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Contents

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STATE AND LEGAL POLICY OF UKRAINE IN THE FIELD OF PROTECTION OF CHILDREN DURING MARTIAL LAW

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Abstract. The article analyzes the state and legal policy of Ukraine in the sphere of child protection during the period of martial law. A review of normative legal acts of Ukraine in the field of child protection, which reflect the state-legal policy, in particular: the Law of Ukraine On Childhood Protection", the Concept of the State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2021, State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2021, etc. On the basis of the analysis of normative legal acts of Ukraine, conclusions are made about the state of the state-legal policy in the field of child protection.

Key words: state and legal policy, child protection, state and legal policy in the field of child protection.

Introduction. Children are the future of every state.

During the war, children especially need attention and care. Due to the fact that children do not know about such a phenomenon as war, it is very difficult for them to experience those emotions. Even if a child is not a direct participant in a military conflict, he experiences significant stress, because his immediate environment is worried, because some irreversible events occur that are difficult for him to perceive and realize.

According to the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974), children are identified as the most vulnerable part of the population. The state must ensure the best possible conditions for the protection of children, especially during martial law; is obliged to take all necessary measures to promote the physical and psychological recovery and social integration of the child who is a victim of armed conflict. Such restoration and reintegration must take place in conditions that ensure the health, self-respect and dignity of the child.

Main part. The course of action chosen by the state authorities to solve a certain problem or set of interrelated problems is defined as state-legal policy.

The state-legal policy of Ukraine and the mechanisms of the state, through which relations in the field of protection of children are regulated, are reflected in regulatory legal acts. The legal basis of legislation in the field of childhood protection is primarily the Convention on the Rights of the Child (Convention on the Rights of the Child, 1989), since it enshrines all the rights that belong to children.

The main national normative legal act in the field of protection of children's rights is the Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001), which determined that the protection of childhood in Ukraine is a strategic national priority that is important for ensuring Ukraine's national security.

The Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001) defines that «protection of childhood» is a system of state and public measures aimed at ensuring a full life, comprehensive upbringing and development of a child and protection of his/her rights.

Also, the Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001 : art. 5) stipulates that the basic principles of childhood protection and state policy in this area are determined by the Verkhovna Rada of Ukraine by approving relevant national programs.

However, as of today, at the level of our state there is no national program for the protection of childhood, approved by the Verkhovna Rada of Ukraine.

The Law of Ukraine «On Childhood Protection» (Law of Ukraine «On Childhood Protection», 2001 : art. 5) stipulates that the implementation of state policy on childhood protection, development and implementation of targeted national programs of social protection and improvement of the situation of children, support for families with children, coordination of activities of central and local executive authorities in this area is provided by the Cabinet of Ministers of Ukraine.

Since 2009, the relevant program documents have been constantly implemented: the National Program «National Action Plan for the Implementation of the Convention on the Rights of the Child» for the period up to 2016 (National Action Plan for the Implementation of the UN Convention on the Rights of the Child, 2009), as well as the State Social Program «National Action Plan for the Implementation of the UN Convention on the Rights of the Child» for the period up to 2021, adopted in 2017 (National Action Plan for the Implementation of the UN Convention on the Rights of the Child, 2017).

These regulations ensured the continued implementation into national legislation of the provisions of the UN Convention on the Rights of the Child (Convention on the Rights of the Child, 1989), as well as international standards and priorities of the Council of Europe Strategy for the Rights of the Child (Council of Europe Strategy for the Rights of the Child (2016–2021), 2022).

Currently, at the regulatory level, there is a single effective Concept of the State Social Program «National Action Plan for the Implementation of the UN Convention on the Rights of the Child» for the period up to 2021, approved by the order of the Cabinet of Ministers of Ukraine of April 5, 2017 (Kontseptsiia Derzhavnoi sotsialnoi prohramy «Natsionalnyi plan dii…», 2017). To implement it, the Cabinet of Ministers of Ukraine approved the State Social Program National Action Plan for the Implementation of the UN Convention on the Rights of the Child for the period up to 2021 (Pro zatverdzhennia Derzhavnoi sotsialnoi prohramy…, 2018). At the level of the Government of Ukraine, programs for the protection and improvement of the situation of children have not yet been approved, taking into account the introduced and current martial law.

In our opinion, it is necessary to continue the existing practice of approving the Concept of the State Social Program «National Action Plan for the Implementation of the Convention on the Rights of the Child», which reflects the basic needs of children, taking into account the circumstances of martial law and mechanisms for ensuring them during martial law. Also, the adoption of such a normative legal act is necessary for further implementation of the norms of the UN Convention on the Rights of the Child (Convention on the Rights of the Child, 1989 : art. 38, 39) and the Law of Ukraine «On the Protection of Childhood» (Law of Ukraine «On Childhood Protection», 2001 : art. 5).

In addition, it should be noted that today in the system of central executive bodies of Ukraine there is no body that dealt exclusively with the protection of children.

The Law of Ukraine «On Bodies and Services for Children and Special Institutions for Children» (Law of Ukraine «On Bodies and Services for Children and Special Institutions for Children», 1995 : art. 1) defines the system of bodies entrusted with the implementation of social protection of children and the prevention of offenses among them:

the central executive body that ensures the formation of state policy in the field of family and children, the central executive body that implements the state policy in the field of family and children, the executive body of the Autonomous Republic of Crimea in the field of family and children, the relevant structural subdivisions of regional, Kyiv and Sevastopol city, district state administrations, executive bodies of city and district councils in cities;

authorized units of the National Police;

receivers-distributors for children of the National Police;

schools of social rehabilitation and vocational schools of social rehabilitation of educational bodies;

centers for medical and social rehabilitation of children of health care institutions;

special educational institutions of the State Criminal-Executive Service of Ukraine;

orphanage for children;

centers for social and psychological rehabilitation of children;

social rehabilitation centers (children's villages).

The central executive body that ensures the formation and implementation of state policy in the field of family and children today is the Ministry of Social Policy of Ukraine. According to the Regulations on it (Pro zatverdzhennia Polozhennia pro Ministerstvo sotsialnoi polityky Ukrainy, 2015), this ministry is the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy on family and children, rehabilitation and recreation of children, adoption and protection of children's rights.

At the same time, this is not the only function assigned to the Ministry of Social Policy. The scope of activity of the Ministry of Social Policy is quite wide. In 2020, the Cabinet of Ministers of Ukraine approved the Concept for the implementation of state policy on social protection of the population and protection of children's rights (Kontseptsiia realizatsii derzhavnoi polityky shchodo sotsialnoho zakhystu naselennia ta zakhystu prav ditei, 2020).

This Concept states the fact that the Ministry of Social Policy continues to perform a significant number of functions for the implementation of state policy on a wide range of issues. At the same time, the system of administration of social programs is complex, control over the protection of children's rights is not fully ensured, and the mechanism for exercising such control needs to be improved. Despite this, at the basic level, there remains insufficient resource capacity and human resources for local self-government bodies to exercise their own and delegated powers in the field of social protection and ensuring children's rights in accordance with the needs of residents of the territorial community.

In the above-mentioned Concept, the proposal of the Government of Ukraine was to establish a state executive body, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Social Policy and which implements the state policy in the field of social protection of the population and protection of children's rights, state control over compliance with the requirements of the legislation when providing social support and observance of children's rights is ensured by transforming the State Social Service into the National Social Service of Ukraine (National Social Service).

The National Social Service, the provision of which was approved by the Resolution of the Cabinet of Ministers of Ukraine dated August 26, 2020 No. 783 (Deiaki pytannia Natsionalnoi sotsialnoi servisnoi sluzhby Ukrainy, 2020), is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Social Policy and which implements state policy in the field of social protection of the population, protection of children's rights, state control over compliance with the requirements of the legislation when providing social support and observance of children's rights.

The main tasks of the National Social Service are the implementation of state policy in the field of health improvement and recreation of children, adoption and protection of children's rights; implementation of state policy in the field of state control over the observance of children's rights.

Based on the Regulations on the National Social Service, it can be concluded that this state body is entrusted with a range of analytical issues, which by no means ensures maximum satisfaction of the needs and interests of children.

On January 19, 2022, the Resolution of the Cabinet of Ministers of Ukraine decided to establish the State Service of Ukraine for Children as a central executive body with a special status, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy in the field of adoption and protection of children's rights (Pro utvorennia Derzhavnoi sluzhby Ukrainy u spravakh ditei, 2022).

However, this resolution has not yet entered into force.

The resolution itself stipulates that it enters into force simultaneously with the law defining the special status, special tasks and powers of the State Service for Children, and the law amending the Law of Ukraine «On the State Budget of Ukraine for 2022» regarding the financing of this Service.

Such a bill was under consideration by the Parliament – «On Amendments to Certain Legislative Acts of Ukraine on the Delimitation of the Functions of State Authorities and Local Self-Government Bodies on the Protection of Children's Rights in Connection with the Establishment of the State Service of Ukraine for Children» (Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy…, 2022).

The draft law provided for the separation of powers of central and local authorities, local self-government bodies and territorial communities in the field of childhood protection and protection of children's rights in connection with the establishment of the State Service of Ukraine for Children.

The bill also introduced a much broader system of bodies and services for children. The draft law stipulates that the Cabinet of Ministers of Ukraine, in accordance with its powers, provides general regulation of activities in the field of protection of children's rights. The central executive body that ensures the formation and implementation of state policy in the field of adoption and protection of children's rights is the State Service of Ukraine for Children.

According to the aforementioned draft law, the State Service of Ukraine for Children is a central executive body with a special status, which is entrusted with exercising powers to prevent, detect, suppress cases of violation of children's rights, powers of the competent adoption authority, coordinate the activities of central executive bodies and local self-government bodies, children's services, other bodies for children on adoption and protection of children's rights, implementation of the Convention on the Rights of the Child.

According to the information contained in the bill card, the draft was submitted to the President of Ukraine for signature on 31.08.2022.

Conclusions. Firstly, at present in our country there is no normative legal act that would define a national program on the basic principles of protecting children's rights. Consequently, the priority directions of child protection during martial law and the mechanisms for their implementation have not been determined.

Secondly, the authority to protect children is assigned to several executive bodies (Ministry of Social Policy, National Social Service, etc.). At the same time, in addition to protecting children, the above-mentioned bodies exercise a wide range of other powers.

This leads to a lack of targeted approach to addressing issues related to child protection. We consider it necessary to create a separate body in the system of central executive bodies, the only task of which will be the formation and implementation of state policy in the field of child protection. In particular, we consider it expedient to create the State Service for Children and define it as the main

body that ensures the formation and implementation of state policy in the field of protection of children's rights.

The presence in the system of central executive authorities of the main body in the field of child protection, in our opinion, will clearly define the state and legal policy in this area and create favorable conditions for ensuring proper protection of children both in peacetime and during martial law.

References:

1. Konventsiia pro prava dytyny [Convention on the Rights of the Child]. (1989, November 20). URL: https://zakon.rada.gov.ua/laws/show/995_021#Text [in Ukrainian].
2. Stratehiia Rady Yevropy z prav dytyny na 2022–2027 rr.: «Prava dytyny na praktytsi: vid stabilnoi realizatsii do spilnoho novatorstva» [COUNCIL OF EUROPE STRATEGY FOR THE RIGHTS OF THE CHILD (2022-2027): "Children's Rights in Action: from continuous implementation to joint innovation"] (2022, February 23). URL:https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5a064 [in Ukrainian].
3. Deklaratsiia pro zakhyst zhinok i ditei pry nadzvychainykh obstavynakh ta pid chas zbroinykh konfliktiv [Declaration on the Protection of Women and Children in Emergency and Armed Conflict] (1974, December 14) [in Ukrainian].
4. Deiaki pytannia Natsionalnoi sotsialnoi servisnoi sluzhby Ukrainy: postanova Kabinetu Ministriv Ukrainy vid 26 serpnia 2020 r. № 783 [Some issues of the National Social Service of Ukraine: Resolution of the Cabinet of Ministers of Ukraine from August 26 2020]. (2020, August 26) [in Ukrainian].
5. Pro skhvalennia Kontseptsii realizatsii derzhavnoi polityky shchodo sotsialnoho zakhystu naselennia ta zakhystu prav ditei : rozporiadzhennia Kabinetu Ministriv Ukrainy vid 26 serpnia 2020 r. № 1057-r [On approval of the Concept for the implementation of state policy on social protection of the population and protection of children's rights : Decree of the Cabinet of Ministers of Ukraine from August 26 2020]. (2020, August 26) [in Ukrainian].
6. Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvitn. 2001 roku No 2402-III [On Childhood Protection : The Law of Ukraine from April 26 2001, No 2402-III]. (2001, April 26). Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].
7. Pro Zahalnoderzhavnu prohramu "Natsionalnyi plan dii shchodo realizatsii Konventsii OON pro prava dytyny" na period do 2016 roku : Zakon Ukrainy vid 5 ber. 2009 roku No 1065-VI [About the National Program "National Implementation Action Plan UN Convention on the Rights of the Child" for the period until 2016 : The Law of Ukraine from March 5 2009, No 1065-VI]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].
8. Pro Zahalnoderzhavnu prohramu "Natsionalnyi plan dii shchodo realizatsii Konventsii OON pro prava dytyny" na period do 2016 roku : Zakon Ukrainy vid 5 ber. 2009 roku No 1065-VI [About the National Program "National Implementation Action Plan UN Convention on the Rights of the Child" for the period until 2016 : The Law of Ukraine from March 5 2009, No 1065-VI]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].
9. Pro zatverdzhennia Derzhavnoi sotsialnoi prohramy "Natsionalnyi plan dii shchodo realizatsii Konventsii OON pro prava dytyny" na period do 2021 roku : postanova Kabinetu Ministriv Ukrainy vid 30 travnia 2018 r. № 453 [On approval of the State Social Program "National Action Plan for the Implementation of the UN Convention on the Rights of the Child" for the period up to 2021 : Resolution of the Cabinet of Ministers of Ukraine from May 2018, № 453]. URL: https://zakon.rada.gov.ua/laws/show/453-2018-%D0%BF#Text.
10. Pro orhany i sluzhby u spravakh ditei ta spetsialni ustanovy dlia ditei : Zakon Ukrainy vid 24 sichn. 1995 roku No 20/95-BP [On Bodies and Services for Children and Special Institutions for Children :

The Law of Ukraine from January 24 1995, No 20/95-BP]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo [in Ukrainian].

11. Pro zatverdzhennia Polozhennia pro Ministerstvo sotsialnoi polityky Ukrainy : postanova Kabinetu Ministriv Ukrainy vid 17 chervn. 2015 № 423 [On approval of the Regulation on the Ministry of Social Policy of Ukraine : Resolution of the Cabinet of Ministers of Ukraine from June 17 2015, № 423]. URL: https://zakon.rada.gov.ua/laws/show/423-2015-%D0%BF#Text [in Ukrainian].
12. Pro utvorennia Derzhavnoi sluzhby Ukrainy u spravakh ditei : postanova Kabinetu Ministriv Ukrainy vid 19 sichn. 2022 № 23 [On the establishment of the State Service of Ukraine for Children : Resolution of the Cabinet of Ministers of Ukraine from January 19 2022, № 23]. URL: https://zakon.rada.gov.ua/laws/main/23-2022-%25D0%25BF#Text [in Ukrainian].
13. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo rozmezhuvannia funktsii orhaniv derzhavnoi vlady ta orhaniv mistsevoho samovriaduvannia z pytan zakhystu prav ditei u zviazku z utvorenniam Derzhavnoi sluzhby Ukrainy u spravakh ditei : proekt Zakonu Ukrainy vid 22 liutoho 2022 № 7087 [On Amendments to Certain Legislative Acts of Ukraine on the Delimitation of the Functions of State Authorities and Local Self-Government Bodies on the Protection of Children's Rights in Connection with the Establishment of the State Service of Ukraine for Children : Draft Law of Ukraine from February 22 2022, № 7087]. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39054 [in Ukrainian].

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FORCED DISAPPEARANCES IN THE CONDITIONS OF ARMED CONFLICT: PECULIARITIES OF COMMISSION AND RESPONSIBILITY

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Abstract. The article is concerned on to the study of the peculiarities of the commission of enforced disappearance in Ukraine in the conditions of armed conflict and problematic issues that arise in practice in connection with the need to bring the perpetrators to criminal responsibility for the commission of the specified offense. The prerequisites for the criminalization of enforced disappearance have been considered. The reasons for the prevalence of enforced disappearances in the context of armed conflict have been identified and investigated. Statistical data on the number of enforced disappearances have been analyzed. Attention has been focused on the specifics of the perpetration of enforced disappearances during the war in Ukraine. The method of committing of enforced disappearances in the conditions of an armed conflict has been studied, the data on the categories of persons who become victims of this criminal offense have been analyzed. Possible places of violent disappearances, including during the so-called "filtering" have been considered. Attention has been dedicated to the main element of the objective side of enforced disappearance – the refusal to recognize the fact of deprivation of liberty and to inform about the fate and location of the victim. Certain problems of responsibility for enforced disappearance have been identified, including the causes of impunity for persons who commit enforced disappearances. A conclusion has been made regarding the presence of problematic issues that require legal resolution and the need to form an effective mechanism aimed at bringing to criminal responsibility persons committing crimes of enforced disappearance in order to avoid impunity.

Key words: enforced disappearance, missing persons, torture.

Introduction. Today enforced disappearance is one of the most brutal and dangerous crimes. First of all the specified criminal offense encroaches on the safety of humanity by causing harm to a specific person. As a result of this several fundamental human rights are violated.

Along with this it is worth noting that enforced disappearance is aimed not only at the disappeared, but also at other persons, starting with the closest relatives and ending with society as a whole. At the same time it is important that enforced disappearances are committed in direct connection with state policy and mostly by officials.

Given the fact that the criminal legal prohibition of enforced disappearance was enshrined in national legislation quite recently, many questions arise regarding the application of the relevant norm in practice. This issue is especially acute in view of the active phase of the armed conflict in Ukraine, because in this aspect it is practically not studied in the criminal law science.

The purpose of the article is to analyze the specifics of the commission of enforced disappearance in the context of armed conflict and the problems that arise when the perpetrators are brought to justice.

The task of the article is to highlight the features of enforced disappearance and issues of responsibility for this offense in wartime conditions.

The methods of analysis, comparison, generalization, as well as the statistical method have been applied in the research, which made it possible to obtain relevant results.

Prevalence of the practice of enforced disappearances in wartime conditions. Back on June 17, 2015, Ukraine joined the International Convention for the Protection of All Persons from Enforced

Disappearance (hereinafter referred to as the Convention) – an international legal act of a universal nature, which enshrines the right of a person not to be subjected to enforced disappearance (Law of Ukraine, 17.06.2015, No. 525-VIII).

In order to fulfill the international legal obligations assumed by Ukraine in accordance with the Law of Ukraine of July 12, 2018 No. 2505-VIII "On the Legal Status of Missing Persons" (Law of Ukraine, 12.07.2018, No. 2505-VIII) the current Criminal Code of Ukraine was supplemented by Art. 146-1 "Enforced disappearance".

However, so far, despite the prevalence of enforced disappearances in Ukraine during the war, the guilty persons remain unpunished.

Since February 2014, our country has been in a state of undeclared war with the Russian Federation, which initially occupied and later annexed the Autonomous Republic of Crimea and the city of Sevastopol, and subsequently began carrying out armed aggression in certain areas of Donetsk and Luhansk regions. On April 14, 2014, the National Security and Defense Council of Ukraine announced the beginning of an Anti-Terrorist Operation (ATO) aimed at countering the activities of illegal Russian and pro-Russian armed groups; as of April 30, 2018, its format was changed to a Joint Forces Operation (JOF). The new phase of the armed aggression of the Russian Federation, which began on February 24, 2022, led to numerous casualties among military personnel and law enforcement officers, as well as among the civilian population, the occupation of part of the territory of Ukraine, and significant economic losses.

Ever since the occupation of Crimea in March 2014, Russia has been using enforced disappearances as a method of waging war, to intimidate and suppress resistance. Later, this practice became even more widespread in certain areas of Donetsk and Luhansk regions, but from February 24, 2022, the Russians began to really mass kidnap Ukrainians. Enforced disappearance is one of the most common crimes systematically committed by representatives of the aggressor state on the territory of Ukraine.

According to the report of the UN Monitoring Mission on Human Rights in Ukraine on the general situation with human rights in Ukraine as of as of January 31, 2023, 621 cases of enforced disappearances were documented (Report of the UN Secretary General and the Office of the UN High Commissioner for Human Rights, 2023). At a press conference in Kyiv on March 24, 2023, Matilda Bogner, head of the UN Human Rights Monitoring Mission in Ukraine, during the presentation of the 35th report of the Office of the UN High Commissioner for Human Rights on the human rights situation in Ukraine, reported, among other things, about conducting interviews with 127 civilians who were previously detained and then released; 90% of them reported that representatives of the Armed Forces of the Russian Federation and the Federal Security Service of the Russian Federation tortured and ill-treated them during detention, in some cases this included sexual violence. Five of these civilians were boys between the ages of 14 and 17 who disappeared due to violent actions by the Armed Forces of the Russian Federation, were ill-treated or tortured (Janowski K., 2023).

According to the information provided by the Main Investigative Department of the National Police of Ukraine in response to the request of the non-governmental organization "ZMINA Center for Human Rights", from the beginning of the full-scale war of Russia against Ukraine until June 6, 2023, 16,000 criminal proceedings were initiated due to the illegal deprivation of liberty and the enforced disappearance of almost 8,800 civilians. In addition, 7,300 criminal proceedings were initiated for the disappearance of 10,200 people (Materialy Tsentru prav lyudyny ZMINA, 2023).

At the same time, according to the General Prosecutor's Office of Ukraine, in 2020, 69 criminal offenses under Art. 146-1 of the Criminal Code of Ukraine have been registered, while in 2021 – 56, in 2022 – 1120, and during 6 months of 2023 – 39 (Reports of the Office of the Prosecutor General of Ukraine).

Human rights organizations are constantly working to collect data on missing persons, in particular through direct contact with the families of the disappeared, as well as by sending information requests

to local self-government bodies which in some cases keep records of missing persons in their territorial communities better than state bodies.

According to the non-governmental organization "ZMINA Center for Human Rights" since February 24 in 2022, at least 311 cases of enforced disappearance of Ukrainians in the occupied territories were documented. Of that number, 181 people were released, but 118 are still missing or in Russian captivity. The largest number of missing Ukrainians was recorded in the occupied south of Ukraine: 119 people were abducted in the Kherson region, 90 in the Zaporizhia region. There are currently 27 cases of enforced disappearances in the occupied areas of the Kharkiv region (Materials of the online conference of the ZMINA Center for Human Rights, 2022).

The Kharkiv human rights group, together with its partners in the "Tribunal for Putin" ("T4R") coalition, collected and entered into the initiative's database information on 2,858 enforced disappearances committed against 5,140 civilians in the period from February 24, 2022 to March 31, 2023.

According to their data, the largest number of enforced disappearances occurred at the beginning of the full-scale invasion of the territory of Ukraine. The organization's database recorded 759 cases of disappearance in March 2022, which is 26.7% of the total number of cases of disappearance. The number of recorded cases gradually decreased until it reached approximately 120–160 people per month in June-July 2022 (this number remained until mid-autumn 2022). After the de-occupation of part of the territory of Ukraine, namely the Kharkiv and Kherson regions, the number of enforced disappearances does not exceed 100 cases per month and continues to remain at this level until now (Information portal of the Kharkiv human rights group, 2022).

Thus since the beginning of the armed conflict different data have been published on the number of persons missing, as well as on the number of enforced disappearances. However, such information does not reflect the real situation. To date, it is impossible to name the exact number of persons who were abducted and moved to the territory of the aggressor state.

It is worth emphasizing that by the Order of the Ministry of Internal Affairs of Ukraine No. 535 dated August 29, 2022, the Regulation on the Unified Register of Persons Disappeared Under Special Circumstances was approved (Order of the Ministry of Internal Affairs of Ukraine No. 535 dated 29.08.2022). Since May 2023 this Register finally became operational. It allows accumulating data on missing persons under special circumstances. Among the shortcomings, cooperation between the various institutions involved in the search process has not yet been fully established, due to which part of the coordination takes place in manual mode (Discussion materials of public organizations, 2023).

So we can talk about the positive dynamics of the settlement of issues related to missing persons under special circumstances, taking into account the fact that the legislation of Ukraine is developing in accordance with the norms of international law, not only balancing the system of concepts and the creation of relevant bodies, but also the procedures for searching for missing persons in Ukraine, including during the war.

Peculiarities of enforced disappearances during armed conflict. Every enforced disappearance begins with the deprivation of the victim's freedom. Most people disappear under unknown circumstances. At the same time, it is quite difficult to establish the exact date of a person's disappearance. This especially applies to temporarily occupied territories, where it is impossible to find out the exact circumstances why a person suddenly disappeared, stopped communicating. The lack of any connection with the temporarily occupied territories makes it impossible to obtain accurate information about committed criminal offenses.

Most of the victims of enforced disappearances are abducted from their homes. This indicates a clear intention to kidnap those people who, in fact, disappeared, and excludes the factor of chance. At the same time, enforced disappearances are complex in nature: they are usually

combined with searches, family intimidation, destruction of property, seizure of cash, valuables and equipment.

At the same time people who are at work, on the street, at public transport stops on the way, at mass events, crossing roadblocks are also subjected to violent disappearances. Unlike those who disappeared at home, these are random people who become victims of a coincidence of circumstances, the behavior of the occupiers, the order to "round up everyone", etc.

Some people disappear during the evacuation, trying to leave the temporarily occupied territories. If such people arouse suspicion during an inspection or search on the way out of the temporarily occupied territory, they may end up in filtration camps or be immediately accused of committing actions that their occupiers consider illegal.

It should also be noted that special attention is paid to personal signs of people. They are searched during personal searches, stripped, and if they find a tattoo that includes any national Ukrainian symbols, symbols of individual units of the Armed Forces of Ukraine, etc., the person will almost certainly be detained. Even if it does not have such symbols, but the Russian military cannot understand the meaning of the tattoo, the person can also be detained.

Arbitrary detention, torture, ill-treatment, psychological pressure, sexual violence and threats thereof, enforced disappearances – such a list of war crimes committed by Russia against Ukrainians is reported in the Office of the UN High Commissioner for Human Rights. The armed forces of the Russian Federation and affiliated armed groups commit illegal actions against Ukrainians, in particular, during the so-called "filtering" (Coverage of the Security Council meeting, 2022). "Filtering" is carried out in special "filtration camps", which are similar to "concentration camps" created by Russian troops in temporarily occupied Ukrainian territories, as well as directly in Russia. The exact number of "camps" where Ukrainians are kept is currently unknown. In July 2022, the deputy head of the US mission to the OSCE, Courtney Ostrian, announced the discovery of at least 18 "filtration camps" created for the detention and forced deportation of Ukrainians to Russia (Solomon E., 2022). In August, researchers from Yale University published a report in which they counted at least 21 "filtration camps" where Russia illegally detains Ukrainians – and this is only in the territory of the Donetsk region (Fact sheet of Yale school of public health, 2022).

During the so-called "filtering" Russian occupation forces and representatives of illegal armed groups take passports from Ukrainian citizens, check mobile phones, conduct personal searches (including forcing them to completely undress) and interrogate them. The UN has documented that Russian forces committed war crimes against Ukrainians believed to be connected to the Armed Forces of Ukraine or state institutions, and generally against people with a pro-Ukrainian position and those who did not pass the check for loyalty to Russia (News of U.S. Department of State, 2022).

During individual interviews, former prisoners say that they were beaten with hands, feet, butts, hammers, sticks, and metal pipes, and electric current was used in order to cause maximum suffering. Traces of stab and cut wounds remain on the bodies of those released. As one of the methods of abusing exhausted prisoners, performing physical exercises in an excessive amount is used; also practice keeping people in inhumane, unsanitary conditions, without proper medical treatment, without providing sufficient food and drinking water, without access to fresh air, in overcrowded cells (Miroshnychenko V., 2023)

According to the Kharkiv human rights group, a high percentage of the victims of enforced disappearances are former military personnel – former ATO participants, law enforcement officers, border guards, rescuers, etc. Another large group of the missing are pro-Ukrainian volunteers, activists, journalists, those who took part in mass events against the occupation or even did not take part, but seemed dangerous to the occupiers. The third largest category of victims of enforced disappearances are officials of state authorities and local self-government bodies. There are also specific categories of victims of enforced disappearances. They are Crimean Tatars, teachers,

farmers, managers of agricultural enterprises, priests, doctors (Information portal of the Kharkiv human rights group, 2022).

There is no unequivocal answer to the question of who is at risk of becoming a victim of enforced disappearance. Here, as in the case of the missing, the vast majority of the disappeared are ordinary residents of populated areas, it is impossible to establish clear motives for their abduction by the Russian military. They did not express their civic position actively, did not work in state structures or religious organizations. The reason for the persecution of citizens in the occupied territories can be anything, any act of real or imagined disobedience.

It is also worth noting that the tendency of violent disappearances for men is twice as high as for women – 3,204 men (62% of the total number of disappeared) and 1,776 women (34%). At the same time, the number of missing children was 160 (4%) (Ovdiyenko H., 2023). The main reason for the prevalence of acts of enforced disappearance against men is their warning of anti-Russian resistance, which representatives of the Russian occupation authorities are trying to prevent.

A mandatory element according to the definition of enforced disappearance under both international law (Convention, 2006) and national legislation is the refusal to acknowledge the fact of deprivation of liberty and to inform about the fate and location of the victim. In this way, enforced disappearance actually differs from many related crimes. After the disappearance, the victim's relatives have no opportunity to obtain information either from the local occupation authorities or from Russian official bodies. Confirmation of the presence of the missing person under the control of the Russian authorities may take place after months (and in some cases even after a year) from the moment of disappearance. However, even this confirmation does not contain information about the whereabouts and state of health of the missing person. Therefore, the relatives of the victims still have no idea whether the missing person is alive, in what condition he is, and whether violence is being used against him. In response to requests, Russian state authorities do not provide specific answers or do not respond at all. For their part, the Ukrainian state authorities do not have the tools to force the Russian side to provide timely and truthful information, since the Russian side does not fulfill its international obligations (Ovdiyenko H., 2023).

Individual causes of impunity for persons who commit enforced disappearances. To this date in Ukraine, in the conditions of war, the problem of bringing perpetrators of enforced disappearances to criminal responsibility is quite acute. Despite the large number of cases of enforced disappearances that occur in the context of armed conflict, not a single verdict in criminal proceedings under Art. 146-1 of the Criminal Code of Ukraine is absent. With rulings of local courts in the vast majority of criminal proceedings regarding the perpetration of enforced disappearances indicate that data on their perpetration were entered into the Unified Register of Pretrial Investigations as early as 2018–2020. However, the pre-trial investigation in these proceedings is still not over.

Given the lack of witnesses, as well as information about the probable reasons for detention, it is very difficult to trace the fate of people who have become victims of enforced disappearance. As a result of the commission of the specified criminal offense, the family members do not have information about the location of the victims, their state of health, etc. for a long time. If there are witnesses of such violations, they are mostly intimidated and do not want to testify, especially when they themselves are still in the temporarily occupied territories or they have relatives there. Thus, it is difficult to persuade them to communicate with law enforcement agencies. In addition, it is quite difficult to investigate criminal offenses committed in the temporarily occupied territories, since there is no access to them, and therefore to the scene of the incident, witnesses, etc. An investigation that is conducted remotely is significantly limited in resources and therefore cannot be effective. Even after the de-occupation of the territories, the traces of committed criminal offenses in many cases are almost impossible to recover, and the witnesses, if not intimidated, have long since left the territory and live abroad.

Among the main problems that arise today in the investigation of enforced disappearances, it is worth mentioning:

failure to enter information about a criminal offense into the Unified Register of Pretrial Investigations;

incorrect definition of responsibility;

lack of efficiency in the actions of law enforcement officers;

lack of thoroughness during investigative (search) actions;

lack of access by investigators to the crime scene (if it is about the occupied territory);

ineffective informational interaction between various bodies of pre-trial investigation;

improper procedural management of pre-trial investigations.

The competence of the National Police of Ukraine to investigate cases of enforced disappearances is questionable. Given the essence of this criminal offense aimed at the safety of humanity, such liability should be determined by the security investigative bodies, which would undoubtedly affect the effectiveness of the pre-trial investigation.

Along with this it should be noted that not only the problems related to the investigation of enforced disappearances are the reason for the impunity of the persons who committed them. In practice, quite a lot of questions arise in connection with the application of the criminal law norm, which provides for responsibility for enforced disappearance. Such questions primarily concern the debatable nature of the definition of the object of the criminal offense, the forms of the objective party, the special subject, the qualification of the enforced disappearance committed in complicity, as well as combined with the commission of other criminal offenses. At the same time, it is worth noting that the existing problems related to the construction of the article itself. 146-1 of the Criminal Code, taking into account that the specified norm competes with a number of articles of the Law of Ukraine on criminal liability, including, in particular, Articles 146, 147, 148, 149, 151, 349, 349-1, 365, 371, 426 of the Criminal Code, in practice complicate the process of qualification of the committed act.

It is also important to ensure the criminal prosecution of persons who currently hold leading (in particular, higher) positions in the authorities of the so-called "DNR", "LPR", as well as those involved in the forcible disappearance of officials of bodies (services, divisions) of state power, units of the Armed Forces, law enforcement agencies and special services of the aggressor state and bringing them to criminal responsibility.

In addition, as can be seen from the construction of Art. 146-1 of the Criminal Code of Ukraine, the legislator did not provide qualifying or particularly qualifying features in it, which, in our opinion, would be appropriate to change by enshrining in Part 3 the provisions that provide for responsibility for committing enforced disappearance repeatedly, or with a prior conspiracy by a group of persons, or if it caused serious consequences, with an appropriate punishment. Given the increased public danger of the committed act, this will ensure a fair measure of punishment for violators.

Thus, the above needs special attention of the legislator for the formation of an effective mechanism aimed at bringing to criminal responsibility persons guilty of crimes of enforced disappearance, including the direct managers of those persons who committed acts related to the enforced disappearance of a person.

