагаються захистити користувачів цифрових послуг від загроз та негативного впливу при використанні ШІ, розробляючи з цією метою свої стратегії розвитку та регулювання штучного інтелекту. Відзначено, що національні стратегії розвитку ШІ різняться одна від одної своїми цілями, але всі вони мають спільну мету – впровадження безпечних технологій ШІ у всі сфери життєдіяльності людини. Щоб краще зрозуміти вплив штучного інтелекту на людину та знайти рішення викликів, які він створює, необхідна міжнародна співпраця, яку підтримує GPAI (Глобальне партнерство зі штучного інтелекту). На підставі проведеного дослідження доведена необхідність посилення інтересу до вирішення проблем захисту людини від потенційних загроз ШІ на міжнародному рівні. Охарактеризовано основні напрямки розвитку безпечного штучного інтелекту, що оговорювались на першому в історії саміті, проведеному у Великій Британії. Безпечна розробка штучного інтелекту дозволить використовувати його технології на благо людства. Визначено основні нормативно-правові акти, котрі є визначальними для формування як міжнародної, так і національної політики кожної держави, що регулюють сферу захисту прав людини в галузі використання ШІ. Висвітлено становлення міжнародних та європейських стандартів у сфері застосування штучного інтелекту. Проаналізовано нормативно-правові документи, котрими закріплюється та регулюється реалізація технологій Ші в Україні.

Зроблено висновок, що на сьогодні жодна держава у світі не спроможна працювати над створенням і впровадженням ШІ ізольовано від інших: лише міжнародне співробітництво науковців здатне забезпечити розвиток високих технологій ШІ. Україна як частина європейської спільноти держав і член Спеціального комітету зі штучного інтелекту при Раді Європи має орієнтуватися перш за все на стандарти Європейського Союзу, Ради Європи та інших загальноєвропейських інституцій щодо розвитку ШІ. Правове регулювання використання штучного інтелекту в Україні знаходиться на стадії розробки. Основою для підготовки державних програм і нормативно-правових актів, які стосуються розвитку ШІ в Україні, повинна стати стратегія розвитку штучного інтелекту на 2022–2030 роки. З метою усунення ризиків штучного інтелекту при розробці національних нормативно-правових актів пропонується опиратися на європейські та світові стратегії розвитку та регулювання ШІ, враховуючи міжнародні стандарти та етичні принципи при його використанні.

Ключові слова: штучний інтелект, права людини, загрози, безпека, стратегії розвитку, міжнародні стандарти, етичні принципи.

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INTERPRETATION OF LEGAL DUTY IN THE AMERICAN LEGAL TRADITION

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Summary

Human rights, as enshrined in current international legal instruments, are the result of long-term historical development and the gradual formation of standards that have become the norm in modern democratic society. The formation of such unified standards for regulating social life has led to the modern doctrine of human rights being based on universal principles and values, including freedom, equality, justice, and the inalienability of fundamental human rights. However, despite the commonality of these values and principles on which the modern idea of human rights is founded, its formation and gradual development occurred under the influence of cultural, historical, political, and sociological factors of individual states or entire regions. These factors led to the emergence of distinct legal traditions.

A legal tradition is understood as a deeply rooted and historically conditioned attitude of people towards the role of law in society, the nature of law, as well as the organization and functioning of the legal system as a whole. The legal tradition, in turn, leads to certain differences or authenticity in the interpretation of various legal categories, as their formation occurred through the prism of unique circumstances characteristic of a particular legal tradition. Studying approaches to interpreting certain legal phenomena in specific legal traditions allows for a broader understanding of a given legal concept, revealing its peculiarities in the legal systems of individual states, and conducting a comparative analysis of its interpretation alongside other legal traditions.

Today, when discussing human rights and obligations, we often refer to sources of the European legal tradition, which undoubtedly play an important role in the modern understanding of human rights. However, it would be incorrect to overlook the contributions of other legal traditions, particularly the American one. The emergence of the modern system of human rights and obligations on the American continent is associated with the activities of the Organization of American States, as well as the adoption of such acts as the American Declaration of the Rights and Duties of Man of 1948 and the American Convention on Human Rights of 1969. It should be noted that the American Declaration of the Rights and Duties of Man preceded the Universal Declaration of Human Rights of 1948 by six months, which underscores the significance of this act in the process of establishing an international system of human rights and their protection. A characteristic feature of

this Declaration, which distinguishes it from the Universal Declaration of Human Rights of 1948 and a number of other European human rights acts, is its extensive list of duties imposed on individuals.

Thus, to identify the peculiarities of interpreting the category of legal duty, it would be appropriate to study this fundamental normative legal act of the American legal tradition in the field of human rights and duties. Furthermore, studying normative legal acts that regulate both human rights and duties will allow us to outline the mechanism of establishing and normatively formulating key human duties in the American legal tradition.

Key words: legal duty, American legal tradition, American Declaration of the Rights and Duties of Man, American Convention on Human Rights.

1. Introduction

Legal duty is one of the fundamental concepts in jurisprudence, playing a key role in the functioning of any state's legal system. In the American legal tradition, which is based on the principles of common law and constitutionalism, the interpretation of legal duty has special significance and distinctive features. This concept not only defines the boundaries of proper behavior for legal subjects but also serves as a basis for understanding the relationships between the state and citizens, as well as between individuals in society.

Studying the interpretation of legal duty in the context of the American legal system allows for a deeper understanding of the peculiarities of legal thinking, judicial practice, and lawmaking in the United States of America. This issue becomes particularly relevant in the context of globalizing legal systems and the growing influence of American law on international legal practice. Analyzing approaches to interpreting legal duty in the American tradition can provide valuable insights for the development of legal theory and practice in other countries, particularly those seeking to reform their legal systems towards greater efficiency and human rights protection.

The gradual development of the idea of human rights under the influence of various historical, cultural, and social factors has led to the emergence of distinct legal traditions. One of these traditions formed under the influence of Anglo-Saxon law and territorially covers the northern part of the American continent. However, the American legal tradition in the field of human rights and duties is not often the object of scientific research, particularly in comparison with the European legal tradition. Therefore, we consider it appropriate to conduct a detailed analysis of the interpretation of legal duty in the American legal tradition based on the study of its fundamental legal acts.

Literature. The issue of human rights and duties in the American legal tradition has not yet received proper elaboration in domestic science, but a number of progressive studies have been carried out by foreign scholars, namely Francesco Seatzu, Christina M. Cerna, etc., whose opinions we have referred to in certain parts of the work.

The aim of the article is to study the interpretation of the category of legal duty in the American legal tradition, particularly based on the examination of fundamental legal acts, primarily the American Declaration of the Rights and Duties of Man of 1948.

Research Methodology. The study will employ a complex of general scientific and special legal methods. In particular: 1) historical method – for analyzing the evolution of the concept of legal duty in American legal thought; 2) comparative legal method – for comparing approaches to interpreting legal duty in American and other legal systems; 3) system analysis – for considering legal duty as a component of the American legal system; 4) formal-legal method – for analyzing normative legal acts and court decisions related to legal duty; 5) hermeneutic method – for interpreting legal texts and doctrinal sources; 6) case study method - for investigating specific court cases that illustrate the peculiarities of interpreting legal duty in American judicial practice; 7) analytical and synthetic methods - for summarizing the obtained results and formulating research conclusions. The application of these methods will allow for a comprehensive study of the peculiarities of interpreting legal duty in the American legal tradition and will ensure the objectivity and reliability of the obtained results.

2. American Declaration: main foundations

The formation and development of the American legal tradition undoubtedly spanned a significant period of time. Given the broad scope of its development, we will focus on the period after World War II, characterized by the intensification of humanization and democratization processes, which in turn led to the formation of a human rights system and the concept of human duties.

First, approaching the analysis of the chosen research topic, to properly understand the task at hand, it's worth noting what the term «interpretation» means. In dictionaries, the term «interpretation» is given several meanings: 1) revealing the content of something; explanation, elucidation; 2) clarification, interpretation of scientific and literary texts, works of fine art; also – reproduction. In theoretical jurisprudence, «interpretation» in a broad sense is understood as the process of construing various

legal categories. Thus, the task of this study is to outline how the category of legal duty is interpreted and understood in the American legal tradition. The method of research will be textual and content analysis of fundamental acts of American law, namely the American Declaration of the Rights and Duties of Man of 1948 and the American Convention on Human Rights of 1969.

The American Declaration of the Rights and Duties of Man is an international regional document adopted on May 2, 1948, by the Organization of American States. The adoption of the American Declaration of the Rights and Duties of Man became a significant and symbolic event for American society, as it was the only act in the inter-American system that enshrined fundamental rights and duties for three decades, from 1948 to 1978, or more precisely until the American Convention on Human Rights came into force. Emphasizing the role and significance of this legal act, it should be noted that chronologically it preceded the adoption of the Universal Declaration of Human Rights by several months, and also became the first normative legal act that defined a list of individual legal duties of a person in its content (Shumilo, 2018, p. 116).

The adoption of the American Declaration of the Rights and Duties of Man resonated with the American legal community, as most of the then-legal scholars put forward ideas about enshrining and protecting socio-economic rights, and there were constant discussions around the concept of individual human duties (Cerna, 2009, p. 3). However, one American jurist, supporting the idea of enshrining individual duties alongside human rights, emphasized that every human right has a corresponding human duty. Individual human rights, in turn, cannot have any meaning in a vacuum devoid of duties imposed on individuals (Seatzu, 2019, p. 4). Thus, the American legal system in 1948 took the first step towards proclaiming key human duties alongside rights and freedoms.

First of all, approaching the analysis of the Declaration's content itself, we emphasize that this act enshrined the category of legal duties directly in its title, giving it the same importance as human rights. Analyzing the content of the main current international legal acts that are sources of standards in the field of human rights, we can only speak of a fragmentary and abstract role of duties in their content. That is why, in our opinion, a significant advantage and striking feature of the American Declaration of the Rights and Duties of Man is the elevation of the category of duties to the same level as human rights, emphasizing their important role and the impossibility of human rights existing without corresponding duties.

The preamble of the Declaration in its very first provision states: «All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.» Analyzing the content of this provision, we can conclude that it establishes a natural duty of man, namely «to conduct themselves as brothers one to another,» although the Declaration does not provide a precise definition of this duty, which makes it somewhat evaluative. We can assume that such a duty involves treating others with respect, dignity, based on the principle of justice. This natural duty is a kind of active duty that encourages a person to act in an appropriate, desirable manner (American Declaration of the rights and duties of man, 1948).

The next provision in the preamble of the Declaration further draws attention to the role of legal duties, proclaiming: «The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.» Thus, this provision indicates the interconnection of human rights and duties and emphasizes that, living in society, the presence of rights necessarily implies the emergence of certain duties. Simply put, a duty exists because someone has a right that must be respected by other members of society and the realization of which should not face any obstacles from society and its members. Examining the content of the document's preamble, we draw attention to another equally important provision: «Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis» (American Declaration of the rights and duties of man, 1948). Based on the above, the American Declaration emphasizes that the foundation of legal duties is their moral counterparts, that is, duties based on moral principles. Such an interpretation of legal duty is quite rational, as a legal duty based on recognized moral principles receives some approval from society and does not cause rejection. Moreover, the means of ensuring legal duty, in case of reflecting moral principles in its content, will be not only state coercion but also public opinion, which again will increase the level of its proper observance and execution. In the case of contradictions between legal duty and moral convictions of society, it can be assumed that its proper execution will be ignored by such society.

The final provision of the Declaration's preamble once again emphasizes the natural duty of man, namely: «Since spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.» In other words, this statement implies that the purpose of human existence is spiritual development, and man, in

turn, has a duty to fully contribute to achieving this goal (American Declaration of the rights and duties of man, 1948). Continuing the idea of spiritual development as the highest goal of human existence, the preamble mentions another natural duty: «Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.» The content of the preamble concludes as follows: «And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect» American Declaration of the rights and duties of man, 1948). Again, the Declaration does not provide an exhaustive interpretation of what «moral conduct» is, but we believe it refers to behavior based on key moral principles – dignity, equality, justice, etc.

Summarizing the content analysis of the preamble to the American Declaration of the Rights and Duties of Man, we emphasize its main aspects in the context of interpreting legal duty:

– A person, by virtue of their nature, is endowed with natural duties, the main of which are «to conduct themselves as brothers one to another,» «to serve the spiritual development of society with all their strength and resources,» «to preserve, practice and foster culture by every means within their power,» «always to hold moral conduct in high respect»;

– There is an undeniable interconnection between human rights and duties: the existence of rights is impossible without the existence of corresponding duties;

– The foundation of legal duties is morality, reflected in key moral principles, which positively affects the level of their execution and observance by society.

3. The analysis of the main part of the American Declaration

Moving on to the analysis of the main part of the American Declaration of the Rights and Duties of Man, we draw attention to its structure, where the first section deals exclusively with human rights, and the second - exclusively with duties. First of all, we note that the section devoted to legal human duties consists of nine articles, namely from Article 29 to Article 37 inclusive.

The realization that human life gains meaning precisely in the human community strongly influenced the formulation of Article 29 of the Declaration, which presents the first legal duty, namely to society: «It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.» In other words, a person is obliged to behave towards other people in such a way as to ensure that everyone in society can fully form and develop their personality. Based on this duty, we can conclude that the American Declaration pursues the idea that the rights of each person are limited by the rights of another person. To ensure well-being in social life, the Declaration also imposes on a person the duty to cooperate with the state and the community (American Declaration of the rights and duties of man, 1948).

The second legal duty, regulated by Article 30 of the Declaration, is addressed to parents and children: «It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.» We have an example of an active duty that encourages subjects to a certain socially useful behavior, in this case - to help, support, protect children and honor parents. The next article establishes the duty of every person to acquire at least a primary education. An interesting approach is applied in Article 32 of the Declaration, which proclaims: «It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.» Thus, the Declaration recognizes voting as a civic duty, not a person's right, as is often the case in the national legislation of individual states. In our opinion, the authors of the Declaration aimed to emphasize the responsibility and role of civil society in forming government institutions.

The duty of every person to obey the law and other legitimate commands of the authorities of his country and of the country in which he may be is enshrined in the next article of the Declaration. The classic duty to abide by the letter of the law is interpreted somewhat differently in this case, as it takes into account not only national legislation but also the legislation of any other states in which a person may be present. The next duty is imposed on the person to society and the nation, namely to perform any civil and military service that the state may require for its defense and preservation. The final duties in the second section of the American Declaration are the duty to pay legally established taxes and the duty to work, as far as one's abilities and possibilities allow, to obtain the means of livelihood or for the benefit of the community. The last of these duties, the Declaration differentiates into two types – compulsory work, to obtain means of subsistence, that is, receiving certain funds, as well as work for the benefit of the community – that is, free, volunteer or public service.

Thus, having examined the content of the American Declaration of the Rights and Duties of Man, we can draw several conclusions about the interpretation of the category of legal duty in its content. First of all, having studied the content of the legal duties provided by the Declaration, we can classify them by subjects:

– duties to society;

– duties to the state;
– duties to children or parents.

Based on the duties we've examined, we can also assert that all of them are active in their content, meaning they require a person to act in a certain proper manner.

A somewhat different approach to the classification and characterization of the duties provided by the Declaration is presented by Italian scholar Francesco Seatzu. In his opinion, all the listed duties can be divided into two categories: those that can be implemented through legislative acts, and those that are mostly recommendatory in nature. He believes that most of the above-mentioned duties from the Declaration's content are intended to function as a kind of «ethical code of conduct» for all citizens of American countries. That is, such duties as «to conduct oneself in relation to others so that each and every one may fully form and develop his personality,» «to cooperate with the community,» «to help parents and protect them when needed» - are of a purely moral nature, encouraging socially beneficial behavior (Francesco Seatzu, 2019, p. 17).

The second category of duties involves the state taking certain active actions, including creating a legislative mechanism for their implementation. For example, the duty of every person to acquire at least a primary education implies and requires active actions on the part of the state to guarantee the fulfillment of this duty, namely the creation of educational institutions and regulation of their activities at the legislative level (Francesco Seatzu, 2019, p. 17).

4. American Declaration vs American Convention on Human Rights

The American Convention on Human Rights, having entered into force in 1978, completed the process of forming the American system of human rights and their protection, and also marked the transition from the norm-setting stage to the stage of direct implementation of established human rights. Unlike the American Declaration of 1948, the Convention focused on expanding the catalog of human rights rather than establishing duties. Nevertheless, Article 32 of the Convention defines the mechanism of the interconnection between human rights and duties and states that «Every person has responsibilities to his family, his community, and mankind,» and also emphasizes that «The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society» (American Convention on humans rights («Pact of San Jose, Costa Rica», 1978). Thus, similar to the 1948 Declaration, the Convention supports the idea that the rights of each person are limited by the rights of another person, which logically implies the duty to respect the rights of other members of society and not to interfere with their realization.

Thus, summarizing the above study of the interpretation of legal duty based on the provisions of the American Declaration of the Rights and Duties of Man of 1948, as well as the American Convention on Human Rights of 1969, we can say that both documents became a driving factor in promoting the idea of giving legal human duties the same importance as rights. Moreover, by first establishing a list of basic individual human duties, the Declaration and Convention differentiated them in their content, depending on to whom a particular duty should be performed or observed - to society, the state, parents, community, etc. Of course, some of the duties provided in the above-mentioned documents are more of a moral or ethical nature of a recommendatory character, while others are quite normative.

We also emphasize that the Declaration introduces us to duties that derive directly from human nature, thus supporting the concept of natural duties. In interpreting legal duty, the Declaration also emphasizes its moral basis and support, believing that legal duty also implies a number of moral duties. An important aspect in the context of both the Declaration and the Convention on Human Rights was the clear delineation of the interconnection between human rights and duties. The presence of rights always implies the emergence of corresponding duties, primarily - to respect the rights and freedoms of other members of society and not to interfere with their realization. In fact, the consolidation of the above thoughts on the interconnection of rights and duties, as well as giving the latter the same legal significance as human rights, is of enormous importance, because rights and freedoms cannot exist separately from duties. Each right corresponds to a respective duty, which needs to be equally emphasized, which in perspective will contribute to balancing individual freedom in society and their responsibility.

5. Conclusions

Thus, we have conducted a study of the interpretation of the category of legal duty in the American legal tradition based on the provisions, primarily, of the American Declaration of the Rights and Duties of Man of 1948. Summarizing the above, we can confidently say that the American legal tradition made a significant step in 1948 in promoting the idea of enshrining basic legal human duties, while the European legal tradition focused exclusively on proclaiming human rights and freedoms.

The American Declaration of the Rights and Duties of Man first proposed a wide range of individual legal duties, characterizing them and distributing them according to spheres of social relations and subjects

to whom one should perform or observe a particular duty. In particular, the Declaration provided for the following legal duties: mutual duties of children and parents; the duty of everyone to learn, participate in voting, obey the law, work; the duty to serve society and the nation, including civil and military service, pay taxes, etc. The American Declaration enshrines 27 human rights and 10 human duties. Thus, the Declaration managed to achieve harmony between human rights and duties, emphasizing their interconnection. The Declaration also emphasized the existence of natural human duties alongside natural rights, enshrining them in its content, and noted the moral basis and support of legal duties.

In our opinion, the approach proposed by the American legal tradition in the context of interpreting legal duty as a legal category, which is endowed with the same legal significance as human rights, should be taken into account by the international community. Fundamental international documents containing universally recognized human rights standards (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention for the Protection of Human Rights and Fundamental Freedoms) do not focus on human obligations to the same extent as on rights. Unlike human rights, human duties are mentioned abstractly, that is, mostly as a need to respect and not violate the rights of others. Human duties, in turn, are not limited to an internal conviction about respecting the rights of others, as almost every human right is naturally associated with human responsibility and duty, which provides for the possibility of realizing this right by all members of society. That is why we consider it appropriate to adopt the experience of the American legal tradition and enshrine fundamental human duties at the international level, which will undoubtedly contribute to achieving a balance between freedom and responsibility in society.

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ІНТЕРПРЕТАЦІЯ ПРАВОВОГО ОБОВ'ЯЗКУ В АМЕРИКАНСЬКІЙ ПРАВОВІЙ ТРАДИЦІЇ

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Анотація

Права людини, які закріплені у діючих міжнародно-правових актах, є результатом довготривалого історичного розвитку, поступового формування стандартів, що стали нормою життя сучасного демократичного суспільства. Формування подібних уніфікованих стандартів для регулювання суспільного життя призвели до того, що сучасна доктрина прав людини базується на універсальних принципах та цінностях, зокрема свободи, рівності, справедливості, невідчужуваності основоположних прав людини, тощо. Проте, незважаючи на спільність таких цінностей та принципів, на яких заснована сучасна ідея прав людини, її становлення та поступовий розвиток відбувався під впливом культурних, історичних, політичних та соціологічних чинників окремих держав чи цілих регіонів. Такі чинники призвели до виникнення окремих правових традицій. Під правовою традицією розуміється глибоко вкорінене в свідомості людей та історично зумовлене їх ставлення до ролі права в суспільстві, природи права, а також до організації та функціонування правової системи в цілому. Правова традиція, у свою чергу, зумовлює певну відмінність або ж автентичність в інтерпретації тих чи інших правових категорій, оскільки їх становлення відбувалося під призмою унікальних обставин характерних для тієї чи іншої правової традиції. Дослідження підходів до інтерпретації певних правових явищ у окремо взятих правових традиціях дозволяє ширше опанувати знання про те чи інше правове поняття, вивити його особливості у правових системах окремих держав, провести порівняльний аналіз його тлумачення поряд з іншими правовими традиціями. Сьогодні ж, ведучи мову про права та обов'язки людини, ми часто звертаємося саме до джерел європейської правової традиції, які, безумовно, відіграють важливу роль у сучасному розумінні прав людини, проте, буде неправильним обійти внесок інших правових традицій, зокрема американської. Виникнення сучасної системи прав та обов'язків людини на американському континенті пов'язана з діяльністю Організації американських держав, а також з прийняттям таких актів як Американська декларація прав і обов'язків людини 1948 року та Американська конвенція з прав людини 1969 року. Слід зазначити, що Американська декларація прав та обов´язків людини за часом ухвалення випередила на шість місяців Загальну декларацію прав людини 1948 року, що підкреслює значимість даного акту у процесі становлення міжнародної системи прав людини та їх захисту. Характерною особливістю цієї Декларації, що відрізняє її від Загальної Декларації прав людини 1948 р., та ряду інших європейських актів у галузі прав людини, є розгорнутий перелік обов´язків, що покладаються на людину. Таким чином, з метою виявлення особливостей інтерпретації категорії правового обов'язку доцільно буде вивчити такий фундаментальний нормативно-правовий акт американської правової традиції у галузі прав та обов'язків людини. Окрім цього, вивчення нормативно-правових ак-

тів, що регламентують як права так і обов'язки людини, дозволить нам окреслити механізм закріплення та нормативного формулювання ключових обов'язків людини у американській правовій традиції.

Ключові слова: правовий обов'язок, американська правова традиція, Американська декларація прав і обов'язків людини, Американська конвенція з прав людини.

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ECONOMIC AND POLITICAL FREEDOMS AS INDICATORS FOR DETERMINING THE POLITICAL REGIMES OF TODAY

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Summary

Economic and political freedoms are often used as key indicators to classify types of political regimes. These freedoms, which include freedom of speech, freedom of the press, and economic freedoms such as freedom of business and freedom of trade, significantly affect how a country is perceived as a democracy or an autocracy. Democracies are typically characterized by high levels of these freedoms, allowing open expression and market regulation that encourages competition and fair trade. In contrast, autocratic regimes often impose restrictions on both speech and economic activity, limiting the scope of political discourse and centralizing economic control. These freedoms not only reflect, but also shape the political landscapes of modern states. The synthesis of freedoms with political governance not only determines the internal dynamics of nations, but also affects their relationships on the global stage. Ensuring the development and protection of these freedoms is of paramount importance to the development of stable, prosperous and just societies around the world. Economic and political freedoms are the foundation of democratic government and are essential to the personal and economic well-being of citizens.The purpose of the work is to conduct a study of the influence of the scope of economic and political rights and freedoms on the formation of the political regime in the country. The object of the research iseconomic and political freedoms as key criteria for the classification of types of political regimes. The subject of the research is social relations that arise, change and cease in the process of consolidation and implementation of economic and political rights and freedoms and their influence on the formation and functioning of democratic and autocratic political regimes. Research methodology includes methodological approaches (active, systemic, comparative, axiological), general scientific methods of thinking (analysis, synthesis, abstraction, generalization), philosophical (dialectical, metaphysical, hermeneutic, epistemological), general scientific (historical, synergistic, functional, structural) and specifically scientific (formal-legal, comparative-legal) methods. As a result of the study, problematic issues related to the problem were analyzedwith the realization of economic and political freedoms as key indicators of the country's political regime, which significantly affect the trajectory of its development and international position.

Key words: economic freedoms, political freedoms, political regime, democratic political regime, autocratic political regime.

1. Introduction

The political regime as one of the elements of the state form is a key characteristic of the modern state. If you examine the main components of the political regime of any state, you can determine the state of guaranteeing, implementation and protection of rights and freedoms in this state, the ratio of branches of government, the direction of relations with other states of the world. In this sense, the state of protection and implementation of political and economic rights and freedoms is of key importance. The purpose of the work is to conduct a study of the influence of the scope of economic and political rights and freedoms on the formation of the political regime in the country. Research methodology includes methodological approaches (active, systemic, comparative, axiological), general scientific methods of thinking (analysis, synthesis, abstraction, generalization), philosophical (dialectical, metaphysical, hermeneutic, epistemological), general scientific (historical, synergistic, functional, structural) and specifically scientific (formal-legal, comparative-legal) methods.

2. Freedom of speech and press, economic freedoms and anti-corruption freedoms and their impact on political regimes

Freedom of speech and freedom of the press are the foundation of democratic government. They allow the free exchange of ideas, which is important for the health of democracy. These freedoms allow citizens to criticize their governments and advocate for change without fear of reprisal. As indicators, the levels of these freedoms are directly correlated with the democratic state of the country.

In contrast, autocratic regimes often suppress free speech and control the press to maintain power. Mass media in such countries usually serve as mouthpieces for state propaganda, with virtually no tolerance for dissent or criticism. This lack of media freedom is a clear indicator of an autocratic regime where the government controls not only the economic aspects of the country, but also the information resources.

Indices such as the Press Freedom Index help quantify these freedoms and are used by researchers and policymakers to classify countries into categories such as «free», «partly free» and «unfree». These classifications are based on the legal environment that regulates the media, political pressures that influence reporting, and economic control over news sources.

Understanding the status of these freedoms in a country provides insight into its governance and political climate, offering a window into broader political dynamics and how they affect everything from individual rights to economic policy.

Economic freedoms encompass a range of rights and freedoms that allow individuals and businesses to engage in economic activity with minimal government interference. Key components of economic freedom include business freedom, trade freedom, tax freedom, financial freedom, and property rights. These freedoms are necessary to create an environment in which economic activity can flourish, contributing to overall national prosperity.

In democratic regimes, economic freedoms tend to be strong, with clear and consistent rules that promote fair competition and protect property rights. Democracies understand that economic empowerment of individuals and businesses drives innovation and growth. For example, fiscal freedom allows for reasonable taxation and government spending, which encourages investment and economic diversification.

Conversely, in autocratic regimes, economic freedoms are often severely restricted. The governments of these countries can impose strict regulations and take control of major industries, stifling entrepreneurship and keeping citizens economically dependent. Property rights are often unprotected because the state can expropriate property without fair compensation. Such economic control is a tool for autocrats to maintain power by limiting the economic independence of their citizens.

The relationship between economic freedoms and political regimes is thus reciprocal. Economic policy not only reflects the nature of the political regime, but also strengthens it. Economic freedoms encourage democratic participation by empowering citizens, while restricting them strengthens autocratic rule.

Freedom of investment is crucial to a country's economic development and is often seen as a thermometer measuring the health of political governance. Countries with high investment freedom attract significant foreign direct investment, which contributes to economic growth and job creation. Democracies usually promote open investment policies, providing a transparent and stable environment for both domestic and international investors. This openness not only stimulates economic growth, but also supports political stability by distributing economic power more widely among private actors and reducing susceptibility to corruption.

Freedom of labor means the ability of workers to form trade unions, conduct collective agreements and work without undue restrictions. In democratic regimes, labor rights are protected and workers are free to organize and express their interests, contributing to a more equitable distribution of economic gains. This freedom ensures that workers can advocate for fair wages and safe working conditions, which are fundamental to sustaining the middle class and promoting social stability. Conversely, autocratic regimes often impose strict controls on labor rights to prevent workers from organizing and mobilizing,

which could threaten their power. Restrictions on labor rights in such regimes are often accompanied by poor working conditions and unequal economic policies that favor elite groups over the general public.

Anti-corruption measures are also an important indicator of political regimes. Democracies tend to have more robust transparency and accountability mechanisms that help fight corruption. These measures include a strong legal framework, an independent judiciary, and an active civil society that monitors government actions and demands accountability. However, corruption often thrives in autocracies, and there are few mechanisms to hold leaders accountable. This lack of transparency not only undermines economic efficiency, but also undermines public trust in government.

The scope of these freedoms – investment, labor and anti-corruption – provides a critical understanding of the functioning and nature of political regimes. They highlight the interplay between economic policy and political power, showing how economic freedoms underpin democratic governance and how their absence can signal autocratic tendencies.

The relationship between economic and political freedoms is a defining characteristic that can clarify the nature of political regimes and their impact on public welfare. Taken together, these freedoms offer a comprehensive framework for understanding not only the governance of a country, but also its place on the world stage in terms of democracy, human rights, and economic prosperity.

Democratic regimes characterized by high levels of political and economic freedoms tend to demonstrate a strong rule of law, transparent governance, and active citizen participation. These attributes contribute to the creation of an environment where freedoms are protected and where citizens can fully participate in the political and economic life of their country. The presence of reliable freedoms is indicative of a healthy democracy, where checks and balances are respected and where the government is accountable to the people.

On the other hand, autocratic regimes often exhibit limited political and economic freedoms, where power is centralized and dissent is not tolerated. In this environment, freedoms such as freedom of the press, freedom of assembly, and economic freedoms such as freedom of business and trade are severely curtailed. Suppression of these freedoms is often justified by autocratic leaders as necessary to maintain order or economic stability, but in reality it serves to consolidate their power and suppress opposition.

The global landscape of political regimes shows that countries with broad freedoms tend to experience higher economic growth, more innovation and improved quality of life. These countries attract more international investment, offer better opportunities for their citizens and play a more significant role in international affairs. Conversely, countries with limited freedoms often face economic stagnation, social unrest, and isolation on the world stage.

Thus, understanding the levels of political and economic freedoms can provide valuable information about predicting the trajectory of nations in terms of development, peace, and security. International organizations and politicians use indices measuring these freedoms to develop foreign policy, distribute aid, and enter into diplomatic relations.

In summary, economic and political freedoms are not only basic human rights, but also important indicators of the country's political regime. They shape the political landscape and influence economic and social dynamics within and between nations. As the world continues to evolve, the promotion and protection of these freedoms remain essential to the development of democratic values, economic prosperity and global peace.

3. Challenges and opportunities in diverse political regimes

The diversity of political regimes around the world creates both challenges and opportunities, especially in the exercise and protection of economic and political freedoms. Understanding these dynamics is critical to international relations, global business strategies, and efforts to promote human rights and democratic governance around the world.

In autocratic regimes, the main challenge is the concentration of power, which often leads to human rights violations and suppression of economic freedoms. The absence of free speech and a free press can stifle opposition and impede the free flow of information, keeping the population uninformed and often misinformed about the true state of affairs. Economic challenges in these regimes include limited access to markets, limited entrepreneurship, and heavy reliance on state-owned enterprises, which can lead to inefficiency and corruption.

In addition, the international community faces difficulties in engaging with these regimes due to their unpredictability and ethical dilemmas in dealing with governments that violate human rights. International sanctions and diplomatic isolation are tools often used to pressure these governments, but they can also have unintended consequences for civilians, exacerbating their suffering under repressive governments.

Conversely, democratic regimes offer numerous opportunities due to their openness and respect for freedoms and rights. Economically, these countries create a favorable environment for business and investment. Property rights protection, contract enforcement, and a competitive market environment

attract foreign investment and encourage domestic innovation.

Politically, democracies tend to be more stable and predictable, making them attractive partners for international trade and diplomatic relations. Their commitment to human rights and the rule of law also makes them leaders in the fight against global challenges such as climate change, international crime and human trafficking.

Democracies also provide opportunities for conflict resolution through dialogue and legal means rather than through violence and repression. This helps not only in solving internal conflicts, but also in international disputes, where democratic countries can act as mediators and facilitate peaceful solutions.

For politicians, NGOs, and international organizations, navigating the landscape shaped by these diverse regimes involves a delicate balance. Promoting and protecting freedoms around the world requires diplomatic tact, strategic alliances, and sometimes a tough stance against human rights abuses. Economic sanctions, diplomatic pressure and, in some cases, international intervention are strategies used to influence political regimes toward greater freedom and democracy.

However, these actions must be carefully vetted to avoid harming the very people they are supposed to help and to prevent the establishment of autocratic leaders who can use external pressure as a pretext to further suppress freedoms.

International organizations and coalitions play a key role in shaping political regimes, promoting economic and political freedoms. These actors, which include the United Nations, the European Union, the World Trade Organization, and various regional and global human rights organizations, use a combination of diplomatic, economic, and sometimes military tools to influence countries toward democratic governance and respect to human rights.

Diplomatic efforts of international organizations often involve dialogue, negotiation and protection of interests. These organizations serve as platforms where global issues are discussed and resolutions are passed that set norms and expectations for member states. For example, the United Nations Human Rights Council works actively to address human rights abuses and promote freedom and democracy by participating in fact-finding missions, issuing reports and providing recommendations to member states.

Economic instruments are powerful levers of influence on political regimes. International organizations such as the International Monetary Fund and the World Bank provide financial aid and development programs to countries that adhere to certain standards of governance, including economic transparency and democratic practices. In contrast, sanctions are used against regimes that violate international norms or oppress their own populations, with the goal of isolating them economically and pressuring them to reform.

4. The role of international organizations and coalitions

International organizations are also involved in capacity building and educational programs to strengthen democratic institutions and develop civil society. These programs include training for journalists, support for fair elections, and training in human rights and democratic values. By empowering individuals and institutions, these organizations lay the groundwork for lasting political and economic reforms.

Coalition building is another important strategy where groups of countries come together to address specific global issues, such as climate change, trade disputes, or regional conflicts. These coalitions can exert considerable pressure on individual governments to change their policies and align them with international standards. For example, coalitions formed in the European Union have played an important role in promoting environmental legislation and protecting human rights in member states.

Although international organizations and coalitions are important in promoting economic and political freedoms, they face challenges and criticism. Sovereignty issues often arise when some states resist external influence on their internal affairs. In addition, the effectiveness of these organizations can be hindered by geopolitical interests, financial constraints and different levels of commitment between member states.

In addition, there are criticisms about the consistency and impartiality of these organizations. Developing countries sometimes view them as instruments of Western influence, arguing that interventions are not always applied uniformly and may be biased by strategic interests.

The influence of international organizations and coalitions on political regimes manifests itself differently in different regions, shaped by the historical, cultural and political context. Examining these regional influences provides a clearer picture of the effectiveness and challenges of global governance initiatives in promoting freedoms.

In Eastern Europe, the post-Cold War period marked a significant transition from autocratic regimes to democratic rule, largely influenced by the European Union and NATO. The prospect of EU membership has become a strong incentive for countries such as Poland, Hungary and the Baltic states to implement significant political and economic reforms. These reforms included strengthening the rule of law, liberalizing the economy, and improving human rights protection. Despite the recent challenges

of democratic backsliding, the overall trajectory of Eastern Europe's development underscores the transformative power of international engagement.

Sub-Saharan Africa presents a more complex picture, where the effects of international efforts are mixed. While some countries have made notable progress in democratic governance, others continue to struggle with political instability, corruption and authoritarianism. International organizations such as the African Union and various UN programs focus on election monitoring, conflict resolution, and economic development initiatives. However, deep-seated challenges, including poverty and ethnic conflict, often undermine these efforts, requiring a more tailored and sustainable approach.

Southeast Asia exhibits a variety of political regimes, from vibrant democracies like Indonesia to autocratic governments like the government of Myanmar. International efforts in the region have often focused on trade agreements, disaster relief and human rights protection. Although criticized for its laissez-faire policy, ASEAN has gradually begun to play a more active role in addressing regional issues such as the Rohingya crisis and territorial disputes in the South China Sea. The strategic importance of the region attracted considerable attention of major powers, which affected the dynamics of international efforts.

The Middle East remains one of the most difficult regions to promote political and economic freedoms due to entrenched authoritarian regimes, ongoing conflicts, and complex geopolitical interests. Efforts by international organizations to promote democracy and human rights have often been complicated by oil politics, terrorism, and the Israeli-Palestinian conflict. Success stories are rare and usually tempered by failures, as seen in the aftermath of the Arab Spring, when the initial gains of freedom were largely curtailed.

The regional implications of international efforts to promote economic and political freedoms underscore the complexity of global governance. Success depends not only on the strategies of international organizations and coalitions, but also on local conditions and the willingness of local authorities and society to accept changes. While progress may be slow and non-linear, the continued commitment of the international community remains critical to fostering an environment where freedoms can flourish.

5. Future directions for promoting economic and political freedoms

Looking to the future, the trajectory of advancing economic and political freedoms around the world will be influenced by both ongoing challenges and new opportunities. The international community must adapt to changing global dynamics, including technological progress, changes in economic power and the changing political landscape, in order to effectively uphold and strengthen democratic norms and economic openness.

Technologies play a key role in shaping the future of economic and political freedoms. Digital platforms offer unprecedented opportunities for free speech and political mobilization. However, they also pose significant challenges, such as disinformation, surveillance, and the potential for digital authoritarianism. International organizations and coalitions must focus on promoting digital rights and ensuring that technology supports, not stifles, freedom and democracy.

Economic inequality remains a significant obstacle to full economic freedom and political participation. As the global economy continues to grow, there is an urgent need to ensure that economic growth benefits all sections of society. This includes advocating for policies that support fair trade, labor rights and fair access to resources. International efforts should also focus on supporting small and medium-sized enterprises and promoting entrepreneurship in order to expand people's economic opportunities and strengthen their political activities.

The effectiveness of international efforts to promote freedoms often depends on the strength and cohesion of multilateral institutions. In an era of growing unilateralism and nationalism, increasing the importance of multilateral frameworks is crucial. These institutions must be reformed and strengthened to remain relevant and effective in addressing today's global challenges, from climate change to international security, that affect economic and political freedoms.

As the influence of developing economies grows, engaging these powers becomes essential to the global advancement of freedoms. Countries such as India, Brazil and South Africa play a crucial role in their regions and around the world. Their participation in international coalitions can help balance the influence of more autocratic forces and contribute to a more multipolar world where democratic ideals are more widely accepted and implemented.

Finally, one cannot fail to notice the intersection of economic development and political freedoms. Sustainable development that respects environmental constraints and provides for future generations is an integral part of preserving and expanding freedoms. International strategies must integrate economic, social and environmental objectives to support holistic and sustainable approaches to development that support political stability and freedom.

Summarizing the above, it can be stated that economic and political freedoms are key indicators of the country's political regime and significantly influence its development trajectory and international position. The synthesis of freedoms with political governance not only determines the internal dynamics of nations, but also affects their relationships on the global stage. Thus, ensuring the development

and protection of these freedoms is of paramount importance to the development of stable, prosperous and just societies around the world. Economic and political freedoms are the foundation of democratic government and are essential to the personal and economic well-being of citizens. These freedoms enable the innovation, investment and broad-based growth that is critical to sustainable development.

Autocratic regimes pose serious challenges to the global advancement of freedoms. These regimes often limit freedom of control, leading to political and economic stagnation. Addressing this requires a delicate approach that balances pressure and engagement to encourage reform without harming the population.