Conclusions. Today Russian troops, security forces and Russian-controlled armed formations are committing acts of enforced disappearance against the civilian population in the territories that were or remain occupied on a large scale, grossly violating the provisions of both international law and national legislation of Ukraine. At the same time, cases of torture, ill-treatment, and the use of physical and psychological pressure on victims of enforced disappearances are systematic.

It is worth emphasizing that acts of enforced disappearance are carried out within the framework of state policy, and therefore anyone can become a victim of enforced disappearance, regardless of gender and status.

The legislation of Ukraine is currently developing in many directions in accordance with the norms of international law, including due to the need to register persons who have disappeared under special circumstances. At the same time, the practice of enforced disappearances in Ukraine still remains virtually unpunished. This is related both to the problems of the application of the criminal legal norm, which provides for responsibility for enforced disappearance, and to the ineffectiveness of the investigation of this criminal offense, caused, first of all, by its specificity in the conditions of an armed conflict, associated with the lack of access to the place of its commission – temporarily occupied territories, as well as insufficient information, absence or intimidation of witnesses.

Many issues necessary for the formation of an effective basis for effective criminal legal counteraction to acts of enforced disappearance still need to be resolved, in particular, the final determination of the object of enforced disappearance, establishing the liability of the specified criminal act as a criminal offense against the safety of humanity by security investigative bodies, supplementing of Art. 146-1 of the Criminal Code of Ukraine with qualifying features, which, in our opinion, will contribute to the effective investigation of this offense and bringing the guilty to justice with the appointment of a fair measure of punishment for what has been committed.

References:

1. Dopovid′ Heneral′noho sekretarya OON ta Upravlinnya Verkhovnoho komisara OON z prav lyudyny shchodo sytuatsiyi z pravamy lyudyny v Ukrayini za period z 01 serpnya 2022 roku po 31 sichnya 2023 roku. (2023). [Report of the UN Secretary General and the Office of the UN High Commissioner for Human Rights on the human rights situation in Ukraine for the period from August 1, 2022 to January 31, 2023]. URL: https://www.ohchr.org/sites/default/files/ documents/ countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-UA.pdf
2. Janowski K. (2023). UN Human Rights Ukraine released reports on treatment of prisoners of war and overall human rights situation in Ukraine: Press Release. URL: https://ukraine.un.org/en/224744-un-human-rights-ukraine-released-reports-treatment-prisoners-war-and-overall-human-rights
3. Factsheet: “System of Filtration: Mapping Russia’s Detention Operations in Donetsk Oblast”. Yele school of public health. (2022). URL: https://hub.conflictobservatory.org/portal/sharing/rest/content/items/a0ee9207cfcc484f9cb21a1cf718a205/data
4. Miroshnychenko V. (2023). Nasyl′nyts′ki znyknennya na terytoriyi Ukrayiny z 24 lyutoho 2022 roku. [Enforced disappearances on the territory of Ukraine since February 24, 2022]. Kharkiv. [in Ukrainian]. URL: https://t4pua.org/1428
5. Mizhnarodna konventsiya pro zakhyst usikh osib vid nasyl′nyts′kykh znyknen′: pryynyata rezolyutsiyeyu 61/177 Heneral′noyi Asambleyi OON vid 20 hrudnya 2006 roku [International Convention on the Protection of All Persons from Enforced Disappearances: adopted by UN General Assembly resolution 61/177 of December 20, 2006]. URL: zakon.rada.gov.ua/laws/show/ 995_l54
6. Ovdiyenko H. (2023). Analitychna informatsiya shchodo nasyl′nyts′kykh znyknen′ v Ukrayini. [Analytical information on enforced disappearances in Ukraine]. Kharkiv. [in Ukrainian]. URL: https://khpg.org/1608812468
7. P″yat′ rokiv zakonu pro pravovyy status osib, znyklykh bezvisty: diye, ale z problemamy. [Five years of the Law on the Legal Status of Missing Persons: Working, but with problems]. Materialy dyskusiyi Koalitsiyi “Ukrayina. P″yata ranku” z Tsentrom prav lyudyny ZMINA ta Mediynoyu initsiatyvoyu za prava lyudyny vid 12 lypnya 2023 roku. URL: https://zmina.ua/event/pyat-rokiv-zakonu-pro-pravovyj-status-osib-znyklyh-bezvisty-diye-ale-z-problemamy-pravozahysnyky/?fbclid=IwAR1mxk3-p6wDQt41nmvaqJ5vVbmSYlGhBs3sj Mdf8N _xUpMUbqZI_y9urA0
8. Reports of Russian Federation Forces Putting Ukrainian Civilians in «Filtration» Camps Must Be Investigated, Senior Officials Tell Security Council. Office of the UN High Commissioner for Human Rights. Meetings Coverage and Press Releases. September 07, 2022. URL: https://press.un.org/en/2022/sc15023.doc.htm

9. Russia's Filtration Operations and Forced Relocations. U.S. Department of State. September 06, 2022. URL: https://www.state.gov/russias-filtration-operations-and-forced-relocations/
10. Solomon E. (2022). The U.S. identified 18 Russian «filtration camps» for Ukrainians, a diplomat says. New York Times. URL: https://www.nytimes.com/live/2022/07/08/world/russia-ukraine-war-news?smid=url-share#the-us-identified-18-russian-filtration-camps-for-ukrainians-a-diplomat-says.
11. Pro pravovyy status osib, znyklykh bezvisty: Zakon Ukrayiny vid 12.07.2018 № 2505-VIII. [On the legal status of missing persons: Law of Ukraine dated July 12, 2018 No. 2505-VIII]. Vidomosti Verkhovnoyi Rady Ukrayiny. 2018. № 38. S. 5, st. 280.
12. Pro pryyednannya Ukrayiny do Mizhnarodnoyi konventsiyi pro zakhyst usikh osib vid nasyl′nyts′kykh znyknen′: Zakon Ukrayiny vid 17.06.2015 № 525-VIII. [On the accession of Ukraine to the International Convention on the Protection of All Persons from Enforced Disappearances: Law of Ukraine dated 06/17/2015 No. 525-VIII]. Holos Ukrayiny. № 119.
13. Pro zareyestrovani kryminal′ni pravoporushennya ta rezul′taty yikh dosudovoho rozsliduvannya [About registered criminal offenses and the results of their pre-trial investigation]. Ofis Heneral′noho prokurora Ukrayiny. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2
14. Pro zatverdzhennya Polozhennya pro Yedynyy reyestr osib, znyklykh bezvisty za osoblyvykh obstavyn: Nakaz Ministerstva vnutrishnikh sprav Ukrayiny vid 29.08.2022 № 535. [On the approval of the Regulation on the Unified Register of Persons Disappeared Under Special Circumstances: Order of the Ministry of Internal Affairs of Ukraine dated August 29, 2022 No. 535]. Ofitsiynyy visnyk Ukrayiny vid 02.09.2022, № 68, stor. 511, stattya 4162, kod akta 113482/2022
15. Vykradeni okupantamy: rosiya vykorystovuye nasyl′nyts′ki znyknennya yak metod vedennya viyny. (2022). [Abducted by the occupiers: Russia uses enforced disappearances as a method of waging war]. Materialy onlayn-konferentsiyi Tsentru prav lyudyny ZMINA. URL: https://www.facebook.com/zmina.ua/videos/613073290416814/
16. Znyknennya bezvisty, nasyl′nyts′ki znyknennya ta nezakonne pozbavlennya voli pid chas viyny v Ukrayini (za danymy po Khersons′kiy, Zaporiz′kiy, Kharkivs′kiy ta Luhans′kiy oblastyakh). (2022). [Disappearances, enforced disappearances and illegal deprivation of liberty during the war in Ukraine (according to data from the Kherson, Zaporizhzhya, Kharkov and Luhansk regions)]. Informatsiynyy portal Kharkivs′koyi pravozakhysnoyi hrupy. URL: https://khpg.org/1608810811.
17. Z pochatku povnomasshtabnoho vtorhnennya poterpilymy vid nasyl′nyts′kykh znyknen′ staly 8 800 tsyvil′nykh, bezvisty znyklymy vvazhayut′sya 10 200 osib – Natspolitsiya. (2023). [Since the beginning of the full-scale invasion, 8,800 civilians have become victims of enforced disappearances, 10,200 people are considered missing - National Police]. Materialy Tsentru prav lyudyny ZMINA. URL: https://zmina.info/news/z-pochatku-povnomasshtabnogo-vtorgnennya-poterpilymy-vid-nasylnyczkyh-znyknen-staly-8-800-czyvilnyh-bezvisty-znyklymy-vvazhayutsya-10-200-osib-naczpolicziya/

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CRIMEAN OCCUPATION AND UNCLOS DISPUTE SETTLEMENT: NAVIGATING TERRITORIAL SOVEREIGNTY AND NON-RECOGNITION

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Abstract. The article examines the interplay between the Crimean occupation and UNCLOS compulsory dispute settlement procedures, exploring how the fact of Crimea's occupation can be established and UNCLOS dispute settlement procedures applied. It also investigates the contradiction within the Annex VII Arbitral Tribunal's award in the *Coastal State Rights Dispute* due to Crimea's occupation. The study concludes that to address violations made by the Russian Federation under the provision of UNCLOS Crimea's occupation, Ukraine can seek an advisory opinion from the International Court of Justice. Strengthening Ukraine's position requires a legally binding decision on Crimea's occupied status and Ukraine's coastal state status, possibly through an ad hoc tribunal with jurisdiction. Supporting evidence from other courts may be valuable, despite their lack of direct jurisdiction over the matter of occupation. The article also discusses the principle of non-recognition and the tribunal's neutral approach to accommodate both parties in its award in *Coastal State Rights Dispute*.

Key words: a dispute concerning interpretation or application of UNCLOS, Coastal State Rights Dispute, dispute between Ukraine and Russia, international law, law of the sea, state responsibility.

Introduction. Land retains its fundamental role in establishing sovereignty and asserting States' claims over both terrestrial and maritime areas. The territorial aspect remains as a prime feature, serving as «the physical foundation» for authority, jurisdiction, nationality, and thus providing the basis for peace and security (Klein, 2018: 253). Under international law, only States can claim maritime title. States possess distinct rights and responsibilities over various maritime zones that extend from their coastlines. Thus, within the baselines of a coastal state lie internal waters, where full sovereignty is exercised, and just outside it lies the territorial sea, which is also subject to a coastal state's sovereignty, except for the right of innocent passage granted to vessels of other states. Additionally, a coastal state is entitled to a contiguous zone for specific purposes and an exclusive economic zone, which can extend up to 200 miles from its baselines. The coastal state also possesses sovereign rights over its continental shelf, which can extend up to 200 miles or more, depending on the specific seabed configuration and assessment process for the extent of an outer continental shelf. As the distances from the coast increase, the coastal state's rights gradually decrease until reaching the high seas, an area over which no state exercises sovereignty (Klein, 2018: 253-534; UNCLOS art. 8(2), art. 2, art. 18–19, art. 33, art. 56, art. 76).

The compulsory dispute settlement procedures included in Part XV of United Nations Convention on the Law of the Sea (UNCLOS or Convention) have been widely recognized as one of its most notable accomplishments of «a legal order for the seas and oceans» (Holst 2023: 284). Thus, the question goes how the sovereignty over the territory, namely Crimean occupation, and disputes under UNCLOS interact with each other.

Relevance of the issue. Since the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022, the relations between these two countries certainly made a stronger shift to regulation by international humanitarian law then it was in 2014. Since 2014, when Crimea was illegedly occupied by the Russian Federation, Ukraine instituted *Dispute Concerning Coastal State Rights in*

the Black Sea, Sea of Azov, and Kerch Strait (further *Coastal State Rights Dispute*) on 16 September 2016 under Annex VII of UNCLOS. Thus, it could be considered that despite the occupation and international humanitarian law as general law, law of the sea acts as a special law, and by this, «*lex specialis derogat legi generali*».

Analysis of recent research and publications. Territorial sovereignty and disputes settlement under UNCLOS was covered by vast amount of legal scholarship. For example, it was done by such well-known lawyers and scholars as Alan Boyle (1997, 2003), Yoshifumi Tanaka (2018, 2019), Natalie Klein (2005, 2014, 2018), Igor Karaman (2012), Robin Churchill (2010, 2017), Sandrine W. De Herdt (2022), Lan Ngoc Nguyen (2023) and many more ('Select Bibliography on Settlement of Disputes Concerning the Law of the Sea', 2022).

Crimean occupation as a part of *Coastal State Rights Dispute* between Ukraine and the Russian Federation was addressed by Peter Tzeng (2016, 2017); Oleksandr Zadorozhnii (2016); Robert G. Volterra, Giorgio F. Mandelli, and Álvaro Nista (2018); Gaiane Nuridzhanian (2018); Valentin Schatz and Dmytro Koval (2018, 2021); Massimo Lando and Nilüfer Oral (2021), etc.

However, the possible scenario of applying the approach taken by Mauritius in regard Chagos Archipelago and UK have not yet been investigated, which, together with the increasing discussions on this issue and preliminary objection award in *Coastal State Rights Dispute* by the Annex VII Tribunal, has led to the need for comprehensive research.

Methodology. The article applies a case study approach, focusing on the Crimean occupation, to examine the complexities and implications of the dispute settlement procedures within the framework of UNCLOS. The research methods include legal analysis of relevant international treaties and case law, as well as examination of primary and secondary sources to provide a comprehensive understanding and reach the established aim of the article.

The aim of the article is to answer the question how the Crimean occupation and compulsory dispute settlement procedures under UNCLOS interact with each other; what possible scenario of establishing the fact of occupation of Crimea with further applicability of compulsory dispute settlement procedures under UNCLOS is; and why there is a contradiction within the award of Annex VII Arbitral Tribunal in Coastal State Rights Dispute because of the occupation of Crimea.

1. An overview of UNCLOS and its compulsory dispute settlement procedures

The compulsory jurisdiction provided in Part XV, section 2 of UNCLOS does not extend to all international legal disputes. It is limited to disputes falling within the scope of the Convention. It is provided in Article 288, namely, it is «jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part».

Thus, to invoke the jurisdiction provided by UNCLOS, the party bringing the dispute must identify specific provisions of the Convention that it claims have been violated by the opposing party. While the Convention covers various aspects, it does not address every issue that may arise in relation to the sea. Consequently, there may be cases where a dispute pertains to matters concerning the sea but does not involve any provisions of the UNCLOS (Chandrasekhara Rao & Gautier 2018: 90).

Applicability of the jurisdiction under UNCLOS involving contested land sovereignty issues remained ambiguous under UNCLOS for quite a long time. The text of UNCLOS does not provide explicit guidance on this matter. The only reference is found in its Article 298(1)(a)(i), which allows States to make declarations excluding maritime delimitations from compulsory dispute settlement, but it does not clarify whether concurrent land sovereignty issues are also excluded in the absence of such declarations. However, there are indications that court or tribunal under UNCLOS may have the authority to address ancillary land issues as long as they are not the central subject of the dispute and do not rely on a supplementary jurisdictional basis (Buga 2005: 91).

The ambiguity of applicability of the jurisdiction under UNCLOS involving contested land sovereignty issues was solved by recent law of the sea jurisprudence. Thus, the first one to answer this

question was the *Chagos Marine Protected Area Arbitration* between Mauritius and United Kingdom (further *Chagos MPA Arbitration)*. In this case, one of Mauritius' claims was that the UK lacked the authority to declare an MPA or other maritime zones over the Chagos Archipelago because it did not qualify as the «coastal» State under Articles 2, 55, 56, and 76 of UNCLOS.

Firstly, the Annex VII Tribunal isolates the real issue in the case and identifies the object of the claim (para. 208), evaluates where the relative weight of the dispute lies (para. 211).

In particular it asks «[i]s dispute primarily a matter of the interpretation and application of the term «coastal State», with the issue of sovereignty forming one aspect of a larger question? Or does the Parties' dispute primarily concern sovereignty, with the United Kingdom's actions as a «coastal State» merely representing a manifestation of that dispute?» and gives the answer that «[t]here is an extensive record, extending across a range of fora and instruments, documenting the Parties' dispute over sovereignty contrast, prior to the initiation of these proceedings» (para. 211). The Arbitral tribunal highlights the argument of Mauritius that «the consequences of a finding that the United Kingdom is not the coastal State extend well beyond the question of the validity of the MPA» (para. 211). Thus, in its award dated March 18, 2015, the arbitral tribunal determined that this claim was related to a dispute concerning land sovereignty, which fell beyond the scope of the Convention. As a result, the tribunal concluded that it lacked jurisdiction over the matter (paras. 219–221).

In *the South China Sea Arbitration* between the Republic of Philippines and the People's Republic of China, Annex VII Tribunal addresses among other issues also the source of maritime entitlements and the status of certain maritime features in the South China Sea. Thus, it rules that in its Award on Jurisdiction and Admissibility that claims «could be understood to relate to sovereignty if […] either (a) the resolution of the Philippines' claims would require the Tribunal to first render a decision on sovereignty, either expressly or implicitly; or (b) the actual objective of the Philippines' claims was to advance its position in the Parties' dispute over sovereignty» (para. 153). Another jurisprudence involving into a law of the sea dispute matters of sovereignty became *the Coastal State Rights Dispute*.

2. Analysis of *the Coastal State Rights Dispute*

The case involves a dispute between Ukraine and the Russian Federation, arising from events in Crimea in 2014. Ukraine claims that Russia invaded and occupied Crimea, while Russia asserts that a referendum resulted in Crimea's reunification with Russia. Due to this, Ukraine alleges that the Russian Federation that «various unauthorized activities of the Russian Federation occurring subsequently to these events violate Ukraine's rights under [UNCLOS]» (paras. 1–7). The Arbitral Tribunal notes that the parties hold different views regarding the nature of the dispute, the extent of its jurisdiction, and the existence of a dispute over sovereignty over Crimea. Thus, Russian Federation argues that the Arbitral Tribunal does not have the right to consider Ukraine's case because it pertains to sovereignty over Crimea, rather than the interpretation or application of UNCLOS. Ukraine, on the other hand, asserts that the dispute being examined by the Arbitral Tribunal relates to the interpretation or application of UNCLOS, thus giving the Tribunal jurisdiction (paras. 43–45).

The Arbitral Tribunal evaluates the nature of the dispute, the extent of its jurisdiction, and the existence of a dispute over sovereignty over Crimea.

2.1. The nature of the dispute

The main argument of the Russian Federation is the question of Ukraine's «coastal State rights» depends on the Tribunal's determination of which state has sovereignty over the relevant maritime zones, which hinges on Ukraine's sovereignty over Crimea. They argue that Ukraine seeks to restore Crimea's sovereignty through legal and diplomatic means. The Russian Federation argues that Ukraine's claims are based on allegations of aggression and annexation by Russia, and they challenge these accusations. They emphasize that the core issue of disputed land sovereignty cannot be bypassed by calling Russia an aggressor. The Russian Federation contends that Ukraine's objective is

to secure a favourable determination on the sovereignty of Crimea, which falls outside the scope of the Convention (paras. 46–57).

In return, Ukraine asserts that the dispute before the Tribunal concerns the interpretation or application of UNCLOS. It claims that Russia has violated its rights guaranteed under the Convention «through a campaign of exclusion, exploitation, and usurpation across the Black Sea, the Sea of Azov, and the Kerch Strait». Ukraine argues that its references to «coastal State» and «sovereignty» are in line with the provisions of the Convention and confirm that the dispute involves its interpretation and application. The objective of Ukraine's claims is to address Russia's actions in the maritime areas and protect its resources and cultural heritage, not to challenge the status of Crimea as part of Ukraine (paras. 58–62).

The Tribunal in this respect concludes that while Ukraine frames its dispute as violations of its rights under UNCLOS, many of its claims are based on the assumption that Crimea belongs to Ukraine, and it is the «coastal State» under UNCLOS. However, if the status of Crimea as part of Ukraine is not established, the Tribunal cannot address these claims without resolving the sovereignty issue over Crimea (paras. 151–154).

2.2. The extent of the jurisdiction

The Russian Federation argues that the jurisdiction of the Arbitral Tribunal is limited to disputes concerning the interpretation or application of the Convention, and it does not include disputes over territorial sovereignty (paras. 65–73). On the other hand, Ukraine contends that the Tribunal has a broad jurisdictional grant to address all issues related to the law of the sea. They argue that the term «any dispute» in Article 286 reflects the intent of UNCLOS to grant the tribunal broad jurisdiction. Ukraine also points to the *Chagos MPA Arbitration* where it was established that when a dispute relates to the interpretation or application of the Convention, the jurisdiction of a court or tribunal extends to making necessary findings of fact and ancillary determinations of law to resolve the dispute. Therefore, according to Ukraine, a respondent's claim of sovereignty cannot automatically negate the tribunal's jurisdiction under Articles 286 and 288 UNCLOS, and in certain cases, the tribunal can address the underlying sovereignty dispute as part of its resolution process (paras. 74–77).

The Tribunal in this respect believes that the main issue in this case is whether a sovereignty dispute over Crimea exists and, if so, whether it is related to the maritime dispute brought by Ukraine before the Tribunal (paras. 161).

2.3. The existence of a dispute over sovereignty over Crimea

The Arbitral Tribunal examines the argument regarding the existence of a sovereignty dispute over Crimea. It determines that the principles of non-recognition, good faith, and estoppel do not bar the Russian Federation's claim. The Tribunal also rejects Ukraine's assertion that the claim is implausible. Furthermore, the Tribunal concludes that resolving the question of sovereignty over Crimea is essential to addressing Ukraine's claims under the Convention. As a result, the Tribunal lacks jurisdiction over claims dependent on Ukraine's sovereignty over Crimea and advises Ukraine to revise its submissions accordingly (paras. 162–188).

Undoubtedly, the central issue in this case revolves around the sovereignty dispute concerning Crimea. Similar to *Chagos MPA Arbitration* between Mauritius and the United Kingdom, Annex VII arbitral tribunal cannot determine the coastal State without addressing the underlying questions of sovereignty. However, from the perspective of the view of the illegal occupation, this part of the Award brings more questions than answers.

3. Occupation and dispute related to sovereignty over Crimea under UNCLOS: another perspective

When the law of the sea acts as a special law, and by this, «*lex specialis derogat legi generali*», even if certain parts of the sea are occupied, the occupying power does not have the right to explore and exploit natural resources within the «occupied» maritime zones. By this, «the displaced government

retains its rights under [UNCLOS] and the occupant must allow the occupied State to exercise such rights, or at least cooperate with the occupied State in exploitation of the resources due to the long-term environmental, political and economic effects of such actions» (Friedman 2021: 437).

However, the reality shows that such occupation has to be established before alleging the occupying state of its violation of articles of UNCLOS. It reflects a lot of similarities with the Chagos Archipelago and Mauritius case.

The Chagos Archipelago is a group of islands located in the Indian Ocean. It was detached from the colony of Mauritius in 1965 and is currently part of the British Indian Ocean Territory. The UK removed the entire Chagossian population from the archipelago between 1968 and 1973, and today it no longer has a permanent population. In 1966, the largest island in the archipelago, Diego Garcia, was leased to the United States as a strategic airbase (Nguyen 2016: 121-122). The archipelago has been the subject of disputes between Mauritius and the United Kingdom regarding sovereignty and the establishment of a Marine Protected Area to preserve marine biodiversity. Mauritius has asserted its rights to sovereignty over the archipelago and initiated earlier mentioned *Chagos MPA Arbitration*. When the Arbitral Tribunal declined its jurisdiction in this case, Mauritius gained support within United Nations General Assembly (UNGA) that adopted Resolution 71/292 on Request for an advisory opinion of the International Court of Justice (ICJ) on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965" on 22 June 2017. Later, after the Advisory Opinion was issued, Mauritius initiated a maritime delimitation dispute with Maldives in the International Tribunal for the Law of the Sea (ITLOS). Thus, the Special Chamber of ITLOS concluded that there was no involved question of sovereignty over the Chagos Archipelago, based on the determinations made by the ICJ in its *Advisory Opinion concerning Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* and Resolution 73/295 adopted by UNGA on 22 May 2019 (para. 246). By this, the Special Chamber does not directly address the question of sovereignty. However, based on the ICJ's Advisory Opinion, the Chamber essentially settles the sovereignty dispute between the United Kingdom and Mauritius over the Chagos Archipelago with a binding effect. This case's unique circumstances make it unclear if it impacts on the future determinations on sovereignty over territory within the law of the sea dispute settlement (De Herdt 2022: 367).

The *Chagos MPA Arbitration* and *Coastal State Rights Dispute* share a similarity in having an unresolved dispute over territorial sovereignty.

The possible scenario in case of occupation of Crimea is to apply the approach taken by Mauritius in regard to the Chagos Archipelago. By this, it does make sense to ask UNGA to issue a resolution seeking an advisory opinion from ICJ regarding the status of Crimea as occupied by the Russian Federation. However, even though the situation with Chagos Archipelago seems similar to Crimea, it has a very distinct difference. Thus, ICJ in its Advisory Opinion highlights the functions of the UNGA concerning decolonization (para. 163), it also was mentioned by Special Chamber in its Award on Preliminary Objections (para. 226). There is no certainty that ICJ Advisory Opinion can provide any emphasis in a special role of UNGA concerning illegal annexation and occupation. In this respect it would be important to strengthen Ukraine's position against Russia's illegal annexation and ongoing occupation of Crimea since 2014 and to seek a more definitive and legally binding decision on the status of Crimea as occupied and Ukraine as its coastal state. Given the recent full-scale invasion of Ukraine by the Russian Federation and discussions about establishing an ad hoc tribunal (Vasiliev 2022, Corten & Koutroulis 2022, Trahan 2023, Pylypenko 2023, McDougall 2023, etc) if such a tribunal is formed, it could be asked for legally binding decision confirming the status of Crimea as occupied by the Russian Federation since 2014. One of the most important issues is that the relevant ad hoc tribunal has to be granted this jurisdiction to do so, and it should be agreed that its decision would be legally binding. The supporting evidence that can be used are decisions of other courts, such as ECHR, ICJ, ICC. Even though they do not have direct jurisdiction to establish the

matter of occupation, they do legal evaluation of the situation that could be referred to as «authoritative power».

From the perspective of general international law, the illegality of acquiring territory through the threat or use of force is a principle of customary international law. It was confirmed in a number of cases (*Military and Paramilitary Activities in and against Nicaragua*, paras. 187–190; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 88).

The International Law Commission recognized the prohibition of aggression and illegal use of force as *jus cogens* (Report of the International Law Commission 2001: 283-284, paras. 4–5). *Jus cogens* or a peremptory norm of general international law is defined as «a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character» (VCLT, art. 53).

Article 41(2) of the International Law Commission Articles on State Responsibility provides the obligation of non-recognition stating that «[n]o State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation». Meanwhile, Article 40 states that «1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation».

The obligation of non-recognition is aimed at maintaining the illegality of the situation and preventing any actions that could imply recognition of its legality (Talmon 2006: 114). UNGA Resolution 68/262 calls upon states not to recognize any alteration of Crimea's status. The Tribunal in *Coastal State Rights Dispute* acknowledges this non-recognition principle, however, it «does not consider that the UNGA resolutions […] can be read to go as far as prohibiting it from recognising the existence of a dispute over the territorial status of Crimea» (para. 177). According to the Tribunal «without prejudice to the meaning of the phrase «not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol», the mere recognition of the objective fact of the existence of a dispute over Crimea in the sense that the claim of one party is positively opposed by the other party cannot be considered to contravene the UNGA resolutions» (para. 177).

By this, according to the Tribunal, it «recognises […] reality without engaging in any analysis of whether the Russian Federation's claim of sovereignty is right or wrong. In this regard, the Arbitral Tribunal recalls the statement of the ICJ in East Timor that Portugal, similarly to the Russian Federation in this case, «has, rightly or wrongly, formulated complaints of fact and law against Australia which the latter has denied. By virtue of this denial, there is a legal dispute» (para. 178).

The approach taken reveals the reality by claiming not to violate the principle of non-recognition. Nevertheless, at the same time it also acknowledges the existence of a dispute between Ukraine and the Russian Federation. This creates a contradiction within the tribunal's award. If the non-recognition principle is applied, there should be no dispute because the actions of the Russian Federation are considered as a serious breach of the prohibition of aggression and illegal use of force. However, if a non-recognition principle is not applicable in this case, then, indeed, there is a clear dispute between these two parties regarding the status of Crimea, and the Tribunal lacks jurisdiction to rule on this matter.

While criticizing the approach taken by the Tribunal, it is important to see another side. And another side is that the essential characteristic of the settlement of disputes is that jurisdiction shall be based on consent (Gautier 2022: 1062). Obviously, the legal order for the ocean and the compulsory dispute settlement system depends on the continued willingness of States to participate in it, uphold it, and comply with it (Holst 2023: 284).

And by this, the Tribunal faced quite a challenging situation. In case, if it would not have chosen such a neutral position in respect of the status of Crimea, either Ukraine or the Russian Federation

would be the ones who would not accept its ruling. Also, considering time of the award, it was just a couple years ago when China in *the South China Sea Arbitration* adopted a position of non-acceptance and non-participation in the proceedings (*the South China Sea Arbitration* Award on Jurisdiction and Admissibility, para. 10; *the South China Sea Arbitration* Award, para. 53). By this, it seems that the Arbitral Tribunal intentionally decided to contradict itself with non-recognition principle by accommodating both parties of the case: Ukraine and the Russian Federation.

Conclusions. The results of the study confirm the complexity of the situation with the occupation of Crimea and Annex VII Arbitral Tribunal under UNCLOS. The *Chagos MPA Arbitration* and *Coastal State Rights Dispute* both have unresolved disputes over territorial sovereignty. To address the situation with Crimea, Ukraine can follow Mauritius' approach with the Chagos Archipelago, seeking an advisory opinion from the ICJ through the UNGA. However, it's important to note that the ICJ's advisory opinion may not provide clear emphasis on the role of the UNGA concerning illegal annexation or occupation. To strengthen Ukraine's position against Russia's actions, a more definitive and legally binding decision on Crimea's status as occupied and Ukraine as its coastal state is needed. Establishing an ad hoc tribunal with the jurisdiction to make such a decision and ensuring its decision is legally binding would be crucial. Supporting evidence from other courts like the ECHR, ICJ, and ICC can also be useful, despite their lack of direct jurisdiction on the matter of occupation.

According to general international law, acquiring territory through the threat or use of force is illegal, and this principle is considered a peremptory norm. Article 41(2) of the International Law Commission Articles on State Responsibility outlines the obligation of non-recognition, aiming to maintain the illegality of the situation and prevent any actions implying recognition of its legality. In the *Coastal State Rights Dispute*, the tribunal acknowledges the non-recognition principle but also acknowledges the existence of a dispute between Ukraine and Russia. This creates a contradiction within the award, as applying the non-recognition principle would mean there should be no dispute. However, the tribunal may have chosen a neutral position to accommodate both parties and avoid potential challenges to its jurisdiction.

References:

1. Boyle, A. (1997). Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction. *International and Comparative Law Quarterly*, *46*(1): 37-54. https://doi.org/10.1017/S0020589300060103.
2. Boyle, A. (2003). Some Problems of Compulsory Jurisdiction before Specialised Tribunals: The Law of the Sea". In P. Capps, M. Evans & S. Konstadinidis (Eds.), *Asserting Jurisdiction: International and European Legal Perspectives* (pp. 243–253). Hart Publishing.
3. Buga, I. (2012). Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals. *The International Journal of Marine and Coastal Law* 27: 59–95. https://doi.org/10.1163/157180812X615113.
4. *Chagos Marine Protected Area Arbitration* (Mauritius v United Kingdom), Annex VII Arbitral Tribunal, PCA Case no 2011-03, Award of 18 March 2015.
5. Chandrasekhara Rao, P. & Gautier, P. (2018). *The International Tribunal for the Law of the Sea.* Cheltenham, UK: Edward Elgar Publishing. https://doi-org.peacepalace.idm.oclc.org/10.4337/9781786433015.
6. Churchill R. (2017). The general dispute settlement system of the UN Convention on the Law of the Sea: overview, context, and use. *Ocean Development and International Law* 48(3-4): 216–238. https://doi.org/10.1080/00908320.2017.1327287
7. Churchill, R. (2010). Trends in Dispute Settlement in the Law of the Sea: Towards the Increasing Availability of Compulsory Means. In D. French, M. Saul & N.D. White (Eds.). *International Law and Dispute Settlement: New Problems and Techniques* (pp. 143–172). Hart Publishing.