International organizations and coalitions play a key role in promoting freedoms. They provide a platform for dialogue, set international standards and can offer both the whip and the gingerbread to encourage democratic practices and economic openness.

The digital revolution, economic inequality and the rise of nationalism are modern challenges that affect freedoms. Effectively addressing these challenges requires adaptive strategies that use new technologies and economic models to promote inclusive growth and protect individual rights.

A multifaceted, cooperative approach is essential to advancing economic and political freedoms around the world. International organizations, national governments, civil society and the private sector should work together to: Expand multilateral cooperation: strengthen existing international structures and institutions to better address global challenges that affect freedoms; using powerful technologies to enhance democratic engagement and economic opportunity while protecting against abuse; focusing on policies that reduce inequality and ensure that the benefits of economic growth are widely shared; protection and expansion of legal regulations regarding the protection and guarantee of personal rights and freedoms.

6. Conclusions

The analysis of economic and political freedoms as indicators for determining political regimes reveals profound insights into the fundamental structures that govern nations. As demonstrated throughout this research, the extent and nature of these freedoms are not merely reflections of current governance but are also pivotal forces shaping the trajectory of nations' development and their international relations.

Democratic versus Autocratic Regimes: The study confirms a clear dichotomy between democracies and autocracies in terms of the breadth and application of political and economic freedoms. Democracies, characterized by substantial freedoms in speech, business operations, and political engagement, show a direct correlation with higher levels of economic performance and societal well-being. Conversely, autocracies restrict these freedoms, often leading to economic inefficiency and social unrest.

Impact on Global Stability and Development: The freedoms analyzed are crucial for fostering international stability and economic growth. Countries that maintain high levels of political and economic freedoms tend to attract more global investments, participate more actively in international affairs, and exhibit stronger economic growth. Such environments encourage innovation and equitable growth, which are vital for sustainable development.

Role of International Indexes and Measures: Indices such as the Press Freedom Index and the Index of Economic Freedom are vital tools for policymakers and researchers. They provide objective measures to assess and compare the status of nations globally, influencing international policy, aid distribution, and diplomatic relations.

Implications for Global Governance: The findings underscore the importance of international efforts in promoting and protecting economic and political freedoms worldwide. The role of global and regional organizations, such as the United Nations, the World Trade Organization, and the European Union, is critical in this endeavor. Through diplomatic engagement, these bodies can advocate for reforms, mediate in conflicts, and provide a platform for dialogue among nations.

Challenges in Advancing Global Freedoms:

Resistance from Autocratic Regimes: One of the significant challenges is the resistance from autocratic leaders who view economic and political freedoms as a threat to their control. International strategies must carefully balance pressure and engagement to encourage liberalization without provoking severe crackdowns on freedoms.

Complexity in Implementation: The diverse cultural, economic, and political backgrounds of countries make a one-size-fits-all approach ineffective. Tailored strategies that consider local contexts and leverage regional influences are necessary for promoting sustainable changes.

Future Directions: Looking forward, the promotion of economic and political freedoms will increasingly intersect with digital rights and cybersecurity. As digital platforms become central to political expression and economic transactions, protecting digital freedoms will be crucial. Additionally, addressing the rise of nationalism and populism that challenges multilateralism will be imperative for maintaining the global order that supports these freedoms.

Call to Action: The global community must remain vigilant and proactive in promoting economic and political freedoms to ensure a just, prosperous, and stable international system. Continuous commitment to these principles, robust support for

international institutions, and strategic engagement with all stakeholders, including civil society and the private sector, will be crucial.

By understanding and leveraging the interplay between economic policies and political freedoms, nations and international bodies can forge paths toward more democratic and equitable societies. This study advocates for an unwavering commitment to these freedoms, recognizing their indispensable role in shaping a world where peace, prosperity, and justice are attainable for all.

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ЕКОНОМІЧНІ ТА ПОЛІТИЧНІ СВОБОДИ ЯК ІНДИКАТОРИ ДЛЯ ВИЗНАЧЕННЯ СУЧАСНИХ ПОЛІТИЧНИХ РЕЖИМІВ

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Анотація

Економічні та політичні свободи часто використовуються як ключові показники для класифікації типів політичних режимів. Ці свободи, які включають свободу слова, свободу преси та економічні свободи, такі як свобода бізнесу та свобода торгівлі, суттєво впливають на те, як країна сприймається як демократія чи автократія. Демократичні країни зазвичай характеризуються високим рівнем цих свобод, що дозволяє відкрите вираження поглядів і ринкове регулювання, яке заохочує конкуренцію та чесну торгівлю. На противагу цьому автократичні режими часто накладають обмеження як на слова, так і на економічну діяльність, обмежуючи сферу політичного дискурсу та централізуючи економічний контроль. Ці свободи не лише відображають, але й формують політичні ландшафти сучасних держав. Синтез свобод із політичним управлінням не лише визначає внутрішню динаміку націй, але й впливає на їхні стосунки на глобальній арені. Забезпечення розвитку та захисту цих свобод має першорядне значення для розвитку стабільних, процвітаючих і справедливих суспільств у всьому світі. Економічні та політичні свободи є основою демократичного правління та мають важливе значення для особистого та економічного добробуту громадян. Мета роботи – провести дослідження впливу обсягу економічних та політичних прав і свобод на формування політичного режиму в країні. Об'єктом дослідження є економічні та політичні свободи як ключові критерії для класифікації типів політичних режимів. Предметом дослідження є суспільні відносини, що виникають, змінюються та припиняються в процесі закріплення та реалізації економічних та політичних прав і свобод та їх вплив на формування та функціонування демократичного та автократичного політичних режимів. Методологія дослідження включає методологічні підходи (діяльнісний, системний, порівняльний, аксіологічний), загальнонаукові методи мислення (аналіз, синтез, абстрагування, узагальнення), філософські (діалектичний, метафізичний, герменевтичний, гносеологічний), загальнонаукові (історичний, синергетичний, функціональний, структурний) і конкретно науковий (формально-юридичний, порівняльно-правовий) методи. У результаті дослідження проаналізовано проблемні питання, пов'язані з реалізацією економічних та політичних свобод як ключових показників політичного режиму країни, що суттєво впливають на траєкторію її розвитку та міжнародне становище.

Ключові слова: економічні свободи, політичні свободи, політичний режим, демократичний політичний режим, автократичний політичний режим.

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CONSTITUTIONAL PRESUMPTION OF INNOCENCE AND THE INSTITUTION OF RELEASE FROM CRIMINAL LIABILITY: CORRELATION ISSUES

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Summary

The purpose of the article is to determine, taking into account the results of the analysis of the current legislation of Ukraine and the provisions of the doctrine of criminal law, the issues of correlation and ensuring the compliance of the institution of release from criminal liability with the constitutional presumption of innocence.

The methodological basis of the presented article includes a complex of general and special legal methods including analysis and synthesis, the method of description and observation, comparative- and formal-legal methods.

Results and conclusions. The article, taking into account the results of the analysis of the current legislation of Ukraine and the provisions of the doctrine of criminal law, identifies the problems of the relationship between the institution of release from criminal liability and the constitutional presumption of innocence.

It is established that the release from criminal liability does not refute the admission of guilt of a person, if you give him the value of official confirmation (statement) of the fact that he committed a criminal offense. It is determined that the release from criminal liability also concerns the problems of ensuring the rule of law in the activities of public authorities, compliance of criminal law with the principles and norms of international law, systemic coherence of various branches of the national legal system.

It is determined that the presumption of innocence is recognized as one of the fundamental principles of criminal justice in a state governed by the rule of law. At the same time, it is an important element of the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of national law by virtue of Article 9 of the Constitution as an international treaty. However, despite its fixation in the most important international legal acts that enshrine universal standards of fundamental human rights, and the enshrinement of the Constitution of Ukraine states that in practice the presumption of innocence is often violated, as evidenced by a number of decisions of the European Court of Human Rights concerning Ukraine.

Key words: release from criminal liability, presumption of innocence, criminal impact, measures the impact of criminal law, the ratio.

1. Introduction

The Constitution of Ukraine declares that a person is deemed innocent of a crime and may not be criminally punished until one's guilt is legally proven and found by a lawful sentence. A similar provision is reproduced in Part 2 of Article 2 of the Criminal Code of Ukraine (hereinafter – CC). These requirements relate to one of the most important guarantees of observing the rights and freedoms of a person and a citizen - the presumption of innocence. In the most comprehensive way, this provision of a democratic and legal state is set out in Article 17 of the Criminal Procedure Code, Part 1 of which stipulates that "a person shall be deemed innocent of the commission of a criminal offense and shall not be imposed a criminal punishment unless his/her guilt is proved in accordance with the procedure prescribed in this Code and is established in the court judgment of conviction which has taken legal effect".

In modern criminal law, the system of measures of criminal-legal influence is not exhausted (does not end) only by punishment. The Criminal Liability Law provides for the possibility of applying to a person whose act contains the elements of a crime a number of other "tools" for correcting his behavior, in particular, such as exempting this person from criminal liability on the grounds provided for by law (in particular, provided for in Article 45–49 CC). The legislator is adamant when it comes to the assessment of actions, by the commission of which a person is exempted from criminal liability. Part 1 of Article 44 of the Criminal Code directly states that only "the person who committed the crime" is exempt from criminal liability. Therefore, the body that applies the release is not given the right to change the legal assessment of the person's crime. The legislator does not exclude the committed act from being socially dangerous, but only exempts a person from criminal liability in connection with the presence of certain conditions stipulated by the current criminal legislation. At the same time, the grounds for release from liability are not those that give the right to rehabilitation of a person (Korol V.V., 2011, p. 257). Therefore, the person's act is considered criminal both at the time of its commission and at the time of its assessment by the pre-trial investigation body or the court - as well as when resolving the issue of release from criminal liability. Recognizing a person's act as a crime also means establishing his guilt. This raises certain doubts regarding the consistency of the indicated legal consequence of the crime with some principles of the rule of law in the field of law enforcement.

The peculiarities of the prerequisites and grounds for the application of the norms on release from criminal liability have long been the reason for discussions considering the constitutionality of the mentioned institution, and its compliance with the presumption of innocence as one of the most important principles of modern law. Among the representatives of criminal law science, in different years, P.P. Andrushko, O.F. Bantyshev, Yu.V. Baulin, V.I. Borisov, G.B. Wittenberg, O.M. Gotin, M.E. Grigorieva, Yu.V. Grodetskyi, O.O. Dudorov, O.O. Zhitny, O.V. Kovitidi, O.S. Kozak, O.M. Lemeshko, V.T. Malyarenko, A.A. Muzyka, O.V. Naden, V.P. Tyhiy, P.V. Khryapinskyi, S.S. Yatsenko, and some other authors have participated in this discussion. At the core of the issue, is the fact that the release of a person from criminal liability allegedly entails the recognition of a person's guilt in committing a crime in a manner not provided for by law, i.e. without a court judgment on this issue.

The purpose of the article is to determine, taking into account the results of the analysis of the current legislation of Ukraine and the provisions of the doctrine of criminal law, the issues of correlation and ensuring the compliance of the institution of release from criminal liability with the constitutional presumption of innocence. The relevance of this issue is not only in the theoretical plane. It also concerns the problems of ensuring the regime of legality in the activities of authorities, compliance of criminal law norms with the principles and provisions of international law, and systemic coherence of various branches of the national legal system.

2. The essence of the institution of release from criminal liability and the presumption of innocence

The study of investigative and judicial practice shows that the anti-criminogenic potential of the institution of release from criminal liability is only partially realized, since the legislator, constructing the analyzed norms, made a number of conceptual shortcomings and editorial errors. As a result, the institution of release from criminal liability has significant contradictions, and some of its provisions come into conflict not only with other articles of the Criminal Code of Ukraine but also with the provisions of other legal branches (Mezentseva I., Borovyk A., 2016., p. 87). Release from criminal liability, as stated in Clause 1 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the practice of application by the courts of Ukraine of the legislation on release from criminal liability" dated December 23, 2005 No. 12, is the state's refusal to apply restrictions of certain rights and freedoms established by law by closing the criminal case to a person who has committed a crime, which is carried out by the court in cases provided for by the Criminal Code of Ukraine and in the manner established by the Criminal Procedure Code of Ukraine. Closing of a criminal case with release from criminal liability is possible only in the case of a person committing a socially dangerous act, which contains the composition of a crime provided for by the Criminal Code of Ukraine, and in the presence of legal grounds defined in the law, an exhaustive list of which is given in part 1 of Article 44 of the Criminal Code of Ukraine, namely: in the cases provided for by this Code, as well as on the basis of the Law of Ukraine on amnesty or an act of pardon (On the practice of application by the

courts of Ukraine of the legislation on the release of a person from criminal).

P.V. Khryapinsky notes that the problem of release from criminal liability is controversial, certain issues are solved diametrically oppositely in the legal literature (Khriapinskyi P.V., 2014, p. 77-78). Thus, S.G. Kelyna, researching release from criminal liability, defines it as the refusal of the state to give a negative assessment to a person who has committed a crime in the cases provided for in the law. Yu.V. Baulyn understands release from criminal liability as a legal refusal of the state to apply to a person who has committed a crime restrictions on his certain rights and freedoms, defined by the Criminal Code of Ukraine (Baulin Yu.V, 2004, p. 58). V.V. Skibytskyi defines release from criminal liability as the legal eradication of liability of a person who has committed a socially dangerous act prescribed by law if the goals of punishment and the objectives of criminal legislation can be achieved (or have already been achieved) without the use of criminal coercion. O.F. Kovitidi believes that release from criminal liability is the refusal of the state in cases provided for by law to convict and punish a person whose act contains the elements of a crime (Kovitidi, O.F., 2005, p. 107). O.S. Kozak understands release from criminal liability as the state's refusal, represented by the court, to apply to a person who committed a crime the restrictions on certain rights and freedoms provided for by the Criminal Code of Ukraine, which does not entail criminal legal consequences carried out in accordance with the requirements of criminal and criminal procedural laws (Kozak, 2009, pp. 18-19). A.V. Savchenko, V.V. Kuznetsov, and O.F. Shtanko define release from criminal liability as the refusal of the state to apply restrictions, conviction, and punishment of a person who has committed a crime provided for by the criminal law if such a person does not imposes a significant public danger, has fulfilled certain regulatory conditions and is able to correct oneself without coercion of the state through punishment (Savchenko A.V., 2005, p. 164). V.S. Egorov sees in release from criminal liability the non-application to a person, who is recognized guilty of committing a socially dangerous act, of the negative legal consequences provided by law for its commission, in connection with the disappearance or significant reduction of the social danger of the criminal act or the person who committed it. P.V. Khryapinskyi notes that release from criminal liability is the state's refusal to officially condemn the person who committed the crime in the form of a guilty sentence by a court and the application of criminal law burdens due to the legal facts provided for in the Criminal Code of Ukraine, which has the effect of terminating all complex of criminal-legal relations (Khriapinskyi P.V., 2014, p. 77).

The principle of presumption of innocence is a generally recognized international legal principle. It is enshrined in a number of universal and regional acts that form the basis of international human rights standards. It is reflected in Clause 1 of Article 11 of the Universal Declaration of Human Rights of 1948, Clause 2 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, Clause 2, of Article 14 of the International Covenant on Civil and Political Rights (Convention on the Protection of Human Rights and Fundamental Freedoms of 1950). Its purpose is to protect citizens from unjustified prosecution and conviction.

The presumption of innocence is recognized as one of the fundamental principles of criminal justice in a state governed by the rule of law. At the same time, it is an important element of the right to a fair trial, guaranteed by Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms, which is part of national legislation by virtue of Article 9 of the Constitution of Ukraine - as an international treaty in force ratified by the Verkhovna Rada of Ukraine. However, despite its fixation on the most important international legal acts, which established universal standards of basic human rights, and its normative enshrining in the Constitution of Ukraine (Article 62), in reality, the presumption of innocence has often been violated, as evidenced by, in particular, a number of decisions of the European Court of Human Rights regarding Ukraine (Fulei T., 2012, p. 39).

In order to apply grounds for release from criminal liability (taking into account their substantive-legal, and procedural components), the state body (court) must establish the presence of the elements of a crime in the act, i.e. recognize what the person has committed as a crime. Therefore, the logic of applying the norms of the institution of release from criminal liability requires preliminary recognition of the fact of committing a crime and proof of a person's participation in it. In any other case, one should talk not about release from criminal liability, but about its exclusion (non-occurrence) in connection with the absence of its grounds (Stupnyk Ya.V., Horinetskyi Y.I., 2015, p. 72).

3. Practical challenges of the release from criminal liability implementation

The introduction in 2001 of an exclusively judicial procedure for closing criminal proceedings on "non-rehabilitative" grounds (due to the entry into force of the Criminal Code of Ukraine of 2001, according to Part 2 of Article 44 of which release from criminal liability in the cases provided for by this Code shall be carried out exclusively by the court) has not put to an end the discussion. The main issue on which representatives of substantive criminal law and procedural experts cannot agree is whether the state establishes the guilt of a person who is subject to release from criminal liability, and if so, whether it can be established in the relevant court decision (resolution or rulings), or only a guilty sentence of the court is required for this (Ros H., 2009, p. 232). Thus, the former head of the Supreme Court of Ukraine, V.T. Malyarenko, emphasized: since the release

from criminal liability of persons who have committed a crime is not carried out by issuing a guilty or acquittal sentence, it is necessary to immediately provide for the procedure for considering such cases and issuing rulings, resolutions on closing cases and release of a person from criminal liability. The absence of such an order creates serious problems for law enforcement (Maliarenko V.T., 2005, p. 206). At the same time, some scholars insist that the release of a person from criminal liability can take place only after he is found guilty of a crime in a guilty sentence by the court, as the release of a person from criminal liability outside of the judgment cannot take place, because, in this case, there are no conditions for such a release (Pivnenko V., 2004, p. 39). Ye. Osychniuk notes that a reference to the commission of a crime by a person is possible only if there is a guilty sentence against him, and not a court ruling, since there are many provisions in the legislation, according to which citizens can be limited in certain rights based on the closure of a criminal case against them for "non-rehabilitating" circumstances. Thus, the researcher believes that a paradoxical situation has arisen, when a person based on a court ruling will be considered to have committed a crime and will be subject to certain restrictions in the exercise of his rights, but based on the Constitution of Ukraine as an act of the highest legal force, one at the same time has to be considered innocent. In order to correct this drawback, it is proposed to introduce a rule according to which release from liability is possible based on a judgment by which a citizen is found guilty and at the same time exempted from criminal liability without imposing any punishment (Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Ministry of Internal Affairs of Ukraine regarding the official interpretation of the provisions of the third part of Article 80 of the Constitution of Ukraine (the case on parliamentary immunity).

In order to overcome the conflict between the existence of release from liability and the presumption of innocence, a change in the procedure for such release is proposed. However, despite the external "technical" simplicity of such a decision, it is unacceptable for modern criminal law. In the case of its legislative implementation (and the establishment of release from liability exclusively through a court judgment), the difference between the release of a person from punishment (today it is carried out by a sentence as well as the imposition of punishment) and release from criminal liability is blurred. Recognizing negative criminal liability by imposing on the person who committed the crime state condemnation and deprivations of a personal, property and other nature, which are provided for by the criminal law and are determined for this person by the guilty sentence of the court, release from such a liability can be considered as the complete deprivation of the person who committed the crime from the state conviction for it together with all the legal restrictions that would occur in connection with the conviction (mainly these restrictions that the person undergoes in connection with in connection with serving a sentence). According to the current criminal legislation, negative criminal liability is implemented in one of three forms (conviction with actual punishment, conviction with release from serving the sentence and conviction with release from punishment) (Criminal Law. General part, 2011, p. 718–722). Therefore, release from criminal liability, which does not formally contain state condemnation (conviction), does not belong to the forms of realization of such liability. It is a release not only from the execution of the punishment but also from its appointment, as well as from condemnation (a negative official assessment of the guilty's behavior by the state in the form of a guilty verdict) (Merkulova V.O., 2007, p. 64). At the same time, release from punishment or release from serving a sentence is a partial deprivation of certain, but not all, legal restrictions of an already convicted person. With the passing of a verdict and its entry into legal force, the state condemns the violator, and criminal liability is imposed on him.