8. Corten O. & Koutroulis V. (2022). Tribunal for the crime of aggression against Ukraine – a legal assessment. *In-Depth Analysis Requested by the DROI Subcommittee.* https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf
9. De Herdt, S. W. (2022). Mixed Disputes, *The International Journal of Marine and Coastal Law 37*(2): 358–367. https://doi.org/10.1163/15718085-bja10082
10. *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives*). International Tribunal for the Law of the Sea. Retrieved 22 July 2023, from https://www.itlos.org/en/main/cases/list-of-cases/dispute-concerning-delimitation-of-the-maritime-boundary-between-mauritius-and-maldives-in-the-indian-ocean-mauritius/maldives/
11. *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives*), Preliminary Objections Judgment of 28 January 2021.
12. Friedman, S. (2021). The Application of the Law of Occupation in Maritime Zones and Rights to «Occupied» Marine Resources. *The International Journal of Marine and Coastal Law* 36(3): 419–437. https://doi.org/10.1163/15718085-bja10064
13. Gautier, P. (2022). Some Reflections on the «New Law of the Sea». *International Law Studies*, 99: 1050–1062. https://digital-commons.usnwc.edu/ils/vol99/iss1/39/
14. Holst, R. J. (2023). Reflections on the Governance Function of Compulsory Dispute Settlement in the Legal Order for the Ocean. *The International Journal of Marine and Coastal Law*, 38(2), 283–301. https://doi.org/10.1163/15718085-bja10122
15. Karaman, I. V. (2012). *Dispute Resolution in the Law of the Sea*. Brill | Nijhoff. https://doi.org/10.1163/9789004212015
16. Klein, N. (2005). *Dispute Settlement in the UN Convention on the Law of the Sea*. Cambridge University Press. https://doi.org/10.1017/CBO9780511494376
17. Klein, N. (2014). The Effectiveness of the UNCLOS Dispute Settlement Regime: Reaching for the Stars? *Proceedings of the ASIL Annual Meeting* 108: 359–364. https://doi.org/10.5305/procannmeetasil.108.0359
18. Klein, N. (2018). Land and Sea: Resolving Contested Land and Disappearing Land Disputes under the UN Convention on the Law of the Sea. In C. Giorgetti & N. Klein (Eds.), *Resolving Conflicts in the Law* (pp. 249–296). Brill Nijhoff. https://doi.org/10.1163/9789004316539_014
19. Koval, D. (2021). The Award Concerning Jurisdiction in the Coastal State Rights Dispute Between Ukraine and Russia: What Has Been Decided and What to Expect Next. *Lex Portus* 7(1): 7–30. https://doi.org/10.26886/2524-101X.7.1.2021.1
20. Lando, M. & Oral N. (2021). Jurisdictional Challenges and Institutional Novelties – Procedural Developments in Law of the Sea Dispute Settlement in 2020. *The Law & Practice of International Courts and Tribunals* 20(1): 191–221. https://doi.org/10.1163/15718034-12341444
21. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004.
22. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019.
23. McDougall, C. (2023). The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine. *Journal of Conflict and Security Law*: 1–28. https://doi.org/10.1093/jcsl/krad004
24. *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), I.C.J. Reports 1986.
25. Nguyen, L. N. (2016). The Chagos Marine Protected Area Arbitration: Has the Scope of losc Compulsory Jurisdiction Been Clarified? *The International Journal of Marine and Coastal Law 31*(1): 120–143. https://doi.org/10.1163/15718085-12341393
26. Nguyen, L. N. (2023). *The Development of the Law of the Sea by UNCLOS Dispute Settlement Bodies*. Cambridge University Press. https://doi.org/10.1017/9781108980296

27. Nuridzhanian, G. (2018). Crimea in International Courts and Tribunals: Matters of Jurisdiction. *Max Planck Yearbook of United Nations Law Online* 21(1): 378–403. https://doi.org/10.1163/13894633_021001013
28. Oral, N. (2022). Ukraine v. The Russian Federation: Navigating Conflict over Sovereignty under UNCLOS. *International Law Studies* 97: 478–508. https://digital-commons.usnwc.edu/ils/vol97/iss1/25/
29. Pylypenko, V. (2023, January 5). The View from Ukraine: Why a New International Criminal Tribunal to Prosecute Russian Aggression is Needed. *Blog: Justice in Conflict*. https://justiceinconflict.org/2023/01/05/the-view-from-ukraine-why-a-new-international-criminal-tribunal-to-prosecute-russian-aggression-is-needed/
30. Report of the International Law Commission, 53rd Session, GAOR, 56th Session, Supp. No. 10 (A/56/10), 2001.
31. Schatz, V. & Koval, D. (2018, September 6). Insights from the Bifurcation Order in the Ukraine vs. Russia Arbitration under Annex VII of UNCLOS. *EJIL: Talk! Blog of the European Journal of International Law.* https://www.ejiltalk.org/insights-from-the-bifurcation-order-in-the-ukraine-vs-russia-arbitration-under-annex-vii-of-unclos/
32. Schatz, V. (2021). The Status of Crimea and the Sea of Azov as a Jurisdictional Hurdle in Ukraine v. Russia: A Comment on the UNCLOS Annex VII Arbitral Tribunal's Award Concerning Preliminary Objections. *Review of Central and East European Law* 46(3–4): 400–415. https://doi.org/10.1163/15730352-bja10053
33. Select Bibliography on Settlement of Disputes concerning the Law of the Sea. (2022). In *Yearbook International Tribunal for the Law of the Sea / Annuaire Tribunal international du droit de la mer, (*2021), 25: 165–168. Brill Nijhoff. https://doi.org/10.1163/9789004533981_011
34. Talmon, S. (2006). The Duty Not to «Recognize as Lawful» a Situation Created by the Illegal Use of Force or Other Serious Breaches of a *Jus Cogens* Obligation: an Obligation without Real Substance? In C. Tomuschat & J. Thouvenin *(Eds.), The Fundamental Rules of the International Legal Order* (pp. 99–125). Brill | Nijhoff. https://doi.org/10.1163/ej.9789004149816.i-472.33
35. Tanaka, Y. (2018). *The Peaceful Settlement of International Disputes*. Cambridge University Press. https://doi.org/10.1017/9781316687062
36. Tanaka, Y. (2019). *The International Law of the Sea*. Cambridge University Press. (3rd ed.). https://doi.org/10.1017/9781108545907
37. *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China),* Annex VII Arbitral Tribunal, PCA Case no 2013-19, Arbitral Award of 12 July 2016.
38. *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China),* Annex VII Arbitral Tribunal, PCA Case no 2013-19, Award on Jurisdiction and Admissibility of 29 October 2015.
39. Trahan, J. (2023, February 6). Why a «Hybrid» Ukrainian Tribunal on the Crime of Aggression Is Not the Answer. *Blog: Just Security*. https://www.justsecurity.org/85019/why-hybrid-ukrainian-tribunal-on-crime-of-aggression-is-not-the-answer/
40. Tzeng, P. (2016, October 14). The Doctrine of Indispensable Issues: Mauritius v. United Kingdom, Philippines v. China, Ukraine v. Russia, and Beyond. *EJIL: Talk! Blog of the European Journal of International Law.* https://www.ejiltalk.org/the-doctrine-of-indispensable-issues-mauritius-v-united-kingdom-philippines-v-china-ukraine-v-russia-and-beyond/
41. Tzeng, P. (2017). Ukraine v. Russia and Philippines v. China: Jurisdiction and Legitmacy. *Denver Journal of International Law & Policy* 46(1): 1-19. https://digitalcommons.du.edu/djilp/vol46/iss1/3
42. UN General Assembly Resolution 68/262 (2014). Territorial integrity of Ukraine.
43. UN General Assembly Resolution 71/292 (2017). Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

44. UN General Assembly Resolution 73/295 (2019). Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.
45. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.
46. Vasiliev, S. (2022, March 3). Aggression against Ukraine: Avenues for Accountability for Core Crimes. *EJIL: Talk! Blog of the European Journal of International Law.* https://www.ejiltalk.org/aggression-against-ukraine-avenues-for-accountability-for-core-crimes/
47. Vienna Convention on the Law of Treaties Sea (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
48. Volterra, R. G., Mandelli, G. F. & Nistal, A. (2018). The Characterisation of the Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait. *The International Journal of Marine and Coastal Law* 33(3): 614–622. https://doi.org/10.1163/15718085-12331098
49. Zadorozhnii, O. (2016). Arbitrazhnyi protses vidpovidno do Konventsii OON z morskoho prava 1982 r. ta zvernennia do Mizhnarodnoho Sudu OON yak sposoby rozviazaty spory mizh Ukrainoiu i Rosiiskoiu Federatsiieiu: efektyvnist, perevahy, nedoliky [The Arbitration Process in Accordance with the UN Convention on the Law of the Sea of 1982 and the Recourse to the International Court of Justice as a Way to Resolve Disputes between Ukraine and the Russian Federation: The Effectiveness, Advantages, Disadvantages]. *Ukrainian Journal of International Law* 2016(2): 7–15 [in Ukrainian].

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RESEARCHING THE PLACES OF SPONTANEOUS BURIALS OF DECEASED AND KILLED CITIZENS IN THE DE-OCCUPIED TERRITORIES[1]

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Abstract. The article highlights the peculiarities of organizing and conducting an investigation of spontaneous burial sites of deceased and killed citizens in the de-occupied territories. The algorithm of actions of law enforcement bodies after receiving a report on the presence of spontaneous burials in a certain territory is considered. The author draws attention to the issue of involving qualified specialists and experts in the investigation of spontaneous burial sites and providing them with specialized assistance. The author describes the actions of the investigator and the specialists involved during the working phase of the inspection of the spontaneous burial sites, the removal, examination, and recovery of the bodies, the fixation of the traces found, and the packaging of the material evidence. Attention is paid to the recommendations for drawing up a protocol for the inspection of the crime scene. The possibilities of using the modern laboratory equipment "ANDE 6C" for the analysis of human DNA profiles and the identification of the bodies of the dead are demonstrated.

Key words: criminal proceedings, war crimes, inspection, places of spontaneous burials, de-occupied territories.

Statement of the problem. The necessity of fulfilling the tasks of criminal proceedings outlined in Article 2 of the Criminal Procedure Code of Ukraine (Kryminalnyi protsesualnyi kodeks Ukrainy: 2012) (hereinafter – the CPC of Ukraine) in connection with the full-scale Russian aggression in the event of discovery of unauthorized graves obliges the employees of national and international law enforcement and judicial authorities to take all possible measures aimed at establishing the circumstances of each criminal offense resulting in the loss of human life, the identity of each victim of such offense and all those responsible for its acts.

It is impossible to fulfill the defined tasks at the stage of pre-trial investigation without qualitative investigation of the places of spontaneous burials of deceased and killed citizens in the de-occupied territories. Such an investigative action is carried out to ensure the collection and verification of evidence in the criminal case by carrying out other necessary and possible procedural actions (presentation of a person for identification, carrying out a series of forensic examinations, identification

[1] In this article, the results of the author's research are partially used and further developed, as reflected in the following publication: "Review of the Scene of Natural Burials (based on materials from de-occupied territories): a guide for law enforcement Practitioners" by Tsutsqiridze M.S., Krymchuk S.G., Vitvitsky S.S., Kaverina T.P., et al. Kropyvnytskyi: Don. State University of Internal Affairs; Kyiv: Main Investigation Department of the National Police of Ukraine, 2023. 124 p.

of a person, etc.). At the same time, the effectiveness of these actions and the admissibility of the results obtained in proving the results depend, first of all, on a properly organized and qualitatively conducted inspection of the places of spontaneous burials of dead and deceased citizens in the de-occupied territories, which is becoming more and more important every day.

Analysis of recent research and publications. The works of V.K. Veselskyi, A.V. Ishchenko, R.L. Stepaniuk, H.K. Teteriatnyk, M.S. Tsutskiridze, K.O. Chaplynskyi, V.Y. Shepitko, and many others are devoted to specific issues of preparation and conduct of various types of investigative examinations. In their works, they mainly considered the general issues of conducting this investigative (detective) action, methods and stages of the investigation, and gave recommendations on typical places to search for certain types of traces depending on the type of crime and the way of its commission.

The relevance of the chosen topic is reinforced by the lack of thorough, general scientific works on the study of problematic issues in the organization of preparation and inspection of spontaneous burials of dead and deceased citizens in the de-occupied territories, which are considered in the context of war crimes.

The article aims to highlight the peculiarities of inspection and research of spontaneous burial sites of deceased and killed citizens in the de-occupied territories as an important stage of collecting evidence of war crimes.

Summary of the main material. Beginning with the period of de-occupation of the Kyiv region, at the end of March 2022, a new stage in the work of the pre-trial investigation units of the National Police of Ukraine began with the documentation of the places of spontaneous burials of deceased (dead) military and civilian personnel. The first discovered mass graves in Bucha, Irpin, Moshchun, and Borodyanka not only shocked me with their brutality but also revealed many problematic issues related to the organization and rapid development of the algorithm of actions developed by the Main Investigation Department of the National Police of Ukraine to provide methodological assistance to local investigators.

Such work required taking into account the mistakes made in documenting the crimes of the occupying forces committed since April 2014, when law enforcement officers and forensic experts first encountered cases of mass deaths of civilians and soldiers as a result of mortar and artillery shelling, the inability to evacuate dead soldiers from the battlefield on time, the capture of Ukrainian soldiers, torture and death as a result of such enemy actions, and spontaneous burials. In addition, there was a need for rapid concentration of professional knowledge and skills, participation of many law enforcement officers, criminalists, doctors, forensic and judicial experts, and application of recommendations on the organization and tactics of priority investigative (search) actions. The interaction of various specialists and units has become truly crucial and has allowed investigators to more thoroughly document crimes that qualify as violations of the laws and customs of war, to avoid significant procedural errors, and to prevent inconsistencies in the identification of unidentified persons who died as a result of Russia's armed aggression.

Undoubtedly, technically and psychologically, the most difficult investigative (search) action was the inspection of the scene of the incident after the discovery of the place of spontaneous burial, namely, its organization and conduct.

Examining a crime scene is a crucial aspect of detective work, and there are numerous resources available for experts who specialize in the Criminal Procedure Code. However, the current circumstances, brought on by Russian aggression, require a fresh approach to preparing and conducting investigations of unplanned grave sites. These circumstances are considerably different from those typical of standard crime scene examinations.

According to departmental regulations, law enforcement agencies must register any reports of potential grave sites and dispatch an investigative team to the location to verify the information.

The Ukrainian Ministry of Internal Affairs provides professional support for preliminary investigations of areas mentioned in citizen reports, using explosive experts and military sappers. Before conducting any further investigative action, it is essential to explore the area and ensure mine safety in de-occupied territories. This should be standard practice for law enforcement units working in these regions.

If there is confirmation of a spontaneous burial in a particular area, investigators who specialize in criminal offenses against human life and health will perform further work (Pro zatverdzhennia Instruktsii z orhanizatsii vzaiemodii orhaniv dosudovoho rozsliduvannia: 2017).

When working at unauthorized burial sites, it is important to uphold the principles of showing the utmost respect for the deceased and preventing any damage to the investigation process (Dufeniuk O.M., 2022: 373).

To properly investigate the scene, it is necessary to have municipal service employees or willing volunteers with technical expertise in excavating graves and moving bodies. Additionally, forensic experts, the National Police of Ukraine forensic specialists, experts from the Expert Service of the Ministry of Internal Affairs, and a specialized mobile laboratory team (Pro zatverdzhennia Instruktsii pro poriadok zaluchennia pratsivnykiv orhaniv dosudovoho rozsliduvannia politsii ta Ekspertnoi sluzhby: 2015) should be present. It is also important to have representatives from foreign authorities who can document events for the International Criminal Court. In this case, the inspection of a spontaneous burial site, under optimal conditions, is carried out continuously from the moment the grave is opened until the last body is recovered. Before opening the grave, it is recommended to dig a test trench to establish the initial position of the outermost bodies without damaging them, and from there to begin gradually removing soil layers from the first to the last body.

Mine safety should also be considered before removing the bodies. The bodies may be mined by the occupying forces. To this end, a pyrotechnics, engineer, and demolition expert or explosives technician should examine the site of the unauthorized burial before the start of the inspection and, if necessary, take measures to quickly clear the burial site, taking into account safety measures. Explosive devices of various etymologies may be on the body, in clothing, under the body, between bodies (if they are lying on top of each other), etc.

An inspection is carried out at each burial site, covering the recovery of all the bodies located there, and is documented in a site inspection report. When excavating a grave site, it is necessary to determine whether it is a primary or secondary grave site.

The inspection process may take several days, and a detailed record will be maintained of any pauses or resumes. While the inspection is on hold, the location is monitored to prevent any damage or theft. Additionally, the actions of the investigator and the team are recorded via video. The inspection report should contain the current GPS coordinates of the site where the unauthorized burial was discovered. This is particularly useful when inspecting locations like forests or fields. When removing the bodies, each one is assigned a unique identification number based on the order in which it was taken from the grave. Any objects found in or around the grave are also numbered for identification purposes.

When handling bodies, it is important to pay attention to their condition, as decomposition changes can lead to the disruption of anatomical integrity. Each body should be placed in a separate transportation package, which is labeled with an anti-vandal marker while attaching a tag with explanatory text simultaneously. The tag includes information about the location of retrieval, date, time, brief circumstances of the event, body number, and other data necessary for further body identification and maintaining the order of its examination, concerning the details outlined in the crime scene examination protocol. If there are signs of binding, limb immobilization, blindfolding, or other indications of violence inflicted on the body while alive, or if there are objects that can help identify the deceased, such items are not removed from the body during the retrieval phase. Instead, they are carefully

described and photographed from various angles. Subsequently, they are placed in a special transportation package. In case of discovering body fragments, they are either placed in a single package if there are objective grounds to believe that they all belong to one individual, or in separate packages if there is doubt regarding their association.

The investigator should take all necessary measures to properly document and direct each bone fragment discovered during the excavation of a grave for molecular genetic analysis. This will help determine whether these fragments originate from a single body and provide reliable information about the number of bodies or body parts present in the grave at the time of burial.

After removing the last body from the burial site, it is necessary to recheck the grave using ordinary rakes. First, rake along the length of the grave, and then across its width. Additionally, a manual check can be done using hands covered with tight rubber gloves to sense the presence or absence of contents. This process is done exclusively to ensure that no item or fragment of bone remains in the grave that may have fallen out during the retrieval of bodies. Moreover, it allows for the identification and retrieval of items that may carry the DNA of the person who conducted the burial or committed the crime, especially in cases involving shootings.

The retrieval of material evidence is also motivated by the anticipated cause and timing of death, as well as the potential determination of whether the bodies were placed in the grave while still alive or after their death. This is done to gather evidence that can shed light on the circumstances surrounding the deaths and potentially aid in identifying any perpetrators involved.

In the case of discovering skeletal remains of unidentified bodies, all remaining clothing and footwear are also retrieved from the burial site, including partially decomposed fragments, buttons, belts, buckles, religious items (icons, medallions, etc.), jewelry (rings, earrings, chains, or their fragments), personal belongings, and other items that, considering the circumstances of body retrieval, could not naturally be present at the place of body discovery. This also includes separated hair, nails, teeth, and dental crowns.

If there are signs of body packaging before burial, it is mandatory to document it in the crime scene examination protocol, and the packaging item itself is seized for further investigation. In such cases, attention should also be paid to the presence or absence of adhesive tape that may have been used to secure the person or the bag in which they could have been placed.

Following the examination of the body, the crime scene examination protocol is prepared at the scene by specialized investigators. The examination is conducted using video recording, capturing the body and the surrounding area.

In the examination protocol of the body, the following details are recorded:

date, time, GPS coordinates, the name of the locality, address, and other relevant location information;

weather conditions at the time of discovery;

the location of the body marked on a map of the locality;

the position of the body about stationary objects and the overall surroundings;

the condition of the body, visually identified bodily injuries, postmortem changes, distinctive features, and clothing;

detailed descriptions of any traces of torture or signs of physical abuse on the body;

possible causes of death such as gunshot wounds, asphyxiation, and cuts (including dismemberment);

personal belongings discovered with the body, including mobile phones, are collected as material evidence;

documents found with the deceased individual or close to them are also collected as material evidence;

The examination of a body typically involves two stages: a general overview and a detailed examination.

During the general overview, the following aspects are examined and documented in the protocol:

1) body position and posture at the scene, including:

assessing whether there are any signs of postmortem changes in the body's position and posture (as they may have diagnostic significance);

noting the location of the body and its relation to surrounding objects or fixed landmarks (e.g., the head facing south);

describing the position of the body (lying, sitting, on the side, etc.);

observing the position of the head and limbs (level, bent, inclined, etc.);

documenting any objects or items found on or near the body and their relationship to it;

noting the position and facial expression of the head.

2) the external condition of the clothing on the body;

3) any instruments of death found with the body.

During the detailed examination, the following aspects are investigated:

1) corpse bed (the area of the floor or ground beneath the body);

2) clothing of the deceased (the clothing worn by the deceased is examined layer by layer, starting from the top). Attention is given to the specific items worn and their sequence of placement; the condition of the clothing and footwear is noted, including any damage (tears, cuts, detached parts) and contamination (color, consistency); the configuration of damaged edges in the clothing is also documented (even, uneven, etc.); the contents of pockets are inspected and recorded.

3) the body of the deceased and any injuries present.

During the examination of a naked body, the following aspects are recorded:

1) completeness, skin color, stature, age, and gender;

2) postmortem changes: pallor and coldness of the skin (areas of warmth if present). Rigor mortis (the degree and distribution of stiffness) – it typically begins in the jaw muscles after 2–4 hours and progresses to the neck, shoulder girdle, and downward. It starts to disappear from the top down after approximately two days. Livor mortis (lividity) – the location and prominence of lividity marks are noted. The usual color is bluish-purple, while pink lividity may indicate exposure to carbon monoxide or hypothermia. Signs of decomposition – such as putrefactive odor, skin slippage, discoloration (greenish or darkening), and the presence of bloating or gas formation in soft tissues (facial swelling, distended abdomen, scrotum, protruding eyes, etc.). Presence of insects, egg masses, and larvae – any signs of insect activity, such as the type of insects, location, and quantity, are recorded.

3) appearance and characteristics of the abdomen;

4) individual characteristics and peculiarities (distinctive features);

5) injuries on the body: any injuries present on the body are described, including their nature (stab wound, incision, bruise, hematoma), location, size, shape, and other relevant details (color, edges, layering, contamination);

6) bloodstains, secretions, hair, and other traces and material evidence on the body or in its vicinity or objects associated with causing the injuries.

The different parts of the body are described in the following sequence: head → face → neck → chest → abdomen → back → arms → legs.

The body is photographed, a diagram is prepared, and impressions and casts of the fingerprints are taken during the examination. Samples such as hair fragments, nail clippings with subungual contents, and other potential traces found on the body are collected. Therefore, it is recommended to perform all actions related to the examination of the body and the collection of trace evidence as much as possible at the crime scene (the location where the body was discovered) (Furman Ya.V., Kotliarenko L.T., 2017: 12).

Upon completion of the examination, the protocol specifies the location (the forensic medical examination department) where the body will be transported.

The use of modern equipment obtained from the USA by forensic specialists significantly aids in crime scene investigation. One such piece of equipment is the RAPID DNA technology-based system called "ANDE 6C," which can generate interpreted genetic profiles from biological samples within 90 minutes. This "sample-to-profile" method involves DNA extraction, multiplex PCR amplification, and DNA fragment separation and detection using capillary electrophoresis. This laboratory establishes a person's DNA profile using 27 loci, which is more precise compared to the existing methods used in the forensic centers of the Ministry of Internal Affairs of Ukraine and the forensic bureau in the cities of Odesa and Dnipro, where profiling is conducted using 24 loci and 16 loci, respectively. However, there is a nuance related to a legal collision, despite the fact that the purpose of the study is to validate the Accelerated Nuclear DNA Equipment (ANDE) 6C system as a method for typing reference samples according to ISO/IEC 17025 standards (Identyfikatsiia zhertv, 2022; Spetsialisty-kryminalisty politsii dokumentuiut viiskovi zlochyny rf, 2022).

In this case, the actual analysis of micro-particles is performed by forensic specialists who carry out their duties within the provisions of regulatory documents that regulate the activities of pre-trial investigation bodies (Deiaki pytannia zabezpechennia vyluchennia, peredachi ta repatriatsii til, 2022).

Considering that the Criminal Procedural Code still provides for the involvement of a specialist in conducting a crime scene investigation, the results obtained through the use of the "ANDE 6C" mobile system from start to finish are fully documented in the crime scene examination protocol, legitimizing them as lawfully obtained evidence. This methodology allows for a more selective approach to the appointment of molecular genetic expertise to identify the deceased person, using only the samples that are predetermined to be used during the molecular genetic examination.

It should be noted that the use of the mobile system "ANDE 6C" is necessary only in cases where more complex and rapid preliminary body identification is required. Its extensive utilization in Ukraine was first observed after a missile strike on the "Amstor" shopping center in Kremenchuk, Poltava region. During the crime scene investigation at the incident site, simultaneous efforts were made to dismantle the technogenic debris, and search for and retrieve fragmented remains of the deceased individuals, which were difficult to identify or had become fragmented due to the high temperatures resulting from the fire.

It is crucial for the investigator and forensic specialist to understand that during the examination of the crime scene in both natural burial sites and technogenic debris resulting from missile and bomb strikes that caused extensive building destruction, fires, and explosions, all possible body fragments should be collected and surface swabs should be taken from surviving structures where remnants of biological traces from individuals present at those locations before the catastrophe might have been left. Observations during cleanup operations and personal involvement in search missions in such scenarios provide ample evidence that due to aggressive actions, the bodies of the deceased can not only be distorted but can also be fragmented into micro-particles, contaminating each other. This complicates their identification, even with the utilization of advanced resources such as the "ANDE 6C" system.

After the retrieval of bodies from natural burial sites and their preliminary examination, a more detailed examination is conducted in forensic institutions, under the requirements of current legislation, for further molecular-genetic identification, using sampling techniques as necessary.

Advanced technologies have made it possible to extract fragments of bone tissue from partially burned samples, from which DNA profiles can be subsequently established. This significantly changes and enhances the process of identifying the deceased. This process takes place during the dissection of the body and the direct conduct of the forensic examination.

Currently, European specialists are being involved in investigative (search) actions in the liberated territories, as reported by the Office of the Prosecutor General of Ukraine (Kostin A, 2022). Since the early days of the liberation, alongside investigators and forensic specialists of law enforcement

agencies, experts from the Institute of Criminalistics Research of the National Gendarmerie of France have been participating in the examination of crime scenes. They utilize not only their own mobile DNA laboratory but also actively participate in the examination of bodies in morgues, employing their technical capabilities, such as portable X-ray machines for determining the direction of gunshot channels and deep drills for collecting DNA material from bone tissue using anti-vandal methods, and so on. Recently, these specialists have been working in the liberated part of the Kharkiv region.

Currently, the de-occupation of Ukraine is ongoing. Units of the National Police are enhancing their skills by gaining practical experience in the de-occupied territories. From interacting with the population to obtaining evidence of crimes against humanity committed by Russia, this is the main focus of the challenging and necessary work of the police units at this stage.

Conclusions. Therefore, the organization and conduct of the examination and investigation of makeshift burial sites of deceased individuals in de-occupied territories have certain differences compared to crime scene investigation in regular situations. It may be characterized by rapidly changing conditions at the scene of the criminal offense, the need to involve a significant number of specialists from various fields, the use of forensic techniques and methods, and the presence of explosive hazards posing risks to the lives and health of the examination participants.

Further scientific research is seen as promising in the following areas: organizational and tactical peculiarities of exhumation, the appointment of forensic examinations in criminal proceedings based on reports of makeshift burial sites; implementation of advanced international practices and standards for collecting evidence of war crimes; expanding the practice of establishing joint investigative teams and involving ad hoc foreign experts; development of action algorithms in the areas affected by rocket attacks, massive destruction, mass killings, and makeshift burials, where special skills and forms of interaction among investigators, experts, specialists, and representatives of competent foreign authorities are required.

References:

1. Kryminalnyi protsesualnyi kodeks Ukrainy: Zakon Ukrainy vid 13.04.2012 № 4651-VI [Criminal Procedure Code of Ukraine: Law of Ukraine dated 13.04.2012 No. 4651-VI]. Retrieved from : https://zakon.rada.gov.ua/laws/show/4651-17/ (accessed 1 June 2023). [in Ukrainian].
2. Pro zatverdzhennia Instruktsii z orhanizatsii vzaiemodii orhaniv dosudovoho rozsliduvannia z inshymy orhanamy ta pidrozdilamy Natsionalnoi politsii Ukrainy v zapobihanni kryminalnym pravoporushenniam, yikh vyiavlenni ta rozsliduvanni : Nakaz MVS Ukrainy vid 07.07.2017 № 575 [Approval of the Instruction on the Organization of Interaction between the Bodies of Preliminary Investigation and Other Units of the National Police of Ukraine in Preventing Criminal Offenses, Their Detection and Investigation: Order of the Ministry of Internal Affairs of Ukraine dated 07.07.2017 №. 575]. Retrieved from : https://zakon.rada.gov.ua /laws/show/z0937-17#Text (accessed 1 June 2023). [in Ukrainian].
3. Dufeniuk, O.M. (2022) Rozsliduvannia voiennykh zlochyniv: lohistychni, kryminalistychni ta sudovo-medychni pytannia [Investigation of War Crimes: Logistical, Criminalistic, and Forensic Medicine Issues]. *Yurydychnyi naukovyi elektronnyi zhurnal,* 4, 369-373. [in Ukrainian].
4. Pro zatverdzhennia Instruktsii pro poriadok zaluchennia pratsivnykiv orhaniv dosudovoho rozsliduvannia politsii ta Ekspertnoi sluzhby Ministerstva vnutrishnikh sprav Ukrainy yak spetsialistiv dlia uchasti v provedenni ohliadu mistsia podii : Nakaz MVS Ukrainy vid 03.11.2015 № 1339 [On the Approval of the Instruction on the Involvement of Employees of the Police Pre-Trial Investigation Bodies and the Expert Service of the Ministry of Internal Affairs of Ukraine as Specialists for Participation in the Scene Investigation: Order of the Ministry of Internal Affairs of Ukraine dated November 3, 2015, No. 1339]. Retrieved from : https://zakon.rada.gov.ua/laws/show/z1392-15#Text (accessed 1 June 2023). [in Ukrainian].

5. Furman Ya. V., Kotliarenko L. T. (2017) Pamiatka slidchomu shchodo provedennia ohliadu trupa na mistsi podii [Guidelines for the Investigator on Conducting a Body Examination at the Scene of the Incident]. Kyiv : Nats. akad. vnutr. sprav. 41 p. [in Ukrainian].
6. Identyfikatsiia zhertv, koly ANDE hotova dopomohty [Identification of victims with the assistance of ANDE]. Retrieved from : https://www.ande.com (accessed 1 June 2023). [in USA].
7. Spetsialisty-kryminalisty politsii dokumentuiut viiskovi zlochyny rf na terytorii Kyivshchyny [Specialists-criminalists from the police document Russian military crimes in the territory of Kyiv region]. Retrieved from : https://www.youtube.com/watch?v=7ksOYzEF8TM (accessed 1 June 2023). [in Ukrainian].
8. Deiaki pytannia zabezpechennia vyluchennia, peredachi ta repatriatsii til (ostankiv) osib, zahyblykh (pomerlykh) u zviazku iz zbroinoiu ahresiieiu proty Ukrainy : Postanova Kabinetu Ministriv Ukrainy vid 17.06.2022 № 698 [Some issues regarding the retrieval, transfer, and repatriation of bodies (remains) of individuals who died as a result of armed aggression against Ukraine: Resolution of the Cabinet of Ministers of Ukraine dated 17.06.2022 № 698]. Retrieved from : https://zakon.rada.gov.ua/laws/show/698-2022-%D0%BF#top (accessed 1 June 2023). [in Ukrainian].
9. Kostin, A (2022) Misiia frantsuzkykh ekspertiv pershoiu doslidyla tila zahyblykh z evakuatsiinoi kolony bilia Kupianska – tse dokaz nashoi absoliutnoi vidkrytosti [The mission of French experts was the first to examine the bodies of the deceased from the evacuation convoy near Kupiansk – this is evidence of our absolute transparency]. Retrieved from : https://www.gp.gov.ua/ua/posts/andrii-kostin-misiya-francuzkix-ekspertiv-persoyu-doslidila-tila-zagiblix-u-kupyansku-ce-dokaz-nasoyi-absolyutnoyi-vidkritosti (accessed 1 June 2023). [in Ukrainian].

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THE SUPRA-NATIONALITY PRINCIPLE IN EU VISA POLICY: THEORETICAL AND APPLIED ASPECTS

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Abstract. The author analyses scientific findings and legal acts related to supranationality in the EU. In particular, the article focuses on the theoretical and applied aspects of the supranationality principle in the EU visa policy. According to the author, supranationality at the EU level is an opportunity for the EU to influence the internal legislative policies of the EU member-countries through relevant bodies authorised to do so. The research methodology used in the paper includes general scientific and special scientific approaches and methods. According to the study's findings, the concept of "supranationality" in the EU visa policy is manifested in the minimum standards established at the EU level regarding the operation of the visa regime. These standards are mandatory for implementation in the policy of each individual EU member-country, with the possibility of their adjustment based on conditions for maintaining the required minimum.

Key words: supranationality, European integration, visa policy, European Union, Europe, Ukraine.

Introduction**.** The EU is now a unique interstate association that has no analogues in the modern world. Its uniqueness is ensured by the features of authority organisation in the EU, which is based on the establishment and functioning of the EU supranational institutional system that guarantees the solution to the most important tasks of the European integration process, the implementation of consistent and effective EU policy (Sakhniuk, 2017, p. 197). The elements of subnational, national, interstate, and supranational regulation are inextricably linked in the EU, highlighting its distinguishing features and implying the flexibility of approaches to the application of supranationality as a practical tool for the development of integration based on the values of respect for human rights (Falalieieva, 2018, p. 93). Today, it is safe to say that the EU is an exclusive supranational integration entity that plays a significant role in today's international environment (Kraievska, 2011, p. 143). In this context, the shared visa policy of the European Union and its member-countries is a clear example. At the same time, since Ukraine has already been designated as a candidate country for the EU, it is especially relevant to examine the issue of supranational visa policy through the example of granting visa-free status to Ukrainian citizens.

The purpose of this study is to examine the theoretical and applied aspects of the supranationality principle in the EU visa policy.

The research objectives are to examine the essence of supranationality as a legal category and demonstrate the features of the concept of «supranationality» in the EU visa policy.

Materials and methods. Foreign and domestic scientific literature covers a wide range of topics related to supranationality and the EU visa policy. In the literature, however, these issues are usually studied separately. In particular, scientists analyse supranationality within the framework of the EU institutional system or in the context of the European law in general. It is worth noting N. Honcharuk's (2005) study, which analyses the effect of integration processes on the formation of national identities in European societies. It is also worth mentioning V. Sakhniuk's work (2017), which examines the manifestation of supranationality in the functioning of the EU institutional system. K. Polat's article (2006) is devoted to the issue of supranationality in the EU immigration policy, and many other researchers highlight specific aspects of the principle of supranationality in the EU policy. In general,

a substantial amount of the research focuses on specific aspects of supranationality as a legal phenomenon (Sikorska, 2011; Denysov & Falalieieva, 2018; Vyshniakov, 2014 etc).

The research methodology is based on a system of general scientific and specific approaches and methods. In particular, the dialectical method was used to investigate the legal content of the concept of «supranationality», and the historical method revealed the regularities of its formation and development. The generalisation of the study's results allowed to conclude about the theoretically applied aspect of supranationality in the EU policy on the visa regime.

The results and discussion. Semantically the Latin prefix «supra», used in complex words, should be translated not only as «beyond» but also as «above» being the opposite to the prefix «sub», which means «under» or «lower». Therefore, supranationality involves that something occurs above nations, and sometimes above countries, or that its significance is recognised by all people (for example, concepts, values, etc.) (Ruszkowski, 2006, p. 187).