Thus, to demand that a guilty verdict be handed down upon the release from criminal liability means denying this institution the right to exist, since a component of release from criminal liability is, as already noted, a refusal to officially condemn the criminal behavior of the guilty person and to condemn him on behalf of the state. Therefore, release from criminal liability is impossible either through a guilty sentence or through an acquittal (release from criminal liability is possible only in relation to a person who committed an act containing all the elements of a crime) (Criminal Law. General part, 2011, p. 736). From the moment the guilty sentence of the court becomes legally binding, the only release from punishment or its serving or the application of other criminal-legal measures of influence, which are included in the content of certain forms of criminal liability, is possible (Burdin V.M.. 2005, p. 71). Thus, the court's guilty sentence against a person and his release from criminal liability are mutually exclusive categories.

Some scientists suggest, taking into account foreign legislative experience, abandoning the institution of release from criminal liability, while expanding the scope of application of release from punishment and improving other means of criminal law response to a crime, the presence of which can be established only by a guilty sentence of the court, which will allow to abolish the possibility of collision between the provisions of the Criminal Code, the Criminal Procedure Code, and the Constitution of Ukraine (Yatsenko S.S., 2011, p. 165). However, the very existence of the institution of release from liability is based on the fact that the state is ready not to apply official condemnation (actually, sentence) and related means of criminal law influence (repressive in content) to the person who taught the crime, if it recognizes, that such a measure, given the grounds available in the law, is inexpedient. For example, this

is possible due to the fact that, as a result of a change in the situation, a person or his actions (committed for the first time for a crime of minor or medium severity) have lost public danger (Article 48 of the CC). Rejection of the institution of release from criminal liability at the current stage of the development of the criminal policy of Ukraine is impossible, given the presence of a clear tendency to differentiate the means of solving criminal legal conflicts. "The concept that is developing... within the framework of the criminal law institution of release from criminal liability is absolutely necessary from the point of view of criminal policy, and its existence is inevitable for every more or less developed legal order," L.V. Golovko notes.

Nowadays, the issue of harmonizing ("reconciliation") the provisions of the Criminal Code regarding release from criminal liability and the principle of presumption of innocence remains important. However, it should be noted at the same time that the perfection of its wording is open to reasonable doubt today. In particular, V. Lobach comes to the conclusion that the definition of this presumption contains a broad comprehension that does not fully take into account the modern realities of justice, that the literal understanding of "establishment of guilt only by a sentence", which focuses on the conviction of a person, does not correspond to the principle of humanism and international trends in the development of criminal justice regarding alternatives to criminal prosecution (Lobach V., 2003, p. 15).

4. Guilt and culpability as determining factors for solving the ambiguity

It should be noted that Article 62 of the Constitution of Ukraine and in Part 2 of Артшсду 2 of the Criminal Code is actually (it should be noted) not about the "guilt" of a person, but about his "culpability". According to Article 23 of the Criminal Code "guilt is a mental stance of a person with regard to the performed act or omission under this Code and to the consequences thereof, as expressed in the form of intent or recklessness." In such an interpretation, guilt in criminal law is only one of the elements in the subjective side of the composition of the crime, which must be proven along with its other components - the object, the act, the sanity of the person, etc. As a feature that is part of the subjective side of the composition of the crime, guilt (intent or recklessness) must be established both in the proceedings that end with the imposition of punishment and in the proceedings in which the person is released from criminal liability. "The decision on the release of a person from criminal liability must be preceded by a complete and accurate establishment of the actual circumstances of the committed crime and the correct qualification of the committed crime", points out O.O. Dudorov (Dudorov O., 2009, p. 40). Such polysemy in the use of the term "guilt" in Ukrainian law leads some domestic researchers to ambiguous, unsubstantiated (and therefore controversial) conclusions, an example of which is the position of O.S. Kozak, who believes that "proving the guilt of a person in the manner prescribed by law and establishing of this fact by the court's decision in the form of a justified resolution to close the criminal case in connection with the release of a person from criminal liability is not a violation of the principle of presumption of innocence, since the person's guilt is proven in a legal manner and established by the court's decision" (Kozak O.S., 2008). In this regard, R.V. Veresha should be supported in his proposal on the expediency of folmulating of Part 2 of Article 2 of the Criminal Code in the new edition: "A person is considered innocent of committing a crime and cannot be subjected to criminal punishment until his culpability is proven in a legal manner..." (Veresha R.V.. 2005, p. 110). So, formally (primarily in the criminal-procedural sense) the category "culpability" means no more than the statement that "it was this person who committed the act against which he is accused" (Dudorov O., 2009, p. 41).

In Article 62 of the Constitution of Ukraine and in Part 2 of Article 2 of the Criminal Code, the recognition of guilt (more precisely, culpability) of a person is connected only with the imposition of punishment. Such a requirement is consistent with Part 1 of Article 50 of the Criminal Code, according to which punishment is imposed only on a person found guilty of committing a crime. The international democratic community, the relevant acts of it were cited at the beginning of this publication, also associates the recognition of a person's culpability by a court sentence within the limits of the presumption of innocence with the imposition of punishment (and not other means of criminal legal influence). The connection between the categories "culpability" and "punishment" allows us to assume that culpability is an indispensable (mandatory) prerequisite for punishing a person. But at the same time, neither the criminal law nor the criminal procedural law requires recognition of culpability as a prerequisite for the application of punishment alone. A dogmatic and systematic interpretation of the legislation allows us to state that the recognition of a person's culpability when applying other measures of criminal legal influence is not prohibited either at the international or national level. Thus, the procedure of release from punishment (for example, according to Part 4 of Article 74 of the Criminal Code) or release from serving a sentence (for example, according to Article 75 of the Criminal Code) requires the court to issue a guilty sentence. However, this circumstance does not become a basis for raising the question of unconstitutionality (inconsistency with Article 62 of the Fundamental Law of the State) or inconsistency with international standards of human rights of such forms of implementation of criminal liability (Stupnyk YaV., Horinetskyi Y., 2015, p. 73).

One should agree with the opinion of O.F. Kovitidi that "the Constitution of Ukraine links the establishment of a person's guilt by the court's sentence with the possibility of imposing a punishment on him, and this consequence is by no means foreseen in the case of a decision on release from criminal liability" (Kovitidi O.F., 2005, p. 16), as well as that "the Constitution resolves only one, albeit very fundamental issue, namely: a person can be found guilty of committing a crime only by a court's sentence" and this "does not exclude the fact that being recognized as having committed a crime, a person may be released from criminal liability by a court, but in a different procedural order" (Baulin Yu.V., 2004, p. 55).

5. Recognition of release from criminal liability as an alternative to a criminal punishment

In order to solve the set tasks, release from criminal liability should be considered from the point of evaluating this institution as an alternative to a criminal punishment as a means of criminal-legal influence, which is used at the stage of criminal-legal relations when the crime is revealed, the person who committed it has already been exposed, and his guilt in the committed act is confirmed by a sufficient evidentiary base formed during the criminal proceedings (Stupnyk Ya.V., Horinetskyi Y.I., 2015, p. 75).

Such a release is considered a proven domestic variant of an alternative response to the commission of a crime, which replaces the state's traditional response to a crime. The application of such an alternative should differ in form (procedural aspect) and content (the presence of an official conviction – moral and ethical aspect) and legal consequences (substantive and legal aspect) from the application of punishment. In particular, a court decision (ruling) should be a fully sufficient decision on this issue, in which, on the one hand, the grounds for applying the exemption of a person from criminal liability must be substantiated, on the other hand, the actual circumstances of the crime committed by him, his qualifications, evidence of his guilt, etc. When such a decision (ruling) is issued, the defendant does not acquire the status of a convicted person, which gives the state the right to apply a punishment to him. Since the release from criminal liability does not indicate the acquittal of a person, the recognition of his innocence of a crime, then, when deciding the issue of releasing a person from criminal liability, the court not only has the right but also must establish the guilt of this person in committing a crime. The Criminal Code of Ukraine, regulating the analyzed legal institution, proceeds from the establishment of the fact that a person has committed a criminal act, and therefore the grounds for release from criminal liability provided by law are recognized as non-rehabilitative (Criminal Law. General part, 2011, p. 732).

6. Conclusions

Thus, the analysis of the problem of ensuring compliance of the institution of release from criminal liability with the constitutional and international legal presumption of innocence ultimately allows to support the position according to which the substantive legal institution of release from criminal liability stipulated by the Criminal Code of Ukraine does not contradict the presumption of innocence. However, for this, its prescriptions should be evaluated, firstly, as not included in the mechanism of implementation of criminal liability, and secondly, as alternative measures of criminal law influence in comparison to punishment. At the same time, such dismissal does not negate the recognition of a person's guilt, if we give it the meaning of official confirmation (acknowledgment) of the fact that he committed a criminal offense.

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КОНСТИТУЦІЙНА ПРЕЗУМПЦІЯ НЕВИНУВАТОСТІ ТА ІНСТИТУТ ЗВІЛЬНЕННЯ ВІД КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ: ПРОБЛЕМИ СПІВВІДНОШЕННЯ

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Анотація

Метою статті є визначення, з урахуванням результатів аналізу чинного законодавства України й положень доктрини кримінального права, проблем співвідношення та забезпечення відповідності інституту звільнення від кримінальної відповідальності конституційний презумпції невинуватості.

Методологічною основою представленої статті є комплекс загально- та спеціально-правових методів, що включає аналіз і синтез, метод опису та спостереження, порівняльно- та формально-юридичний методи.

Результати та висновки. У статті з урахуванням результатів аналізу чинного законодавства України й положень доктрини кримінального права визначено проблеми співвідношення інституту звільнення від кримінальної відповідальності конституційний презумпції невинуватості.

Встановлено, що звільнення від кримінальної відповідальності не спростовує визнання винуватості особи, якщо надавати йому значення офіційного підтвердження (констатації) факту вчинення нею кримінального правопорушення. Визначено, що звільнення від кримінальної відповідальності стосується й проблем забезпечення режиму законності в діяльності органів влади, відповідності норм кримінального права принципам і нормам міжнародного права, системній узгодженості різних галузей національної правової системи.

Визначено, що презумпція невинуватості визнається однією з основоположних засад кримінального судочинства в правовій державі. Водночас вона є важливим елементом права на справедливий суд, гарантованого статтею 6 Конвенції про захист прав людини і основоположних свобод, яка є частиною національного законодавства в силу статті 9 Конституції України – як міжнародний договір, згоду на обов'язковість якого надана Верховною Радою України. Однак, незважаючи на її фіксацію у найважливіших міжнародно-правових актах, які закріпили універсальні стандарти основних прав людини, та нормативне закріплення в Конституції України зазначено, що на практиці презумпція невинуватості часто порушується, свідченням чого є, зокрема, низка рішень Європейського суду з прав людини щодо України.

Ключові слова: звільнення від кримінальної відповідальності; презумпція невинуватості; кримінально-правовий вплив; заходи кримінально-правового впливу, співвідношення.

SECTION 2
CONSTITUTIONALISM AS MODERN SCIENCE

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LEGISLATIVE DRAFTING TECHNIQUES AS A MEANS OF GIVING EFFECT TO THE RULE OF LAW. THE CASE OF UKRAINE

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Summary

Ukraine is currently carrying out some reforms recommended by the Venice Commission of the Council of Europe and by the European Commission (in order to become a Member State of the European Union), in order to strengthen democracy, the Rule of Law, human rights and protection of minorities.

The purpose of this article is to demonstrate that legislative drafting techniques are a means to give effect to the principle of the Rule of Law, when it comes to Ukraine; and to recommend that Ukraine improves the way its institutions draft/scrutinise bills, and adopts best practices from Europe.

The methods of this article will be those of an analysis of constitutional law. The article will rely on the definition of the principle of the Rule of Law (given by AV. Dicey and developed by Lord Bingham) and the idea that legislative drafting techniques can be seen as a means to give effect to such a principle. The Ukrainian current constitutional context (viz., the impossibility of amending its Constitution under martial law, due to Article 157 of the Constitution of Ukraine) will be considered. Some pieces of Ukrainian legislation will be analysed in the light of the Venice Commission's recommendations. Some of the main legislative drafting techniques and their aims, in the light of the best practices from Europe, will also be analysed.

The results of the article will set out that in such a current constitutional context, where the recommended reforms can be implemented only by Acts of Parliament (although some amendments to the Ukrainian Constitution would be appropriate), in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Therefore, the scientific novelty of the article will be to test general concepts with regards to the exceptional constitutional circumstances of Ukraine.

The conclusions, thus, is that Ukrainian institutions (such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of the Republic of Ukraine) should improve the way they draft/scrutinise bills, adopting best practices from Europe, in order to improve the quality of primary legislation and, thus, to give effect to the principle of the Rule of Law.

Key words: constitutional law, quality of legislation, European Commission for Democracy though Law of the Council of Europe (Venice Commission), accession to the European Union, Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, President of the Republic of Ukraine.

1. Introduction

Ukraine is currently carrying out some reforms recommended by the Venice Commission of the Council of Europe and by the European Commission (in order to become a Member State of the European Union), in order to strengthen democracy, the Rule of Law, human rights and protection of minorities. Although some amendments to the Ukrainian Constitution would be appropriate to this end, the Ukrainian Constitution cannot be amended under martial law, due to Article 157 of the Ukrainian Constitution. Therefore, the recommended reforms have been implemented in Ukraine by Acts of Parliament.

In such an exceptional constitutional context, thus, in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Therefore, the scientific novelty of the article will be to test general concepts (viz., the quality of legislation as a means to give effect to the principle of the Rule of Law) with regards to the exceptional constitutional circumstances of Ukraine; and to recommend that Ukraine improves the way its institutions draft/scrutinise bills, and adopts best practices from Europe, in order to improve the quality of its primary legislation and, thus, to give effect to the principle of the Rule of Law.

The methods of this article will be those of an analysis of constitutional law. The article will rely on the definition of the principle of the Rule of Law (given by A.V. Dicey), and on the view that legislative drafting techniques is a means to give effect to the principle of the Rule of Law (as stated by Lord Bingham) (Section 2). The current Ukrainian constitutional context (viz., the impossibility of amending the Constitution under martial law, due to Article 157 of the Constitution of Ukraine) will be considered (Section 3). Some pieces of Ukrainian legislation will be analysed in the light of the Venice Commission's recommendations, under which some «provisions are extremely long and too detailed», due to Ukraine's long-standing legislative tradition consisting of very detailed and formalised texts (Section 4). Some of the best practices from Europe, when it comes to legislative drafting techniques, will be analysed to this end (Section 5).

2. The principle of the Rule of Law and legislative drafting techniques

From the traditional British perspective, the principle of the Rule of Law (or, in other words, the supremacy of the law) has three meanings. First, no man is punishable or can be lawfully made to suffer in body or deprived of their goods unless they had violated the law which has been established in an ordinary way and applied by an ordinary court. Second, every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Third, the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts (Dicey, 1915, p. 107 ff.).

In civil law jurisdictions, those principles would be called the principle of legality, the principle of equality and (as Dicey himself would say) the principle under which the security to the rights of individuals results from the general principles of the Constitution (Dicey, 1915, p. 115).

Some decades later, Lord Bingham listed some principles, in order to explore what he called «the ingredients» of the Rule of Law. Under the first principle, he pointed out that «[t]he law must be accessible and so far as possible intelligible, clear and predictable» (Bingham, 2010, p. 37).

Given that the Rule of law contains such a principle, it is important to deduce how the form of legislation (viz., the way legislation is structured, organised and expressed) can give effect to it. As has been demonstrated, principles of legislative drafting play a key role in determining the form of legislation, thus to give effect to the Rule of Law (Cormacain, 2022, p. 13 f.).

Some Authors pointed out that the quality of legislation is the extent to which the criteria emanating from constitutional principles are met (Xanthaki, 2014, p. 2; Voermans, 2017, p. 26; Albanesi, 2019, p. 53 ff.). However, constitutional principles of proper lawmaking can proactively guide legislative decision making only following «a meticulous thinking process that involves analysis, design and drafting» (Mousmouti, 2019, p. 16).

Such general concepts already established by scholars, will be tested here with regards to Ukraine, which is currently facing exceptional constitutional circumstances.

3. The current Ukrainian constitutional context and the crucial role of the quality of primary legislation to give effect to the principle of the Rule of Law in Ukraine

Ukraine is currently facing exceptional constitutional circumstances.

Under article 157 of the Constitution of Ukraine, «[t]he Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency». In Ukraine martial law was declared on 24th February 2022, when the Russian Federation's full-scale invasion started.

Ukraine is currently carrying out some reforms recommended by the European Commission for Democracy through Law (Venice Commission, 2022a; Venice Commission 2022b; Venice Commission, 2023a; Venice Commission 2023b) and by the

European Commission (European Commission, 2022), in order to become a Member State of the European Union, to strengthen democracy, the rule of law, human rights and protection of minorities. Under Article 8 of the Constitution of Ukraine, «in Ukraine, the principle of the rule of law is recognised and effective». Under Article 49 of the Treaty of the European Union and the Copenhagen criteria, EU Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Some amendments to the Ukrainian Constitution would be appropriate for this purpose, for example regarding the appointment/election of the Judges of the Constitutional Court (Albanesi, 2023a; Albanesi, 2023b); or the establishment of autonomous regions as a tool to protect national minorities (Albanesi, 2023c).

However, given article 157 Const., the aforementioned recommended reforms have been implemented in Ukraine by Acts of Parliament. For example, this is the case of Law of Ukraine No. 3277-IX, On amendments to certain legislative acts of Ukraine on clarifying the provisions on competitive selection of candidates for the position of a Judge of the Constitutional Court of Ukraine; and Law of Ukraine No. 3389-IX, On the introduction of amendments to the Law of Ukraine 'On National Minorities (Communities) in Ukraine' regarding some issues of exercising the rights and freedoms of persons belonging to national minorities (communities) of Ukraine.

In such an exceptional constitutional context, thus, it is clear that in Ukraine the quality of primary legislation becomes crucial to give effect to the Rule of Law. Acts of Parliament aimed at implementing those recommendations could give effect to the Rule of Law, only if they are of a good quality, as stated above.

However, if one reads some past opinions of the Venice Commission, the quality of legislation in Ukraine poses several issues.

4. The Venice Commission and the quality of Ukrainian's legislation

Among other recommendations that mention some specific issues concerning the quality of legislation (Venice Commission, 2021), one can find some recommendations about Ukraine.

In 2009, while examining some Ukrainian bills, the Venice Commission stated that «it has to be regretted the opinion for making extremely long, too detailed, reiterative, confusing and extremely rigid laws […]. The result is a Law which […] is very complex and confusing, and will possibly be very difficult for citizens to understand, for political actors to handle, and for […] courts to deal with» (Venice Commission, 2009, paragraph 3).

In 2010, the Venice Commission noted that the Ukrainian legislator «tries to mention or to enumerate all the possible facts which can form the elements of a legal rule. Therefore, the legal texts are quite voluminous and contain elements which are perhaps not necessary, or which could be delegated to subordinate legislation (e.g. a regulation). One negative effect is certain: the rules are difficult to find and to know, also for the practising judge, and, if the law does not provide for a rule for facts in a certain case (no catalogue of facts is complete) the judge might be feeling completely at sea» (Venice Commission, 2010, paragraph 9).

In 2022, while examining the draft law On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis, the Venice Commission noted that: «some draft provisions are extremely long and too detailed. During the online meetings, the delegation was informed about Ukraine's longstanding 'legislative tradition' consisting of very detailed and formalised texts. […] Aware of the complexity of the issue going beyond a specific opinion, the Venice Commission would like to draw the attention of the Ukrainian legislators to its regularly updated Compilation of opinions and reports concerning the law-making procedures and the quality of the law. Among many useful findings based on the variety of legislation of the member States, the Commission recalls the 'golden rule' for structuring and drafting legislative acts, namely that an article should not contain more than three paragraphs (or subparagraphs), a paragraph should not contain more than three sentences, and a sentence should not contain more than one idea» (Venice Commission, 2022a, paragraph 67; Venice Commission, 2022b, paragraph 70).

From these opinions of the Venice Commission, one can easily argue that the quality of legislation in Ukraine poses several issues.

5. Legislative drafting techniques and best practices from Europe

As mentioned, legislative drafting techniques are a means to give effect to the principle of the Rule of Law. As demonstrated, this is especially true when it comes to Ukraine, due to the exceptional constitutional circumstances that Ukraine is facing. However, the quality of Ukrainian legislation poses some issues, if one reads the opinions of the Venice Commission. One might thus argue that Ukraine should improve the way its institutions draft/scrutinise bills, and should adopt best practices from Europe.

Before drawing conclusions about Ukraine, it might be useful to give some examples of the main legislative drafting techniques adopted in Europe. It could also be of help to describe the main goals of using legislative drafting techniques.

The main goals of using legislative drafting techniques (Xanthaki, 2013, p. 5 ff.) are as follows. Efficacy is the capacity of a piece of legislation to achieve the regulatory aims that it is set to address. Effectiveness is the capacity of a legislative text: to foresee the main projected outcomes and use them in the drafting formulation process; to state clearly its objectives and purpose; to provide for necessary and appropriate means and enforcement measures; to assess and evaluate real-life effectiveness in a consistent and timely manner. Efficiency is when a legislative act uses the minimum costs for the achievement of optimum benefits of the legislative action. Clarity is the quality of being clear and easily understood. Precision is the exactness of expression or detail. Unambiguity is the capacity of its wording of having certain or exact meaning. Plain language is a concept that encapsulates a qualifier of language that is subjective to each reader to use.

The main legislative drafting techniques (Xanthaki, 2013, p. 60 ff.; Albanesi, 2019, p. 171 ff.) regard the language of legislative acts (e.g., use of specific tenses, use of modal auxiliaries such as may or shall, semantic unambiguity, syntactic unambiguity, punctuation, etc.); the structure of legislative act (e.g., title, articles, paragraphs, preliminary provisions such as definitions, substantive provisions, final provisions, such as transitional provisions or schedules, etc.); the relations between legislative acts (e.g., repeal, express amendments, exceptions, etc.); specific contents of legislative acts (e.g., criminal provisions, tax legislation, etc.); specific legislative acts (e.g., Acts of Parliament, delegated legislation, emergency decrees, etc.).

The United Kingdom is a good model for Ukraine to look at.

Historically, in the U.K. the view of legislative drafting as a specialised discipline with its own rules and principles rests on Jeremy Bentham's idea of Nomography or the Art of Inditing Laws (Bentham, 1843, p. 231 ff.). In 1869 Lord Thring wrote the Instructions for Draftsmen (Lord Thring, 1877). A centralized body (the Office of Parliamentary Counsel) was established within the Executive, with the task of drafting bills. Before the establishment of the Office of Parliamentary Counsel, bills had been drafted by independent counsel employed by the relevant department. Such a system had led to inconsistency in drafting legislation, because «[t]here was no security for uniformity of language, style, or arrangement in laws»; it also created problems with planning policies, because «[d]ifferent Departments introduced inconsistent Bills, and there was no adequate provision by which the Prime Minister, or the Cabinet as a whole, could exercise effective control over measures fathered by individual Ministers» (Ilbert, 1901, p. 83 f.).

In the following decades, in the U.K. legislative drafting rules were developed in treatises such as Erskine May (Natzler & Hutton, 2019, p. 593 ff.), Garth Thornton's Legislative Drafting (Xhantaki, 2013) and Craies on Legislation (Greenberg, 2017, p. 407 ff.).

From a theoretical perspective, in the U.K. the nature of legislative drafting has been framed as a specialised discipline (Xhantaki, 2014, p. 10 ff.). From such a perspective, legislative drafting is seen as a sub-discipline of law: in particular, as phronesis, i.e. the praxis of subjective decision-making on factual circumstances or the practical wisdom of the subjective classification of factual circumstances to principles and wisdom.

In Continental Europe, the machinery model is different. Government bills are drafted by lawyers within the relevant Department. This model has some pros and cons.

According to some Authors, only lawyers within the Department, who are expert in the relevant field, have a deep knowledge of the legal framework concerning that field. Moreover, the departmental model fits with the Continental Europe parliamentary system of government, where the final contents of legislation are constantly negotiated in Parliament within the Majority party or between the Majority and the Opposition (Mattarella, 1993, p. 127).

On the other hand, this model has two unfortunate consequences, if compared to the British model (Albanesi, 2021, p. 320). First of all, the relevant Department is essentially focused on dealing with policy and legal aspects of the bill. Thus, it does not take account of legislative drafting needs. Secondly, this system does not allow departmental officers to develop specific expertise in legislative drafting.

However, in Continental Europe, a good system of parliamentary scrutiny of the quality of legislation has been established. For example, in Italy both the Chamber of deputies and the Senate established a Comitato per la legislazione, a bipartisan Committee that is tasked with scrutinising bills, using legislative drafting guidelines as the legal standards of their scrutiny (Albanesi, 2021, p. 323 ff.).

It will be up to Ukraine to choose the best model for its legal system. Surely, the British model shows that legislative drafting is a specialised discipline that requires training and skilled professional officers. On the other hand, the Continental model might sit better within the constitutional framework of the Ukrainian form of government. However, in this case, parliamentary scrutiny of the quality of legislation

in Ukraine should be strengthened and the European Continent could be taken as a model to this end.

6. Conclusions

The conclusions, thus, are as follows.

The Ukrainian institutions (such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the President of the Republic of Ukraine) should improve the way they draft/scrutinise bills, and adopt best practices from Europe, in order to improve the quality of its primary legislation and, thus, to give effect to the principle of the Rule of Law.

The relation between the quality of legislation and the Rule of law is strong in every legal order (Section 2). However, this plays a greater role within the exceptional constitutional circumstances that Ukraine is facing. Given the impossibility to amend its Constitution, Ukraine has relied on Acts of Parliament to carry out the recommended reforms. However, those acts should be of a high quality in order to give effect to the Rule of Law (Section 3).

The actual issues posed by Ukrainian legislation in terms of quality of legislation (Section 4) demonstrates that Ukraine should improve the way its institutions draft/scrutinise bills, and should adopt best practices from Europe (Section 5).

The legal challenge that Ukraine is facing in carrying out the reforms, recommended by the Venice Commission and the European Commission in order to become a Member State of the European Union, is huge. Therefore, one should bear in mind that giving effect to the principle of the Rule of Law requires a good quality of legislation, especially when, as in Ukraine, it is not possible to amend the Constitution, given the exceptional constitutional circumstances that Ukraine is dealing with.

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ТЕХНІКА ПРОЕКТНОГО ЗАКОНОДАВСТВА ЯК ЗАСІБ РЕАЛІЗАЦІЇ ВЕРХОВЕНСТВА ПРАВА. СПРАВА УКРАЇНИ

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Анотація

Зараз Україна проводить деякі реформи, рекомендовані Венеціанською комісією Ради Європи та Європейською комісією (для того, щоб стати державою-членом Європейського Союзу), з метою зміцнення демократії, верховенства права, прав людини та захист меншин.

Метою цієї статті є продемонструвати, що техніка розробки законів є засобом реалізації принципу верховенства права, коли йдеться про Україну; а також рекомендувати Україні покращити спосіб, у який її інституції розробляють/перевіряють законопроекти, і перейняти найкращі практики з Європи.

Методи цієї статті будуть методами аналізу конституційного права. Стаття спиратиметься на визначення принципу верховенства права (надане А.В. Дайсі та розроблене лордом Бінгемом) та ідею про те, що методи розробки законів можна розглядати як засіб реалізації такого принципу. Буде розглянуто нинішній конституційний контекст України (а саме неможливість внесення змін до Конституції в умовах воєнного стану через статтю 157 Конституції України). Деякі законодавчі акти України будуть проаналізовані з урахуванням рекомендацій Венеціанської комісії. Також буде проаналізовано деякі з основних методів розробки законодавчих актів та їхні цілі у світлі передового досвіду Європи.

За результатами статті буде встановлено, що в такому нинішньому конституційному контексті, де рекомендовані реформи можуть бути реалізовані лише актами парламенту (хоча деякі зміни до Конституції України були б доцільними), в Україні якість первинного законодавства стає вирішальною щодо запровадження верховенствоа права. Тому науковою новизною статті буде перевірка загальних концепцій щодо виняткових конституційних обставин України.

Висновки, таким чином, полягають у тому, що українські інституції (такі як Верховна Рада України, Кабінет Міністрів України та Президент України) повинні покращити спосіб розробки/перевірки законопроектів, запозичуючи передовий досвід Європи щоб підвищити якість первинного законодавства і, таким чином, реалізувати принцип верховенства права.

Ключові слова: конституційне право, якість законодавства, Європейська комісія за демократію через право Ради Європи (Венеціанська комісія), вступ до Європейського Союзу, Верховна Рада України, Кабінет Міністрів України, Президент України.

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THE NATIONAL IDEA IN THE UKRAINIAN LEGAL AREA

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Summary

The study is based on the assumption that at the current stage of development of the State and society, there is a need to form a national idea of the State, which is a theoretical expression of the Ukrainian people's self-awareness of their identity and individuality, and which, based on common values and interests, can be one of the important factors in consolidating Ukrainian society, a general vector for further development of the country and a guideline for its role and place in the world community. The national idea is an expression not only of the psychological and cultural model of society, but also a manifestation of the national legal sphere, which has a complex and ambiguous composition that requires a detailed scientific study. The purpose of the study is to identify the prerequisites and components of the formation of the national idea at the current stage of development of Ukrainian society and the State in the legal plane. The theoretical basis of the study is based on analytical developments in the theory of state and law, political science, constitutional law, and sociology of law in the study of various aspects of the national idea in the context of globalization. Numerous tasks and the diversity of the material under study have led to the use of various research methods: formal legal, systemic and structural, specific sociological, logical. The work uses the socio-cultural and civilizational approaches to the analysis of legal ideology, legal policy, legal doctrine, as well as axiological, geopolitical, and institutional approaches to the national idea of the State. It is noted that when forming the national idea, laying a progressive national-state ideology as its basis, it is necessary to take into account both the cultural uniqueness of Ukraine and the legal component of society, as well as global trends in the modern world. In the context of state-building, the national idea should be an integrative ideological basis on which to consolidate the political nation and create a project for the country's development for the future. It can be argued that the modern state-building process in Ukraine requires modernization of the concept of the national idea and certain adjustments to its value content. In order for the national idea to become an effective basis for the development of the rule of law, it must be correlated with legal ideology, legal policy and legal doctrine, and must be consistent with such values as national interest and national mentality. The implementation of the national idea should have a specific content and be filled with practical steps in the development of the Ukrainian state.

Key words: national idea, legal ideology, legal policy, legal values, national identity, national mentality, national interest.

1. Introduction

The philosophical and legal understanding of the phenomenon of the national idea is a necessary conceptual component of the search for new guidelines for the development of the state in the context of globalization, the development of the Ukrainian state national policy that meets the imperatives of the present.

It is no coincidence that in the theoretical sense, the content of the modern interpretation of the Ukrainian national idea has always caused a lot of controversy and discussion.

The category of "national idea" has been and remains the focus of attention of such foreign authors as D. Adamson (1991), P. Boermer (1986), W. Connor (1994), H.R. Cowie (1979), K. Deutsch (1995), T. Eriksen (1993), J. Hrytsak (1996), I. Mayall (1992), A. Motyl (1993), A. Smith (1998), L. Snyder (1991), G. Sorod (1992), V. Zaslavsky (1992).

The problems of national ideology, ways of forming national legal policy and doctrine related to the national idea are in the focus of attention of such scholars as A. Kolodiya, I. Kurasa, O. Petryshyn, Y. Rymarenko, P. Frisa, and others.

The publications of Y. Kalinovsky, L. Nagorna, I. Polishchuk, and A. Chernenko address theoretical issues related to the structure and content of the national idea.

Meanwhile, there is no special study devoted to a holistic understanding of the phenomenon of the national idea in the legal plane in domestic science yet.

In this context, it is of scientific interest to develop a national philosophical and legal concept of the national idea based on the theoretical model of interaction of such components as legal ideology, legal policy and legal doctrine, taking into account national identity and national legal values.

The purpose of the study is to highlight the components of the formation of the national idea at the present stage of development of Ukrainian society and the State in the legal plane and their correlation with each other.

2. Interpretations of the Ukrainian national idea

The range of approaches to the interpretation of the national idea in scholarly sources has been and remains quite wide. As a rule, the authors give the national idea a narrow, ethnographic interpretation, emphasizing the special role of ethnic peoples in state-building.

Thus, some scholars interpret the national idea as a strategic goal of national progress, the origin and expression of national identity. This definition contains two important components of the national idea. The first is that a national idea is a form of mental comprehension by a nation of its psychological and cultural content, i.e., its characteristic temperament, abilities, inclinations, habits, customs, attitude to the cosmos, including the land on which it lives, to other peoples and nations, which is referred to as "national identity." The second is a form of mental comprehension of the indigenous values of one's existence and the goals of one's activity that follow from the latter. Thus, the national idea is the sum of "national self-consciousness" and "the strategic goal of national progress" (Duz-Kryatchenko, 2014, p. 48).

From the angle of the theory of Ukrainian nationalism, the national idea is a storehouse of progressive national programs, political ideas, slogans, values, an engine of national progress, the basis of national liberation movements, national self-sovereignty; "how can one look at the world otherwise than from the gut of one's own nation?" (Lypa, 2023). Representatives of the school of ethno-state studies propose to understand the national idea as the realization of the Ukrainian dream, unclaimed Ukrainian constitutionalism, an organic combination of the national revival itself with national state-building; it is the idea of the nation, the people, the idea of the Motherland, in fact, the idea of Ukraine as the homeland of all its citizens, the consolidation of the nation as an ethno-social organism (Rymarenko, 1999, p. 11).

As we can see, attempts to find a universal formula for the Ukrainian national idea have been made repeatedly, but developing our own paradigm of national self-organization has proven to be too difficult for both scholars and politicians.

It is clear that at the theoretical level, the search for a national idea is a search for the "core" around which the entire range of national dominants – national interests, statehood, patriotism, democracy, justice, religious tolerance, etc. - would be concentrated (Nagorna, 2003, p. 20).

We share the opinion of those scholars who recognize that the national idea is a set of ideas, a system of views on the unification of the nation around a common goal aimed at gaining statehood and its further development. Accordingly, the Ukrainian national idea is a theoretical expression of the Ukrainian people's self-awareness of their identity and individuality, their self-worth, the right to self-determination and independent development, and national independence. The socio-political, including international, conditions of Ukraine's development in the historical context indicate a constant movement in this direction. At the present stage, it is about its consolidation and making it a unifying, consolidating state idea that would master the consciousness of the people (Parkhomenko, 2023, p. 74).

Thus, in today's context, it is worth emphasizing that the Ukrainian national idea is based on a deep awareness of each Ukrainian's belonging to the Ukrainian national community, identification with this community, and the formation of ideas about its typical features, ethnic territory, language, and ideas about its historical and spiritual values. Thus, it is important for Ukraine to develop an integral doctrine that, based on the right basic principles and ideology, would allow it to unite the nation around meaningful and understandable goals. Such an idea that can unite society is the national idea.

3. Polymorphism of the national idea

The concept of "national idea" is polymorphic, combining different and even oppositely directed phenomena, including national identity, national ideology, national policy, legal doctrine, etc. Let us consider these phenomena in more detail and determine their relationship with the national idea.

The primary component of the national idea is often referred to as national identity, which is defined as a complex multidimensional, multifaceted phenomenon, the study of which includes social, psychological, cultural and ethnic aspects.

The notion of national identity reflects the awareness of two opposing processes: on the one hand,

the individualization of group action, and on the other hand, the maintenance of collectively approved rules of behavior.

Given that in practice there is no clearly defined set of features for defining national identity, it is advisable to refer to the concept of nation. According to K. Gubner, "the identity of a nation is presented as determined by a set of historical regulatory systems that guide the subjects belonging to that nation in their ordinary actions, speech, thinking, feelings and desires at certain moments of time. These systems form the immediate horizon of the near and familiar. These include values, customs, culture, language, political ideas and goals, but also attitudes toward a particular geography, a particular climate, and the handling of material things" (Gubner, 2021).

At the same time, the category of national identity can be supplemented with semantic content more familiar to its traditional approaches by the concepts of national self-consciousness, national character, etc. Therefore, national identity is a multicomponent phenomenon, but the fact of consciousness and self-awareness remains decisive; in order for them to function properly, forming a nation and defending national values, national dignity of the entire people, a volitional factor is also needed; identity is the main core of all our actions (Tytar, 2019, p.76).

Thus, national identity carries the answer to the question of the essence of one's people, nation, its place, role and tasks in world history, and the ideal forms of its existence. Therefore, the national idea can be considered a form of rational and conscious comprehension of national identity.

In the legal sphere, legal identity is of great importance, as it is seen as the guiding principle in the structure of legal and cultural values. It is no coincidence that the awakening of legal consciousness of citizens is associated with the formation of legal values, mentality and types of social self-identification. In addition, legal identity cannot but be oriented towards a certain system of legal values, legal traditions, specific normative integrities (laws, codes, foundations, constitutions) (Hetman, 2010, p. 49)..

In the scientific literature, for a more complete characterization of national identity, attention is sometimes drawn to such a phenomenon as "national mentality", which is one of the global psychological universals that encompasses all basic mental processes and characteristics of an individual – a member of the national community, the nation as a whole (national character, national consciousness and ethnic subconscious).

The best reflection of the national mentality is the nation-state, its specific institutions - the basis of the nation's political system, state structure, form of government, essential features of the political regime, political traditions, the prevailing ideology in this nation, as well as typical everyday stereotypes and attitudes (Polishchuk, 2017, p. 111).

The next component of the national idea is the national ideology, the main postulate of which is the conclusion that its content contains fundamental ideas that form the basis for the legal system of the state and constitute indisputable requirements for creative and transformative activities in the field of state and legal reality (Sitnik, 2912, p. 9). Of particular importance in the content of ideology is legal ideology.

The national idea constitutes the platform of the national legal ideology and determines the theoretical foundations of the state's legal system. In other words, the essence of the state ideology coincides with the content of the national goal - building an independent state competitive in the modern world. Every country has such a state national ideology.

Legal policy can be viewed as a special political and legal phenomenon that is formed as a result of systematic, scientifically based activities of the state and public associations aimed at determining the strategy and tactics of legal development of society, improving the mechanism of legal regulation, ensuring human and civil rights and freedoms, and building a state governed by the rule of law.

Legal policy is primarily aimed at streamlining the legal sphere, which is capable of optimizing economic, political, social, environmental and other relations through its legal instruments. Formation of legal policy is an objective necessity in a democratic state where the rule of law prevails.

Legal policy can be successfully implemented only if it is based on scientific research and scientific doctrine. In this sense, legal policy is a catalyst for scientific research, an impetus for identifying and solving new problems in the legal sphere.

The main directions of formation and development of legal policy at this stage of development of the Ukrainian statehood and its legal system can be considered: (1) implementation of the rule of law and recognition of its dominance in all spheres of public life; (2) ensuring protection and safeguarding of human and civil rights and freedoms at the level of generally recognized international legal standards; (3) increasing the efficiency of the current system of law of Ukraine in regulating social relations and processes(4) adaptation of Ukrainian legislation to the requirements of EU law, including in the form of convergence of certain legal institutions in various branches of national law, as well as interpretation of national legislation in accordance with EU law both in lawmaking and law enforcement; (5) formation of the state legal ideology based on the national self-identification of Ukrainian society and contributing to "raising the level of legal awareness and legal culture of individuals, officials of state bodies and society as a whole, overcoming legal nihilism and other manifestations of deformation of legal consciousness" (Petryshyn, 2012, p. 31).