However, in practice, the term «supranationality» is typically associated with relationships between countries rather than between nations. It is usually used to denote an authority that spans several countries. In this sense, any international organization in which countries cooperate may be called supranational. Consequently, the term «supranationality» is used to describe international organizations in which some authority was transferred from member-countries to a supranational body (Mamadouh, 1998).

The concept of supranationality gained special relevance after the Second World War due to the formation and conceptualization of integration processes in Europe. Those processes are related to globalization and, when combined, result in the emergence and approval of new mechanisms of coordination, consolidation of efforts and interests, and cooperation among sovereign countries (Falalieieva, 2018, p. 97).

As a doctrinal term «supranationality» started to be used widely from the beginning of the 20-th century. Later, the concept of «supranational order» came to be established as the highest essence of law, returning to «jus gentium». Supranational elements can be found in postwar literature devoted to the activities of the European Communities and the European Union. During this time Western Europe underwent a period of deep transformation, in which established models of political power were radically revised, resulting in a «new type of state form, a supranational-country». Then the question arose: «Did the Communities establish a new, «post-national» political system in which national government authorities were destined to concede?» (Rosamond, 2000, p. 10).

The consept of «supranationality» was first enshrined as a legal term in European law in the Treaty establishing the European Coal and Steel Community, signed in Paris in April 1951 by France, Germany, Italy, and the Benelux countries after lengthy negotiations. The following was stated in Article 9 of this document: «The members of the High Authority shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with the supranational character of their duties. Each Member State undertakes to respect this supranational character and not to seek to influence the members of the High Authority in the performance of their tasks» (Traité instituant la Communauté Européenne du Charbon et de l'Acier, 1951). This treaty established the institutions that became the precursors of the European Community's corresponding structures, and whose activities had an already growing supranational character. However, no definition of this concept can be found in the mentioned document.

According to L. Hrytsaienko, the supranationality of the EU should be understood as the member-countries' renunciation of some of their sovereign rights in certain areas for the benefit of this integration entity's institutions. This determines a higher level of supranational power than national power since its implementation is independent of the directives of the organization's member-countries, and

regulatory legal acts take precedence over domestic ones (Hrytsaienko, 2010, p. 7). W. Denysov and L. Falalieieva, connecting its appearance with European integration, believe that this neologism was introduced into scientific circulation due to the federalist course of European political and legal thought, being its conceptual basis (Denysov, & Falalieieva, 2018, p. 215).

Most commonly, supranational law manifests itself in integration processes, where it coexists with integration law, forming some sort of symbiosis. The interaction between supranational and integration law appears to be mutual partial coverage, which is demonstrated by the fact that in the areas where these two legal phenomena coincide, a regime of supranational integration law occurs. At the same time, the integration element manifests itself as the purpose, object, and method of legal regulation while the supranational element is the power competence, even if provided from the outside and limited (Vyshniakov, 2014, p. 121).

The core of supranationalism is member-countries' contractual transfer (always freely chosen, but not always a one-time act) of a part of their sovereign rights in certain areas, that are traditionally considered to be the parts of their internal competence, to an integration association. The essence of supranationalism can be discovered not only in the scope of explicitly transferred sovereign powers, but also in how actively and effectively the provided opportunities are used, which can be tracked both during the formation of the integration association's position, decision-making, and in the process of its implementation using various means and methods, flexible mechanisms and procedures (Falalieieva, 2018, p. 94).

In the system of institutions of the European Coal and Steel Community, the central role from the very beginning was assigned to the Supreme Board, established as an executive body. The Supreme Board's decisions were mandatory on the country institutions of the association's six member-countries. The establishment of the High Management in the system of the European Coal and Steel Community, endowed with real broad supranational powers, was a significant step towards European economic integration, a breakthrough in traditional ideas about the functional structure of international organisations. At the same time, in opposition to the Supreme Board, the Council of Ministers was established, which limited supranational trends in the development of integration processes.

On August 10, 1952, J. Monet ceremoniously inaugurated the institutions of the European Coal and Steel Community in Luxembourg, the first «European capital». During the transition period (until 1958), a customs union was established, and a single customs tariff for third-countries was implemented by lowering customs tariffs. Between 1954 and 1961, labour mobility was introduced (Kudriachenko, 2010).

Finally, in 1957, two agreements were signed in Rome, establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom), as well as their associated institutes. The first agreement also provided the establishment of the European Social Fund (ESF) and the European Investment Bank (EIB). The supranational nature of the EU was supposed to emerge gradually: decisions were to be adopted unanimously at first, then by a qualified majority of votes.

By the decade of the three communities' existence, it was decided to unite their functional bodies to save resources, which resulted in the signing of the Treaty on the merger of the three communities in Rome on April 8, 1965 (the establishment of a single Council and a single Commission of the three Communities under the name «Commission of the European Communities»). The joint commission began functioning on July 11, 1967, resulting in the actual unification of all three communities into a single structure named the European Community. Gradually, a common internal market was formed within the Community, and beginning in 1968, customs duties in inter-country trade were eliminated, and the free labour movement was permitted (Kudriachenko, 2010).

At the Fontainebleau summit in June 1984, the heads of the European Community's member-countries decided to put into practice the formation of citizens' sense of common European identity. For

this purpose, symbols of a united Europe such as the flag, the national anthem, and even a collective holiday – «Europe Day» – were establishedю Residents of the Schengen Agreement member-countries began to benefit from the visa-free regime (Sikorska, 2011, p. 330). In 1986, in response to the need for further economic integration, the Single European Act was approved to expand the subject competence of the EU. As a result, this organization's supranational nature has strengthened. In particular, the European Parliament (former Assembly) received new legislative powers, and the European Commission's powers were extended (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172).

In 1992, the Treaty on the European Union was signed (Treaty on European Union, 1992). The preparatory work was complicated by differences in member-countries' positions, particularly on issues of collective foreign and security policy, criteria for member-countries' readiness to introduce a single currency, and the generalisation of the majoritarian principle. However, an agreement between opposing viewpoints eventually allowed all new provisions to be incorporated into a single document (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172). It was logical since supranationalism is intended to fill relevant gaps due to presuming the same understanding of the essence of its forms and content by countries and its basis on the unity of practice of implementation (Falalieieva, 2018, p. 98). Supranational organizations should elaborate policies and rules that bind together the countries (Polat, 2006, p. 71).

As N. Honcharuk points out, the peculiarity of the manifestation of supranational identity is that the phenomenon of supranationality of the EU citizens occurs while preserving the national sovereignty of the EU member-countries and the national identity of their citizens. This situation creates several contradictions: on the one hand, there are countries and cultures, and the cultural, linguistic, and other characteristics of the EU member-countries are preserved; on the other hand, citizens' sense of belonging to the European Union is gradually emerging, and their supranational identity is being formed (Honcharuk, 2005, p. 67). While performing their functional powers, the EU institutions should not interfere in the internal affairs of the sovereign countries that are members of it; however, the governing bodies of the EU are gradually expanding their competence, which leads to the limitation of the EU members' sovereignty and the strengthening of supranational tendencies on the path of European integration. Due to the functioning of the supranational system of the EU institutions, the amount of sovereign competence is realized, which implementation is necessary for achieving shared objectives (Sakhniuk, 2017, p. 199).

Supranationality is formed when each member-country delegates some of its sovereign powers to the integration association, which is then implemented through a multilateral supranational mechanism. At the same time, supranational institutions do not acquire sovereignty; instead, they are dependent on the scope and nature of the granted competence, demonstrating the interdependence of supranationality and national sovereignty (Falalieieva, 2018, p. 100). Unlike membership in international organizations, membership in integrated associations, particularly the European Union, limits countries' sovereign rights by transferring some of their rights to the integrated association. Transferring their rights in such a case cannot be interpreted as a loss of their sovereign identity, as only the country can be recognized as the bearer of sovereignty. After all, this means only the country's voluntary transfer of some elements of its internal competence to international institutions and the simultaneous implementation of national and supranational jurisdiction on its territory, the scope and proportions of which are also determined by the volume of material/jurisdictional powers of supranational institutions required for regulation and the basis for the administration of specific spheres of activity (Denysov, & Falalieieva, 2018, p. 230).

It is worth noting that, in accordance with the Treaty on European Union, a regional association with a new, deeper level of political and economic integration was created. The document demarcated the socio-economic sector dominated by the Community and its supranational bodies. According to the Venice Commission of the Council of Europe's conclusions on the form of the EU system

in 1994, this entity «remains an international organization of a supranational nature» (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172). Since 1997, the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, and some related acts have continued expanding the competence of the EU (Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 1997). Asylum, employment policy, visa and migration policies, and other issues were added to the EU's list of responsibilities.

For example, the Schengen Agreement (Regulation (EU) 2016/399) reflected member-country disagreements over the scope of immigration policy and the possibility of supranationalism, which resulted in several positive developments toward a collective migration policy, including a harmonized visa policy. Member-countries have committed to act following relevant Union law, including the European Union's Charter of Fundamental Rights, the Geneva Convention relating to the Status of Refugees, signed on July 28, 1951 in Geneva, and obligations concerning access to international protection, particularly the principle of non-refoulment.

Finally, Regulation 2018/1806 (Regulation (EU) 2018/1806) established generalised minimum standards for the visa-free regime at the EU level. This document provides for complete harmonization in terms of third-country and its nationals who need a visa to cross the external borders of the Member States and those nationals who are exempt from this requirement. The determination of which third-country, citizens of which are subject to or exempt from the visa requirement, must be based on a weighted assessment of each individual case against various criteria. Such determination should be carried out regularly and may result in legislative proposals to amend Annex I of this Regulation, which lists the third-countries whose nationals must have a visa when crossing the external borders of the member-countries, and Annex II of this Regulation, which lists the third-countries whose nationals are exempt from the visa requirement when crossing the external borders of the member-countries for a stay of no more than 90 days and in any 180 days, notwithstanding the existence of country-specific amendments to these Annexes in specific circumstances. However, taking into account the case law of the European Union's Court of Justice, this Regulation should not preclude the application of international agreements concluded by the European Community before the entry into force of Regulation (EC) No. 539/2001, which result in the need for a derogation from the collective visa policy. Furthermore, Article 6 of the Regulation states that: first, a member state may provide for exceptions to or exemptions from the visa requirement for the following categories of people: a) holders of diplomatic, official, or special passports; b) civilian members of air and sea crews while performing official duties; c) civilian members of the sea crew who landed and have a seafarer's identity document issued by International Labour Organisation Conventions No. 108 of May 13, 1958, or No. 185 of June 19, 2003, or the International Maritime Organisation Convention on the Simplification of International Maritime Services of April 9, 1965; d) crew and members of emergency or rescue missions in the event of a disaster or accident; e) the civilian crew on vessels sailing in international internal waters; f) holders of travel documents issued by intergovernmental international organizations in which at least one member-country, or by other subjects recognized as subjects of international law by the relevant member-country, to officials of these organizations or institutions; second, the member state may exempt citizens from the visa requirement in the following cases: a) school pupils who are nationals of a third-country listed in Annex I, are residing now in a third-country listed in Annex II or Switzerland and Liechtenstein, and are traveling on a school excursion with a group of school pupils, accompanied by a teacher from the school; b) persons recognized as refugees and stateless persons if the third-country in which they reside and received their travel documents is one of the third-countries listed in Annex II; c) members of the armed forces traveling on NATO or Partnership for Peace com-

pany, as well as holders of the identification documents and movement orders specified in the Agreement between the Parties to the North Atlantic Treaty relating to the Status of their Armed Forces of June 19, 1951; d) Without prejudice to the requirements arising from the Council of Europe's European Convention on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, recognized as refugees and stateless persons and other persons not having the nationality of any country residing in the United Kingdom or Ireland and holding a travel document issued by the United Kingdom or Ireland and recognized by the Member State concerned; third, a member-country may make exceptions to the visa exemption for individuals who engage in paid activities during their stay (Regulation (EU) 2018/1806). Thereby, the supranational character of the EU visa policy has some exceptions.

As expected, the flexibility of the supranational principle resulted in some differences in visa policies among the EU member-countries and Ukrainian citizens. Ireland, for example, reserved the right to an independent visa policy during its EU integration, and thus the visa-free regime would not apply to this member-country (Regulation (EU) 2018/1806); this is why the visa-free regime between Ukraine and the EU did not allow Ukrainian citizens to travel to Ireland. However, as is well known, on the second day of Russia's full-scale war against Ukraine, Irish authorities cancelled the visa regime in solidarity with Ukrainians. Thus, Ukrainian citizens have been granted visa-free entry into this country as an emergency measure. Following the Council of Europe's Temporary Protection Directive (COUNCIL DIRECTIVE 2001/55/EC), Ireland accepts Ukrainians who have been forced to flee their country due to the war, allowing Ukrainian citizens to cross the border with any identity documents (internal passports, birth certificates, passports whose validity has expired, ID cards, and so on). (Embassy of Ukraine in Ireland).

Conclusion. The concept of «supranationality» at the EU level means the ability of the EU to influence the internal legislative policies of the EU member-countries through relevant bodies authorized for this purpose. Supranationality appears primarily as the result of member-states contractually transferring parts of their sovereign powers in one or more areas to the integration association to ensure certain harmonization.

The impact of the supranationality principle on the EU visa policy can generally be considered positive, mainly because the various instruments have been unified to some extent by establishing minimum standards from which the EU member-countries cannot deviate, despite that these are only minimum standards. After all, the EU member-countries are free to make some adjustments under the EU legislation without violating these general minimum standards. Therefore, despite the supranational nature of the EU visa policy, some differences in visa policy regarding the implementation of visa-free status for Ukrainian citizens can still be traced back to some EU member-countries.

References:

1. Anufriev, M. & Kisilevych-Chornoivan, O. (2018). Rozvytok kompetentsii YeS [Development of EU competence]. *Scientific notes,* 5, 170–175 [in Ukrainian].
2. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=en
3. Denysov, W. & Falalieieva, L. (2018). Nadnatsionalnist yak pravova realnist mizhnarodnoi intehratsii [Supranationality as a legal reality of international integration]. *Law of Ukraine*, 1, 214–231 [in Ukrainian].
4. Falalieieva, L. (2018). Fundamentalni prava ta kontseptsiia nadnatsionalnosti: novitni pidkhody u praktytsi YeS [Fundamental rights and the concept of supranationality: New approaches in EU practice]. *The Scienti ic Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 6, 93–100 [in Ukrainian].

5. Honcharuk, N. S. (2005). Vplyv intehratsiinykh protsesiv na formuvannia natsionalnoi identychnosti yevropeiskoho suspilstva [The impact of integration processes on the formation of European society's national identity]. *Education and Society*, 6 (35), C. 67 [in Ukrainian].
6. Hrytsaienko, L. (2010). Instytutsiinyi mekhanizm Yevropeiskoho Soiuzu [Institutional mechanism of the European Union] (PhD Thesis), Kyiv. 59 p.
7. Kraievska, O. (2011). Mihratsiina polityka YeS: polityko-pravovyi aspekt [Migration policy of the EU: Political and legal aspect]. *Hrani,* 5(79). 143–147 [in Ukrainian].
8. Kudriachenko, A. I. (2010). *Vzaiemodiia natsionalnykh i nadnatsionalnykh instytutiv obiednanoi Yevropy* [*Interaction of national and supranational institutions of united Europe].* In: The cultural and civilizational space of Europe and Ukraine: Peculiarities of formation and modern development trends / A. I., Kudriachenko (Ed.). *Collective monograph. Institute of European Studies of the National Academy of Sciences of Ukraine*. (c. 75–94). Kyiv: University «Ukraine» [in Ukrainian].
9. List of visa-free countries for citizens of Ukraine in 2023. Retrieved from: https://businessvisit.com.ua/uk/turi/bezvizovi-krayini/ [in Ukrainian].
10. Mamadouh, V. D. (1998). Supranationalism in the European Union: What about multilingualism? *Faculteit der Ruimtelijke Wetenschappen.* Retrieved from: https://pure.uva.nl/ws/files/3166861/3767_mamadouh.pdf
11. Polat, C. (2006). The immigration policy and process of European integration: supranationalism versus intergovernmentalism? *Ankara Review of Europen Studies*, 6(1), 69–80.
12. Posolstvo Ukrainy v Irlandii [Embassy of Ukraine in Ireland]. Retrieved from: https://ireland.mfa.gov.ua [in Ukrainian].
13. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification). Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399
14. Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification). Retrieved from: https://eurlex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32018R1806#d1e39-39-1
15. Rosamond, B. (2000). Theories of European Integration. New York, Macmillan Press, St. Martin's Press.
16. Ruszkowski, J. (2006). Supranationalism as a challenge for the European Union in the globalized world. Europäische Gemeinschaften / Amt für Amtliche Veröffentlichungen. Europe's challenges in a globalised world; Conference Brussels, 23–24 Nov. 2006. Retrieved from: https://czasopisma.marszalek.com.pl/images/ pliki/rop/2010/rop201012.pdf
17. Sakhniuk, V. (2017). Proiav nadnatsionalnosti u funktsionuvanni instytutsiinoi systemy YeS [Manifestation of supranationality in the functioning of the EU institutional system]. *Entrepreneurship, husbandry, and law*, 4, 197–200 [in Ukrainian].
18. Sikorska, O. (2011). Fenomen nadnatsionalnoi identychnosti v krainakh YeS [The phenomenon of supranational identity in EU countries]. *Scientific notes*, 7, 327–332 [in Ukrainian].
19. Traité instituant la Communauté Européenne du Charbon et de l'Acier. Retrieved from: https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX: 11951K/TXT&from=LV
20. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11997 D%2 FT XT
21. Treaty on European Union. Retrieved from: https://eur-lex.europa.eu/EN/legal-content/summary/treaty-of-maastricht-on-europeanunion.html
22. Vyshniakov, O. (2014). Nadnatsionalnist yak pravovyi fenomen [Supranationality as a legal phenomenon]. *Scientific works of the National University «Odesa Law Academy».* 119–124 [in Ukrainian].

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FEATURES OF THE OBJECTIVE SIDE OF VOLUNTARY LEAVING A MILITARY UNIT OR PLACE OF CORPS

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Abstract. The article analyzes the objective side of the criminal offense provided for in Art. 407 of the Criminal Code of Ukraine "Unwillingly leaving a military unit or place of corps".

The signs characterizing two forms of action are identified: voluntary leaving a military unit or place of corps; failure to appear on time without valid reasons for duty. It is substantiated that voluntary leaving a military unit or place of corps or failure to report to duty on time, committed under martial law or in a combat situation, cannot be considered forms of the objective side of this criminal offense. The expediency of considering "martial law" and "combat situation" as circumstances aggravating responsibility is argued.

As a conclusion, the signs of the objective side of the criminal offense provided for in Art. 407 of the Criminal Code: an act that is expressed in two forms; the way, place and time of its commission.

Key words: method, place, time of committing criminal offenses, criminal offenses against the established order of military corps, voluntary abandonment of a military unit or place of corps; failure to appear on time without valid reasons for duty, serviceman.

Introduction. The procedure for passing is established by the legislation of Ukraine military service is a guarantee of ensuring the legal regime in the military formations that were formed in accordance with the laws of Ukraine and that a legally established legal category that regulates passing military service Voluntary abandonment of a military unit or place of service violates the established order of military service, for which criminal liability is established in accordance with the provisions of Art. 407 of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code).

Problematic questions of the essence of the objective side of the arbitrary leaving a military unit or place of service in the theory of criminal law decided ambiguously. Therefore, it is necessary to find out and study the signs in detail of the objective side of the criminal offense provided for in Art. 407 of the Criminal Code "Arbitrarily leaving a military unit or place of service." The specified thesis is the purpose of this scientific article.

Problematic issues of criminal responsibility for committing offenses against the established order of military service were studied by such scientists as V.P. Bodayevskyi, V. A. Bugaev, S. I. Dyachuk, M. I. Karpenko, T. Yu. Kasko, M.O. Kolodyazhny, M. I. Melnyk, V. O. Navrotskyi, Yu. I. Rusnak, M.M. Senko, M.S. Turkot, M. I. Khavronyuk, S. O. Kharitonov and others.

Presenting main material. The objective side of the criminal offense provided for in Art. 407 of the Criminal Code, described in the Criminal Code as follows: "voluntarily leaving a military unit or place of service, as well as failure to appear on time without valid reasons for service" (Kryminalnyi kodeks Ukrainy vid 04/05/2001 r.). As we can see, the objective side of the analyzed criminal offense contains features that characterize two forms of doing:

1) voluntary abandonment of a military unit or place of service;

2) failure to appear on time without important reason for duty.

M. I. Melnyk believes that the objective side of the criminal offense provided in Art. 407 of the Criminal Code, has a more complex structure possible forms of its manifestation:

1) voluntarily leaving a military unit or place of service military serviceman with a term of service lasting more than three days, but no more than a month (Part 1 of Article 407);

2) non-appearance of serviceman on time without important reasons for service in case of dismissal from the unit, appointment or transfer, absence from a business trip, vacation or from a medical institution lasting more than three days, but not more than a month (Part 1 of Article 407);

3) voluntarily leaving a military unit or place of service a military serviceman (except for conscript service) for a duration of: a) more than ten days, but no more than a month; b) although less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407);

4) non-appearance of a serviceman (except conscript servicemen services) on time for duty without valid reasons for a duration of: a) more than ten days, but not more than a month; b) although less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407);

5) voluntary abandonment of a military unit or place of service by anyone military serviceman for more than one month (Part 3 of Article 407);

6) failure to show up on time for duty without important reason of any kind military serviceman for more than one month (Part 3 of Article 407) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1124).

Senko M.M. to the forms of the objective side includes the arbitrary leaving a military unit or place of service or failing to appear on time at service committed under martial law or in a combat situation (Senko, 2005: 70). We consider this position incorrect, since the specified circumstances are such that burden the responsibility. Therefore, it is correct to note that qualified and especially qualified features of this criminal offense is the duration of voluntary abandonment of a military unit or place of duty or untimely reporting to duty without valid reasons – over one month (Part 3 of Article 407 of the Criminal Code), committing acts in the conditions of a special period (Part 4 Art. 407 of the Criminal Code), under martial law or in a combat situation (part 5 of Article 407 of the Criminal Code).

Thus, the objective side of the criminal offense, provided for in Art. 407 of the Criminal Code, consists in the abandonment by the subject of the criminal offense without the permission of the head of the location of the military unit or place of service, as well as failure to appear on time without valid reasons for service at in case of dismissal from the military unit, assignment or transfer, non-appearance from a business trip, vacation or from a medical institution. Such arbitrary evasions from military service are recognized as criminally punishable if they continued more than three days, but not more than a month (Part 1 of Article 407 of the Criminal Code), more than ten days, but not more than a month, or even less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407 of the Criminal Code); more than one month (Part 3 of Article 407 of the Criminal Code), committed in the conditions of a special period (Part 4 of Article 407 of the Criminal Code), committed in the conditions martial law or in a combat situation (Part 5 of Article 407 of the Criminal Code).

Peculiar nature of violations of the order of military service consists in the unity of action and inaction: one is accompanied by another, according to each action is followed by inaction and conversely. Violation of special rulesbehavior is characterized by a person's non-fulfillment of the requirements that are presented to him. At the same time, the external manifestation of behavior is a person's attitude towards regulations, and not to material objects (Kharytonov, 2018: 110).

According to Senko M. M., the act provided for in Art. 407 of the Criminal Code, may be committed in two ways: by action - voluntary abandonment of a military unit or place of service or through inaction - failure to appear on time for duty without valid reasons (Senko, 2005: 70). Kharitonov S.O. believes that the order of military service is violated by inappropriate behavior of a serviceman and indicates that voluntary abandonment of a military unit or place of service is committed only by active behavior (Kharytonov, 2018: 112).

Leaving a military unit or place of service is arbitrary in case it is committed illegally and without the permission of a direct or the immediate superior of the culprit. The term "arbitrary" means arbitrariness, which contradicts the statutory requirements regarding the possibility of staying outside the place of duty only with appropriate permission. The presence of this sign means that the person is aware of the violation of the established order and the fact of illegality stay outside the borders of the military unit or place of service and wishes to do so (Senko, 2005: 71). Abandonment of a part or place of service committed is arbitrary without the permission of the chief (commander) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1124), leaving without the permission of the commander location of the military unit during the established duty hours daily schedule, or at other times when performing in the location of the part official task; the territory of the educational center, the camp at any time; any other place of service where the person must permanently or temporarily perform the duties assigned to her (Viiskovi zlochyny: komentar of legislation, 2003: 71-79). Illegally leaving a military unit or the place of service is recognized if it is committed contrary to the established rules of staying servicemen outside the military unit or location services (Senko, 2005: 70). In our opinion, "arbitrary" should be understood committing actions contrary to the requirements of regulatory and legal acts, without availability appropriate permission.

According to Art. 216 of the Charter of the Internal Service of the Armed Forces of Ukraine, conscript military servicemen in time off from classes and work time have the right to move freely on the territory of the military unit, and during liberation – and within the garrison (Zakon Ukrainy "Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy"). Military servicemen of the officer and sergeant ranks (senior) staff who are serving under the contract and who are leaving outside the garrison, the military commander is notified in writing parts Departure of conscript military servicemen abroad of the garrison (except for cases of departure on vacation or business trip) is prohibited (Karpenko, 2018: 245). Conscript military servicemen are released from the location of the military unit by the company commander in the specified time days and hours and in the order established by the commander of the military unit. A dismissed person is issued a notice of dismissal signed by the company commander and with an imprint of the seal of the military unit. It specifies the duration of the permit stay of a serviceman outside the military unit. A note about the exemption is valid only within the garrison in which the specific one is stationed military base. In addition to the company commander, they also have the right to give dismissal superior commanders and superiors are equal to him in terms of position (Karpenko, 2018: 245).

There is a well-founded opinion that the military serviceman's leaving a part or place of service with the permission of the direct or immediate superior, even if he does not have the right to grant dismissal, although it is illegal, but it is not arbitrary and, accordingly, such actions do not contain signs of a criminal nature the offense provided for in Art. 407 of the Criminal Code (Senko, 2005: 701; Viiskovi zlochyny: comment on legislation, 2003: 71-79). Karpenko M. I. believes that in such a case, the responsibility rests with the superior who admitted violation of the dismissal procedure (Karpenko, 2018: 246).

A military unit or duty station as an immediate alternate location committing a criminal offense is any military units, subdivisions, teams, institutions, formations, where according to their officials duties or orders or instructions of the command, the subject must be on service There is an opinion that the location of the military unit should be considered the territory of a barracks, camp, marching or combat location units, where a person enrolled in military service is included in the unit's lists (Senko, 2005: 70); that this is the territory of a barracks or camp (camp), the military unit's mobile or combat location (Karpenko, 2018: 246); that a military unit is the territory of a military unit, the boundaries of which may or may not be marked by a fence, but are usually determined by the order of the unit commander with an illustration of them on a plan (diagram) (Naukovo-praktychnyi komentar

Kryminalnoho kodeksu Ukrainy, 2010: 1125). At the same time, it should be borne in mind that the boundaries of the territory the borders of the military unit and the military garrison do not coincide.

As stated in Art. 366 of the Charter of the Internal Service of the Armed Forces of Ukraine, the military unit and its units are located on the training ground in premises or tent camps. Boundaries of the training ground (camp), beyond which it is forbidden to leave the components, they are announced in the order by part (Zakon Ukrainy "Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy"). During stay of a serviceman on a business trip instead of him service will be considered the place indicated in the travel certificate. At non-appearance of a serviceman to a unit or place of service after termination the term of legal absence in places of preparation and direct execution crimes are those in which the serviceman was on legal grounds, i.e. medical institution, place of leave, dismissal, military the part from which the serviceman left (when transferring and returning from assignment).

During the serviceman's stay on a business trip the place of his service will be considered the place indicated in the certificate of assignment. In case of non-appearance of a serviceman to the unit or place of service after the expiration of the period of legal absence from places of training and of the direct commission of the crime are those in which the serviceman was on legal grounds, i.e. medical institution, place of vacation, dismissal, military unit from which a serviceman was discharged (at transfers and returns from business trips).

In case that the place of service does not coincide with the location of the military part, you should use the provisions of Part 4 of Art. 24 of the Law of Ukraine "About general military duty and military service": military personnel are considered to be performing military service duties: a) on the territory military unit or in another place of work (classes) during working hours (educational) time, including breaks established by the schedule (schedule classes); b) on the way to or from work, during business hours trips, return to the place of service; c) outside the military unit, if stay there corresponds to the duties of a military serviceman or was sent there by order of the relevant commander (chief); d) during performance of state duties, including in cases where these duties were not related to military service; e) during the performance of duty with saving human life, protection of state property, maintenance of military discipline and law enforcement (Zakon Ukrainy "Pro zahalnyi viiskovyi oboviazok i viiskovu sluzhbu").

Therefore, the place of service, except for a military unit, can be considered any another place where the serviceman is obliged for a certain time perform official duties or be at the command of the superior: place performance of official tasks or economic work outside the location part, conducting educational classes or mass cultural events, movement as part of a team – echelon, train, column (Karpenko, 2018: 247).

That is, it is the place where the person actually performs the duties of military service Senko M.M. clarifies that the place of service can be:

a) for servicemen who are on a business trip - a place the business trip specified in the business trip certificate;

b) for military personnel undergoing military service in civilian clothes institutions and establishments, – the location of these institutions or establishments;

c) for military personnel who are in a medical institution – location of the medical facility;

d) for servicemen who are outside the boundaries of part c in connection with the performance of special duties related to military service or execution of the order – the place of execution of these duties or the order;

e) for servicemen who are transported as part of a group (not part of military unit) – echelon, command, column (Senko, 2005: 72).

Failure to appear on time for duty without valid reasons as the second form objective side of the analyzed criminal offense consists in because the serviceman who left the location of the military unit on legal grounds, does not return to military service without valid reasons part or place of service

in the prescribed period (Karpenko, 2018: 247). That is, the serviceman is outside the military unit or places of service on legal grounds: on dismissal, business trip, vacation, medical institution and, having objective opportunities for this, without respectable ones reasons do not appear or appear late for duty (Senko, 2005: 73).

M.I. Melnyk notes that the non-appearance of a serviceman on time at service is his failure to report for duty within the term specified in the relevant documents (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125), because it is the duty of a serviceman upon discharge from the unit, appointments, transfers, returns from a business trip, from vacation or from medical institution is to return to service within the term specified in permission documents: release notes, prescriptions, certificates of business trip, leave card, medical institution documents.

Establishing the fact of non-appearance when a serviceman is summoned to criminal liability for failure to appear on time without valid reasons at the service is not enough. In such a situation, it is necessary to find out whether he had the opportunity guilty serviceman under specific circumstances of the case to appear at service. If, due to objective circumstances, he did not have such opportunity, in this case there is no volitional sign of the act, therefore it is criminal liability should be excluded due to lack of composition criminal offense (Senko, 2005: 74). At the same time, actual moment of appearance of the serviceman must be documented, and the time return of servicemen from discharge – to be noted in the record book dismissed Thus, a necessary condition of total responsibility for failure to show up on time without valid reasons for duty is a person's responsibility to report for duty, stipulated by the relevant regulatory acts, which may arise from the order or instruction of the superior.

Failure to report to duty on time is not a criminal offense in if it is caused by valid reasons. In Part 11 of Art. 15 of the Law Ukraine "On military duty and military service" states that valid reasons for non-arrival of conscripts to conscription stations on time, established by the territorial center of recruitment and social support, which are confirmed by relevant documents, are recognized:

a) an obstacle of a natural nature, an illness of a conscript or other circumstances which deprived him of the opportunity to personally arrive at the specified point and time;

b) the death of his close relative (parents, wife, child, siblings, sister, grandfather, grandmother) or a close relative of his wife (Zakon Ukrainy "Pro zahalnyi viiskovyi oboviazok i viiskovu sluzhbu").

It is obvious that this norm has an evaluative nature, because it contains a term "other circumstances that deprived him of the opportunity to personally arrive at the indicated point and term". Unforeseen traffic stop can be attributed to such circumstances, which led to the impossibility of arriving on time in another way, detention of a serviceman by the authorities, providing emergency care for sick parents, if it could not be obtained in another way (Viiskovi zlochyny: komentar zakonodastva, 2003: 128; Kharytonov, 2018: 57).

Important reasons for the delay of servicemen on business trips may exceed the terms specified in the business trip certificate unforeseen obstacles in communication, fire or natural disaster that happened in the family of a serviceman, serious illness of his family members or persons, on whose upbringing he was. A serious reason for the delay in release the delay of the serviceman by the military commandant must be recognized, by other state authorities in connection with circumstances unrelated to illegal stay of a serviceman outside the location of the unit or places of service (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

Thus, a mandatory condition of criminal responsibility for Art. 407 of the Criminal Code, is absence without important reasons for duty on time. The important reasons are the objective factors that prevent it a serviceman to report to the unit on time (Senko, 2005: 76). List of possible cases of non-appearance of conscript servicemen on time without valid reasons for service, provided for in the disposition of Part 1 of Art. 407 of the Criminal Code (art in case of dismissal from a part, assignment or transfer, from a business trip, vacation, medical facility) is not exhaustive. There are cases

when the serviceman was outside the location of the unit in connection with by performing a certain task (at the same time, the messenger is sent to the place residence of the officer to inform him of the necessity of appearing in part) and does not appear on time without valid reasons for duty and evades from her for more than three days, but not more than a month. A serviceman for these actions should also be subject to liability under Part 1 of Art. 407 of the Criminal Code. However, such the case of not appearing on time without valid reasons for duty is not provided for and not directly specified in the law (Senko, 2005: 87).

Terms of voluntary leaving a military unit or place of service are of great importance for criminal liability under Art. 407 of the Criminal Code. So, the following terms are specified in the norm: a) for conscript servicemen service – more than three days, but not more than a month (Part 1 of Article 407 of the Criminal Code), b) for military serviceman (except for conscript service) - more than ten days, but not more than month, or even less than ten days, but more than three days, committed repeatedly within a year (Part 2 of Article 407 of the Criminal Code), c) for more than one month (Part 3 of Article 407 of the Criminal Code).

In the context of Art. 407 of the Criminal Code, the term "month" means a calendar month (from 1 January to February 1, February 15 to March 15, etc., regardless of the number days in one or another month) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125). The term "no more than a month" means actual duration of voluntary absence from the moment of leaving the part or expiration of the established period of attendance at the part or at the place of service, which or is equal to the calendar month, or does not exceed it (for example, from January 10 until January 29, from February 1 to March 1, from March 5 to April 5) (Viiskovi zlochyny: commentary on legislation, 2003: 71-79). In other words: between the initial and final moments of voluntary leaving a part or place of service or failure to show up for duty on time must pass one calendar month regardless of the number of days in it. The term "more than a month" covers any what is the excess of the monthly term (one month and 5 hours, one month and 20 days) (Viiskovi zlochyny: komentar zakonodastva, 2003: 71-79). Duration specified in the disposition of Art. 407 of the Criminal Code is an important constituent feature analyzed criminal offense.

Without intention to be absent for more than one month, even twice voluntary abandonment of a military unit or failure to appear on time without valid reasons for service lasting 28–29 days each time to qualify, depending on the type of subject, under Part 1 or Part 2 of Art. 407 of the Criminal Code (Naukovo- praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

If the military serviceman was in voluntary service for the first time absent for 10 days, and the second for 23 days, not intending to evade in both cases from service for a period of more than one month, his actions should be qualified under Part 1 Art. 407, although the total duration in this case exceeds the monthly period. But in the event that there are two or more facts of voluntary abandonment service duration of one of them is less than one month, and the second one is more than one month, it is worth talking about the real set of criminal offenses and actions to qualify according to part 1, part 2 of Art. 407 of the Criminal Code or according to Part 1, Part 3 of Art. 407 of the Criminal Code (Naukovo- praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125; Viisks zlochyny: comment on legislation, 2003: 71-79).

Temporary appearance in the location of a military unit of a serviceman, who evades the duty of military service, unwillingly to start performing these duties does not interrupt the duration of the arbitrary leaving the military unit. In the event of the appearance of a serviceman who was voluntarily absent for more than three days, in a military unit or place of service, but in the absence of a report to the relevant commander (chief) about his return and subsequent non-fulfillment of duties from military service, term arbitrary absence is not interrupted (Karpenko, 2018: 247).

The time during which the serviceman was kept at the guardhouse in connection with his detention, or was under inpatient treatment at connection with the disease, while not hiding his belonging

to the military service, until the time of his voluntary absence from a military unit or location service is not counted (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

The term of service of a serviceman, even if outside the military part, but in the field of activity of the competent bodies that have the authority regarding the resolution of the issue of the further passing of the data service military serviceman or regarding giving his actions a legal assessment (the person is detained or arrested in a disciplinary or administrative order, to her a preventive measure was applied in connection with being brought to criminal proceedings liability for another criminal offense, executes a lawful order or order of a state authority) is subject to exclusion from the term illegal stay outside the military unit from the moment when the serviceman declared to the specified authorities about his evasion of military services (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125). That is, the actual period of stay of the serviceman outside the borders military unit or place of service is counted towards the term of voluntary leaving a military unit or place of service by a serviceman term service, as well as his failure to appear on time without valid reasons at service in accordance with Art. 407 of the Criminal Code only on the condition that there is such a stay illegal, arbitrary and unauthorized.

The criminal offense provided for in Art. 407 of the Criminal Code, is an act of formal composition: it is described in the CC in such a way that in the disposition Art. 407 of the Criminal Code does not specify socially dangerous consequences. So, for availability it is not necessary to establish the presence of elements of a criminal offense socially dangerous consequences and the causal connection between them and the act. The criminal offense provided for in Art. 407 of the Criminal Code, is finished from the moment voluntary abandonment of a military unit or place of service by a conscripted serviceman or from the moment of non-appearance of the person on time without valid reasons for service in case of dismissal from the unit, appointment or transfer, failure to appear from a business trip, vacation or from medical institution after the end of the minimum duration of action, specified in the CC.

Regarding the act provided for in Part 1 of Art. 407 of the Criminal Code, it should be noted that it exists expired from the moment of expiry of the established period of voluntary abandonment or non-appearance of a military serviceman in the absence of intent regarding evasion of service for a longer period (more than a month). Voluntary abandonment of a military unit or place of service ends in the specific moment when the serviceman arrived at the military unit or place of service was either detained or appeared before the appropriate body (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1126).

Thus, in the case of committing an act provided for in Art. 407 of the Criminal Code, a certain criminally illegal state is created, which lasts for some time period of time Therefore, it is important to establish the moment of the beginning and the end of the analyzed criminal offense. There is an opinion that these moments are determined differently for different categories of servicemen, who are the subjects of the act specified in Art. 407 of the Criminal Code: for military personnel the beginning of the term of service by voluntarily leaving the military unit or places of service should be considered the actual moment of their leaving, instead for military servicemen of other, except fixed-term, types of military service working time regulations are established, where the terms and the duration of their performance of the main activities arising from the duties military service Regulation of working hours when carrying special types services (combat duty, guard service) is determined by the military statutes, orders, instructions and other legal acts. Therefore, the initial moment of voluntary abandonment of a military unit or the places of service of these categories of servicemen are a matter of fact leaving a military unit or place of service during their performance official duties (Senko, 2005: 64-65).

The second form of the objective side of this criminal offense (failure to show up on time without valid reasons for duty) has a different point of the beginning: the end of the established duration of the legal stay outside service (Senko, 2005: 65).

The initial moment of voluntary abandonment of a military unit or the place of service is the day when the serviceman voluntarily left the location of the military unit or place of service, and the initial moment failure to show up for work on time - the next day after the expected day appearing in a military unit or place of service (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1126). That is, the actual moment voluntary abandonment of a military unit or place of service should be considered the beginning of a criminal offense provided for in Art. 407 of the Criminal Code, and his end - the day of return to the unit or detention outside the unit. Failure to show up for duty is considered to be the end of the established term appearance, and finally – the time of return to the unit or detention of the person by the relevant authorities (Peletskyi, 2011: 250).

When setting the initial moment of non-appearance on time without important reasons for service may cause difficulties in cases of absence military serviceman's document with the specified date of arrival for service or this period was not determined by his verbal order. In such situations the initial moment of voluntary absence should be counted from the moment obtaining a real opportunity for military personnel to appear in military service part or to the place of service (Senko, 2005: 65). If in the leave ticket or in another document, which is the reason for the serviceman's absence within the limits of the part or place of service, only the date of return is indicated, then voluntary absence should be calculated from the next day, after the date specified in the document, since the return of a serviceman to duty at what time on the day specified in the leave ticket or other document, should be considered legitimate. If, in addition to the date, the hour is also indicated return to duty, then voluntary absence begins after discharge at the specified hour (Senko, 2005: 66).

In the case of a military serviceman forging a document that gives the right on leaving a military unit or place of service, his actions have to qualify under Art. 409 of the Criminal Code as evasion of military service forgery of documents.

According to Senko M. M., the end of arbitrary abandonment of a military unit or place of service or failure to appear on time without permission reasons for service should be considered the time from which the serviceman stopped voluntary absence from military service. Termination of the arbitrary absence from service, in his opinion, is: a) the moment of return serviceman to the location of the military unit or to the place of service, b) the moment of voluntary appearance of the guilty person to the relevant authorities with a confession about voluntarily leaving a military unit or place of service or non-appearance on time without valid reasons for service, c) the moment of arresting the culprit by law enforcement agencies or representatives of the part or citizens of connection with his voluntary leaving of a military unit or place of service or failure to appear on time without valid reasons for duty, d) the moment of occurrence irresistible force that prevented the culprit from appearing in a part or place services, e) the moment of occurrence of other circumstances, as a result of which the sign disappears voluntary absence from a military unit or place of service (Senko, 2005: 66).

Conclusions. Therefore, the objective side of the criminal offense, provided for in Art. 407 of the Criminal Code, has the following characteristics:

1) action, which is expressed in two forms: action - voluntary abandonment military unit or place of service and inactivity – unreported on time without

valid reasons for service;

2) method – arbitrariness of leaving a military unit or place of service, what is the commission of actions contrary to the requirements of normative legal acts, without availability of the appropriate permit;

3) place of commission – military unit or place of service, i.e. territory, where the serviceman is obliged to perform for a certain time official duties or to be on the orders of the superior;

4) the time of committing the criminal offense: a) more than three days, but no more than a month (Part 1 of Article 407 of the Criminal Code), b) more than ten days, but no more than a month (Part 2 of Article 407 of the Criminal Code), c) more than one month (Part 3 of Article 407 of the Criminal Code).

References:

1. Viiskovi zlochyny: komentar zakonodavstva (War crimes: commentary on legislation), 2003: 272. [in Ukrainian].
2. Zakon Ukrainy «Pro zahalnyi viiskovyi oboviazok i viiskovu sluzhbu» (Law of Ukraine «About general military duty and military service») № 2232-XII vid 25.03.1992 r. URL: https://zakon.rada.gov.ua/laws/show/2232-12#Text [in Ukrainian].
3. Zakon Ukrainy «Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy» vid 24.03.1999 r. (Law of Ukraine "On the Statute of the Internal Service of the Armed Forces of Ukraine") URL: https://zakon.rada.gov.ua/laws/show/548-14#Text [in Ukrainian].
4. Karpenko M. I. (2018) Zlochyny proty vstanovlenoho poriadku nesennia viiskovoï sluzhby (viiskovi zlochyny): teoretychni ta prykladni aspekty (Crimes against the established order of military service (military crimes): theoretical and applied aspects) : Monohpafiia, 420. [in Ukrainian].
5. Kryminalnyi kodeks Ukrainy vid 05.04.2001 r. (Criminal codex of Ukraine) URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text [in Ukrainian].
6. Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy (Scientific and practical commentary on the Criminal Code of Ukraine), 2010: 1288. [in Ukrainian].
7. Peletskyi V. O. (2011) Obstanovka vchynennia zlochynu yak element kryminalistychnoi kharakterystyky samovilnoho zalyshennia chastyny abo mistsia sluzhby (The circumstances of the commission of the crime as an element of the criminal characteristics of the arbitrary overstaying of a part or place of service). Problemy zakonnosti, 117, 249–256. [in Ukrainian].
8. Senko M. M. (2005) Kryminalna vidpovidalnist za samovilne zalyshennia viiskovoi chastyny abo mistsia sluzhby (Criminal liability for voluntarily leaving a military unit or place of service) : dys. … kand. yuryd. nauk: 12.00.08, 217. [in Ukrainian].
9. Kharytonov S. O. (2018) Kryminalna vidpovidalnist za viiskovi zlochyny za kryminalnym pravom Ukrainy (Criminal liability for war crimes under the criminal law of Ukraine) : monohrafiia. 328. [in Ukrainian].

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THE RELATIONSHIP OF THE PRINCIPLE OF INDEPENDENCE OF JUDGE AND THE PROCEDURE OF ELECTION (APPOINTMENT) TO POSITIONS MEMBERS OF THE HIGH COUNCIL OF JUSTICE

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Abstract. The purpose of the scientific article is to establish the relationship between the principle of independence of a judge and the procedure for the election (appointment) of members of the High Council of Justice. The methodological basis of the study was the method of legal science as a system of means of learning law. The conceptual and methodological basis of the work was a comparative legal and comprehensive approach. It was emphasized that a judge has the inherent freedom to impartially and impartially perform his professional duties without political interference. It is substantiated that, based on the fact that constitutional power in Ukraine should be exercised on the basis of continuity and integrity.

Key words: independence of judges, continuity, rule of law, High Council of Justice, re-evaluation, removal, incompetence.

Introduction. Freedom is a fundamental constitutional value of independent Ukraine, which originates from human dignity, finds its expression in the spirituality of society, its culture, and therefore in law. Without a doubt, freedom as a human attribute is an indispensable condition for social stability and social progress and determines democracy. The task of finding and ensuring a balance between the values of individual freedom and the common good rests with the state. And the cornerstone in the problem of relations between the state and the individual is the determination of the degree of freedom of a person, including the degree of freedom of a judge.

The independence of a judge is guaranteed by the Constitution and laws of Ukraine, and influencing a judge in any way is prohibited (parts one and two of Article 126 of the Constitution of Ukraine). The independence of a judge is a constitutional principle and an interdisciplinary principle of the judiciary, which is enshrined in Articles 126, 129 of the Constitution and Articles 1, 6, 7, 48, 126, 128, 133 of the Law of Ukraine «On the Judiciary and the Status of Judges» No. 1402-VIII of June 2, 2016, as well as in Articles 6 and 21 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law No. 475/97-BP of July 17, 1997.

Article 126 of the Basic Law enshrines a system of guarantees to ensure the independence and inviolability of judges, which are an integral part of their status, constitutional principles of the organization and functioning of courts and the professional activity of judges. And the guarantees of independence of courts are: administration of justice exclusively by courts; a special procedure for appointing, electing, prosecuting and dismissing judges; administration of justice in accordance with the procedure established by law; the secrecy of the adoption of a court decision and the prohibition of its disclosure; the binding nature of the court decision; inadmissibility of interfering with the administration of justice, influencing the court or judges in any way, contempt of court and establishing responsibility for such actions; proper material and social security of judges, etc.

International standards do not provide clear guidance on which public authority should have the authority to appoint judges or what the appropriate procedure should be. However, any appointment procedure must guarantee both institutional and individual independence of the court, as well as objective and subjective impartiality. This requirement arises from the principle of separation of powers and the principle of checks and balances, which constitute the most important protection mechanism in this case.

The purpose of the article is to establish the relationship between the principle of independence of a judge and the procedure for the election (appointment) of members of the High Council of Justice and to find out whether there are signs of interference with the independence of judges by the legally regulated procedure of removal from office or termination of the powers of a member of the High Council of Justice, taking into account paragraphs two, six paragraph 4 of chapter II «Final and transitional provisions» of Law No. 1635-IX in systematic connection with the prescriptions of Article 18 of Law No. 1798-VIII.

Research materials and methods. In order to distinguish modern approaches to the understanding of the principle of independence of a judge, to check whether the principle of the rule of law and the principle of independence of the judiciary are violated by the legislative consolidation of the procedure for the dismissal of members of the High Council of Justice (paragraphs five to eleven of clause 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX) etc., a number of research methods were used. The methodological basis of the study was the method of legal science as a system of means of learning law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; research methods and techniques. The conceptual and methodological basis of the work was the historical, operational, comparative-legal and comprehensive approach.

Results and discussion. According to the Constitution of Ukraine, guarantees of independence of a judge are appropriate means of minimizing and eliminating negative influences on a judge during the exercise of powers. A component of the guarantee of the independence of judges is ensuring the continuity and inviolability of the functional constitutional balance in dynamics, in real social life, which, in turn, involves preventing the so-called alienation of the Constitution from real life.

The independence of the judiciary is undoubtedly an essential part of the principle of the rule of law and is designed to ensure that every person has the right to a fair trial, and therefore it is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, which ensures confidence in the justice system (Council of Europe, 2010).

According to Article 1 of the Universal Charter of the Judge (adopted on November 17, 1999, by the Central Council of the International Association of Judges in Taipei (Taiwan)), «the independence of a judge is an important condition for an impartial judiciary that meets the requirements of the law. It is indivisible. Any institutions or authorities, both national and international, must respect, protect and safeguard this independence» (International Association of Judges, 1999).

The independence and inviolability of the judge, guaranteed by the Constitution of Ukraine and the laws of Ukraine, is aimed primarily at the unhindered performance of professional duties by him in the administration of justice, and thus creates the necessary prerequisites for achieving a substantively just result of the judicial proceedings – a balance of constitutional values and interests, without fear or favoring anyone from the point of view of the contextual perspective, and also, despite the probable (un)popularity of the final decision. Thus, the independence of a judge is determined by the degree of freedom and responsibility.

The guarantee of objective independence (that is, the impenetrability of the judiciary in relation to other branches of government) in itself does not imply the individual independence of judges. Independent judges can exist in institutional structures that are independent according to the standards established by European jurisprudence. Models of judicial power, which provide for separation from

other branches of power, do not always ensure the independence of judges. Even very complex models of institutional independence can work in practice in such a way that the independence of individual judges is undermined by internal dependence in the judicial system. Despite the fact that these aspects are different, the guarantee of judicial independence requires an adequate, consistent and simultaneous approach to their configuration in legislation and in practice, as they are deeply interconnected (Gisbert, 2022: 619-620).

Continuity (sustainability) means the ability of the High Council of Justice to continue (maintain) its key activities for a long time. The independence of a judge follows from the content of this concept and, at the same time, can be interpreted as a way of thinking, status and attitude towards others, in particular towards the executive branch of government, which is based on objective conditions or guarantees. Ways and means of ensuring the independence of judges are interconnected with the implementation of constitutional norms in real social relations.

According to the first initial provision laid down in the Bangalore Principles of judicial conduct (Approved by UN Economic and Social Council Resolution No. 2006/23 of July 27, 2006), the independence of judges is a mandatory prerequisite for the rule of law and the main guarantee of a fair trial. Therefore, the judge must in every way support and demonstrate judicial independence both at the personal and institutional level (United Nations Office on Drugs and Crime, 2018: 8).

In order to ensure the competence, independence and impartiality that every person legitimately expects when applying to a court and every judge to protect his rights, the European Charter on the Law «On the Status of Judges» recommends that judges be elected by their peers or by a body independent of the executive and legislative power. For example, the European Charter on the statute for judges enshrines the following: «For any decision prejudicial to the selection, recruitment, appointment, service or termination of a judge's mandate, the statute provides for the intervention of a body independent of the executive and legislative powers, consisting of not less than half of the judges elected by the same judges in an order that guarantees the widest representation of judges' (Council of Europe, 1998).

«The independence of the judiciary is the main condition for ensuring the rule of law and the fundamental guarantee of a fair trial. Judges are entrusted with the duty to make the final decision on issues of life and death, freedom, rights, duties and property of citizens (as stipulated in the introduction to the Basic Principles of the United Nations (995_201), reflected in the Beijing Declaration (995_507), and also in articles 5 and 6 of the European Convention on Human Rights) (995_004). The independence of the courts is a prerogative or a privilege granted not for the benefit of the judges' own interests, but for the benefit of ensuring supremacy in accordance with Article 131 of the Basic Law, an independent constitutional, collegial body of state power and judicial governance operates in Ukraine – the High Council of Justice. The law may provide for additional requirements for a member of the Supreme Administrative Court, and bodies and institutions may be formed in the justice system to ensure the selection of judges, their professional training, evaluation, consideration of cases regarding their disciplinary responsibility, etc. (parts one, eight, nine of Article 131 of the Constitution of Ukraine). The Constitution of Ukraine (parts two and three of Article 131) determines the composition of the High Council of Justice and the subjects of appointment of its members; the order of their election (appointment) is determined by law (Verhovna Rada Ukrai'ny, 1996).

The High Council of Justice «<...> acts on a permanent basis to ensure the independence of the judiciary, it's functioning on the basis of responsibility, accountability to society, the formation of an honest and highly professional corps of judges, compliance with the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors» (Article 1 of the Law of Ukraine «On the High Council of Justice» of December 21, 2016, No. 1798-VIII) (Verhovna Rada Ukrai'ny, 2017).

Due to its status defined by the Constitution of Ukraine, the High Council of Justice should consist of highly qualified and honest persons who must meet the criterion of professional ethics. In order to assist the bodies that elect (appoint) members of the High Council of Justice in establishing the compliance of a candidate for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity, the Ethics Council is formed (Article 91 of Law No. 1798-VIII) (Verhovna Rada Ukrai'ny, 2017).

On July 14, 2021, Law No. 1635-IX (entered into force on August 5, 2021) was adopted with the aim of improving the procedure for election (appointment) to the positions of members of the High Council of Justice for the practical implementation of the principle of the Rule of Law, ensuring the compliance of candidates for the position of a member of the High Council of Justice with the criteria of professional ethics and integrity, etc. (Verhovna Rada Ukrai'ny, 2021).

The High Council of Justice, by decision No. 1822/0/15-21 dated August 12, 2021, decided to apply to the Supreme Court as a subject of the right to a constitutional submission regarding the need to apply to the Constitutional Court of Ukraine (hereinafter – CCU) regarding the verification of compliance with the Constitution of Ukraine of certain provisions of laws No. 1798–VIII, No. 1635–IX. At the meeting of the Plenum of the Supreme Court on October 8, 2021, the Supreme Court considered the issue of the need to submit a constitutional submission to the CCU and on October 13, 2021, sent a constitutional submission to the Constitutional Court of Ukraine, in which it asks to check compliance with Articles 8, 19, 126, 131 of the Constitution of Ukraine paragraph thirteen of clause 231 of chapter III «Final and transitional provisions» of Law No. 1798-VIII, paragraphs one, six and eleven of clause 4 of chapter II «Final and transitional provisions» of Law No. 1635-IX.

The subject of the appeal believes that the disputed provisions of Laws Nos. 1798-VIII, 1635-IX allow for the one-time suspension of the High Council of Justice, which poses real and significant threats to the principle of continuous functioning of the state authority; provide for re-evaluation of members of the High Council of Justice who are judges and have already undergone evaluation for compliance with the criteria of professional ethics and integrity; provide for the procedure for the dismissal of members of the High Council of Justice, which does not comply with the principle of the rule of law; nullify the established order of formation of the relevant body, which in turn violates the principle of independence of judges.

Constitutional proceedings in the case were opened by the decision of the board of judges of the CCU. The case is being considered by the Grand Chamber of the Court.

In the transitional provisions of Law No. 1798-VIII, it is established that the Ethics Council, within six months from the date of approval of its personnel, shall conduct a one-time assessment of the suitability of members of the Supreme Court (except for the Chairman of the Supreme Court) who were elected (appointed) to the position of a member of the High Council of Justice before the entry into force of this Law , criteria of professional ethics and integrity for holding the position of a member of the High Council of Justice (paragraph one of clause 4 of section II of Law No. 1635-IX). That is, the parliament has given the Ethics Council the authority to evaluate members of the High Council of Justice (Verhovna Rada Ukrai'ny, 2017). The second paragraph of the fourth part of Section II «Final and Transitional Provisions» of Law No. 1635-IX provides for the protection of the quorum: «The order and sequence of assessing the compliance of current members and candidates for membership of the High Council of Justice to the criteria of professional ethics and integrity are determined by the Ethics Council, taking into account the possibility of exercising the powers of the High Council by the Council of Justice in accordance with the Constitution of Ukraine» (Verhovna Rada Ukrai'ny, 2021).

The detailing of this legal norm in the Regulation of the Ethics Council, approved by its decision No. 1 dated December 1, 2021, provides, in particular, that the Ethics Council primarily evaluates candidates for vacant positions of members of the High Council of Justice. After the completion

of the relevant competitions, it immediately evaluates the current members of the High Council of Justice. Further evaluation by the Ethics Council of the acting members of the High Council of Justice is carried out after the existing vacant positions of its members are filled (clause 1.2.2) (Etychna rada, 2021).

A provision of the law cannot be considered unconstitutional just because it can be invalidated as a result of, as the Supreme Court suggests, theoretically possible circumstances under which all 17 members of the current composition of the High Council of Justice would probably deserve the recommendation of the Ethics Council to be fired. The authorized bodies will simultaneously select new members of the High Council of Justice, as there are currently four vacant positions in the High Council of Justice. The selection of new members will balance (theoretically possible later) the dismissal of current members of the High Council of Justice.

Based on the meaning of the normative prescription of paragraph six, point 4 of section II «Final and transitional provisions» of Law No 1635-IX, which is in a systemic connection with Article 91 of Law No. 1798-VIII, in the process of evaluation and decision-making on submission to the relevant body of a reasoned recommendation for the dismissal of a member of the Board of Directors, resulting in the latter's removal from office, the Ethics Council has a legally defined obligation to organize its activities so that the Board of Directors has the opportunity to exercise its powers.

The removal from office of members of the High Council of Justice depends on the actions and acts of the Ethics Council, which is limited by legislative provisions on the obligation to take into account the possibility of the High Council of Justice. In connection with the above, the disputed provisions do not contradict the argument stated by the Supreme Court.

The provisions of paragraph six, point 4 of Chapter II «Final and Transitional Provisions» of Law No 1635-IX regulate the issue of removal from office of a member of the High Council of Justice, in respect of which the Ethics Council, which is designated by the Parliament as competent in evaluating members of the High Council of Justice, adopted a recommendation for dismissal due to discrepancy.

A decision to introduce a reasoned recommendation for dismissal, which has the effect of removing a member of the High Council of Justice from office until the relevant body makes a decision, may be adopted by the Ethics Council on the grounds specified in clauses 3–5 of the first part of Article 24 of Law No 1798-VIII. The specified items stipulate the following: «1. Grounds for the dismissal of a member of the High Council of Justice from the position: <…> 3) gross or systematic neglect of duties, which is incompatible with the status of a member of the High Council of Justice or revealed his inadequacy for the position held, acceptance of other behavior that undermines the authority and public trust of justice and the judiciary, including non-compliance with the ethical standards of a judge as a component of the professional ethics of a member of the High Council of Justice; 4) finding the validity of the existing circumstances regarding his non-compliance with the requirements specified in Article 6 of this Law [requirements and restrictions for members of the High Council of Justice]; 5) a significant violation of the requirements established by the legislation in the field of corruption prevention» (Verhovna Rada Ukrai'ny, 2017).

Let's take into account the urgent joint opinion of the Venice Commission and the General Directorate for Human Rights and the Rule of Law of the Council of Europe regarding draft law No. 5068 dated May 5, 2021, No 1029/2021. The document emphasizes that the verification of the members of the High Council of Justice by the Ethics Council in accordance with the criteria of professional ethics and integrity can be considered acceptable only as a one-time, exceptional measure. Removal from the position of a member of the High Council of Justice on the recommendation of the Ethics Council guarantees that such a member cannot participate in its activities until the final decision is made by the body that elected (appointed) this member. Such removal from office is intended to «freeze» the situation; it does not in any way encroach on the competence of the bodies appointing members of the High Council of Justice to dismiss (or not) the corresponding member (paragraphs 58–60

of the Conclusion). (Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudyny i verhovenstva prava Rady Jevropy, 2021). At the same time, paragraph 3.b.1 of Annex I to the Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Creditor, ratified by the Law of Ukraine dated August 25, 2020, No. 825-IX, provides that state authorities will strengthen the independence, integrity and effective functioning of the judiciary authorities, taking into account the conclusions of the Venice Commission, including by introducing legislative amendments to ensure the establishment of an Ethics Commission with international participation, which would have the authority to conduct a one-time assessment of the integrity and ethics of the members of the High Council of Justice and recommend their dismissal to the electoral authorities (appointment) in cases of non-compliance of the members of the High Council of Justice with the standards (Verhovna Rada Ukrai'ny, 2020).

Thus, the provision in the legislation of the institute of temporary suspension from the performance of duties of a member of the High Council of Justice who received a negative assessment corresponds to these obligations of Ukraine.

The given arguments give grounds for the conclusion that the exercise of powers by persons in respect of whom, in accordance with the procedure prescribed by law, reasonable doubts have been established regarding their compliance with the criteria of professional ethics and integrity, undermines trust in the High Council of Justice and the legitimacy of its decisions. Therefore, giving the opportunity to exercise powers to persons for whom there is reasonable doubt as to compliance with the criteria established by the Law and for whom a reasoned recommendation for dismissal has been adopted cannot be justified in connection with the assumption of temporary incapacity of the High Council of Justice.

The concept of a one-time evaluation of the compliance of members of the High Council of Justice is sufficiently clear, understandable and unambiguous and does not attract arbitrary interpretation, and therefore does not contradict Article 8 of the Constitution of Ukraine. And the subject of constitutional control – the sixth paragraph of item 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX – agrees with Articles 8, 126, 131 of the Constitution of Ukraine, international standards and legal positions formed on their basis.

The Verkhovna Rada of Ukraine, as the only body of legislative power in Ukraine (Article 75 of the Constitution of Ukraine), has determined the Ethics Council to be competent in assessing the members of the High Council of Justice according to the criteria of professional ethics and integrity. At the same time, the Ethics Council is guided by the fact that non-compliance with the candidate's established indicators is possible only in the case of proving the non-compliance or the existence of reasonable doubts about compliance (Clause 2 of Part Eighteen, Article 9-1 of Law No. 1798-VIII) (Verhovna Rada Ukrai'ny, 2017).

We draw attention to the clarification set out in the Preamble to the Bangalore Principles of judicial conduct regarding public trust in the judicial system, as well as the authority of the judicial system in matters of morality, integrity and incorruptibility of judicial bodies, which is of prime importance in a modern democratic society. The commentary to this provision states that it is public confidence in the independence of courts, the integrity of judges, the impartiality and effectiveness of processes that underpins the country's judicial system (The UN Economic and Social Council, 2006).

In view of the above, the activity of the Ethics Council and the institution of possible removal of a member of the High Council of Justice from the position are conditioned by the need to exercise high powers only by those persons who meet the legal requirements. The presence of a decision of the Ethics Council, which proved or affirmed a reasonable doubt regarding the non-compliance of a member of the High Council of Justice with the criteria of professional ethics and integrity, provides reasoned grounds for the conclusion that it is impossible for such persons to exercise powers of constitutional importance.

Developing the constitutional provisions set forth in Article 131 of the Basic Law and with the aim of forming an honest and highly professional body of judges, the provisions of Clause 4 of Chapter II «Final and Transitional Provisions» of Law No 1635-IX establish the possibility of a one-time verification of the relevant persons against the criteria necessary for taking up positions members of the High Council of Justice, and not any other state authority. Although some active members of the High Council of Justice passed the qualification evaluation of judges, the need to reform this body of state power also lies in the evaluation of the relevant persons based, in particular, on their already existing activities as members of the High Council of Justice, not judges. Allowing the very possibility of conducting a one-time check of members of the High Council of Justice, the subject of the right to a constitutional submission does not take into account that the earlier qualification assessment by some persons for the position of judge cannot be considered a one-time evaluation of a person as a member of the High Council of Justice who exercised the relevant powers. The legislator regulated the procedure according to which the Ethics Council will once-check compliance with the criteria of integrity and professional ethics of all active members of the High Council of Justice, who were elected (appointed) before the entry into force of Law No 1635-IX.

In paragraph 58 of the Conclusion of the Venice Commission No 1029/2021, (2021) CDL-PI (2021)004 is specifically about checking the integrity of members of the High Council of Justice, and not about any other check of persons who have held any position in the past. As the Venice Commission notes, only one person – the head of the Supreme Court – is exempt from the integrity check to be conducted by the Ethics Council (Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudyny i verhovenstva prava Rady Jevropy, 2021).

It should be noted that such temporary mechanisms, such as a one-time check by the Ethics Council of members of the High Council of Justice in accordance with the criteria of professional ethics and integrity, are quite effective for countries in which the level of public trust in the justice system is low, in particular due to widespread trends of dishonesty. At the same time, the Venice Commission recognizes such temporary procedures as not only justified, but also necessary in the case of a high level of corruption in the justice system and does not see in them a violation of the standards of independence of judges or any other violations.

According to paragraphs five to eleven of paragraph 4 of the transitional provisions of Law No 1635-IX, the conclusion of the Ethics Council regarding members of the High Council of Justice is submitted in the form of a reasoned recommendation for dismissal and has the effect of removal from office and suspension of powers, with a simultaneous referral to the subject of appointment to resolve the issue of dismissal or resignation. That is, the legislator determined that the subject of the decision on the dismissal of a member of the High Council of Justice based on the results of consideration of the reasoned recommendation of the Ethics Council is the very body that elected (appointed) him (Verhovna Rada Ukrai'ny, 2021).

However, if the relevant body did not make a decision to dismiss a member of the Board of Directors or to reject the recommendation of the Ethics Council, then after the expiration of the three-month period, such member of the Board of Directors is considered dismissed from his position.

Therefore, the evaluation procedure proposed by the legislator allows considering two possible options for the actual behavior of the subject of appointing members of the High Council of Justice: 1) active (taking actions) – meeting or rejecting the recommendation to dismiss a member of the High Council of Justice (paragraph ten of clause 4); 2) passive (refrain from taking actions).

The justification of the proposed model is related to the need to minimize the period of time during which the High Council of Justice may experience risks to its work due to the fact that, according to the decision of the Ethics Council, a member of the High Council of Justice is removed from office, does not participate in the work of the state body and its meetings, but at the same time compliance with the criteria of professional ethics and integrity has not been confirmed by the appointing authority.

This approach fully corresponds to the logic of the constitution maker regarding the activity of the High Council of Justice and is due to the goal of preventing the artificial creation of conditions of uncertainty of the status of its members. Since the Constitution of Ukraine does not determine the procedure and grounds for the dismissal of members of the High Council of Justice, and also does not prohibit providing at the legislative level several ways of such dismissal, there are no grounds to assert the unconstitutionality of the version of the dismissal of a member of the High Council of Justice proposed by the contested norm.

By passing Law No 1635-IX, the Ukrainian legislator sought to achieve a legitimate goal – to prevent a stalemate situation in which a member of the Ukrainian National Assembly is removed from office, but not dismissed. The default release mechanism is applied only after the «deadlock» has lasted for a relatively long time. Therefore, this mechanism is a proper implementation of the legislator's discretionary powers in terms of choosing the appropriate tools to eliminate this risk.

Therefore, the Ethics Council is not a body that resolves the issue of disciplinary responsibility. It only provides recommendations to other bodies, which make decisions that may lead to dismissal.

Conclusions. Based on the fact that the constitutional power in Ukraine should be exercised on the basis of continuity and integrity, a model for increasing the institutional capacity of the High Council of Justice and the level of public trust in the bodies of judicial management, in particular, and the judiciary, has been established at the legislative level. This model excludes probable cases of suspension of the High Council of Justice in performance of constitutional functions and exercise of powers.

Legislative regulation of the one-time verification of the relevant persons by the criteria is necessary precisely for the occupation of the positions of the members of the High Council of Justice, and not for any other body of state power. The need to reform this body of state power also lies in the evaluation of the relevant persons based on, in particular, their existing activities as members of the Public Prosecutor's Office, and not as judges. Thus, the one-time evaluation of each person who is a judge and has passed the qualification evaluation is not carried out for the second time as a judge, but for the first time and once as a member of the High Council of Justice.