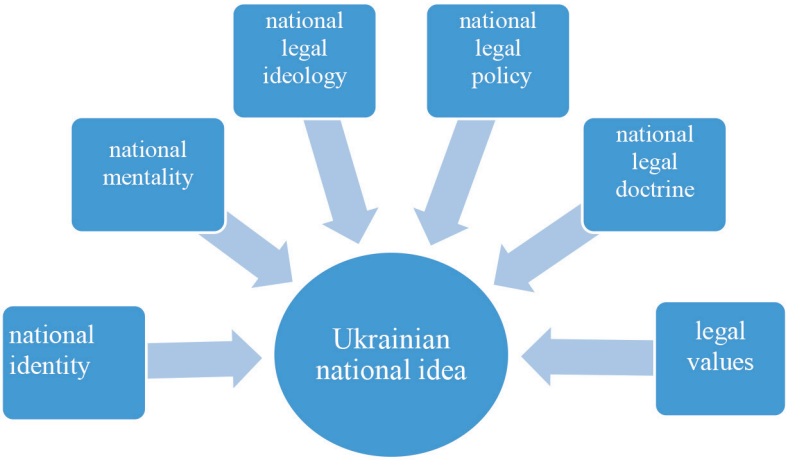
It can be argued that legal policy is a kind of indicator of political orientations and value priorities in the process of forming the national idea of Ukraine.

In turn, the legal ideology and legal policy of the State is formed under the influence of legal doctrine, primarily constitutional and legal doctrine, since the constitutional and legal doctrine of the modern State is a set of ideas, provisions, scientific views and theoretical generalizations which are established and recognized by the scientific community, and which together constitute a logically complete and internally consistent vision, understanding and explanation of the essence, features, main characteristics and patterns (or trends) of development of a certain constitutional and legal phenomenon (phenomenon of The constitutional and legal doctrine substantiates from a scientific point of view the social regularities of emergence, functioning and development of political and legal phenomena, and contributes to the formation of a perfect model of legal regulation. The philosophical and legal ideas of the conceptual level embodied in the constitution and other legislative acts determine the direction of development of the state and society, the national legal system (Ternavska, 2022, p. 59).

As LoPucki & Weyrauch (2000) note, "perhaps the most important role of legal doctrine today is to reinforce the public's respect for the legal system and the decisions it makes" (LoPucki & Weyrauch, 2000).

Thus, legal doctrine not only reflects the state and legal reality, but also provides a vision of law as it should be, i.e. its imaginary ideal image, justifies the need and expediency of forming new rules of law, branches and institutions of law, improving or reforming them. An important component of the legal doctrine is the evaluation and prognostic component, which contains programmatic provisions of a recommendatory and guiding nature and is the result of a critical analysis of the practice of state and law-making.

The defined construction of the Ukrainian national idea can be summarized as follows:



4. The concept of national interest

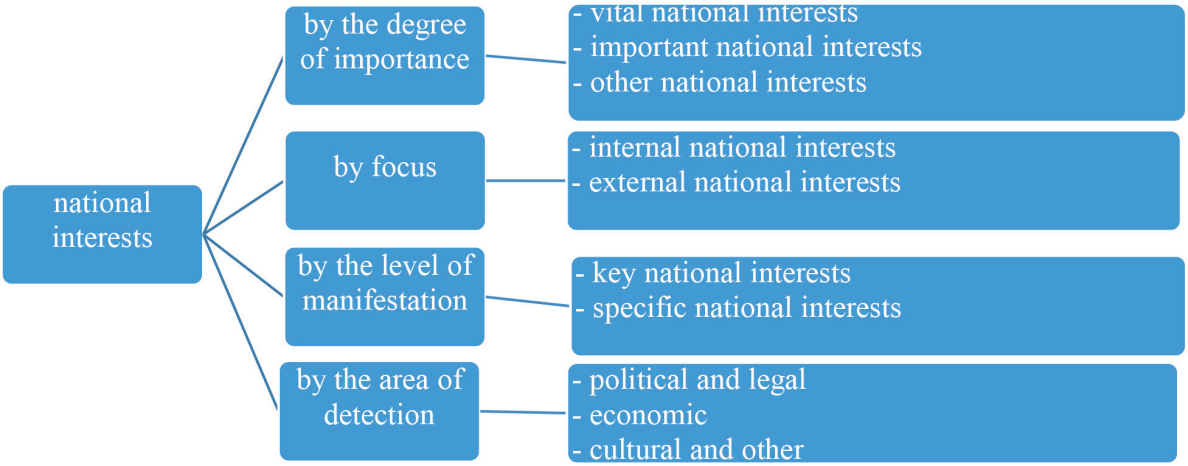
The Constitution of Ukraine stipulates that Ukraine's foreign policy activity is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with the generally recognized principles and norms of international law (Article 18).

The official definition of the term "national interests" is set out in the Law of Ukraine "On the Fundamentals of National Security of Ukraine". It states that national interests are "vital material, intellectual and spiritual values of the Ukrainian people as the bearer of sovereignty and the only source of power in Ukraine, the defining needs of society and the state, the realization of which guarantees the state sovereignty of Ukraine and its progressive development".

Accordingly, the national interest is the determining source of formation of the strategic goal, strategic tasks, object of directions and directions of the nation's development, methods and forms of their realization, which is oriented towards survival and progressive development, and, to some extent, leadership of an individual, society, and the state. It follows that national interests fulfill two important tasks: (1) ensuring a high international image of the state and using advantages in the geopolitical space for national prosperity; (2) improving the welfare of citizens (Kuzmenko, 2008, p. 84).

The national interest is associated with the strategic objective of Ukraine's foreign policy course in the context of globalization and European integration, aimed at increasing the viability and strengthening of a modern independent state while preserving national values, protecting economic and political sovereignty, and its own social and cultural identity. Taking into account these priority areas highlights the foundations of the concept of national interest, enables the state to pursue an active domestic and foreign policy.

Legal scholarship has very well expressed the opinion that the national idea can be realized only in the form of a national institution whose priorities are: (1) creation of civil society, improvement of the efficiency of state authorities and local self-government, development of democratic institutions to ensure human rights and freedoms; (2) achievement of national harmony, political and social stability, guaranteeing the rights of the Ukrainian nation and national minorities of Ukraine; (3) ensuring state sovereignty, theoretical integrity and inviolability of borders; (4) strengthening the gene pool of the Ukrainian nation, its physical and moral health and intellectual potential; (5) development of the Ukrainian nation, historical consciousness and national dignity, development of ethnic, cultural, linguistic and religious identity of citizens of all nationalities that make up the Ukrainian people; (6) establishing equal and mutually beneficial relations with all states, integration into the European and world community.



Thus, national interests are embodied in the national idea of Ukraine, setting the optimal direction of the country's development in political, economic, cultural and other spheres, both in the present and in the future.

5. Legal values as a component of the national idea

The trends in the development of the Ukrainian State at the current stage suggest that such a phenomenon of constitutional and legal reality as constitutional values should be given special relevance and practical significance, since the latter determine the systemic value orientation of the State, which determines effective lawmaking and law application, and, consequently, the effective functioning of the State as a legal.

The Constitution of Ukraine enshrines and guarantees general legal values, values that are of fundamental importance for society, the state, the people, and each individual, namely: a person, his or her life and health, honor and dignity, inviolability and security (Articles 3, 27, 49 of the Constitution of Ukraine); human dignity and freedom (Articles 21, 28 of the Constitution of Ukraine); the right to free development of the individual (Articles 23, 34, 35, 53 of the Constitution of Ukraine); legal equality (Articles 21, 24 of the Constitution of Ukraine); rule of law (Articles 1, 8 of the Constitution of Ukraine); democracy (Articles 1, 5 of the Constitution of Ukraine); sovereignty and territorial integrity of Ukraine (Articles 1, 2, 17 of the Constitution of Ukraine); republican form of government (Article 5 of the Constitution of Ukraine) and others.

Without going into a scientific debate, we note that (a) the Constitution of Ukraine uses the term "value" in relation to a person, his or her life and health, honor and dignity, inviolability and security (Article 3 of the Constitution of Ukraine); (b) the Constitution does not contain any indications of priority or hierarchy of constitutional values; (c) the list of constitutional values is not exhaustive and the development of social relations may contribute to its supplementation or change.

Thus, legal values should be recognized as priority guidelines in society that set the nature and dynamics of society, establish and consolidate the desired types of social relations and ethical ideals. The system of legal values is subject to change, due to the evolution of values, and different time modes are also linked through values.

Legal values exist for society and individuals in the form of "ready-made formulas" that guide social life, influencing the choice of behavior in the field of law.

In our opinion, the state's development strategy and priority areas of its positioning in the international arena should be formed on the basis of the values embedded in the national idea. According to O. Lutskiv (2011), the Ukrainian national idea is not only a program of action for tomorrow, assimilation and preservation of the achievements of the past, its historical and

traditional institutions, but also scientifically grounded, consolidated, innovative and integrative directions of contemporaries in the worldview, motivational and value and other spiritual, informational and spatial-temporal dimensions (Lutskiv, 2011, p. 209).

6. Conclusions

The national idea, which is based on national values and universal humanitarian principles, is the basis of the conceptual core of Ukraine's development strategy, the spiritual, moral, political and legal quintessence of the national and state consciousness of the entire Ukrainian people.

The Ukrainian national idea is realized through its state-building function, as it determines the relationship between the government and the people, legitimizing this power in society.

The Ukrainian national idea acquires the features of a specific program of political and legal activity with a clearly defined national vector of development, which provides for the realization of common national interests and protection of national and legal values.

The relationship between the Ukrainian national idea and its legal components can be conditionally defined as the "law of communicating vessels", when the national idea cannot be built without legal ideology, policy and doctrine, while these phenomena cannot make sense without defining the basic principles of the national idea of the state.

This approach makes it possible to distinguish between broad and narrow meanings of the concept of «national idea". In a broad interpretation, the national idea acquires the status of a basic national value that expresses the historical perspective of society's development and influences socio-political and other processes of the state's life. In a narrow interpretation, the national idea accumulates the main goals and principles of legal development of the state and indicates the strategic horizons of such development.

The subject of a separate scientific study is the formation of a modern national idea under the influence of legal and economic globalization, which, on the one hand, makes the borders between peoples and states transparent, introduces universal civilizational standards, and, on the other hand, promotes the convergence and integration of different social and ethnic communities, and increases the need to define one's cultural and civilizational identity.

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НАЦІОНАЛЬНА ІДЕЯ В УКРАЇНСЬКОМУ ПРАВОВОМУ ПРОСТОРІ

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Анотація

В основі дослідження лежить припущення про те, що на сучасному етапі розвитку держави і суспільства постає необхідність формування національної ідеї держави, яка виступає теоретичним виразом самоусвідомлення українським народом своєї самобутності та індивідуальності, та яка на основі спільних цінностей та інтересів може бути одним із важливих чинників консолідації українського суспільства, загальним вектором подальшого розвитку країни і орієнтиром її ролі та місця у світовому співтоваристві. Національна ідея є виразом не тільки психологічно-культурної моделі суспільства, а і проявом національної правової царини, що має складний та неоднозначний склад, який потребує детального наукового дослідження. Метою дослідження є виявлення передумов і складових формування національної ідеї на сучасному етапі розвитку українського суспільства і держави у правовій площині. Теоретичну основу дослідження становлять аналітичні розробки теорії держави і права, політології, конституційного права, соціології права у вивченні різноманітних аспектів національної ідеї в умовах глобалізації. Численні завдання й розмаїття досліджуваного матеріалу зумовили застосування різних методів дослідження формально-юридичного, системно-структурного, конкретно-соціологічного, логічного. У роботі використовувалися соціокультурний і цивілізаційний підходи до аналізу правової ідеології, правової політики, правової доктрини, а також аксіологічний, геополітичний, інституціональний підходи до національної ідеї держави. Зазначається, що формуючи національну ідею, закладаючи в її основу прогресивну національно-державну ідеологію, необхідно враховувати як культурну своєрідність України, так і правову складову суспільства, а також глобальні тенденції сучасного світу. У контексті державного будівництва національна ідея повинна бути інтеграційним світоглядним підґрунтям, на основі якого консолідується політична нація, створюється проект розвитку країни на майбутнє. Можна стверджувати, що сучасний державотворчий процес в Україні потребує модернізації уявлень про національну ідею, внесення певних корективів до її ціннісного наповнення. Для того щоб національна ідея стала дієвою основою розвитку правової держави, вона мусить співвідноситися з правовою ідеологією, правовою політикою та правовою доктриною, а також відповідати таким цінностям, як національний інтерес та національний менталітет. Реалізація національної ідеї повинна мати конкретний зміст та наповнюватися практичними кроками у розбудові Української держави.

Ключові слова: національна ідея, правова ідеологія, правова політика, правові цінності, національна ідентичність, національна ментальність, національний інтерес.

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DIGITAL SOVEREIGNTY: CONCEPTUAL CHALLENGES AND CONSTITUTIONAL IMPLICATIONS

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Summary

This article examines how national states and integrative unions such as the European Union employ the concept of digital sovereignty in their policy discourse. It begins with the premise that contemporary digital policy of these entities is intricately linked to the idea of digital sovereignty.

The study analyzes the factors that have led national states and the European Union to enter a new phase of modern constitutionalism - digital constitutionalism. Modern European constitutionalism has accumulated experience in various social spheres, as evidenced by developments such as economic constitutionalism. In the digital era, it raises and attempts to answer questions about how digital constitutionalism can overcome the limitations of traditional constitutional thinking, particularly its focus on state-legal and political phenomena. The article explores the extent to which the generalization of purely state constitutional principles can advance in the digital age.

The paper emphasizes that digital constitutionalism is a convenient concept for explaining the phenomenon of constitutional resistance to challenges created by digital technologies. It notes that existing foreign, and especially Ukrainian, legal scholarship has not yet formed a clear and unified vision of this concept.

This article provides a literature review on digital constitutionalism and offers an analysis of the theoretical frameworks surrounding the concept. It posits that digital constitutionalism is an ideology that adapts the values of modern constitutionalism to the demands of the digital age. Currently, digital constitutionalism does not provide normative answers to the challenges of digital technologies, but rather presents a set of principles and values that inform and guide them.

The article argues that Internet governance is evolving towards fragmentation, polarization, and hybridization, which contribute to the development of an architecture of freedom and power in the digital environment. The study aims to identify constitutionally significant threats associated with digitalization and allows for the development of constitutional counterstrategies.

Key words: digital sovereignty, technological sovereignty, technology, security.

1. Introduction

Digital data and technologies have acquired crucial significance in enhancing the competitiveness of modern states and integrative associations such as the European Union. Consequently, it is evident that the concept of digital sovereignty has gained considerable momentum in political and legal-political discourses over the past decade. Digital sovereignty is conceived as a strategic approach for the development of the state as a secure and sustainable entity, for achieving a leading position in the international political and economic system, and for reducing dependence on technologically advanced countries. Furthermore, digital sovereignty is considered a form of strategic autonomy from third countries - an interpretation that has gained particular prominence within the European Union.

The attention paid to digital sovereignty can also be attributed to its direct and indirect implications for national security. The considerable dependence of most states, including economically developed ones, on foreign technologies owned by companies from the USA and China is widely perceived as a potential threat to cybersecurity and national security in general. In this context, digital sovereignty can be interpreted

as an imperative for the restoration of technological independence, a desire to reassert control over cyberspace governance, and a demonstration of readiness to protect digital borders from external competition. It follows logically that governments are endeavoring to develop and control digital security infrastructures, which we categorize as sovereignty over the digital, as well as the utilization of digital technologies for European security governance, which we contrast as sovereignty through the digital. Both dynamics exert a significant impact on the practice of European security (Bellanova R., Carrapico H., & Duez D., 2022).

Beyond its political significance, the study of digital sovereignty involves discussing a new combination of the terms "digital technologies" and "sovereignty," the mixing of which may seem strange to orthodox sovereignty researchers. This renders the research interdisciplinary, important for political science, law, security, international relations, political sociology, and technology. The epistemic richness that arises from using different disciplinary and epistemic approaches enriches the study of digital sovereignty and provides a comprehensive, critical assessment of the phenomenon. It also allows for avoiding simplified unitary approaches to interpreting the content of the concept of "sovereignty."

The development of digital sovereignty issues is one of the priorities of modern interdisciplinary research. Researchers from China, Russia, and other states with authoritarian political regimes are undisputed leaders in developing this scientific direction. They use this concept to combat dissent and implement digital expansionism, as is the case, for example, with China, which promotes its geopolitical agenda in African countries through the "Digital Silk Road" project (C. Cheney, S. Kumar, P. Triolo, H. Shen).

The urge to strengthen digital sovereignty, self-determination, and strategic autonomy, independence from global players such as the USA and China, is the main goal of the digital policy of the European Union and its member states, as evidenced by scientific research by E. Celeste, R. Csernatoni, D. Fiott, L. Floridi, O. Gstrein, T. Madiega, J. Pohle, V. Reding, H. Roberts, and many other authors. Unfortunately, among Ukrainian researchers, only G. Chetverik, D. Dubov, Y. Sribna pay attention to this problem. Only V. Beschastnyi and M. Kostytskyi investigate digital constitutionalism as a new scientific concept, which marks, on the one hand, the transformation of traditional constitutionalism to new digital realities, and on the other hand, the constitutionalization of the regulation of relations on the Internet (Kostytskyi M. & Beschastnyi V. & Kushakova-Kostytska N., 2022).

The aim of this article is to elucidate the paradigmatic shift in constitutionalism by focusing on an expanded conception of sovereignty in the digital age.

2. Conceptual challenges in defining digital sovereignty

The increasing complexity of social life leads to an unusual level of confrontation and competition, which carry new challenges and risks for sovereignty. Thus, at the end of the 20th – beginning of the 21st centuries, phenomena such as economic, energy, technological, financial, food, and now digital sovereignty have emerged. In 1996, J.P. Barlow launched the Declaration on the Independence of Cyberspace proclaiming the absence of sovereignty in this domain (Barlow J.P., 1996). Since then, the debate on sovereignty in cyberspace has been ongoing in the political and academic world.

In the 21st century, digital sovereignty has become an integral component of political discussions on digital issues. However, there exists significant conceptual ambiguity, evidenced by the use of a wide array of correlative concepts. These include "cybersovereignty" (China), "cybernationalism"[1] (China, Russia, India, Iran),"strategic autonomy,""technological and digital sovereignty,""cloud sovereignty," and "data sovereignty" (European Union and Brazil). These terms are employed as abbreviations to denote the articulations between sovereignty and digital technologies, data, and infrastructure (Becerra M., Waisbord S.R., 2021). The introduction of these concepts into scientific discourse represents an iteration of debates that attempt to apply "the notion of sovereignty to the technological world" (Celeste E., 2021). These concepts are actively utilized in political formulations, institutional initiatives, public discourses, and expert analyses, ensuring their further replication in scientific research. It is worth concurring with R. Csernatoni that tracing their conceptual origins presents a significant challenge.

This proliferation of terminology raises pertinent questions: Is this conceptual explosion intentional, or is it a consequence of the tendency of political elites, particularly in the EU, towards adopting "trending" terms? What are the implications of this discursive and doctrinal activism, and how does this conceptual ambiguity serve policy objectives?

It is evident that it needs to be clarified whether the concepts of sovereignty and digital sovereignty are equivalent, complementary, autonomous, or different. State and sovereignty are inseparable concepts. Sovereignty has traditionally been characterized by such features as supremacy, independence, completeness and unity of state power, its independence and equality in relations with other states and international organizations. However, the processes of globalization, and especially European integration, have forced a redefinition of its content, at least in terms of its implementation (Bytyak Y., Yakovyuk I., et al, 2017; Yakoviyk I. V., Shestopal S., p., 2018).

The denial of sovereignty in the digital space has not abolished it. On the contrary, the idea of digital sovereignty has taken a leading place in political, institutional, and

[1] It should be noted that the concepts of cyber sovereignty and cyber nationalism, which are implemented, for example, in China, do not preclude the implementation of state policy of global expansion in cyberspace.

academic discourse. We support the conclusions of M. Robles-Carrillo, who, based on the results of this discourse, came to the following conclusions. Firstly, digital sovereignty is not simply an online version of traditional sovereignty. Secondly, digital sovereignty does not replace or displace this legal-political category. Thirdly, it is neither a consequence nor an extension of the sovereignty principle (Robles-Carrillo M., 2023).