The transitional model of the composition of the Ethics Council and, accordingly, voting by its members, proposed by the parliament, is primarily aimed at a one-time evaluation of valid members of the High Council of Justice according to the criteria of professional ethics and integrity, which precisely contributes to the proper functioning of the High Council of Justice in Ukraine, which is responsible for taking measures to ensure the independence of judges. The Venice Commission recognizes such temporary procedures as not only justified, but also necessary in the case of a high level of corruption in the justice system, and does not see in them a violation of the standards of independence of judges or any other violations.

There are no signs of interference with the independence of judges by the provisions of the thirteenth paragraph of Clause 231 of Chapter III «Final and Transitional Provisions» of Law No. 1798-VIII, Paragraphs one, six and eleven of Clause 4 of Chapter II «Final and Transitional Provisions» of Law No. 1635-IX, since the decision dismissal is decided by the body that elected the relevant member of the High Council of Justice. A judge who is elected to the High Council of Justice has the duty not only of a judge, but also of a member of the High Council of Justice. Therefore, voluntary admission to the relevant position carries with it additional burdens, in particular, regarding the need to pass an assessment for compliance with the criteria of professional ethics and integrity, not only as a candidate for the position of judge, but also as a member of the High Council of Justice. The risks of creating artificial obstacles to the functioning of an effective judiciary and, in some cases, the realization of everyone's right to access to justice as a requirement of the principle of the rule of law have been minimized.

References:

1. International Association of Judges (1999). The Universal Charter of the Judge. Adopted in Taipei (Taiwan) on November 17, 1999. URL: https://www.iaj-uim.org/universal-charter-of-the-judges/
2. United Nations Office on Drugs and Crime (2018). The Bangalore Principles of judicial conduct. Approved by Resolution No. 2006/23 of July 27, 2006]. Retrieved from: https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdft
3. Etychna rada (2021). Rishennja №1 vid 01.12.2021 «Pro zatverdzhennja I, II Rozdilu Reglamentu Etychnoi' rady» [Decision No. 1 dated 01.12.2021 «On the approval of Section I, II of the Regulations of the Ethics Council»]. Retrieved from: https://ec.court.gov.ua/userfiles/media/new_folder_for_uploads/ec/rishenna_er_%201_01_12_21.pdf [in Ukrainian].
4. Gisbert R. B. (2022). Judicial Independence in European Constitutional Law. *European Constitutional Law Review,* 18, 591–620. DOI:10.1017/S1574019622000347
5. Council of Europe (2010). Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. Retrieved from: https://www.icj.org/wp-content/uploads/2014/06/CMRec201012E.pdf
6. Consultative Council of European Judges (2001). Opinion No 1 (2001) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of judiciary and the irremovability of judges (Recommendation No. R (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problem in these fields. Retrieved from: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/OPINION_No_1_eng_2001.pdf
7. Council of Europe (1998). European Charter on the statute for judges. (Strasbourg, 8–10 July 1998). Retrieved from: https://rm.coe.int/16807473ef
8. Venecijs'ka Komisija & General'nyj Dyrektorat z prav ljudyny i verhovenstva prava Rady Jevropy (2021). Terminovyj spil'nyj Vysnovok shhodo zakonoproektu № 5068 vid 5 travnja 2021 roku № 1029/2021 [Urgent Joint Opinion on Draft Law No. 5068 dated May 5, 2021 No. 1029/2021]. Retrieved from: https://rm.coe.int/urgent-joint-opinion-of-the-vc-and-the-dg-of-human-rights-and-the-rule/1680a3ce1b [in Ukrainian].
9. Verhovna Rada Ukrai'ny (1996). Konstytucija Ukrai'ny [The Constitution of Ukraine]. *Vidomosti Verhovnoi' Rady Ukrai'ny (VVR),* 1996, № 30, st. 141 [in Ukrainian].
10. Verhovna Rada Ukrai'ny (2016). Zakon Ukrai'ny «Pro Vyshhu radu pravosuddja» vid 21 grudnja 2016 roku № 1798-VIII [Law of Ukraine «On the High Council of Justice» of December 21, 2016 No. 1798-VIII. *Vidomosti Verhovnoi' Rady (VVR)*, 2017, № 7-8, st. 50. [in Ukrainian].
11. Verhovna Rada Ukrai'ny (2020). Memorandum pro vzajemorozuminnja mizh Ukrai'noju jak Pozychal'nykom ta Jevropejs'kym Sojuzom jak Kredytorom, ratyfikovanyj Zakonom Ukrai'ny vid 25 serpnja 2020 roku № 825-I [Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Lender, ratified by the Law of Ukraine dated August 25, 2020 No. 825-IX]. Retrieved from: https://zakon.rada.gov.ua/laws/show/984_004-20#n29 [in Ukrainian].
12. Verhovna Rada Ukrai'ny (2021). Zakon Ukrai'ny «Pro vnesennja zmin do dejakyh zakonodavchyh aktiv Ukrai'ny shhodo porjadku obrannja (pryznachennja) na posady chleniv Vyshhoi' rady pravosuddja ta dijal'nosti dyscyplinarnyh inspektoriv Vyshhoi' rady pravosuddja» vid 14 lypnja 2021 roku № 1635-IX [Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice» dated July 14, 2021 No. 1635-IX.]. *Vidomosti Verhovnoi' Rady (VVR),* 2021, № 38, st. 320. [in Ukrainian].

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MEDIA FREEDOM IN UKRAINE: WAR CHALLENDES AND MORE

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Abstract. Ukraine has always had problems with media freedom. But due to the full-scale invasion of Russia, Ukraine faced a new challenge – how to provide information security and preserve the European principles of freedom of speech. The article describes the problems that have arisen in Ukraine due to the war and proposes ways to solve them. Also, there is a brief analysis of the newly adopted Law of Ukraine "On Media", which is important on Ukraine's path to EU membership. Special attention is paid to the telethon "United news", which, in the author's opinion, should be terminated.

Key words: media freedom, media outlets, martial law, media legislation, the telethon.

Introduction. Ukraine declared independence in 1991. Although 30 years is a large span, it is not sufficient to transform from a totalitarian country, which the USSR indeed was, to a strong European democracy, which Ukraine is striving to become. In terms of the freedom of speech as one of the major values and features of democracy, Ukraine has shifted from the communist model allowing no private property and censored state media of the 90s, and through the Ukrainian President who was among the greatest enemies of the press in 1999 (Gorchinskaya, 1999) to reach 2006–2008 when Ukraine was recognized as the most liberal country on the post-soviet territory (U.S. Department of State, 2007) excluding the Baltic countries. These days it is classified as a partly free country involved in warfare, and its journalists have collectively won the Pulitzer Prize because "despite bombardment, abductions, occupation and even deaths in their ranks, they have persisted in their effort to provide an accurate picture of a terrible reality, doing honor to Ukraine and to journalists around the Word" (The Pulitzer Prize, 2022).

Main material. Before considering the issues related to the freedom of speech, they should be divided into two categories. The first one includes the violations committed by the Russian Federation. Among them are 59 journalist murder cases on the battlefield, journalist abductions in the territories occupied by Russia (even in Crimea, which has been under occupation for 9 years, at least 15 journalists have vanished over the last year), seizing and shutting down of at least 10 Ukrainian media headquarters, shelling of TV towers, jamming the signal of Ukrainian broadcasters and cyberattacks at their websites, bribing the journalists and censoring their activity etc. (Institute of Mass Information, 2023). All in all, 233 media outlets have shut down in Ukraine over the last year. Unfortunately, until these territories are reclaimed neither Ukraine, nor international community can stop that, having no influence on Russia.

However, in this article I would like to focus on the other category of violations arising on the territory controlled by Ukraine, inasmuch the situation here can and must be redeemed.

Of course, Ukraine had media freedom problems before the Russian invasion. The major underlying reason was that most media outlets were loss-making and were owned by oligarchs, who used their resources to one end – to affect the authorities and society.

Some kind of balance and access to different opinions were partly ensured by the fact that far from all oligarchs supported the existing authorities, so their channels could be overtly oppositional

(nowadays, for example, it is "Channel 5" belonging to previous President of Ukraine Petro Poroshenko), situationally oppositional or neutral which dictated their own policy (such as "Ukraine" channel, belonging to the richest person in Ukraine Renat Akhmetov).

Partly, it has to be resolved by the launching of public broadcasting ("Suspilne" television and radio) after the Revolution of Dignity in 2013. It was a beautiful story when a state channel was turned to a public one. The position of the general director was awarded to a really respected and experienced and most importantly independent journalist. However, violating the law, the government kept underfunding the channel, which led to the latter not being able to create any content, incurring huge debt and having no funds to pay the journalists' salary. Had the channel been more loyal to the government, obviously it would have obtained more ample financial support. Nevertheless, the broadcaster lives up to its reputation and maintains independence. It adheres to high quality standards and journalistic ethics. Weekly monitoring reports on adhering to journalistic standards always rank it the highest among all news channels, its journalists making the smallest number of mistakes (Kulias, 2023). Nowadays, it is the only broadcaster in the Ukrainian telecommunication medium which under martial law features the people's deputies representing opposition forces (Kulias, 2023). Even though Ukraine has now the fourth government and second president since that time, the channel remains underfinanced. There was even an appalling incident in 2020 when due to anti-Covid restrictions on the number of people present, the Suspilne journalists were not accredited for the Ukrainian President's press-conference while a pro-Russian channel's journalists were. Therefore, the channel cannot develop, does not have super-popular programmes and has a rather low rating compared to bright private broadcasters. That is why some officials keep insisting that the channel is redundant and should be shut down.

The development of the Internet and social networks also enhances the media freedom. Ukrainian journalists are proactive in self-organization and setting up own small media. While it has always been rather hard to get on TV as a politician or activist had to either pay the channel or have personal contact with the channel's owner, independent media make it much easier.

In 2017 Ukraine's freedom of speech rating was considerably reduced due to the ban of Russian TV channels, social networks and software. With the view to information security, a special list was created including the Russians who were banned from entering Ukraine and whose content was not allowed to be broadcasted in Ukraine (mostly politicians and actors who supported the annexation of Crimea and travelled there with Russian pro-governmental events). This was condemned by some organizations, such as Reporters Without Borders claiming it to be a restriction of the freedom of speech. That, however, turned out to be a well-grounded decision, inasmuch now the EU countries are also starting to ban these channels and sanctioning certain persons. In addition, in 2021 a ban was placed on some Ukrainian channels with a pro-Russian policy, which was also criticized by the UN as a violation of the freedom of speech. By the way, the owner of these channels was arrested in 2022, charged with state treason and eventually exchanged. He was handed over to Russia and was traded for 200 Ukrainian prisoners of war (Walker, 2022).

But, in my opinion, what crucially undermined the freedom of speech in Ukraine was the full-scale Russian invasion of Ukraine in 2022 and the introduction by the government of the all-Ukrainian informational telethon "United News". It is a blend of a few largest information channels into one, where each studio takes turns and has its allotted time. By an odd coincidence, none of the three largest opposition channels made it to the telethon project although they are profoundly pro-Ukrainian and there are no reasons to suppose that they could harm the national security. They ended up in an ambiguous situation because despite not being banned, they do not have access to digital broadcasting. The Minister of Culture and Information Policy announced that he saw no need of reviving the talks on the channels' participation in the telethon as "there is variety on television" (Radio svoboda, 2022), even though some other recently founded channels with obscure owners have been

allowed in (Dankova, 2022). This issue is currently being resolved in court. However, the Ukrainians cannot trust any decision of the unreformed judicial system.

It should be noted that at the very start of the full-scale invasion, this telethon as a Ukrainian innovation was really useful. In the times of insecurity and chaos when the Russians thrusted fakes into the Ukrainian informational field about Zelenskyy having been killed and Russian tanks moving on to the governmental quarter of Kyiv and resistance not making sense, the unification of key channels facilitated their work and helped avoid panic in the society. The telethon voiced only verified information, promptly broadcasted statements of the President and other Ukrainian authorities, who brought across important information to the people. All the news was coordinated with the Office of the President of Ukraine because journalists indeed did not know what could be revealed on air and what could harm the course of military operations.

Nevertheless, the situation has been stabilized already, obviously there is no need for a telethon. Nowadays, journalists closely cooperate with the military having learned how to report the events without harming the military operations. If the military command deems some information classified or forbids to reveal it (for example, when and where the Ukrainian counteroffensive is going to start or non-disclosure of the Ukrainian military casualties), such limitations are treated by the journalists and society with understanding. Inevitably, there are arguments about not letting the journalists access certain events, but in that case nobody, not even the journalists of the United Telethon are allowed.

Clearly, far from all events happening in Ukraine are related to the war. The necessity to coordinate the reporting with the Minister of Culture and Information Policy or the Office of the President seems at odds with democracy. As of today, the telethon activity is raising increasingly more concerns among media experts. The telethon features only a limited circle of experts and officials who are loyal to the authorities or pro-government politicians. It remains unclear why some events are not revealed in the United Telethon at all, for example, the fact that G7 ambassadors reminded Ukraine of the necessity to adopt the anticorruption program (Kulias, 2023) or some other issues are presented only after they have publicly resonated on the internet, take the case of procurement-related corruption in the Ministry of Defense (Loh, 2023).

It should be mentioned that being funded at the cost of the state budget of Ukraine, the United Telethon is quite a substantial burden on it. It is a way to compensate for the war-related losses sustained by the channels chosen by the government. The 2023 budget allocates UAH 1, 94 billion to be distributed among all the channels involved in the united informational telethon. They include state-owned and private channels as well as public television. Still, "Suspilne" television remains underfunded. This year, UAH 1, 504 million is allocated to this broadcaster, while the Law of Ukraine "On Public Television and Radio Broadcasting" stipulates UAH 4, 419 million (Dankova, 2022).

Several times European Union has urged the Ukrainian authorities to close down the telethon and resume digital broadcasting of opposition channels (Bukvy, 2022). This problem was also emphasized in the US Department of State's report (Bureau of Democracy, Human Rights, and Labor, 2023). Yet President Zelenskyy insists on its necessity till the end of the war, even though the telethon appears to be considered not so much a key to Ukraine's victory over Russia in the information war but rather an instrument for the pro-government powers to win in the election, which is due as soon as the war is over. Even if the authorities declare that all politics should be "suspended" in reality the telethon continuously demonstrates political promotion, and the Office of the President keeps commissioning sociological surveys to monitor the rating of politicians and political parties.

One more problem caused by the telethon is that the state parliamentary channel "Rada", which is meant to illuminate the Ukrainian parliamentary activity and ensure public discussion of draft laws, is currently operating within the United Telethon. Because of war the parliamentary sessions are not aired inasmuch they are taking place behind closed doors. Certainly, there cannot possibly be a need

to make the sessions confidential. It affects the idea of parliamentarism and transparency of the political process in general.

Withal the main criteria indicating the redundancy of the telethon is its steadily decreasing rating, which currently stands at 13–15% of the entire TV viewing. Recent research showed that every second Ukrainian believes that broadcasting a single official point of view is not acceptable, even in wartime (Skliarevska, 2023). The most recent surveys suggest that Ukrainians prefer to seek information on the Internet.

Another controversial fact is that even though Ukraine officially gave up on state channels, in 2023 a license was granted to a new state channel of the Ministry of Defense of Ukraine "Ukrainian military TV". The society is indeed closely watching and deeply concerned with the warfare, but Ukraine has enough state channels, which can serve as a platform for the military to bring across all necessary messages. Therefore, spending otherwise limited resources on one more state channel is absolutely inappropriate and has not been supported.

Despite the outlined challenges faced by the media, it should be indicated that according to the index of Reporters Without Borders, Ukraine has improved its ranking in 2023 rising from 106th to 79th place (Reporters Without Borders, 2023). The organization primarily remarks the overall enhancement of socio-political and economic state of the journalists because since the full-scale invasion the situation in the country has stabilized and journalists have resumed their activity with due regard to the major war challenges. The organization has also welcomed the Law of Ukraine "On the Media", adopted at the end of 2022, (Law of Ukraine "On Media", 2022) as the one complying with the EU legislation. Apropos, synchronization of the media legislation was one of the 7 conditions required from Ukraine to attain the status of the EU membership candidate. The adopted Law is proudly referred to by the Ukrainian authorities as an achievement, emphasizing its compliance with the EU Audiovisual Media Services Directive and claiming that it accounts even for the provisions of European Media Freedom Act.

The adopted Law, however, has given rise to controversial feedback. The National Union of Journalists of Ukraine has objected to this Law and expressed concern with the political engagement of the National Council on Television and Radio Broadcasting and its authority to regulate printed and online media. This position has been supported by the International Federation of Journalists arguing that excessive authority of the national regulator poses a threat to pluralism and freedom of speech in Ukraine (International Federation of Journalists, 2023). The same concerns have been voiced by the Committee to Protect Journalists and European Federation of Journalists who have called for revision of the adopted Law (Committee to Protect Journalists, 2022).

In fact, a detailed analysis of the adopted Law leads to the conclusion that the National Council on Television and Radio Broadcasting is authorized to register and issue licenses to media entities, to supervise and control the activity of all media entities and, most importantly, it is up to the Council itself to develop the regulatory acts governing its activity. The National Council on Television and Radio Broadcasting must adopt its own Strategy and devise a Plan of the strategy implementation, develop a form and procedure of applying for participation in a license and registration competition, independently determine the inspection procedure at media entities and carry out such inspections. Moreover, the Law does not stipulate any responsibility of the its members for non-performance or improper performance of obligations. Nevertheless, there are abundant cases when various bodies in Ukraine have been impeding or delaying decision making or taking unjustified or politically-biased decisions.

A positive aspect of the adopted Law "On the Media" is the introduction of a co-regulation body. According to the Law, each category of media entities must be represented by a joint regulatory body which will cooperate with the National Council on Television and Radio Broadcasting to adopt, for example the criteria of qualifying entities as online media, the criteria of qualifying linear media as

thematic and amount of the national product for such media, as well as other demands applicable to certain media categories. Their activity must be regulated by corresponding co-regulatory codes. There are concerns, which always arise in such situations, related to the Law implementation, namely, how these bodies will be established and in whose interests their representatives will act, because as of today journalists are reluctant to join the National Union of Journalists of Ukraine, explaining that it is useless.

It should also be indicated that the adopted Law stipulates denationalization of the media, reaffirms the journalist rights, clearly defines the media-related violations and prosecution, allows channel shut-down exclusively upon the court decision and determines the procedure of disclosing media's ultimate beneficiaries. Media entities approve of the introduction of an online cabinet, through which the registration and communication with the controlling body is performed. It simplifies the procedure and reduces bureaucracy and corruption.

Conclusions. The Law of Ukraine "On the Media" is to come into effect gradually. Its implementation requires amendments to the laws on elections, advertising and more than 30 regulatory acts, upon which all this legislation will have to be considered holistically. Still, already now we may conclude that the National Council on Television and Radio Broadcasting has excessive authority especially in legislative area, which should be delegated to another body. The number of the Council members is also unreasonable (4 members appointed by the President and 4 members elected by the Parliament) and should be reduced at the cost of the President's quota as Ukraine is a parliamentary-presidential republic. The legislators argue that the President's quota is stipulated in the Constitution of Ukraine and cannot be altered under martial law and asked to wait until the war end.

Therefore, media entities, as well as the entire civil society are looking forward to the end of the war not only to put an end to deaths and suffering among the Ukrainians but also to unfold a full-fledged domestic frontline, a struggle for the reforms in Ukraine. The power of the Ukrainian society lies in its openness and pluralism. Despite the chaos, it gives us power to resist all sorts of autocracy and dictatorship. The role of media in such circumstances can hardly be overestimated. It was with their assistance that the Ukrainian people have been capable of self-organization, held two successful revolutions, are demanding reforms, which are painful for the authorities, and are fighting the largest country in the world.

References:

1. Gorchinskaya K. (1999). Kuchma rated press enemy No. 6. – Kyiv Post. Retrieved from: https://archive.kyivpost.com/article/content/ukraine-politics/kuchma-rated-press-enemy-no-6-339.html (accessed 4 August 2023)
2. Bureau of Democracy, Human Rights, and Labor. (2007). 2006 Country Reports on Human Rights Practices. – The official site of U.S. Department of State. Retrieved from: https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78846.htm (accessed 4 August 2023)
3. The Pulitzer Prize. (2022). The 2022 Pulitzer Prize Winner in Special Citations and Awards. – The official site of the Pulitzer Prizes. Retrieved from: https://www.pulitzer.org/winners/journalists-ukraine (accessed 4 August 2023)
4. Інститут масової інформації. (2023). 509 crimes against journalists and media in Ukraine committed by Russia in a year and two months of the war. – Institute of Mass Information. Retrieved from: https://imi.org.ua/en/news/509-crimes-against-journalists-and-media-in-ukraine-committed-by-russia-in-a-year-and-two-months-of-i52312 (accessed 4 August 2023)
5. Kulias I. (2023). Results of the Monitoring of the United News Telethon for October – December 2022. Part Two. – Detector media. Retrieved from: https://en.detector.media/post/results-of-the-monitoring-of-the-united-news-telethon-for-october-december-2022-part-two (accessed 4 August 2023)

6. Kulias I. (2023). Summary of the "Yedyni Novyni" telethon monitoring for October – December 2022 Part #1. – Detector media. Retrieved from: https://en.detector.media/post/summary-of-the-quotyedyni-novyniquot-telethon-monitoring-for-october-december-2022-part-1 (accessed 4 August 2023)
7. Walker S. (2022). Russia trades Azov fighters for Putin ally in biggest prisoner swap of Ukraine war. – The Guardian. Retrieved from: https://www.theguardian.com/world/2022/sep/22/ukrainian-putin-ally-viktor-medvedchuk-exchanged-for-200-azov-battalion-fighters-zelenskiy-says (accessed 4 August 2023)
8. Radio svoboda (2022). Ткаченко «не бачить потреби» у долученні «Прямого», «Еспресо» і «5 каналу» до єдиного телемарафону. – Radio svoboda. Retrieved from: https://www.radiosvoboda.org/a/news-tkachenko-marafon-espreso-priamyi-pyatyi-kanal/32066602.html (accessed 4 August 2023)
9. Dankova N. (2022). My – shosti u marafoni. Yak Yurii Suhak ta komanda kolyshnoi «Ukrainy» zapustyly telekanal. [We are sixth in the marathon. How Yuriy Suhak and the team of the former "Ukraine" launched a TV channel] – Detector media. Retrieved from: https://detector.media/rinok/article/204636/2022-11-07-my-shosti-u-marafoni-yak-yuriy-sugak-ta-komanda-kolyshnoi-ukrainy-zapustyly-telekanal/ [in Ukrainian] (accessed 4 August 2023)
10. Kulias I. (2023). Monitorynh spilnoho telemarafonu «Iedyni novyny» za 30 sichnia 2023 roku. [Monitoring of the united telethon "Edyni Novyny" for January 30, 2023]. – Detector media. Retrieved from: https://detector.media/shchodenni-telenovini/article/207715/2023-02-06-monitoryng-spilnogo-telemarafonu-iedyni-novyny-za-30-sichnya-2023-roku/ [in Ukrainian] (accessed 4 August 2023)
11. Loh M. (2023). Zelenskyy fired 9 top officials after reports that members of his government went on vacation to Spain and France and took bribes during the war. – Business Insider India. Retrieved from: https://www.businessinsider.in/international/news/zelenskyy-fired-9-top-officials-after-reports-that-members-of-his-government-went-on-vacation-to-spain-and-france-and-took-bribes-during-the-war/articleshow/97300910.cms (accessed 4 August 2023)
12. Dankova, N. (2022). Biudzhet 2023 roku: Menshe na mediino-kulturnu sferu, ale bilshe na marafon i systemu zakhystu informatsii [The 2023 budget: Less for the media and cultural sphere, but more for the marathon and the information protection system]. Detector media. Retrieved from: https://detector.media/rinok/article/205125/2022-11-19-byudzhet-2023-roku-menshe-na-mediyno-kulturnu-sferu-ale-bilshe-na-marafon-i-systemu-zakhystu-informatsii/ [in Ukrainian] (accessed 4 August 2023)
13. Bukvy (2022). EU unofficially calls on Ukraine to move away from the 'united news' on TV, – Germany ambassador. – Bukvy. Retrieved from: https://bykvu.com/eng/bukvy/eu-unofficially-calls-on-ukraine-to-move-away-from-the-united-news-on-tv-germany-ambassador/ (accessed 4 August 2023)
14. Law of Ukraine «On Media». № 2849-IX (2022). Retrieved from: Retrieved from: https://zakon.rada.gov.ua/laws/card/2849-20 [in Ukrainian] (accessed 4 August 2023)
15. Bureau of Democracy, Human Rights, and Labor (2023). 2022 Country Reports on Human Rights Practices: Ukraine. – The official site of U.S. Department of State. Retrieved from: https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/ukraine/ (accessed 4 August 2023)
16. Skliarevska G. (2023). Lack of Diverse Viewpoints in the Telethon: 70% of Ukrainians Look for Information in Other Sources – Detector Media Study. – Detector media. Retrieved from: https://en.detector.media/post/lack-of-diverse-viewpoints-in-the-telethon-70-of-ukrainians-look-for-information-in-other-sources-detector-media-study (accessed 4 August 2023)
17. Reporters Without Borders (2023). Ukraine. – The official site of Reporters Without Borders. Retrieved from: https://rsf.org/en/country/ukraine (accessed 4 August 2023)
18. International Federation of Journalists (2023). Ukraine: IFJ calls on the government to revise new media law. – The official site of International Federation of Journalists Retrieved from: https://www.ifj.org/media-centre/news/detail/category/press-releases/article/ukraine-ifj-calls-on-the-government-to-revise-new-media-law (accessed 4 August 2023)
19. Committee to Protect Journalists (2022). CPJ calls for Ukraine to revise draft media law. – The official site of Committee to Protect Journalists. Retrieved from: https://cpj.org/2022/07/cpj-calls-for-ukraine-to-revise-draft-media-law/ (accessed 4 August 2023)

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ISSUES OF COPYRIGHT FOR OBJECTS CREATED BY ARTIFICIAL INTELLIGENCE

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Abstract. The paper substantiates the problem of recognising artificial intelligence as the author of intellectual property objects. The conditions of copyrightability and the possibility of compliance of copyright objects created by AI with such requirements are given. The article contains answers provided by artificial intelligence at our request. The article issues of types of objects that AI can create are being studied. Authors paid attention to problems of compilation and plagiarism in things made by AI. The research proves that objects created by AI can meet all copyrightable requirements. The authors emphasised that the only exception is the normative condition that only a human can be the author. It was concluded that the impossibility of recognising AI as the work's author is an artificial limitation. The authors emphasised that such a paradigm will change in the future. The authors suggest that the current state of AI is very close to the stage of deterministic understanding of human free will. AI is a surrogate representation of human intelligence with similar properties for analysis, self-improvement, and decision-making.

Key words: copyright, author, property and non-property rights, Artificial Intelligence, objects of intellectual property rights, civil law, co-authorship, the legal status of AI.

Introduction. Intellectual property law clearly defines the subjects of copyright. However, developing society, science, technology and modern technologies require the renewal of established paradigms. Artificial intelligence has become an integral part of our lives and can already write books and scientific articles and create original images, videos, music and other objects of intellectual property rights. These possibilities are implemented almost without human intervention. However, only a human can be an author. The improvement of artificial intelligence, its distribution and obtaining more and more opportunities requires a revision of the concept of authorship and copyright.

State of scientific development. Among the leading academics who studied these questions, we should be noted Loewenheim U. & Leistner M. (Urheberrecht), Lambert P. (Computer Generated Works and Copyright: Selfies, Traps, Robots, AI and Machine Learning), Link J., Waedt K., Ben Zid I., & Lou X. (Current challenges of the joint consideration of functional safety & cyber security, their interoperability and impact on organizations: How to manage RAMS + S), Trifonov R., Nakov O. & Mladenov V. (Artificial intelligence in cyber threats intelligence), Vehar F. & Gils T. (I'm sorry AI, I'm afraid you can't be an author (for now), Kryvetskyi O. (To the problem of legal regulation of artificial intelligence) and other. The issue of copyright recognition for artificial intelligence is controversial and under-researched.

The aim of the study. To substantiate the problem of recognising artificial intelligence as the author of intellectual property objects.

Research methods. General scientific and unique scientific methods of cognition are applied: logical (deduction and induction, analysis and synthesis, abstraction and comparison); hermeneutic (regarding the understanding of scientific texts); formal-dogmatic.

Results of the study. After examining copyrightable conditions, we see that AI-created copyright objects can satisfy all of them. The only exception is the regulatory condition that only a human can be the author – not being able to recognise AI as the work's author is an artificial, rudimentary limitation. We believe that this paradigm will change in the future.

The development of artificial intelligence and the spread of its use opens up new opportunities for human society. The use of AI is becoming more and more common and is already an integral part of our lives. In addition to performing complex algorithmic calculations, AI is used to create texts of laws, scientific research, write works of art, make pictures and music, videos etc. If earlier AI was only an additional tool for human activity, today, AI can completely replace certain professions and independently create copyright objects. However, AI cannot be recognised as the author because humans monopolise this right. Today, AI can already create copyrighted objects with minimal human involvement. For example, it is enough to write a request, and AI will independently create text, pictures, music, etc. Because of this, an urgent question arises about recognising AI as the author or co-author.

The established normative position is the recognition that only a human can be an author. Confirmation of this can be found in these examples:

1. The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being (Compendium of U.S. Copyright Office Practices, 2021, Art. 306);
2. Author – a natural person who created work through his creative activity (On copyright and related rights, 2023, Art. 1);
3. The author is the creator of the work (Copyright Act, 1965, Section 7). The prevailing opinion is that only humans can be authors of personal intellectual creations (Loewenheim & Leistner, 2020);
4. The original copyright holder is the natural person who created the work (Belgian Code of Economic Law, 2022, Art. XI);
5. Criteria of Eligibility for Protection: 1. Nationality of author; place of publication of work; 2. Residence of the author (Berne Convention for the Protection of Literary and Artistic Works, 1979). We think that only a human can meet these criteria.

We asked the AI if it could be the author and received an answer that confirmed the above thesis (Fig. 1).

The answer provided by AI reflects two main concepts: 1. Only a human can be an author; 2. If a work is created without human participation, it does not have an author.

Enshrined in the legislation of the United Kingdom, 'In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken' (Copyright, Designs and Patents Act, Law, 1988, Section 9). P. Lambert defines this formulation as obscure since it is unclear how close the connection between preparatory actions and the directly created work should be (Lambert, 2017).

It can be assumed that such restrictions are related to strict copyrightable requirements, so AI cannot be the author. However, in reality, the criteria for copyrightability are abstract and absent in the legislation of most countries, being limited only to the requirements for the originality of the work (novelty) and human authorship. The Compendium of U.S. Copyright Office Practices contains the most comprehensive list of copyrightable requirements.

This document states that in determining whether a work is copyrightable, the Office analyses questions such as: 1. Is the work eligible for copyright protection in the United States? 2. Has the

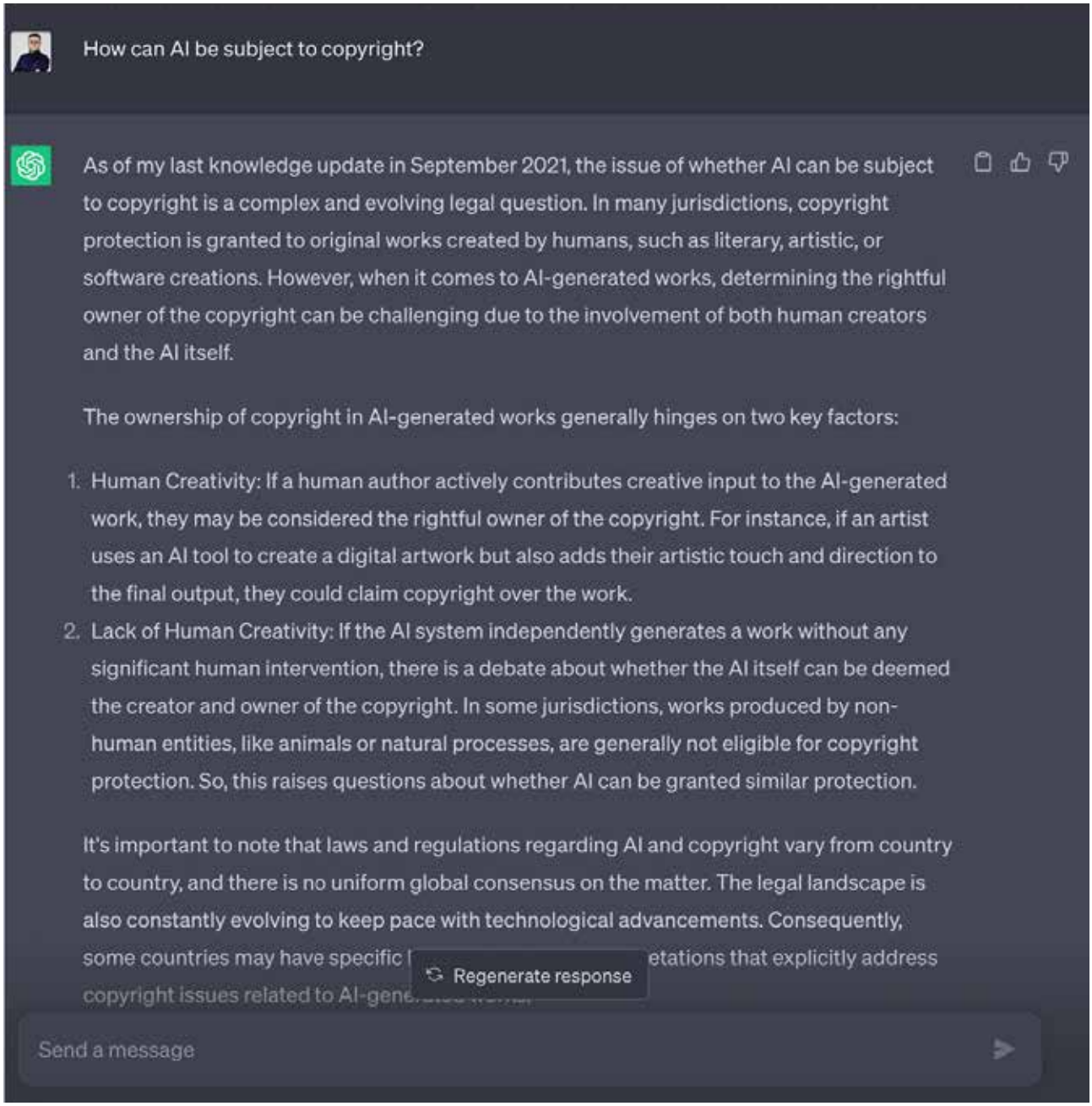

Figure 1. How can AI be subject to copyright? (ChatGPT, 2023)

work been fixed in a tangible medium of expression? 3. Was the work created by a human author? 4. Does the work constitute copyrightable subject matter? 5. Is the work sufficiently original? 6. Was the work independently created? 7. Does the work possess at least some minimal degree of creativity? If the answer to all of these questions is "yes", the work is copyrightable and the claim may be registered, as long as there are no other issues in the registration materials that raise questions concerning the claim and as long as the other legal and formal requirements have been met (Compendium of U.S. Copyright Office Practices, 2021, Art. 302).