Many researchers point to difficulties in defining the content of digital sovereignty, motivating this by the fact that it is a malleable concept lacking a clear definition (Celeste E., 2021), which is why it can be used to justify a multiplicity of policies. D. Lambach and K. Oppermann attempt to reveal the essence of digital sovereignty by highlighting separate narratives focused around certain values that digital sovereignty should provide and protect. These are the narratives of digital sovereignty in German political discourse: the economic prosperity narrative, the security narrative, the "European way of life" narrative, the narrative of the modern state, the data protection narrative, the consumer protection narrative and the democratic empowerment narrative (Lambach D. & Oppermann K., 2022).

3. Digital constitutionalism: a paradigm shift in constitutional theory

In the last twenty years, the policy of nation-states and the European Union in the field of digital technologies has shifted from a liberal economic perspective to a constitution-oriented approach. The formation of digital constitutionalism should be perceived in the context of overcoming the aging and updating of the basic law and the practice of constitutional (higher) courts of the state in accordance with the realities of the 21st century (Vibert F., 2018). The transition of national states and the European Union from a digital liberal approach to a constitutional-oriented strategy was usually carried out in three stages, namely: digital liberalism, judicial activism (the CJEU's judicial activism has played a crucial role in underlining the challenges of the information society, thus paving the way to digital constitutionalism) and digital constitutionalism (De Gregorio G., 2021).

Digital constitutionalism embodies the idea of projecting the values of modern constitutionalism in the context of digital society. It would be erroneous to contend that digital constitutionalism generates a constitutional revolution; rather, it indicates an evolution of modern constitutionalism occurring in accordance with the requirements of the digital age. Existing constitutional provisions are being modified to better correspond to the transformations of the digital era.

The process of constitutionalization of digital society is complicated by the fact that it occurs at multiple levels of governance: national[1], integrative (primarily the European Union[2] and the Council of Europe[3]) and international[4]. We fully endorse the thesis of E. Celeste, who posits that "The values of constitutionalism historically ripened in the context of the state. However, over the past few decades, in a society that has become increasingly more global, the

[1] For example, in the Constitutions of Greece (Part 2 of Article 5A) and Portugal (Article 35), the right to Internet access is defined as a constitutional human right. The Constitution of Mexico (Article 6) guarantees the right to access information technologies and undertakes to create the necessary conditions for this. The Constitutional Council of France proclaimed in 2009 access to the Internet as a fundamental human right in one of its decisions. The Supreme Court of Costa Rica in 2010 recognized Internet access as an inalienable human right.

[2] Since February 13, 2014, the European Parliament has been considering petition 0755/2013 on amending the Treaty on European Union to make Internet access an inalienable human right in all EU member states and oblige states to guarantee it. In 2021, the European Commission (EC) announced the start of Europe's 'Digital Decade' to 'strengthen its digital sovereignty and set standards, rather than following those of others – with a clear focus on data, technology, and infrastructure' (European Commission, 2021).

European Commission (2021) A Europe Fit for the Digital Age. Empowering People With a New Generation of Technologies (Brussels: European Commission).

The EU, which lags behind the US and China in terms of technologies and digital economy, it is asserting its own digital policy approach rooted in human rights against the global influence of the market-centered approach of the United States and China's state-led model.

The EU's actions in exercising its global reach with regard to the internet implicate important normative issues, such as distinguishing between the furtherance of core EU legal values and the advancement of the EU's political interests; promoting the principles of EU law as universal values; ensuring that EU legal values are upheld in practice; and determining the territorial boundaries of EU law. The influence exercised by the EU carries responsibilities towards third countries, particularly those in the developing world. The internet may itself also be influencing EU law (Kuner Ch., 2019).

[3] Resolution 1987 (2014) of the Parliamentary Assembly of the Council of Europe states: "2. The Internet has revolutionised the way people interact and exercise their freedom of expression and information as well as related fundamental rights. Internet access therefore facilitates the enjoyment of cultural, civil and political rights. Consequently, the Assembly emphasises the importance of access to the Internet in a democratic society in accordance with Article 10 of the European Convention on Human Rights. ... Public authorities have a duty to ensure the effective enjoyment of the right to freedom of expression online. The Assembly therefore recommends that the Council of Europe member States ensure the right to Internet access on the basis of the following principles" (The right to Internet access, 2014).

[4] In 2003, under the auspices of the United Nations, the World Summit on the Information Society was held, which resulted in the adoption of the Declaration of Principles, confirming the importance of the information society for supporting and strengthening human rights. In 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, La Rue, a representative of the UN Human Rights Council, presented a report: "Exploring key trends and challenges in the right of all individuals to seek, maintain and disseminate information and ideas of any kind through the Internet". The report contained 88 recommendations on protecting and safeguarding the rights to freedom of expression online, including on protected Internet access for all. Other recommendations called on governments to respect online anonymity, adopt laws on privacy and data protection, and decriminalize defamation. The UN Human Rights Council Resolution "On the promotion, protection and implementation of human rights on the Internet" of July 5, 2012, recognized the right to Internet access as one of the inalienable human rights. In 2016, the UN Human Rights Council adopted a resolution condemning the restriction of Internet access by state authorities.

centrality of the state has faded due to the emergence of other dominant actors in the transnational context. The scholarship has therefore started to transplant the constitutional conceptual machinery beyond the state, including the concept of constitutionalism. The myth of the compulsory link between constitutionalism and the state is debunked. Consequently, the constitutional ecosystem becomes plural, composite and fragmented. If the values of constitutionalism remain the same in their essence, their articulation in specific contexts, within and beyond the state, necessarily becomes 'polymorphic'" (Celeste E.). The sense of this Gordian knot of multilevel normative responses can be deciphered only if these emerging constitutional fragments are interpreted as complementary tesserae of a single mosaic (Celeste E.).

Many difficulties arise when trying to solve the constitutional problems of the digital age. First of all, it is necessary to confirm at the normative level the basic human rights (primarily freedom of expression, confidentiality and data protection; in addition, it should be borne in mind that the use of artificial intelligence by private tech companies and used by public authorities in automated decision-making in welfare programs or criminal justice is an example where the code and the accompanying infrastructure mediate individual rights (De Gregorio G., 2021) in the digital context, as well as balance new asymmetries of power, in particular limiting the possibility of powers appearing outside any control. The latter caveat is related to the fact that digital firms no longer limit themselves exclusively to the status of market participants, as they seek to acquire more state roles, replacing the logic of territorial sovereignty with functional sovereignty (Pasquale F., 2017). Through digital technologies, governments have gained even more control over the lives of their citizens. But on the other hand, the capabilities of large technological multinational companies have increased, which, managing digital goods and services, are able to conduct how a person uses his basic rights.

B.H. Bratton in his book "The Stack: On Software and Sovereignty" suggested that various types of computing - intelligent networks, cloud platforms, mobile applications, smart cities, the Internet of Things, automation - can be considered not as many types that develop on their own, but as those that form a single whole: a randomized megastructure called the Stack, which is simultaneously a computing apparatus and a new management architecture at different levels (Earth, Cloud, City, Address, Interface, User) (Bratton B.H., 2015). Thus, digital constitutionalism consists in formulating the boundaries of the exercise of power in a networked society (De Gregorio G., 2021).

The concept of digital sovereignty is now used to justify national and regional control over data collection and analysis, surveillance and manipulation, industrial policy and other issues. As researchers note, "there has been a 'regulatory turn' (Schlesinger, 2020) in internet governance, with national governments – as well as the European Union – proposing an array of laws, policies, regulations and co-regulatory codes to address issues that include monopoly power, content regulation, data and privacy, and the uses of AI. It has been estimated that over 100 new forms of legislation, regulation and policy reports had been developed across multiple jurisdictions by May 2021, all of which pointed in the direction of growing state direction of the internet and its leading players" (Flew T. & Su C., 2023).

4. The state's evolving role in the digital landscape

Debates about digital sovereignty testify to the preservation of the significance of the state in the conditions of globalization, which is confirmed by the formation at the national level of policies aimed at forming internal markets and using the Internet in accordance with nationalist, political and military considerations (Becerra M. & Waisbord S. R., 2021).

The collision between technology firms and states is characterized by significant asymmetry. On one hand, companies design, produce, sell, and support digital products, rendering states dependent on these entities in virtually all digital domains. Technology companies store vast volumes of data emanating from the public sector; moreover, state bodies, enterprises, and institutions increasingly rely on these companies, which can impose their conditions when negotiating partnerships or other contractual agreements (De Gregorio G., 2021). Conversely, states possess the authority to regulate digital spheres, representing a potent form of cybernetic control. This control is exercised through determining legality, establishing incentives and deterrents, setting taxation levels, formulating public procurement policies, and defining areas of responsibility.

The fact that legal regulation can potentially stifle innovation and disrupt entire industrial sectors underscores the power of the modern cybernetic state. In this asymmetric dialectic, L. Floridi observes that states occasionally utilize national companies for political purposes to confront other states. Concurrently, companies may attempt to circumvent their own state's legislation, while in certain instances relying on their home state for protection against opposing foreign states. In some cases, companies find themselves in conflict with their own states, as exemplified by the Twitter-Trump dispute. Moreover, companies may engage in inter-corporate conflicts by leveraging state capabilities.

For instance, while Microsoft lost to Google in the struggle for search business hegemony, it prevailed over Amazon, IBM, and Oracle in the realm of cloud computing by securing a contract with the US Department of Defense (Floridi L., 2020).

5. Security challenges in the digital era

At the stage of Internet formation in the 1990s, the paradigm promoted by the USA through the International Telecommunication Union prevailed, which consisted in the idea of allowing the freest possible movement of information to benefit everyone. It was argued that the protocols and architecture of the Internet make this network impenetrable to external regulation, and therefore state sovereignty will not apply when it comes to managing network digital technologies. Accordingly, it was believed that the Internet is prone to openness and is the basis for ensuring global information heritage, useful for people around the world. However, pressure from national security sectors (cyberspace is considered as the fifth domain where wars are waged (Steiner J. E., 2015)) and commerce to strengthen regulation and control of the Internet is gradually changing its basic material architecture in ways that can undermine not only the activities of global civil networks, but also the long-term prospects of an open global communication environment. As censorship and surveillance on the Internet become more widespread, and states begin to militarize cyberspace, a radically different environment for global communications emerges.

The revelations of E. J. Snowden, which exposed a complex system of mass and targeted surveillance conducted by American intelligence services and companies, coupled with the shift from Internet decentralization to concentration of control in the hands of predominantly American technology companies, elicited justifiable concerns within the global community.

If the concept of cybernationalism is primarily aimed at suppressing dissent and democratic human rights in the name of national security and satisfying geopolitical interests, the concepts of digital sovereignty do not carry such normative and political connotations. Even for a post-state, post-national political community such as the European Union, the notion of sovereignty is predicated on modern ideas about the right of citizens within a political-geographical territory to exercise autonomous control over information infrastructure and resources. Digital sovereignty synthesizes ideas of geopolitical autonomy, control of technological infrastructure, economic power, and preservation of democracy and human rights in such domains as data and information protection. This conclusion is corroborated by various reports and declarations illustrating this position (Global System Mobile Association, 2020).

It is worth noting that the tasks that specific states seek to solve using the concept of "digital sovereignty" are different and depend, as a rule, on the specifics of their political regime and geopolitical position. Such tasks can be reduced to the following non-exhaustive list: exercising control over internal dissent, for which the possibilities of filtering content entering the country are used by controlling international Internet gateways; imposing bans on technologies from certain states in order to reduce dependence on foreign technologies; development of infrastructure and formation of skills, support of the local technology industry and leading companies, ensuring their competitiveness; protection of a certain system of values; improving the ability of consumers and users to make choices in the digital environment; aligning the idea of digital sovereignty with the development of "green technologies" (Lehuedé S., 2024).

The increasing prevalence of the concept of 'digital sovereignty' in describing various forms of independence, control, and autonomy over digital infrastructures, technologies, and data is a logical progression in contemporary discourse. Although this issue is actively discussed in both democratic[1], and authoritarian states (authoritarian political regimes traditionally appeal to narratives about national security and external threats to justify restrictive information management systems)[2], the concept of digital sovereignty itself remains quite controversial. Thus, the globalization of the IT industry is considered by many researchers as a "democratization of knowledge," while other authors believe that digital "alphabetization", left in the hands of IT "giants" (concentration of the most used technologies in the hands of several companies - Google, Apple, Microsoft), leads to the use of their

[1] Given the significance of information and communication technologies for social and political life, many Indian tribes and indigenous organizations in the United States have created their own projects, from streaming radio to network building and telecommunications advocacy. Information and communication technologies play an important role for indigenous peoples, as well as for self-government, self-determination and decolonization (Duarte M. E., 2017; Kukutai T. & Taylor J., 2016).

[2] S. Budnitsky notes that global Internet governance is one of the areas where China, Russia and other authoritarian states assert their national brands. The governments of China and Russia jointly promote the brand narrative of "Internet sovereignty" not only to counter the technological and managerial hegemony of the United States, but mainly to combat online dissent. Given the power that private online intermediaries have in the political economy of the Internet, national digital media leaders - China's Baidu and Russia's Yandex - have become an integral part of their countries' Internet branding efforts (Budnitsky S. & Jia L., 2018).

hegemony, which they carefully block legally and technically, to store information and data about users in their own interests. Faced with such centralization, the development of free technologies that can guarantee technological and digital sovereignty to the population is a serious challenge for digital democracy (Haché A., 2014). It is no coincidence that the Court of Justice of the European Union concluded that the United States does not provide sufficient guarantees regarding the surveillance and security of personal data, and therefore invalidated the EU-US Data Protection Agreement, which regulates the transfer of data of European users to workers in the USA for commercial purposes (The Court of Justice invalidates Decision 2016/1250).

The concepts of cyber-, technological and information sovereignty have become some of the most influential alternative technological ideas. Developed by states and civil society groups, such concepts tempt a wide range of actors seeking to assert their autonomy and self-determination regarding digital technologies and infrastructure. S. Couture and S. Toupin note in this regard that the formulations may differ significantly, but the overall goal of digital sovereignty frameworks is to ensure that certain subjects can assert their autonomy and self-determination in the context of a data-based society (Couture S. & Toupin S., 2019). S. Lehuedé, in turn, emphasizes that such autonomy is usually based on the rejection of external hegemony, such as, for example, US control over the Internet of Things (IoT), telecommunications and artificial intelligence (AI) industries. In practice, sovereignty frameworks encompass various initiatives related to the design and management of digital infrastructure and data circulation: the development of the so-called Chinese firewall, which allows the state to selectively control information flows; building data infrastructure, as in the European Gaia-X project; and "digital literacy" programs in Latin America (Lehuedé S., 2024).

6. Conclusion

The concept of digital sovereignty encompasses a broad spectrum of issues, including sustainability, cybersecurity, and socioeconomic benefits, which necessitate address at the level of national or supranational digital policy. The inherent ambiguity in the conceptualization of digital sovereignty facilitates the formation of political coalitions within decision-making frameworks. Consequently, this concept plays a pivotal role in fostering consensus within states and integrative associations, while simultaneously signaling an intent to establish novel regulatory paradigms for digital markets and governance structures.

As both liberal and authoritarian regimes increasingly engage in the management of digital spaces across various governmental strata, the establishment of normative rules for Internet development becomes inextricably linked with constitutionalism. This nexus engenders new opportunities for the formulation of innovative research agendas. The primary challenges of digital constitutionalism arise from the multifaceted manifestations of power that intersect across several dimensions, including jurisdictional and ideological spheres. In the context of fragmentation, polarization, and hybridization of Internet governance, two principal constitutional functions emerge: (a) the protection and implementation of fundamental human rights and freedoms, and (b) the limitation of unaccountable power.

While authoritarian political regimes endeavor to expand their authority over the Internet and suppress dissent, democratic political systems direct their efforts towards expediting the transition to enhanced oversight of private technology companies, particularly concerning their adherence to personal human rights and freedoms.

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ЦИФРОВИЙ СУВЕРЕНІТЕТ: КОНЦЕПТУАЛЬНІ ВИКЛИКИ ТА КОНСТИТУЦІЙНІ НАСЛІДКИ

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Анотація

У цій статті розглядається, як національні держави та інтеграційні об'єднання, такі як Європейський Союз, використовують концепцію цифрового суверенітету у своєму політичному дискурсі. Вона починається з припущення, що сучасна цифрова політика цих утворень нерозривно пов'язана з ідеєю цифрового суверенітету.

У дослідженні проаналізовано чинники, які призвели до того, що національні держави та Європейський Союз вступили в нову фазу сучасного конституціоналізму – цифрового конституціоналізму. Сучасний європейський конституціоналізм накопичив досвід у різних соціальних сферах, про що свідчать такі явища, як економічний конституціоналізм. У цифрову епоху він ставить і намагається відповісти на питання про те, як цифровий конституціоналізм може подолати обмеження традиційного конституційного мислення, зокрема його зосередженість на державно-правових і політичних явищах. У статті досліджується, якою мірою узагальнення суто державних конституційних принципів може просунутися в цифрову епоху.

Підкреслюється, що цифровий конституціоналізм є зручною концепцією для пояснення феномену конституційної стійкості до викликів, створених цифровими технологіями. Зазначається, що в зарубіжній, а особливо в українській, юридичній науці ще не сформувалося чіткого та уніфікованого бачення цього поняття.

Ця стаття містить огляд літератури про цифровий конституціоналізм і пропонує аналіз теоретичних засад, що оточують цю концепцію. Вона стверджує, що цифровий конституціоналізм – це ідеологія, яка адаптує цінності сучасного конституціоналізму до вимог цифрової епохи. Наразі цифровий конституціоналізм не дає нормативних відповідей на виклики цифрових технологій, а скоріше представляє набір принципів і цінностей, які їх інформують і спрямовують.

У статті стверджується, що управління Інтернетом розвивається в напрямку фрагментації, поляризації та гібридизації, які сприяють розвитку архітектури свободи і влади в цифровому середовищі. Дослідження спрямоване на виявлення конституційно значущих загроз, пов'язаних з цифровізацією, і дозволяє розробити конституційні контрстратегії.

Ключові слова: цифровий суверенітет, технологічний суверенітет, технології, безпека.

SECTION 3

CONSTITUTIONAL AND LEGAL PRINCIPLES OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES AND LOCAL GOVERNMENT

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THE INSTITUTION OF POPULAR VETO: EXPERIENCE OF SELECTED FOREIGN COUNTRIES

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Summary

This article examines the legislation of foreign countries regarding mechanisms of direct democracy, particularly the institution of popular veto. A historical analysis of the development of this instrument in European law has been conducted.

The methodological basis of the publication consists of scientific methods based on the requirements of objective and comprehensive analysis of socio-political and legal phenomena, which include direct democracy in foreign countries. The research methodology is founded on general theoretical principles and approaches to determining the initial parameters of the formation and development of popular veto as a form of direct democracy. To achieve scientific objectivity in the results, the author used a full range of general scientific and special research methods widely applied in the modern science of constitutional law.

It has been established that although modern forms of direct democracy emerged relatively recently, the concept of popular veto has roots in ancient civilizations as a means of limiting the abuse of power. Initially, the right of veto was exercised not directly by citizens, but by authorized persons on behalf of the people, who could reject laws that contradicted fundamental norms.

It is argued that although popular veto was first enshrined in French constitutional law, Switzerland is considered its birthplace, where this institution received genuine development and was first implemented in practice in 1831. The evolution of popular veto is closely linked to the development of Swiss statehood; however, the immediate impetus for its implementation was granting citizens direct voting rights and the right to participate in referendums. Initially, popular veto was applied at the level of individual cantons, and in 1874 it was enshrined in the Swiss Constitution at the national level. According to the constitutional procedure, a specified number of voters can officially express disagreement with an adopted law within a set period, after which it must be submitted to a nationwide referendum for approval or repeal.

Key words: mechanisms of direct democracy, referendum, popular veto, Swiss Confederation, constitution, constitutionalism.