Let us consider the compliance of copyright objects created by AI with the above conditions.

The first condition is eligible for copyright protection. Each country has a list of copyrighted objects protected by law. In general, such objects are the same in different legal systems: 1. USA – literary

works; musical works, including any accompanying lyrics; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works. 2. Ukraine – literary works of fiction, nonfiction, scientific, technical or other nature (books, brochures, articles, etc.) in written, electronic (digital) or other form; performances, lectures, speeches, sermons and other oral works; musical works with and without text; dramatic, musical and dramatic works, pantomimes, melodic and light shows, circus performances, choreographic and other works created for stage performance, and their productions; theatrical productions, stage adaptations of works; audiovisual works; translation texts for voicing (including dubbing), subtitling of audiovisual works in other languages; works of fine art; photographic works; works of applied art, ceramics, carving, art glass foundry, art forging, jewellery, etc.; works of architecture, urban planning, garden and park art and landscape formations; works of artistic design; derivative works; collections of works, collections of processing of intangible cultural heritage, encyclopedias and anthologies, collections of ordinary data, other composite works, provided that they are the result of creative activity in the selection or arrangement of content; illustrations, maps, plans, drawings, sketches, plastic works related to geography, geology, topography, engineering, construction and other fields of activity; computer programs; databases (data compilations), if they are the result of intellectual activity by selection or arrangement of their parts; other works (On copyright and related rights, 2023, Art. 6).

The examples demonstrate the similarity of the list of copyright objects in the common and civil law systems. The difference is only in the depth of detail.

Today, AI can already create all the specified copyright objects. ChatGPT can independently generate text as a response to a person's question. For example, a magazine created entirely with artificial intelligence's help is published in Ukraine (Boiko, 2023), and AI-Generated Books of Nonsense Are All Over Amazon's Bestseller Lists (Roscoe, 2023). In the example of books, we see that AI does almost all the work, but the user who sells the books and makes a profit is identified as the author.

To demonstrate the capabilities of AI, we asked ChatGPT to write a three-hundred-word story about a man and a woman meeting. The result of the query is shown below (Fig. 2).

Unique resources can be used to create graphic objects: Midjourney, DALL-E, Artbreeder, Let's Enhance, Waifu Labs, Deep Dream Generator's etc (Johnson, 2023). Anima Anandkumar, Bren Professor of Computing at California Institute of Technology, said that if earlier AI compiled and united images from different sources, it could create new, authentic, original objects (Isaacs-Thomas, 2023). Gaps in the legal regulation of such things are already leading to numerous collisions and lawsuits. A famous case was when the German artist Boris Eldagsen generated an image with the help of artificial intelligence and won the Sony World Photography Awards 2023 photo competition. Boris Eldagsen refused the award and emphasised that he deliberately sent the work to check whether such matches were ready for the 'invasion' of works authored by artificial intelligence (Trojanov, 2023).

We used the Midjourney neural network to demonstrate the capabilities of AI in creating graphic images. Our request has the following form: jelly penthouse building, candy texture, cream roof, in the style of willy wonka, cinematic light, organic forms, Alexa mini If --ar 16:9 --v 5. The AI-generated result is shown below (Fig. 3).

As you can see from our examples, human involvement in creating these objects was minimal. We only showed creativity when writing requests, and the AI independently created copyright objects. However, only users who entered the plea will be considered authors, and AI and its developers cannot even be co-authors.

Another issue is closely related to the point of compilation and plagiarism. A group of visual artists has sued artificial intelligence companies Stability AI Ltd, Midjourney Inc, and DeviantArt Inc for copyright infringement, adding to a fast-emerging line of intellectual property disputes over AI-generated work. Stability AI's Stable Diffusion software copies billions of copyrighted images,

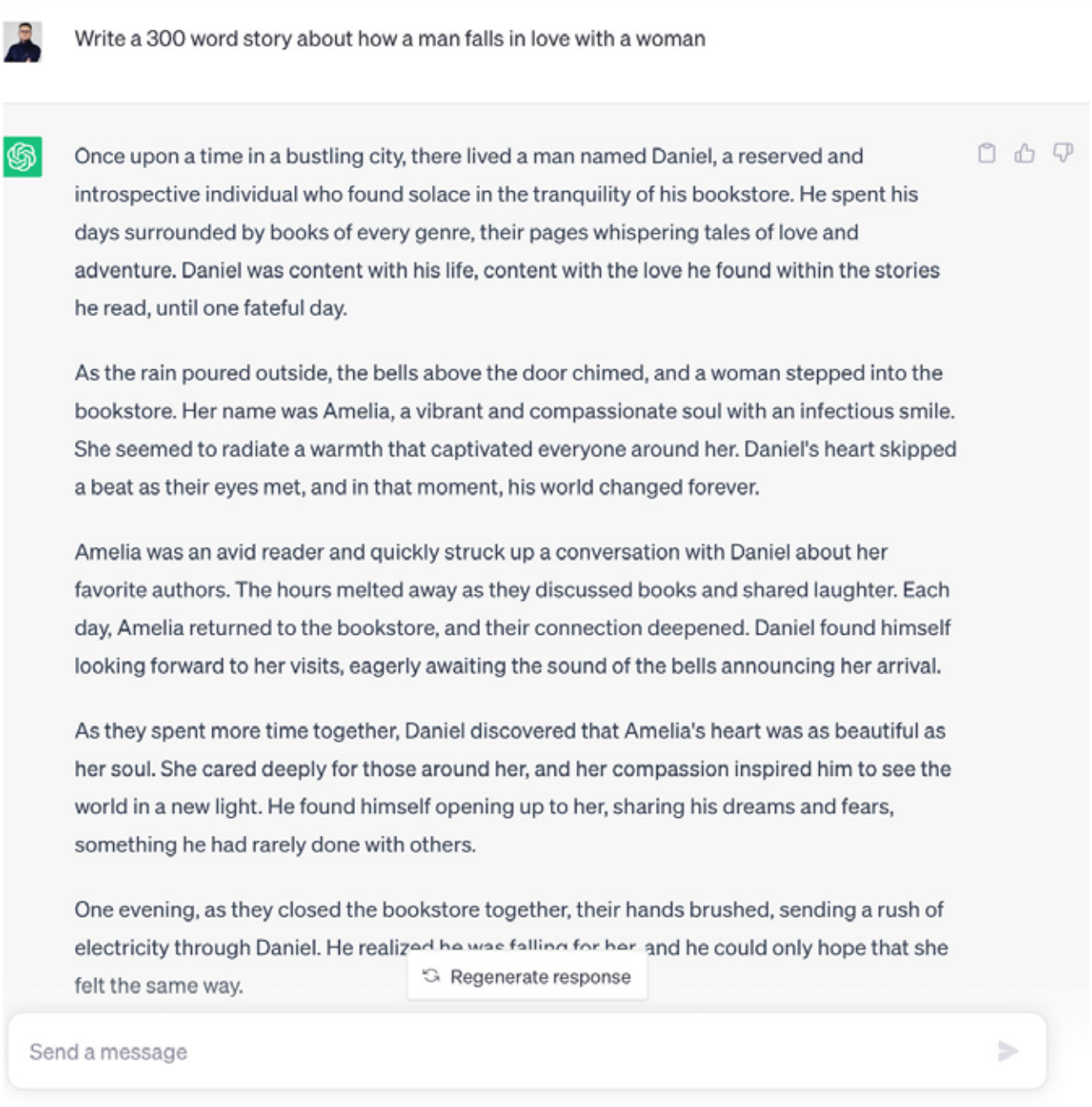

Figure 2. The story was written by ChatGPT (ChatGPT, 2023)

enabling Midjourney and DeviantArt's AI to create images in those artists' styles without permission (Brittain, 2023a). The court case about removing AI-generated pictures from the book became resonant. The decision is one of the first by a U.S. court or agency on the scope of copyright protection for works created with AI. Midjourney general counsel Max Sills said the decision was ‘a great victory for Kris, Midjourney, and artists’ and that the Copyright Office is ‘clearly saying that if an artist exerts creative control over an image generating tool like Midjourney ...the output is protectable.’ (Brittain, 2023b). So, in this case, the court did not recognise the copyright of the author of the book for which the image was created. At the same time, it was not determined who is the author of these images. If we credit Midjourney with authorship, it will be the first precedent for AI authorship. If Midjourney's developer company is recognised as the author of these images, it will create a

Figure 3. Midjourney created the art (Midjourney, 2023)

harmful practice. In this case, all companies whose technologies we use to generate copyright objects will claim co-authorship. Such a position could lead to a legal collapse: We are writing this paper using Microsoft Word, Apple MacBook, Google Search, etc. Should all these companies be co-author of this research? Of course not.

If we continue the search, we will find many other resources with AI that can create all kinds of copyright objects. It should be noted that the quality of these objects does not matter because the requirement is the presence of at least some minimal degree of creativity.

Examining other copyrightable conditions, we see a similar situation. Has the work been fixed in a tangible medium of expression? The electronic form is equal to the physical medium. This requirement is more related to the need for external manifestation of an idea that is not in itself the object of copyright.

Is the work sufficiently original? Was the work independently created? The only way to check compliance with these requirements is to review for plagiarism. If an object created by AI complies with publication ethics and does not contain illegal borrowings, it is copyrightable.

The critical condition is the creation of the object by a human. No law contains a justification for such a position. This is primarily because copyright laws were passed before AI was relevant. The legislators could not suppose that anyone but man could create work. Today, such a position does not correspond to reality and requires legislation updating. Another argument may be related to the minimum degree of creativity requirement.

The legislation clearly defines that the author of a work can only be a natural person who created the work through his creative activity (On copyright and related rights, 2023, Art. 1). A legal entity can be the subject of copyright. However, due to the lack of its intelligence, it is deprived of the opportunity to be a creator (author). The possibility of being the author of a work implies the presence of creative, intellectual activity. A work is an original intellectual creation of the author (co-authors) in science, literature, art, etc., expressed objectively (On copyright and related rights, 2023, Art. 1). The work is an external expression of intellectual activity. In a broad sense, intelligence is

understanding and thinking (Intellect, 2023). The etymology of this word comes from *intellectus, intellegere*, which means to understand, to be intelligent. (Definition of Intellect, 2023). This makes it possible to assume that intellectual activity is related to awareness. However, this position is not relevant for copyright because the copyright for a work arises as a result of the fact of its creation. A work is created from its initial presentation in any objective form (written, tangible, electronic (digital), etc.) (On copyright and related rights, 2023, Art. 9). That is, awareness of one's actions is not a condition for the emergence of copyright. We covered this topic in more detail in the paper Issues of copyright on objects created by animals.

Now it is necessary to decide what sub-elements the AI consists of. AI is associated with essential elements such as Machine Learning, Neural Networks and Deep Learning, essentially a component of the previous term. That is, machine learning is a subfield of artificial intelligence. Deep learning is a subset of machine learning, and neural networks form the basis of deep learning algorithms (AI vs Machine Learning vs deep learning vs neural networks: What's the difference?, 2023).

AI was created as a surrogate analogue of human intelligence. AI today is not a subject of rights and is used only as a tool to implement the will of the user. However, AI independently performs image processing, decision-making, recognition and language processing (Link etc., 2018). AI is a machine's ability to operate intelligently by accurately reading input data and applying that knowledge to achieve defined goals and activities through flexible design (Trifonov etc., 2018). AI carries out independent intellectual movement based on the algorithms embedded in it.

The above correlates with our previous conclusions. In the paper 'Surrogate Will' of artificial intelligence: a philosophical and legal analysis, we wrote the following: 1. After processing the information, the AI intelligence makes the appropriate decision. For example, after analysing a photo, AI concludes that its exposure level is insufficient and decides to increase the brightness; 2. Calculating data can be compared to a person's inner will when he analyses information and makes a decision. The method of improving the picture of AI can be compared to the external form of human free will, the expression of will; 3. AI makes decisions according to the algorithms embedded in it, which is why it can be assumed that it does not have its own will. At the same time, a human also makes decisions under the influence of external factors, available information and knowledge, experience, etc. That is, a human is guided by his algorithms, which can take the form of reflexes, instincts, etc.; 4. From the standpoint of determinism, free will is based on the causal connection of phenomena. In this way, a deterministic understanding of free will can be compared with the algorithmic will of AI. This gives reason to assume that the current state of AI will is very close to the stage of deterministic understanding of human free will; 5. A human's external expression of free will occurs according to specific rules determined by the norms of morality and law. The will of AI is determined by the algorithms embedded in it; 6. AI is a surrogate representation of human intelligence with similar properties for analysis, self-improvement and decision-making. Just as nature, evolution, or God put the capacity for intellectual activity in humans, the developer puts a surrogate version of this in AI (Savchenko, 2023).

We can conclude the similarities and differences between AI and human intelligence from the study Artificial Intelligence vs Human Intelligence (Simplilearn, 2022). Main similarities: 1. The ability to process information and perform complex tasks. 2. Ability to learn and improve based on experience and data. 3. Ability to solve problems, make decisions and perform various tasks. Main differences: 1. Human intelligence has consciousness and self-awareness, while AI does not have these characteristics. 2. Human intelligence has emotions, feelings and social interaction, which makes it more complex and multifaceted than AI. 3. The human intellect has creative thinking and the ability to intuition, which still needs to be fully available to AI.

Conclusions. After examining copyrightable conditions, we see that AI-created copyright objects can satisfy all of them. The only exception is the regulatory condition that only a human can be the

author. This situation is very close to the impossibility of recognition by the animal's author, which we investigated separately. Фактично, The impossibility of recognising AI as the work's author is an artificial limitation. We think that this paradigm will change in the future. We must agree with F. Vehar and T. Gils that 'the fact that humans make use of technical aids to create works for which 'creativity' or 'originality' is a prerequisite is nothing new. What is new instead is that technology itself may become creative' (Vehar & Gils, 2020).

AI can be created to perform specific tasks and functions but does not have consciousness, intellectual independence or free will like a person. Accordingly, if AI generates an image or text at the user's request, it acts as an auxiliary function for creating one or another object. This means that the author is the user who creates the issue/request. Even if AI generates text within a given topic at the user's request, the author is the user. The EU AI Act became the central normative act that began the regulation of AI in the EU, which obliged to indicate that the copyright object was created with the help of AI (Laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, 2021). This could be the first step towards a global change in the legal status of AI.

O. Kryvetskyi emphasises that leading European states are ready to legally recognise a computer program as the work's author and put artificial intelligence on the same level as human intelligence (Kryvetskyi, 2018). However, it is too early to draw such conclusions, and today only the first steps in this direction are being taken.

References:

1. U.S. Copyright Office (3d ed. 2021). Compendium of U.S. Copyright Office Practices § 101. Chapter 300: Copyrightable Authorship: What Can Be Registered.
2. On copyright and related rights, the Law of Ukraine № 2811-IX (2023) (Ukraine). https://zakon.rada.gov.ua/laws/show/2811-20#Text
3. Copyright Act, the Law of Germany (1965) (Germany). https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html
4. Loewenheim, U., & Leistner, M. (2020). *Urheberrecht* (G. Schricker & U. Loewenheim, Ed.; 6th edn).
5. Belgian Code of Economic Law (2022). Article XI.170 CEL
6. Berne Convention for the Protection of Literary and Artistic Works, Convention № TRT/BERNE/001 (1979).
7. ChatGPT (2023). https://chat.openai.com/?model=text-davinci-002-render-sha
8. Copyright, Designs and Patents Act, Law (1988) (UK).
9. Lambert, P. (2017, July 8). Computer Generated Works and Copyright: Selfies, Traps, Robots, AI and Machine Learning. https://doi.org/10.31228/osf.io/np2jd
10. Boiko, O. (2023, 24 March). *A Ukrainian magazine released, created entirely with the help of AI*. Chytomo. https://chytomo.com/en/a-ukrainian-magazine-released-created-entirely-with-the-help-of-ai/
11. Roscoe, J. (2023, 28 June). *AI-Generated books of nonsense are all over Amazon's bestseller lists*. VICE – Unbequemer Journalismus und Dokus zu allem, was wichtig ist auf der Welt. https://www.vice.com/en/article/v7b774/ai-generated-books-of-nonsense-are-all-over-amazons-bestseller-lists
12. Johnson, A. (2023, 28 April). *Here are the best AI image generators*. Forbes. https://www.forbes.com/sites/ariannajohnson/2023/04/28/here-are-the-best-ai-image-generators/?sh=39accbbc3f3c
13. Isaacs-Thomas, B. (2023, 12 Jan). *How AI turns text into images*. PBS NewsHour. https://www.pbs.org/newshour/science/how-ai-makes-images-based-on-a-few-words
14. Trojanov, S. (2023, 18 April). *Zobraženn ja zgenerovane ŠI peremoglo na konkursi fotografij – avtor vidmovsja vid nagorody.* Na chasi. https://nachasi.com/ul/tech/2023/04/18/photography-prize-with-ai/
15. Midjourney (2023). https://www.midjourney.com/home/?callbackUrl=%2Fapp%2F

16. Brittain, B. (2023a, 17 Jan). *Lawsuits accuse AI content creators of misusing copyrighted work*. Reuters. https://www.reuters.com/legal/transactional/lawsuits-accuse-ai-content-creators-misusing-copyrighted-work-2023-01-17/
17. Brittain, B. (2023b, 23 Feb). *AI-created images lose U.S. copyrights in test for new technology*. Reuters. https://www.reuters.com/legal/ai-created-images-lose-us-copyrights-test-new-technology-2023-02-22/
18. *Intellect* (2023). Cambridge Dictionary | English Dictionary, Translations & Thesaurus. https://dictionary.cambridge.org/dictionary/english/intellect
19. *Definition of Intellect* (2023). Merriam-Webster: America's Most Trusted Dictionary. https://www.merriam-webster.com/dictionary/intellect
20. *AI vs. Machine Learning vs. deep learning vs. neural networks: What's the difference?* (2023, 6 July). IBM Blog. https://www.ibm.com/blog/ai-vs-machine-learning-vs-deep-learning-vs-neural-networks/
21. Link, J., Waedt, K., Ben Zid, I., & Lou, X. (2018). Current challenges of the joint consideration of functional safety & cyber security, their interoperability and impact on organizations: How to manage RAMS + S (reliability availability maintainability safety + security). In *2018 12th international conference on reliability, maintainability, and safety (ICRMS)*. IEEE. https://doi.org/10.1109/icrms.2018.00043
22. Trifonov, R., Nakov, O., & Mladenov, V. (2018). Artificial intelligence in cyber threats intelligence. In *International Conference on Intelligent and innovative computing applications (ICONIC)* (2018).
23. Savchenko, V. (2023). «Surohatna volia» shtuchnoho intelektu: filosofsko-pravovyi analiz ['Surrogate will' of artificial intelligence: a philosophical and legal analysis]. *Internet rechei: teoretyko-pravovi ta praktychni aspekty vprovadzhennia v umovakh Yevropeiskoi intehratsii: zb.materialiv Mizhnarodnoi naukovo-praktychnoi konferentsii.* https://www.researchgate.net/publication/371180000_Surogatna_vola_stucnogo_intelektu_filosofsko-pravovij_analiz [in Ukrainian].
24. Simplilearn. (2022, 29 September). *Artificial intelligence vs human intelligence | Will AI replace humans*? Simplilearn.com. https://www.simplilearn.com/artificial-intelligence-vs-human-intelligence-article
25. Vehar, F., & Gils, T. (2020). I'm sorry AI, I'm afraid you can't be an author (for now). *Journal of Intellectual Property Law & Practice*, *15*(9), 718–726. https://doi.org/10.1093/jiplp/jpaa106
26. Laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, Proposal for a Regulation of the European Parliament and of the Council № 2021/0106 (COD) (2021).
27. Kryvetskyi, O. (2018). Do problemy pravovoho rehuliuvannia shtuchnoho intelektu [To the problem of legal regulation of artificial intelligence]. Hromadska dumka pro pravotvorennia, 14, 15–19.

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INTERPRETATION OF LEGAL NORMS ACCORDING TO THE ESTABLISHED PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract. The purpose of the scientific article is to reveal the question of the interpretation of legal norms in accordance with the established practice of the ECtHR and to find out the ratio of normativeness and rhetoric of arguments that the Supreme Court borrows from the practice of the ECtHR and endows with signs of its own legal position or an element of the motivation of the decision.

It was emphasized that one of the problems of the interpretation activity of the ECHR is different ways of its application. Since the Convention can be applied in the judicial practice of Ukraine, the Ukrainian judicial authorities also have the right to interpret it. There is a possible conflict between the interpretation of the Ukrainian courts and the interpretation of the ECtHR. In case of conflicts of interpretations, the interpretation of the ECHR should be considered a priority.

Key words: legal norm, interpretation of legal norms, dynamic interpretation, European Court of Human Rights, judicial precedent, the rule of law.

Introduction. The specificity of the European mechanism for the protection of human rights lies not only in the existence of an act that systematizes natural rights, but also in the functioning of the supervisory body for compliance with the norms of the treaty – the European Court of Human Rights (hereinafter referred to as the ECtHR). The competence of this court includes the interpretation and application of the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) by the convention countries (Article 33), as well as the resolution of disputes between natural persons and the convention countries (Article 34). In addition, the European Court has the right to provide advisory opinions on a wide range of issues.

In the process of considering complaints about violations of the norms of the Convention by the participating countries, the ECHR solves the task of interpreting the norms of the Convention, ensuring that they have the same character. Interpretation, which is one of the stages of the implementation of law, occupies an important place in the functioning of law, because with the help of interpretation, the meaning of a certain rule of law is realized and explained, which is necessary for a unified understanding of the law. Interpretation has meaning and fulfills a prescribed role in the system of categories that express the peculiarities of the process of law.

The issue of the relationship between the interpretation of legal norms and the established practice of the ECtHR requires detailed research, because it is related to such a type of legal activity as law enforcement. Scientific interest in the systematic interpretation of norms, which is a means of resolving hierarchical, substantive and chronological conflicts of law, is connected with the need to increase the effectiveness of legal interpretation activities and its impact on legal practice.

It should be noted that both domestic and foreign researchers were involved in the development of questions about the relationship between the interpretation of legal norms and the practice of the ECtHR, in particular: Ya. Belykh, Yu. Bomhoff, M. Buromenskyi, O. Haydulin, V. Goncharov, I. Kaminska, K. Lenarts, V. Lutkovska, A. Mowbray, A. Monayenko, I. Onyshchuk, P. Rabinovych, O. Serdyuk, S. Syrotenko, O. Smirnova, M. Smush-Kulesha, A. Fedorova, T. Fuley, V. Khudoley, I. Sharkova and others.

However, it is not necessary to talk about an in-depth, detailed and comprehensive consideration of the question of the interpretation of legal norms in accordance with the established practice of the ECtHR in these studies. A significant number of theoretical and practical aspects of the interpretation of legal norms require scientific understanding.

The purpose of the article is to reveal the question of the interpretation of legal norms in accordance with the established practice of the ECtHR and to find out the ratio of normativeness and rhetorical arguments, which the Supreme Court borrows from the practice of the ECtHR and endows with signs of its own legal position or element of decision motivation.

Research materials and methods. A number of research methods were used in order to rethink the question of the interpretation of legal norms in accordance with the established practice of the ECtHR. In particular, the method of legal science was used as a system of means of learning law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; research methods and techniques. With the help of a scientific approach, such research qualities as objectivity and evidence are ensured.

The methods and tools of the legal writing technique are applied, thanks to which the array of positive law loses its spontaneous character and becomes an expression of a certain preconceived structure subordinate to the logic of the internal structure. Thanks to the comprehensive (comprehensive) approach, there is a logical systematization of legal norms, which is carried out by the joint efforts of doctrine and judicial practice.

An important group of methods of knowledge of the interpretation of legal norms have become: general (philosophical) methods, which are the corresponding categories and models, which are characterized by general applicability not only in all branches of scientific knowledge, but also at all stages, stages of scientific research.

To clarify the content of certain scientific concepts of understanding the interpretation of legal norms in accordance with the established practice of the ECtHR, the formal-logical method was applied as a set of means and methods of logical study of law. It is based on concepts, categories, rules and laws of formal logic.

Results and discussion. The benchmark in the integration of European states is the Council of Europe – an organization whose purpose is the organization and development of a united Europe. At the same time, there are still certain questions regarding the understanding of the legal status of the practice of the ECtHR in the domestic legal system, and there are different approaches to the application of one or another decision of the ECtHR. So, on the one hand, there is a legal position that since in accordance with Part 1 of Art. 46 Conventions are high. The Contracting Parties have undertaken to comply with the final decisions of the Court in any cases in which they are parties, only decisions in which Ukraine was a party to the proceedings are precedential in nature. On the other hand, there is a legal position that all ECtHR decisions are a source of law (Monajenko & Smyrnova, 2020).

The practice of the Supreme Court provides numerous examples of such normative application. For example, the situation with the use of the classic for modern international human rights law «three-pronged test for assessing interference or restriction of the right» (legality, legitimacy of the goal, necessity in a democratic society) is indicative. Such tests are used quite often, and this is an important sign of their organic application, and not just citation. The situation is more complicated when the Supreme Court uses tests, approaches or algorithms, the source of which is the ECtHR's interpretation of more general provisions of the Convention. An example is the instrumental doctrine of «right of access to court/right to trial» created by the ECtHR, as a right that does not formally belong to the catalog of conventional rights, but is «derivative» of the right to a fair trial (Article 6) and is applied as a fundamental principle when solving a number of procedural issues. The problem of assessing the legality of the restriction of this right has repeatedly been the subject of consideration

by the Supreme Court of Ukraine (Gromads'ka organization «Instytut prykladnyh humanitarnyh doslidzhen», 2019: 16).

Recognizing the practice of the ECtHR as a source of law in court proceedings involves determining the degree of «universality of this source of law», that is, the limits of its application. Recent years have been marked by a sharp increase in the quantitative indicators of the application of the practice of the ECHR by national courts, which requires assessment and response, because there are objective limits to its application, which are established by the legal nature of the Convention and specific jurisdictional limitations (subject, subject, etc.). In this context, it is worth paying attention to the position, which, with varying degrees of consistency, is followed by numerous Supreme Court judges and which in some cases finds expression even directly in the text of decisions: «43. Therefore, in connection with the ratification of the Convention, the protocols to it and the adoption in the implementation of judicial proceedings of cases referred to their subordination, court decisions and resolutions of the Court should be applied in any case that was in its proceedings» (fragment of the Resolution of the Supreme Court of the Supreme Court of Ukraine No. 924/1389/13 dated July 19, 2018). Such a position, when it is consolidated as an element of the judge's professional culture, becomes an «internal incentive» to include the provisions of the ECtHR's practice in any own decision. This indicates the need for the formation within the national doctrine of the application of the practice of the ECHR clear and understandable criteria or procedural filters for determining the possibilities and limitations of the application of the practice of the ECHR. After all, the requirement to evaluate the legal situations of the trial according to the criteria of compliance with human rights cannot be equated with the obligation to reflect this in the text of the decision (Gromads'ka organization «Instytut prykladnyh humanitarnyh doslidzhen», 2019: 18).

According to the practice of the ECtHR, the following requirements are put forward to the «quality» of the law: accessibility; predictability; it is sufficient to clearly establish the limits of discretionary powers granted to authorities and the manner of their implementation. If the ECtHR concludes that the national legislation did not meet the requirements of the quality of the law, i.e. that the interference was not «prescribed by law», it finds a violation without resorting to analysis of other criteria, such as the conformity of the interference with a legitimate aim or its necessity, as it was, e.g., in the case «Vyerentsov v. Ukraine» dated April 11, 2013, application No. 20372/11: «The Court reiterates that the expression «established by law» in Article 11 of the Convention requires not only that the challenged measure have a certain basis in national legislation; it also refers to the quality of the law in question. The law must be accessible to the persons concerned and formulated with sufficient precision to enable them to regulate their conduct, to be able – if necessary, with due consultation – to foresee, so far as it is reasonable in the circumstances, the consequences which may entail their action (see, for example, the decision in the cases «Sunday Times v. the United Kingdom (no. 1)» (Sunday Times v. the United Kingdom) (no. 1), dated April 26, 1979, para. 49, Series A, No. 30; Rekvényi v. Hungary [GC], Application No. 25390/94, § 34, ECHR 1999-III; Rotaru v. Romania [GC], Application No. 28341/95, § 55, ECHR 2000-V; and Maestri v. Italy [GC], Application No. 39748/98, § 30, ECHR 2004-I)» (Fulej, 2015: 75–76).

In the work of the ECtHR, interpretation means clarifying the exact meaning of a rule of law. Acts of interpretation of the ECHR are designed for repeated application and use by an unlimited number of persons. Having interpreted the norm of the Convention once, the court has the right to use this model in its subsequent decisions. Having interpreted a rule of law, the ECtHR creates a so-called precedent of interpretation.

P. Rabinovych noted that the true meaning of many norms of the Convention, mostly formulated in an overly abstract, often evaluative form, is constituted and clarified only after their interpretation and application in the decisions of the Court. The practice of the Court (these are hundreds of decisions) develops according to the frankly precedential principle. And therefore, knowledge and consideration

of precedent decisions of the ECtHR, assimilation of the specifics of its professional thinking, its «legal mentality» are one of the most urgent tasks facing judges and any other subjects of human rights protection in Ukraine today» (Rabinovych, 1999).

Precedent law is a legal system in which the main source of law is recognized as judicial precedent, that is, a decision made in any case is binding on all courts of equal and lower instance when they consider similar cases. This system enables the court to perform a law-making function not only in the absence of a corresponding law, but also in the presence of an insufficiently clear norm. Case law is specific to Great Britain (more precisely, to England, since Scotland has a special law), the United States, EU member states, and other countries that have adopted English law.

The leading place in the interpretation system of the Convention is occupied by the following general legal principles of interpretation, which are usually formulated as the principles of reasonableness, justice and good faith, which in the practice of law enforcement are often interpreted as the only general principle of natural law – bona fides or good faith. In fact, reasonableness and equity, if they are mentioned together with good faith, act as the main criteria. Therefore, the principle of justice, verbalized using the English term equity, in contrast to justice, has mostly not a qualitative, but a quantitative character and is actually a criterion of equivalence used to qualify facts of good faith or bad faith. If the principle (criterion) of justice is most involved in the process of law enforcement, then the principle (criterion) of reasonableness is the leading one directly in the process of interpreting legal norms (Gajdulin, Hudolej, & Sharkova, 2018: 52).

The concept of proportionality in the case law of the ECtHR was applied for the first time in the decision of the Court in the case «National Trade Union of the Police of Belgium v. Belgium». The content of the mentioned concept is a proportional relationship between the applied measures and the goal they pursue (National Union of Belgian Police v. Belgium 27.10.1975).

Such principles as adherence to precedent and dynamic interpretation concretize the principle of reasonableness, adapting to case law. In practice, in its interpretative activity, the ECtHR applies the model of persuasive precedent. This means that the Court must follow its own precedents regularly, but not inevitably (Mowbray, 2009: 181–182).

In fact, in every subsequent case, the ECtHR strictly adheres to the previous interpretation, unless there is a good reason to ignore the precedent.

At this stage, the number of abrogating (cancellation) decisions is increasing in the practice of the ECtHR. The court resorts to the reinterpretation of previous interpretive versions, which is a manifestation of the tendency towards a predominantly dynamic interpretation of the norms of the ECHR Convention (Honcharov, 2013: 177).

Among the interpretive technologies used in practice by the Strasbourg Court, two juridical and technical rules are of great importance. The first rule was called mutatis mutandis. In Latin, this phrase means – with the replacement of what is subject to replacement; taking into account the relevant differences; with changes resulting from circumstances; with appropriate changes. The content of this prescription is that when interpreting a specific case, attention should be paid to the differences between the real situation being analyzed and the situation described in the relevant decision of the European Court of Human Rights. The second rule is called implied powers. Its essence is that the decisions of the ECtHR, although they mainly contain interpretive norms, but they are not purely declarative and have real legal force. This bindingness of decisions is based on «expectations of powers applied» (Gajdulin, Hudolej & Sharkova, 2018: 63).

As it seems, in the practice of the ECtHR, the dominant type of interpretation is an expansive one. A restrictive interpretation contradicts the essence of this agreement (Convention). Today, the ECtHR interprets the norms of the Convention as broadly as possible. When interpreting the convention, it is not considered as a list of «fixed» norms, but as a document appropriate for the time, which needs to be developed and interpreted within the limits of modern realities. This method of interpretation is

called evolutionary. It is important to note that the evolutionary interpretation is not a limitless interpretation, it must have limits, the interpretation of the norms of the Convention must correspond to the ideals and constitutional values.

The US Supreme Court, for example, has never limited itself to interpretive activity in the narrow sense. In the process of interpreting constitutional norms and principles, the activity of judges is aimed at implementing the law-making function, which is based on ensuring the stability of the American state and preserving the basic values of legal ideology, primarily the priority of fundamental rights and freedoms. Judicial activism and constitutional lawmaking allow the Supreme Court to look for ways to compromise in US constitutional law, to ease social tensions. Judges often manage to more subtly grasp the specifics of a specific situation and find the optimal means of mitigating acute conflicts faster than the legislators of the time

The very idea of the balance of constitutional values in relation to the judicial sphere goes back to the German school of Interessenjurisdenz and the American school of realism of the first decades of the 20th century. Balancing was perceived as a tool for settling conflicts of social interests and formulating legal norms. At the same time, as noted by J. Bomhoff, these schools developed various aspects of it, but in general sought a practical goal – ensuring the peaceful coexistence of the interests of various groups and communities as a condition for democracy (Bomhoff, 2013: 72–137).