1. Introduction

The term "people's power" has become one of the key concepts during recent election campaigns. The introduction of popular veto as a mechanism of people's power was one of the first points in the election programs of some political parties. At the same time, as the analysis of several scientific sources shows, in the modern world, popular veto is not very common among world democracies. In a relatively small number of countries, rejective referendums are possible, and in most cases, only heads of state have the ability to veto legislative acts. Even fewer are the number of European countries whose Constitutions directly state the principles of conducting abrogative referendums - these are Austria, Denmark, Italy, Latvia, and finally, Switzerland. Moreover, it is known from scientific literature that the institution of popular veto has a long history (although some researchers point out that the very emergence of new forms of direct democracy began only in recent centuries, which is associated with the development of democracy, the complication of socio-political relations and, as a result, the expansion of political rights and freedoms of citizens) (Mykhailov, 2017, p. 129-130).

At the same time, today in Switzerland, there is a successful practice where people are the subject of legislative initiative. Europe is also taking its first steps. Draft laws have already been developed that should expand the forms of direct democracy: mechanisms of national and local referendums, popular veto, and recall of deputies have been established. Therefore, it is extremely important, in our opinion, to consider the historical experience of applying the institution of popular veto in the Swiss Confederation.

2. Analysis of scientific publications

Issues of forms of direct democracy in general, as well as popular veto in particular, were considered in the works of Avramenko S., Byelov D., Dunant L., Zharovska I., Kocherga A., Onishchuk M., Komarova V., Kotlyarevsky S., Prieshkin O., Pogorilko V., Staniychuk M., Stora A., Mamychev V., Solomonov S., Samorodova-Bogatskaya L., Fedorenko V. and a number of others.

3. The methodological basis of the publication consisted of scientific methods based on the requirements of objective and comprehensive analysis of socio-political and legal phenomena, which include direct democracy in foreign countries. The research methodology is based on general theoretical principles and approaches to determining the initial parameters of the formation and development of such a form of direct democracy as popular veto. To achieve scientific objectivity of the results, the author used the entire complex of general scientific and special research methods that are widely used in the modern science of constitutional law.

4. Presentation of the main material

Switzerland is usually considered the "oldest democracy in the world". Since the mid-19th century, the institution of popular veto began to be actively used in Swiss cantons, based on the introduction of direct suffrage and citizens' right to participate in referendums. Despite the fact that at that time suffrage was applied in Switzerland in an extremely limited form, even then people had the legal opportunity to refuse consent to a law passed by the legislative body through voting (Maduz, 2010).

The history of the development of people's power in the exercise of public authority in Switzerland, including such institutions as the popular veto, is directly related to the development of Swiss statehood. In this regard, scientific literature offers views that conditionally divide this development into three stages.

The first stage: "Old Confederation" ("Confederation de l'Ancien Regime"), which existed from the foundation of the "Swiss Oath Alliance" through the signing of a treaty between urban and rural communities in 1291 ("Rütli Oath"). In the "old confederation", there were known institutions that guaranteed residents' participation in political life, such as popular assemblies (Landsgemeinde) in mountain cantons, referendums in the canton of Grisons, or the guild system of self-government in some urban cantons (Garrone, 1996, p. 252), which had no analogies in the world. However, given the limitations on the circle of aforementioned citizens, this system can be classified as more aristocratic than democratic (Aubert, 2012, p. 7).

In this regard, A. Dunant's view on the functioning of the institution of popular assemblies during the inception of Swiss statehood is interesting, as it essentially became the precursor to the institution of popular veto itself. The author notes that "the citizens of Schwyz have gathered for joint meetings since ancient times to resolve their local affairs; the political situation here was different from Uri, as the population of Schwyz was directly dependent on the powerful individuals of neighboring lands; its relations with the empire were inconsistent. Unterwalden was in the same position, with the difference that it was still divided between abbeys and castles. As a result, the number of peasants who owned land was limited. Everywhere there was fear that the powerful would no longer be satisfied with their feudal rights and would attempt to encroach on the privileges of the settlers. The people guarded the ancient traditions of independence with jealous care and energetically opposed any outside interference, any attempt at arbitrary interpretation of ancient customs" (Dyunan, 1896, p. 15).

Throughout the Middle Ages, Avramenko S. notes, the legislative power of these assemblies remained unchanged; their main task was, first of all, to observe public interests. However, only the rural population was subordinate to their authority, and the rights of

the nobility were gradually reduced. Accordingly, only peasants who owned land plots had the right to vote in popular assemblies. Land law, meanwhile, limited the possibility of acquiring land plots by persons who were not members of the community, so a significant layer of landless peasants emerged who were not involved in community management. Thus, as we can see, the institution of popular assemblies, although formally an "institution of direct democracy", had a pronounced aristocratic character in the Middle Ages, as a significant part of the population did not have the right to participate in its work (Avramenko, 2002, p. 26).

According to Dunant A., the institution of popular assemblies also existed in Geneva, but until almost the middle of the 15th century, the power to manage city affairs was actually carried out by the "Council of 50", which consisted of representatives of the most noble families of the city (Dyunan, 1896, p. 55).

Starting from the 16th century, the interests of the nobility and craftsmen converged, thus forming a new political elite that had absolute dominion over public life in the cities. As a result of craft guild representatives joining the communal councils of some cities, their influence in the urban community increased. Consequently, the composition of communal councils was expanded, and they acquired the status of representative bodies of "Great Councils". Accordingly, the political majority in these bodies no longer belonged to representatives of old aristocratic families, but to representatives of the new bourgeoisie (Micotti S., Butzer M., 2003, p. 19).

The *second stage* of the establishment of people's power in the Swiss Confederation is associated with the conquest of its territory by revolutionary France and the consequences of this conquest. In December 1797, France captured Basel and its lands. The Basel Great Council hastily proclaimed freedom and equality in the spirit of the French Revolution. Peter Ochs, a decisive supporter of democratic renewal and head of the guild of crafts, declared: "We want to prevent the storm. Let's show the whole world how the aristocracy itself takes the path of democratization" (Fahmi, 1982, p. 51).

According to A. Kölz, "the French managed to overthrow the almighty nobility and abolish the privileges of the ruling families. This opened the way to a new concept of legal freedom based on individual freedom and political equality" (Kolz, 1992, p. 506).

The ideas of the French Revolution were quite thoroughly studied by Swiss philosophers, political scientists, and lawyers. There was an export of French democratic ideas to Switzerland. However, the ideas of "plebiscitary democracy" were not implemented in France at that time, as this country has quite strong traditions of representative democracy, which, in turn, were borrowed and embodied in Swiss constitutionalism, and subsequently sublimated from France through Switzerland to all of Europe. The 18th century and the influence of the French Revolution, in addition to obvious occupational troubles, brought certain achievements to Switzerland in the development of direct democracy institutions. In particular, Swiss constitutional and legal thought borrowed from French Enlightenment ideas the concept of natural rights, which in the context of direct democracy was reflected as the natural, inalienable right to vote of any citizen, which cannot be limited for utilitarian purposes (Tecklenburg, 1911, p. 146).

The third stage is associated with the adoption of the Constitution of the Swiss Confederation in 1848, which marked the beginning of a new phase in the establishment of a democratic state (political) regime in this country, as well as in the implementation of the principle of people's power. It should be noted that on the eve of the establishment of the federal state in 1848, neither universal suffrage nor direct democracy instruments were yet widespread (Aubert, 2000, p. 130).

Initially, in 1891, there was a reform of the constitutional initiative institution, which established the introduction of distinctions between general and partial revision of the Constitution. Then, in 1921, a referendum on international treaties was held. In 1949, a referendum was held on the abolition of urgent federal decrees. These two reforms ultimately stemmed from the adoption of popular legislative initiatives. The conditions for the referendum on international treaties were clarified in 1977. In the same year, the people and cantons approved an increase in the number of signatures required for a referendum and for a popular legislative initiative to 50,000 and 100,000 respectively. In 1987, a requirement for double approval - by the people and cantons - was introduced in case of an initiative and a "counter-project" being put to a referendum. Thus, as Kocherga A. notes, in the development of direct democracy, a period of rapid development until 1949 was followed by a period of gradual development of legislation and bringing it in line with the general principles of constitutional law (Kocherga, 2008, p. 21).

The principle of people's power and direct expression of the people's will in the Swiss Confederation subjects the adoption of the most important (Constitution) and important (Law) decisions of the parliament to control by voters through a referendum and gives the electorate, in addition, the right to put their own proposals to a vote through popular initiative. People's rights developed at the cantonal level even before the formation of the Swiss Confederation, and it was there that they gradually formed by the 19th century.

In contrast to plebiscites used in parliamentary democracy in addition to parliamentary rule to legitimize current government policy, direct expression of the people's will in the Swiss Confederation emerged as a form of opposition of "direct people's rule" to the representative system, as a way to limit parliamentary

power and control the most important state decisions. It was from this that a form of government grew in which 3 main institutions cooperate - the government, parliament, and the electorate (people): the people – through the highest democratic method of lawmaking – genuine expression of will – make the most important final decisions, parliament – important ones, and the government – less significant decisions. This idea of dividing the competence of state institutions according to the criterion of material importance is at least on the same level as the principle of distributing legal norms between sources of law – constitution, law, and regulation (Muller, 1979, p. 21).

Since the adoption of the Constitution in 1848, referendums have been held at the national level in this country about 3-4 times a year, and at the moment their total number exceeds over half a thousand (Premat, 2010, p. 137).

Despite the fact that the principle of people's power in its modern format was not initially inscribed in the foundations of the Swiss federal state, it has undoubtedly long become its iconic characteristic. It can be said that it has become a self-sufficient factor for the Swiss citizen and a constituent element of Swiss statehood itself (Ehrenzeller, 1999, p. 65–91).

The iconic, or, if you will, ideological (central) place that the principle of people's power and direct expression of the people's will occupy among the foundations of the Constitution does not mean that its application would minimize voter activity. The number of popular legislative initiatives put forward over thirty years continues to increase. As for the optional referendum, after a rather calm period that followed the integration of all major parties into the Federal Council in 1958, it began to be used quite actively again from 1970 (Auer, Malinverni, Hottelier, 2008, p. 768).

Swiss constitutionalists note that direct expression of the people's will is the citizen's opportunity to express themselves through voting on a specific issue, in a way other than electing deputies or officials, and this opportunity cannot depend on the "goodwill" of representative bodies (Trechsel, 2000, p. 579). A referendum is mandatory if the vote takes place without a request from a group of citizens; it is optional if one vote is cast only in response to a request from a certain number of voters. The Federal Constitution enshrines both the institution of initiative and referendum, although it does not enshrine them symmetrically. These institutions of direct democracy are usually united by the concept of "people's rights" (Message on the New Federal Constitution, 1996, p. 444).

Investigating the problems of direct expression of the people's will as the basis of the constitutional order in the Swiss Confederation, A. Kocherga notes that the nature of the right to a referendum changes depending on the subject matter (it can be the Constitution, law, international treaty). Its nature differs mainly in that the right to a referendum is absolute when the referendum affirms texts that cannot come into force without the will of the people; it is relative when the referendum is held at the request of a certain number of citizens. In the first case, we speak of a mandatory referendum, in the second - of an optional referendum. The use of the right to a referendum always leads to a nationwide vote. A mandatory referendum exists in two different forms: either ordinary, which suspends the action of acts that are the subject of the referendum, or abrogative - for laws that do not directly follow from the content of the Constitution, and urgent laws (Kocherga, 2008, p. 21-22).

In the 19th century, Switzerland once again proved to the world the uniqueness of its national experience of local democracy: in 1831 in the canton of St. Gallen, the people's veto (veto) was introduced, in 1845 in the canton of Vaud, people's legislative initiatives began to be used, and from the end of the 19th century in the cantons of Schaffhausen, Lucerne, Solothurn, Aargau and Thurgau, the use of popular recall (abberufungsrecht) of representative bodies of these cantons is allowed. Along with mandatory referendums, optional referendums have become widespread (Onishchuk, 2010, p. 98).

S. Kotlyarevsky, considering the concept of the referendum institution from the point of view of its historical roots in a political-morphological review, emphasized the transition from the cantonal form of referendum to the federal one: "The very word 'referendum' was familiar to the Swiss from their political past: this was the name for decisions that in some cantons – Graubünden, Valais - were made at meetings of representatives and then passed ad referendum to parts of the cantons, which were the main political units; the final acceptance or rejection of the decision depended on them. The same order was observed in the union, which was only a congress of independent cantons; the analogy with the new referendum here was that in both cases the representation did not have final, decisive power" (Kotlyarevskij, 1907 p. 34-35). At the same time, he highlighted the following important moment in the evolution of world gatherings, which indicates an expansion of people's legislative rights: "On the contrary, there is a tendency towards more categorical, so to speak, immediacy - the people's veto". That is, after the optional referendum, then appears the mandatory referendum and people's initiative. Therefore, the center of influence shifts from representatives to voters" (Kotlyarevskij, 1907, p. 251).

It should also be noted that support for the institution of the people's veto was not unanimous throughout Switzerland. Communities located predominantly in the German part of Switzerland still prefer the People's Assembly (Assemblée Populaire) to parliament. This fact is historically explained. A. Story explains this by the fact that in the French part, the consciousness of self-governing community was less ingrained compared to the

German part, where each generation was brought up in this elementary "school of freedom" (Stori, 1914, p. 54).

As a result of France's occupation of all of Switzerland and by decision of the French Directory, the country was transformed into a unitary Swiss republic. On April 12, 1798, representatives of the Union of 13 Swiss cantons adopted a Constitution created in the likeness of the French Basic Law of 1795. It limited a number of rights, including citizens' rights to popular legislation (Mamichev, 2000, p. 39).

The Constitution of 1801, approved by Bonaparte, showed a tendency towards centralization. The central government bodies were the Sejm and the Senate, and the cantons were given limited self-government. On October 24, 1801, after another round of negotiations between representatives of unitarists and federalists, the Swiss Sejm developed and adopted a new constitution. The draft of the new constitution, developed by the federalists, was approved and came into force on February 27, 1802. However, the legislator rejected direct public participation in governance, establishing instead the principle of representation, which directly contradicted the historical traditions of Swiss cantons (Solomonova, 2007, p. 45).

It should be noted that "the unitary state structure did not take root among the Swiss accustomed to self-government, and by the end of February-early March 1803, the French authorities were forced to return Switzerland to a decentralized system of governance (Oechsli, 1903, p. 444-445). In the same year, with Napoleon's participation, a new Constitution was developed, which went down in history under the name of the Act of Mediation. "It again established the confederation - a union of 19 separate cantons. All cantons retained their status as independent republics, constitutionally formalized their structure and democratic political regime. In internal affairs, the cantons retained traditional self-government" (Solomonova, 2007, p. 48-49)..

According to J. Bluntschli, from 1815 to 1848, the history of Switzerland is divided into two periods, with the boundary between them connected to 1830. The first 15 years are usually called the period of restoration, and the years following up to 1848 – the period of regeneration. If the first period was characterized by a decline in political forces and relative calm, the second was characterized by the emergence and development of new views and ideas caused by a series of disturbances and revolutions [26, p. 495-496].

V. Mamychev highlights 1829 as the beginning of the period of revival of people's rights in large cantons. In 1831, the canton of St. Gallen introduced the people's veto. Following St. Gallen, Basel-Land, Valais, and Lucerne introduced the people's veto. In 1845, the canton of Vaud, in addition to the people's veto, also introduced an optional referendum and popular initiative (Mamichev, 2000, p. 39).

Direct democracy institutions were further developed in 1891 with the introduction of a popular initiative for partial revision of the Constitution. The peculiarity of this innovation was the novelty of the form in which the initiative itself was essentially formulated (Favez, 1996, p. 323). The latter, according to L. Samorodova-Bogatskaya, could now be expressed in the form of either a thesis containing only a general requirement to change the Constitution in principle by voting "for" or "against" its revision, or a specific draft act amending the Constitution (Samorodova-Bogackaya, 2014, p.145).

However, it should also be noted that the statistics of the results of people's vetoes in Switzerland show that "From 1848, when the Swiss Constitution legalized the institution of referendum and popular initiative at the federation, canton and commune levels, to 1971, in 157 cases of referendums, 63% were initiated by Parliament and 13% by voters". The general characteristic of Swiss referendums comes down to stating the conservatism of this institution during this period. "The referendum is conservative in nature. Most Swiss referendums end with support for the status quo and rejection of proposed reforms" (Mamichev, 2000, p. 39). It should be noted that in a referendum in 1972, Swiss citizens rejected a bill on the sale of weapons abroad (Pohorilko, 2006, p. 349).

Other examples of the use of the people's veto in Switzerland include the 2013 referendum on abolishing compulsory military service, which became one of the most controversial in Swiss society. During this referendum, the Swiss population voted against abolishing universal conscription for military service. That is, 73% voted "for" its preservation. Recall that supporters of mandatory military conscription believe that all young people should serve in the army, while opponents complain about the high cost of maintaining it. It should be noted that the issue of mandatory military service has been raised in referendums in Switzerland more than once. Supporters of mandatory military conscription believe that all young people should serve in the army, while opponents complain about the high cost of maintaining it (Shveitsartsi vystupyly proty skasuvannia viiskovoho pryzovu).

5. Conclusions

Despite the fact that the emergence of new forms of direct democracy began only in recent centuries, the formation of the institution of the people's veto originates from ancient civilizations as a means of limiting the arbitrariness of government representatives. Initially, the people's veto was not applied directly by the people themselves, but by a special person or group of persons authorized in the interests of the people, who opposed laws that, in their opinion, violated the prescriptions of founding laws, which at that time had the prototype of a modern constitution.

Despite the fact that the people's veto was first enshrined in French constitutional provisions, Switzerland is considered the birthplace of this institution, as it was in this country that the people's veto received genuine development and was first implemented in practice in 1831. The development of the people's veto is directly related to the development of Swiss statehood. However, the immediate prerequisite for the practical implementation of this institution in Switzerland was the granting of direct suffrage and citizens' right to participate in referendums. However, it should be noted that initially, the people's veto was implemented at the regional (municipal) level in several cantons, and much later in 1874 at the national level after the implementation of this institution in the Swiss Constitution. According to the constitutional procedure, within a certain period, a specified number of voters have the right to officially declare their disagreement with an adopted law, after which it is mandatorily put to a referendum, where, depending on the results, such a law is either repealed or remains in force.

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ІНСТИТУТ НАРОДНОГО ВЕТО: ДОСВІД ОКРЕМИХ ЗАРУБІЖНИХ КРАЇН

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Анотація

Стаття досліджує законодавство зарубіжних країн щодо механізмів прямої демократії, зокрема інституту народного вето. Здійснено історичний аналіз розвитку цього інструменту в європейському праві.

Методологічну основу публікації склали наукові методи, що базуються на вимогах об'єктивного і всебічного аналізу суспільних явищ політико-правового характеру, до яких належить безпосередня демократія в зарубіжних країнах. В основу методології дослідження покладені загальнотеоретичні принципи й підходи з визначення вихідних параметрів становлення й розвитку такої форми безпосередньої демократії, як народне вето. Для досягнення наукової об'єктивності результатів автор використав увесь комплекс загальнонаукових і спеціальних методів дослідження, які знаходять широке застосування в сучасній науці конституційного права.

Встановлено, що хоча сучасні форми прямої демократії з'явилися відносно недавно, концепція народного вето сягає корінням давніх цивілізацій як спосіб обмеження владного свавілля. Спочатку право вето здійснювалося не безпосередньо громадянами, а уповноваженими особами від імені народу, які могли відхиляти закони, що суперечили основоположним нормам.

Аргументовано, що хоча народне вето вперше було закріплено у французькому конституційному праві, його батьківщиною вважається Швейцарія, де цей інститут отримав справжній розвиток і вперше був реалізований на практиці в 1831 році. Еволюція народного вето тісно пов'язана з розвитком швейцарської державності, однак безпосереднім поштовхом до його впровадження стало надання громадянам прямого виборчого права та права на участь у референдумах. Спочатку народне вето застосовувалося на рівні окремих кантонів, а в 1874 році було закріплено в Конституції Швейцарії на загальнодержавному рівні. Згідно з конституційною процедурою, визначена кількість виборців у встановлений термін може офіційно висловити незгоду з прийнятим законом, після чого він обов'язково виноситься на всенародний референдум для схвалення або скасування.

Ключові слова: механізми прямої демократії, референдум, народне вето, Швейцарська Конфедерація, конституція, конституціоналізм.

NOTES

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