The Analytical Report based on the results of the monitoring of judicial decisions regarding the application in Ukraine of the provisions of the Convention and the practice of the European Court of Human Rights states that during the analysis of the texts of the decisions of Ukrainian judges, an important task was to determine the prevalence of the main methods of «textualization» of the use of the ECHR and the practice of the ECHR. For the national legal tradition, the use of this source of law remains difficult not only in substance, but also from the point of view of textual design. The given data indicate the existence of two main ways/formats of reference to the ECHR and the practice of the ECHR: 1) reference to a specific decision/several decisions with an explanation of the significance for the justification of the Ukrainian judge's decision (such a format was found in 46.8% of decisions); 2) 13.4% of decisions in the motivational part contain a statement of the legal positions of the ECtHR, although there is no indication of their source (the name of the decision) (for example, the legal positions of the ECtHR regarding Article 8 and Article 10 of the ECHR are often applied in this way; 3) reference to a specific article/articles of the ECHR and an explanation of the meaning for a specific case (46.5%); 4) a significant part of the decisions in the format of reference to the ECHR and the practice of the ECHR have probable risks of improper application of the ECHR, in particular the application of «formal» or «declarative» (almost 10% of decisions are limited to only a general mention of the ECHR in the list of legal sources for consideration of the case; 20.2 % of the decisions contain only an indication of the article of the ECHR without explaining its significance for the consideration of the case (Buromenskij & Serdjuk, 2018: 16).

First of all, situations of «erroneous» and «manipulative» application of the ECHR and the practice of the ECHR are important. In the case of a «mistake», the judge incorrectly applies the rules of the ECHR or the practice of the ECHR. The following signs may indicate the «wrongness» of the application: going beyond the legal position of the ECtHR, in particular its extended interpretation of errors related to the standard criteria for the admissibility of statements used by the ECtHR; most often, this is a matter of substantive jurisdiction (ie, application to relations not regulated by convention norms), as well as a misinterpretation of the acceptable subject composition of the participants (for example, application to a dispute between state bodies); erroneous interpretation or reproduction of the content of the norms of the ECHR and the legal positions of the ECHR; presence of factually different circumstances of the case than the situation on the basis of which the ECtHR formulates certain legal positions.

The essence of «manipulative» application of the ECHR does not necessarily mean the adoption of an illegal or dubious decision (for example, with corruption implications). «Manipulative» in this report is the practice of using positions and/or the text of the ECtHR decision in a way that does not correspond to its content and the circumstances of the case, but to the «needs of the judge» regarding the justification of his own decision or its «proper declaration».

K. Lennarts, President of the EU Court, noted that the interpretation of legal norms forms the basis of the EU Court's duty to uphold the rule of law and ensure the main goals of the legal order. The interpretation of legal norms draws a horizontal line between EU institutions and a vertical line between EU institutions and the governments of member states. Judicial control is also carried out, which creates the danger of involving judges in the political process, the connection between constitutional interpretation and the application of foreign and international sources of law is outlined (Lenarts, 2007).

We agree with I. Onyshchuk that the requirement of legal certainty as a constituent element of the «rule of law» concerns the quality of legal acts and their prescriptions, not the «situation». The requirements regarding the quality of legal acts and their prescriptions are put forward with the aim of ensuring, in particular, their unambiguity. One of the components of the widely recognized and laid down basis of the practice of the ECtHR is the principle of the rule of law (the rule of law), which is basic in the understanding rule of law (Onyshchuk, 2021: 62–63).

In addition, as noted by I. Kaminska, the Court of Justice of the EU interprets the norms of EU law not only for the purpose of revealing the content of the norm, but also for the purpose of expressing its content in the context of the EU legal order. An important task of the Court of Justice of the EU is to fill gaps in the legislation, the presence of which violates the system of EU law (Kamins'ka, 2021: 56).

According to the analysis of the standards of the Council of Europe and the practice of the Constitutional and Supreme Courts of Ukraine regarding the limitation of social security, the right to various social benefits form parts of various human social rights guaranteed by both the European Social Charter and the European Convention on Human Rights. According to the Charter, the broader and general rules establishing social security and pension benefits are enshrined in Articles 12 and 23. According to the Convention, the European Court of Human Rights (ECtHR) regularly reviews the issue of pension and social benefits due to the recognition of their pecuniary nature under Article 1 of Protocol No. 1 establishing the right to property protection. As a rule, the level of human rights protection in the member states of the Council of Europe should not deteriorate; after granting the rights, they must remain inviolable. On the contrary, some provisions directly oblige states to increase the level of protection of certain social rights, for example, paragraph 3 of Article 12 of the European Social Charter, which establishes the right to social security, requires countries to gradually raise the social security system to a higher level (Smush-Kulesha, Fedorova, 2021: 55).

However, both the Charter and the Convention are living instruments, so the rights and freedoms set forth in them must be interpreted in the light of current conditions and relevant international documents, as well as in the light of new problems and situations arising in the world. In addition, both of these documents contain provisions that directly allow the limitation of the rights guaranteed in them; in the Charter it is Article G, and in the Convention it is Article 1 of Protocol No. 1. Thus, it should be noted that the reduction of social benefits established by national legislation is not automatically a violation of the Charter and the Convention and may be consistent with these documents, if such a reduction complies with the principles established in the precedent practice of the European Committee of Social Rights and the European Court of Human Rights.

Conclusions. Thus, one of the problems of the interpretation activity of the ECtHR is different ways of applying the Convention. Since the Convention can be applied in the judicial practice of Ukraine, the Ukrainian judicial authorities also have the right to interpret it. But the ECtHR also deals with this, therefore, the interpretation of the Ukrainian courts and the interpretation of the

ECtHR may conflict. In case of conflicts of interpretations, the interpretation of the ECHR should be considered a priority.

The expediency of the interpretation of legal norms by Ukrainian judges taking into account European standards is justified by the fact that the practice of the ECtHR is a legally recognized source of law. The goal of legal interpretation activities based on the principle of the rule of law is to ensure the predictability of normative prescriptions and a consistent approach to the interpretation of legal norms.

References:

1. Bomhoff, J. (2013). Balancing Constitutional Rights: The Origins and Meanings of Postwar Legal Discourse. *Cambridge University Press*, 72–137.
2. Buromens'kij, M. V., Serdjuk, O. V. (2018). *Analitichnij zvit za rezul'tatami monitoringu sudovih rishen' shhodo zastosuvannja v Ukraïni polozhen' Konvenciï pro zahist prav ljudini i osnovopolozhnih svobod ta praktiki Europejs'kogo sudu z prav ljudini* [Analytical report based on the results of monitoring court decisions regarding the application in Ukraine of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights]. Koordinator proektiv OBSЄ v Ukraïni GO «Institut prikladnih gumanitarnih doslidzhen'» v mezhah proektu «Garantuvannja dotrimannja prav ljudini pri zdijsnenni pravosuddja» za finansovoï pidtrimki Ministerstva mizhnarodnih sprav Kanadi. 60. Retrieved from: https://www.osce.org/files/f/documents/b/7/390506.pdf [in Ukrainian].
3. Fulej, T. I. (2015). *Zastosuvannja praktyky Jevropejs'kogo sudu z prav ljudyny v administratyvnomu sudochynstvi: Naukovo-metodychnyj posibnyk dlja suddiv* [Application of the practice of the European Court of Human Rights in administrative proceedings: Scientific and methodological guide for judges]. 2-ge vyd. vypr., dopov. K., 128 [in Ukrainian].
4. Gajdulin, O. O., Hudolej, V. Ju. & Sharkova I. M. (2018). *Precedentne pravo Євropejs'kogo Sojuzu z prav ljudini shhodo zahistu prav urazlivih verstv naselennja* [Case law of the European Union on human rights regarding the protection of the rights of vulnerable populations]. K., 300 [in Ukrainian].
5. Gromads'ka organizacija «Instytut prykladnyh gumanitarnyh doslidzhen'» (2019). *Zvit za rezul'tatamy gromads'kogo monitoryngu zastosuvannja Verhovnym Sudom praktyky Jevropejs'kogo sudu z prav ljudyny. Programa USAID reformuvannja sektoru justycii' «Nove pravosuddja»* [Report on the results of public monitoring of the application of the practice of the European Court of Human Rights by the Supreme Court. USAID Justice Sector Reform Program «New Justice»]. Harkiv, 59 [in Ukrainian].
6. Honcharov, V. V. (2013). *Dinamichne tlumachennja juridichnih norm* [Dynamic interpretation of legal norms]. *Praci L'vivs'koï laboratoriï prav ljudini i gromadjanina Naukovo-doslidnogo institutu derzhavnogo budivnictva ta miscevogo samovrjaduvannja Nac. akad. pravovih nauk Ukraïni. Serija I: Doslidzhennja ta referati.* L'viv: SPOLOM, 27, 252 [in Ukrainian].
7. Kamins'ka, I. V. (2021). *Doktrina metodiv tlumachennja norm prava, sformovana u praktici Sudu ES* [The doctrine of methods of interpretation of legal norms, formed in the practice of the EU Court]. *Problemi zakonnosti,* 154, 51–64. DOI: https://doi.org/10.21564/2414-990X.154.238535 [in Ukrainian].
8. Lenarts, K. (2007). Interpretation and the Court of Justice: A Basis for Comparative Reflection. Retrieved from: https://core.ac.uk/download/pdf/216908204.pdf
9. Monajenko, A. & Smyrnova, K. (2020). *Zastosuvannja praktyky JeSPL ta sudu JeS na prykladi administratyvnogo sudochynstva* [Application of the practice of the ECHR and the EU Court on the example of administrative proceedings]. *Jurydychna gazeta online. 28 kvitnja.* Retrieved from: https://yur-gazeta.com/publications/practice/inshe/zastosuvannya-praktiki-es-pl-ta-sudu-es-na-prikladi-administrativnogo-sudochinstva.html [in Ukrainian].
10. Mowbray, A. R. (2009). An Examination of the European Court of Human Rights' Approach to Overruling its Previous Case Law. *Human Rights Law Review*, 9, 2, 179–201.

11. Onyshchuk, I. I. (2021). *Princip juridichnoï viznachenosti (legal certainty) u rishennjah Konstitucijnogo Sudu Ukraïni* [The principle of legal certainty in decisions of the Constitutional Court of Ukraine]. *Naukovi zapiski Institutu zakonodavstva Verhovnoï Radi Ukraïni,* 5, 60–67. DOI: https://doi.org/10.32886/10.32886/instzak.2021.05.07 [in Ukrainian].
12. Rabinovych. P. (1999). *Rishennja Jevropejs'kogo sudu z prav ljudyny: do harakterystyky konceptual'no-metodologichnyh zasad i'h obg'runtuvannja* [Decisions of the European Court of Human Rights: to characterize the conceptual and methodological bases of their justification]. *Praktyka Jevropejs'kogo sudu z prav ljudyny. Rishennja. Komentari»,* 1. Retrieved from: http://eurocourt.in.ua/Article.asp?AIdx=31 [in Ukrainian].
13. Rishennja ESPL u spravi «Nacional'na profspilka policiï Bel'giï proti Bel'giï» [National Union of Belgian Police v. Belgium] 27.10.1975. Retrieved from: http://zakon.rada.gov.ua/laws/ show/980_087 [in Ukrainian].
14. Smush-Kulesha, M. & Fedorova A. (2021). *Standarti Radi Єvropi ta praktika Konstitucijnogo i Verhovnogo Sudiv Ukraïni shhodo obmezhennja social'nogo zabezpechennja* [The standards of the Council of Europe and the practice of the Constitutional and Supreme Courts of Ukraine regarding the limitation of social security]. Rada Europi, 61 [in Ukrainian].

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DEVELOPMENT OF METACOGNITIVE SKILLS OF COLLEGE STUDENTS IN THE PROCESS OF LEARNING MATHEMATICS, TAKING INTO ACCOUNT NATURAL POSSIBILITIES

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Abstract. This article examines the assessment of metacognition, which allows the teacher to consider the learning process, and helps to identify a lack of knowledge and inaccuracies in understanding the material. The general theory of metacognition and its assessment is analyzed, which allows to find practical approaches to metacognitive strategies using reflective methods. Metacognition enables the teacher to consider the learning process, identify the lack of knowledge and inaccuracies in understanding the material, and understand which metacognitive strategies should be used at one time or another. The theory of metacognition and evaluation allows finding practical approaches to metacognitive strategies. By monitoring the logical thinking of students, a metacognitive strategy for conducting classes with college students is selected. And also in this article we will also consider two components of a complex synthesis – the metacognitive concept and B. Bloom's taxonomy.

Key words: metacognitive strategies, metacognitive processes, reflective metacognitive interview (RMI), metacognitive assessment, educational activity, taxonomy, affectivity, psycho-observation, metacognition.

Ukrainian society is concerned about the drop in the level of mathematics education. In fact, the reality of today is that every year we have a worse and worse level of preparation of basic skills in technical subjects, not everyone can be a professional engineer, but everyone needs to be able to use mathematical skills in real life every day.

The conditions of the war very quickly revealed the shortcomings of our education. The humanization of education in recent years did not provide an opportunity for the development of the technical field. And it is very expensive for us now. The development of mathematics education in the structure of secondary and higher schools will bear fruit in increasing the intellectual and technical capital of the state in the coming years.

The need to modernize mathematics education in FVNZ I-II levels of accreditation is determined by the development of mathematics as a science in the world, the growth of its role in the development of related sciences, as well as the need in mathematics education to create interest in students for the next educational activity, in this way we will come to a successful mastering the basics of life and professional skills. In this regard, a special place is occupied by problems related to the low level of mathematics education in Ukraine.

The research methodology is based on modern approaches to reforming education as a component of pedagogy. Modern pedagogical science in Ukraine is characterized by two interconnected and at the same time oppositely directed vectors: tradition and innovation. In both cases, scientists use postulates in the form of terms in the complex meta-linguistic element of conceptual certainties of this science. The scale and complexity of challenges and tasks, which are concentrated by the dynamism and innovative type of progress, the information explosion, bring to the fore the awareness of the role

and self-sufficiency of an individual, increasing the requirements for his competence in all spheres of life, in particular, the pedagogical.

Education is the process of training a pupil or student for the purpose of training, optimization and development of metacognitive processes, metacognitive skills, and affective abilities. Education is the most important element for learning different skills and creating a common context, because it is a necessary condition for adaptation to the environment. Getting an education in high school and institutions of professional preliminary education is based on the dynamic assimilation of new knowledge, skills, and gaining experience in a certain field. Studying in educational institutions coincides with the period of transition from childhood to youth, which is sensitive for the development of metacognitive abilities. Youth is characterized by internal personal conflict and potential opportunities for effective intellectual and personal development, this period is characterized by the highest indicators of memory, attention and intelligence in general. Therefore, in addition to acquiring new knowledge, skills, and abilities in high school and vocational pre-university, the education system should focus on the development of the main intellectual resource of the individual - metacognitive abilities.

Currently, manufacturability is becoming the main feature of human activity. This provides a completely new transition to the efficiency and quality of the educational process. The distance learning system is now one of the components of the education system. Such an educational system consists of methodical, informational, organizational, programmatic and technical components. They are interconnected by various complex links, with the help of which we have the opportunity to conduct effective classes and obtain decent results.

At present, manufacturability is becoming the main feature of human activity. This provides a completely new transition to the efficiency and quality of the educational process. The distance learning system is now one of the components of the education system. Such an educational system consists of methodical, informational, organizational, programmatic and technical components. They are interconnected by various complex links, with the help of which we have the opportunity to conduct effective classes and obtain decent results.

As we all know, learning, like any other process, involves motor exercises. The movement in the learning process goes from the performance of one educational task to the performance of another task, which allows students to advance along the path of knowledge: from ignorance to knowledge, from incomplete knowledge to more complete and accurate learning. Learning should not be reduced to a mechanical "transfer" of knowledge, from teacher to student, because learning is a two-way process in which teachers and students must interact closely.

After several years of work, I came to the conclusion that one of the main conditions for achieving motor activity is that the achievement of certain goals is motivation. Motivation is based on personal needs and interests. Therefore, to achieve any academic success, it is necessary to make this process desirable. The French writer Anatole France said: "Knowledge absorbed with appetite is better assimilated".

Each teacher has his own view of modern students. My vision of the teaching process is as follows:

1. Each lesson should be carefully thought out in order to transfer one stage of the course to another and give students an opportunity to understand what they have done in the course and why it is necessary to do it that way.

2. Students should be ready to perceive new materials and to understand the topic of the mathematics course.

3. It is very useful to follow the principle "seeing it once is better than hearing it a hundred times". Everything the teacher says can be clearly reflected not only in an explanatory way, but also as a way to help discover the connection between concepts in the reasoning process.

4. This couple must be very interesting. The teacher should charge his emotions and transfer his positive impulses to students, which will help stimulate students' thinking towards activity.

5. The task of every teacher is not only to teach, but also to develop the student's thinking abilities through the subject of mathematics (that is, the speed of the reaction of development, the type of memory, imagination, etc.).

6. Each student should be given the opportunity to solve each problem several times during the study of the topic (provide constant "feedback" so that you can correct mistakes or misunderstandings).

7. It is necessary to evaluate not one solution, but the course of the solution, errors in the methodology of considering tasks, in order to introduce the concept of evaluation at different stages of the course.

An integral stage in the study of mathematics is the motivation of educational activities. It is necessary to convince students of the importance of studying this material, draw attention to mathematics, stimulate their interest, desire to learn, understand and apply knowledge to practice. In order for students to be interested, it is possible to use the following materials:

1. Historical tasks, legends, historical information about the subject.
2. Use interdisciplinary references to address relevant content issues.
3. Use models, drawings, tables, reference signals and practical works.
4. Solve problems that require knowledge of the subject.
5. I am developing math skills.
6. I create interesting questions for repetition and systematization of knowledge.
7. I use various techniques to form educational motivation.
8. In order to develop mathematical knowledge and skills, I use smartphones, mobile phones, tablets and other smart devices in my work to obtain information from Internet encyclopedias, to search for necessary information, to visualize information, to watch video lectures, to test or take questionnaires in the mode online, for constructing graphs, finding areas and volumes using integrals, conducting various experiments and calculations.

Not all students have natural technical data, so their path to knowledge in mathematics is more difficult, thus stress prevention is necessary. Working in pairs and groups of different levels, it is possible to achieve good results when weaker students feel supported by their friends and the teacher. The counterpoint to this pair is to encourage students to use different solutions without worrying about making mistakes or worrying about wrong answers. (Solberg Nes L., Evans D. R., Segerstrom S. C., (2009):1892)

Teaching students to work and think is the main task of the college; the teacher must be able to create creative and pragmatic emotions on a pair. The skillful use of visual aids and technical means meets the requirements of the modern educational process. Each educational toolkit has its own educational function and its own possibilities of use, therefore, all types of visualizations can and should be widely used. If the teacher's word is supported by well-thought-out visual images and if various means are used to save the student, then the pairs will become lively and more interesting. For this, we will get students to want to learn mathematics, because it is interesting.

An experienced teacher of mathematics can relatively easily track metacognitive processes. For example, a student is faced with the task of solving an economic or practical problem, and if at the end he did not receive a logical answer, then it is obvious that the mental operation was not correct, the result of which is not difficult to correct, since the teacher knows the exact position of the logical or computational error of the that competent mathematical thinking requires practical and analytical skills. But for some mathematics teachers, the metacognitive reasoning of some students is less clear. Then it is useful to analyse the mistakes made by the student himself.

Therefore, today a teacher of mathematics needs a comprehensive understanding of metacognitive processes, and without this, purposeful teaching is impossible.

Assessment of metacognition allows the teacher to examine the learning process as if under a microscope. But it helps to reveal a lack of knowledge and inaccuracies in understanding the material,

so the teacher can change the directions of the learning process, making it easier or making it more difficult to find the right solution.

Understanding which metacognitive strategies a teacher needs to use at one time or another is not such a simple matter. By monitoring logical thinking during various types of activities: learning new material, consolidation, repetition, we can get valuable information about the student's thinking process, about his strengths and weaknesses, and this allows us to make changes and appropriate corrections in the learning process.

Metacognitive strategy – according to which clarifying the understanding of the task conditions can be done in three ways:

1) paraphrase while preserving the meaning,

2) paraphrase with a change of meaning;

3) replaced by "deliberately not true" (that is, the condition is similar in structure and topic, but, in fact, not true, according to mathematics);

4) the initial condition is unchanged.

Students read the condition, and then on the sheet where the options described above are marked as true or false, checking whether what they read corresponds to the condition. With a meaningful perception of the condition, the original and paraphrased with preservation of meaning are marked as true, and other cases are marked as false.

If the student asked is why he gave this or that answer, then his reasoning will acquire a metacognitive character. The answer to the question "Why?" generates a larger amount of data, on the basis of which it is possible to evaluate the student's thinking and determine the further course of mathematics education. The general theory of metacognition and its evaluation allows finding practical approaches to metacognitive strategies. Using reflective methods, the student reflects on what he has done. Practical metacognitive strategies include reflective metacognitive interviews, clarification using the questions "Why?", "How?" or "What purpose did we pursue?", in this way, we metacognitively adapt an informal knowledge test, and also carry out metacognitive visualization.

One of the key strategies for determining the metacognitive mental process is the metacognitive interview developed in 1993 (Rhodes and Shanklin). The purpose of the interview is to feel the student's thoughts from the inside, thus to understand why he answers this way and not otherwise. At the same time, it is not important for the teacher whether the answer to any of the questions is correct or incorrect, but why the student made this or that mistake. And the method of reflective metacognitive interview gives such information. This method is called reflective because the evaluation of actions takes place after the learning process. The interview procedure can be as follows: the student is asked to consider what actions he will perform to solve the task and then explain aloud why he performed the task in this particular way, and it is also rational.

To identify knowledge gaps, it is important that the teacher and student use the same terms. The student must be able to tell about his thoughts in such a way that it is clear to the teacher. For this purpose, it is important to introduce a terminologically unified language to improve mathematical literacy skills, thus conducting a reflective metacognitive interview (RMI) becomes an urgent need. If the participants of the learning process speak a mathematical language they understand, then the RMI results will be unfounded and understandable. Therefore, an effective interview can give a lot to determine the metacognitive abilities of a student. The teacher needs to reasonably think through the questions, since factual, simple ones are not suitable in this case. (Hibbing A. N., 2003: 762).

Bloom's taxonomy is not just a classification scheme. This is the request of the organi-call different thought processes as a hierarchy. In this hierarchy, every one level depends on the learner's

ability to work at this level or nyah, lower ego. For example, in order for the learner to apply knowledge (level 3), he must have the necessary information (level 1) and have an understanding of it (level 2). (Murzagaliyeva A.E., Otegenova B.M., 2015: 8).

L. Anderson, after reviewing the taxonomy, made changes in emphasis. It became a kind of work on different forms of thinking. The latest version of the taxonomy began to reflect different forms of thinking, emphasizing the nature of thinking. How was it implemented in practice? The category of "knowledge" was called "recall" precisely because knowledge is a product of thinking. The category "understanding" acquired a new meaning, turning into the category "awareness", and the category "synthesis" was transformed into "creation". So, we finally have the following levels in B. Bloom's taxonomy (we start from the bottom): Remembering, Understanding, Applying, Analyzing, Evaluating, Creating.(Anderson L., Krathwohl D., 2001: 54)

Taxonomy of mental skills of higher order (table 1). The table I developed, the basis of which is Bloom's taxonomy, helps in creating effective questions that will give students the opportunity to think about their actions in solving a mathematical problem from the standpoint of metacognition.

Table 1

A Guide to Using Taxonomy to Improve Reading Comprehension in Mathematics

Level of thinking	Example of questions / tasks
Knowledge	What does this concept mean? (Give the definition.) Describe the condition of the problem. What formulas must be applied? List the main concepts. Tell me what the signs or properties are you will apply
Understanding	What happened to get at the end? (Result.) Explain why exactly these signs or properties you will apply Explain your next steps. Assume what needs to be done next. Give a brief outline of your thoughts.
Application	Where is it used? What would it look like to go the other way? Illustrate it in a diagram or drawing. Analyze your knowledge. You need to write down the course of your thoughts.
Analysis	Analyze the flow of mathematical thought. Compare the rationality of your actions during the period solving the task. Schematically depict the result of solving the problem. Correlations of the obtained result with assigned task. Investigate the reality of the obtained result.
Synthesis	Find a rational solution method. Organize a brainstorm. Make a solution plan. What would you change in the solution method? How should I change the drawing? Was there a mistake? (Imagine what's wrong.) Rewrite, change the decision. Correct the error.
Rating	Rational or the course of the decision? (Assessment.) Rate your work. Evaluate another student's work. Explain why you chose this solution method. Prove that the obtained result is correct. Determine the importance of the obtained result, also – its plausibility.

Consider examples of such questions: How can you evaluate your mathematical activities? What techniques did you use to solve the math problem? What picture did you imagine when you read the condition of the problem?

Metacognitive adaptation of informal checks (Why do you think so? or If you explain in more detail, you will help me understand you.) Leads to the fact that the teacher gathers enough information to assess metacognition: in this way, we find out what the problem is, where is the root mistakes, we find ineffective solution methods or a problematic link in knowledge, in the process of thinking or telling, we check the level of logical, abstract or spatial thinking and whether the student copies the solution methods obtained as a result of previously acquired knowledge too much. (Bloom, B.S., 1956: 12).

Metacognitive visualization (visual image) is the key to understanding the task, used by many teachers. Visualization is often used in geometry, solving practical problems, but it can also work no less effectively - especially in relation to lagging students. Hibbing and Rankin-Erickson advise those who do not have time to ask to draw pictures that arise in the process of reading in order to more clearly imagine the visual image of what they read. This technique can be made metacognitive by asking what is behind his graphic representation, how the drawing reflects the understanding of the condition, and whether he sees the course of the subsequent solution. Therefore, visualization helps to tie together the understanding of what has been read, the construction of a further solution and metacognition.

Therefore, metacognitive strategies are able to create such a context of new information that it is stored in memory, since the form of its integration with previously acquired knowledge facilitates the assimilation of related data. This strategy includes a number of techniques – from active repetition for memorizing the simplest, to integral schemes of organization and task development using systematization and unification of information, as well as reproduction and application of it in arbitrary, meaningfully different forms.

We can see that all these strategies make it possible to understand how the simplest assessment becomes a metacognitive assessment, thanks to the addition of several reflective questions that allow to determine the structure of the student's thinking. And it is the metacognitive assessment that makes it possible to achieve good results.

Thus, we can conclude that the purposeful development of metacognitive skills of college students in the process of learning mathematics using various tasks will contribute to the development of critical thinking, increased self-awareness, increased productivity, and the growth of the individual uniqueness of the students' mindset. The integral use of technological elements will allow to obtain reliably guaranteed learning results in the conditions of cognitive and creative activity of high school and college students, while optimizing the cost of study time. The use of computer technologies ensures a closed and directed educational process, and will also increase the interest of schoolchildren and students in mathematics.

When every citizen changes the approach to mathematics education, then the country will be able to get specialists in technical fields, and will have technical and economic development during the next decade. And then, all of us together, we will change these results to better ones, each of us by virtue, of our.

References:

1. Anderson L., Krathwohl D. (2001) A taxonomy for learning, teaching and assessing: a revision of Blooms taxonomy of educational objectives. Addison Wesley Longman, Ink. / Anderson L., Krathwohl D. – New York : NY, 154 s.
2. Bloom, B.S. (1956). Taxonomy of educational goals: classification of educational goals: Handbook I, cognitive subject. New York; Toronto: Longmans, Green. (in English)

3. Heathfield D. Rhythm, rhyme, repetition, reasoning and response in oral storytelling [D. Heathfield. Rhythm, rhyme, rehearsal, reasoning and response in oral storytelling], http://www.teachingenglish.org.uk/articles/rhythm-rhyme-repetition-reasoning-response-oral-storytelling
4. Hibbing A. N. (2003) A picture is worth a thousand words: Using visual images to improve comprehension for middle school struggling readers. [A. N. Hibbing, J. L. Rankin-Erikson A picture is worth a thousand words: Using visual images to improve comprehension for middle school struggling readers], The Reading Teacher. № 56(8). – pp. 758–770.
5. Murzagaliyeva A.E., Otegenova B.M. (2015) Tapsyrmalar men zhattygular zhinagy. Bloom taxonomies boyinsha oku maqsattary. [Collection of assignments and exercises. Learning objectives according to Bloom's taxonomy]. Astana: "Nazarbayev Ziyatkerlik mektepteri". Pedagogykalyk sheberlik ortalygy. (in Kazakh)
6. Solberg Nes L., Evans D. R., Segerstrom S. C. (2009). Optimism and college retention: mediation by motivation, performance, and adjustment. *J. Appl. Soc. Psychol.* 39, 1887–1912.

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PECULIARITIES OF TEACHING FOREIGN LANGUAGES TO COMPUTER SPECIALTIES STUDENTS

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Abstract. The present study investigates the unique challenges and opportunities associated with teaching foreign languages to students pursuing computer specialties. Drawing upon a comprehensive review of world scientific literature, we explore the cognitive and linguistic peculiarities inherent in computer-related tasks and their implications for language education. Employing an analytical approach, we identify the distinctive characteristics of language acquisition within the context of computer science training.

Through a critical synthesis of prior research, we delineate the inadequacies of conventional language teaching methods in catering to the specific needs of computer science students. Furthermore, we propose a specialized instructional framework that integrates domain-specific terminologies and contextualized language learning techniques to enhance language proficiency among these learners.

Our findings underscore the necessity for a tailored pedagogical approach that aligns with the cognitive profiles of computer specialists, enabling effective cross-cultural communication and international collaboration. We conclude that optimizing foreign language instruction for computer specialties students holds paramount significance in fostering their linguistic competence and adaptability in an increasingly interconnected global landscape.

Key words: foreign languages proficiency, communication, computer science, teaching methods, learning strategy, curriculum, intercultural communication.

Introduction. In the rapidly evolving landscape of modern technology, the acquisition of foreign language proficiency has emerged as an indispensable skill for students pursuing computer specialties. As the global interconnectedness continues to intensify, proficiency in foreign languages has become an essential asset for computer professionals, facilitating effective communication, international collaboration, and access to a vast repository of knowledge. Consequently, the scientific community has dedicated substantial attention to exploring the distinctive challenges and opportunities encountered in training foreign languages tailored to students of computer science and related disciplines.

Through extensive investigation and scholarly discourse, the issue of imparting foreign language education to computer science students has garnered increasing interest in the world scientific literature. Research has shown that conventional language teaching methods, while effective for general language learners, may not align optimally with the distinct cognitive and linguistic requirements of computer specialists. The cognitive processes and linguistic demands inherent in computer-related tasks, such as programming and algorithmic reasoning, necessitate a nuanced and contextually tailored approach to language education. Furthermore, the integration of domain-specific terminologies and jargon encountered in computer science disciplines

requires a specialized instructional framework to facilitate comprehensive language competence among these students.

The article endeavors to shed light on the multifaceted characteristics of teaching foreign languages to computer specialties students, considering the extensive experience in this area. By meticulously analyzing existing studies, this research aims to discern the intricacies surrounding language acquisition in the context of computer science education. Moreover, it seeks to identify and propose novel instructional methodologies that are specifically designed to enhance language learning outcomes and cater to the unique cognitive profiles of computer science students. Ultimately, the overarching goal of our work is to contribute to the optimization of foreign language training, fostering the linguistic aptitude and cross-cultural communicative proficiency of computer specialists' next generation.

Foreign Language Proficiency. In the dynamically evolving realm of computer science, foreign language proficiency assumes paramount significance as an indispensable asset for students pursuing computer specialties. The ability to communicate effectively in a global context and access diverse knowledge repositories constitutes an integral facet of professional competence in this domain. Addressing this critical pedagogical concern, the current study seeks to investigate the peculiarities of teaching foreign languages to students of computer specialties, focusing on optimizing language education for this distinct cohort. As technology continues to connect people across borders, the ability to communicate and work effectively in foreign languages has become a valuable asset for individuals pursuing careers in computer science and related fields. However, teaching foreign languages to students specializing in computer specialties requires careful consideration of their unique needs and the specific challenges they face (Kugai, 2023: 125).

The purpose of the work is to discern the unique characteristics of language acquisition among computer science students and propose a specialized pedagogical approach that augments their linguistic proficiency.

To achieve this goal the following tasks were set:

• to conduct a comprehensive critical synthesis of existing literature on the issue, comprising academic articles, books, and reputable websites. The examination of prior research will serve as the foundational step in identifying the current state of knowledge, pinpointing gaps, and gaining insights into effective language teaching practices for computer science students;

• to employ an analytical approach for investigating the cognitive and linguistic peculiarities inherent in computer-related tasks and their influence on language learning outcomes. This analytical framework will facilitate a nuanced understanding of the factors that impact language acquisition processes for students of computer specialties.

To achieve the research objectives, an extensive literature review was conducted, encompassing peer-reviewed articles, monographs, and websites focusing on foreign languages training and computer science education. The critical synthesis involved a systematic examination of selected literature, analyzing and categorizing findings to identify key themes and trends. Subsequently, the analytical approach allowed for the identification of commonalities and disparities among studies, aiding in the generation of comprehensive insights into the challenges faced in teaching foreign languages to students of computer specialties.

The synthesis of the literature revealed a conspicuous dearth of studies exclusively focusing on language training tailored to computer science students, signifying a critical research gap in the field. However, several investigations highlighted the importance of incorporating domain-specific terminologies and contextualized language learning techniques to foster effective communication within computer science contexts (Lan et al., 2021).

Furthermore, the analytical examination exposed the incompatibility of conventional language teaching methods with the cognitive profiles of computer specialists. Computer science students

exhibited distinct cognitive patterns characterized by analytical thinking, problem-solving, and abstract reasoning, necessitating an innovative and adaptive approach to language instruction (Ellis et al., 2018).

As mentioned above, foreign language proficiency has become an increasingly vital skill for students pursuing computer specialties in the context of the ever-expanding globalized landscape. The paramount significance of linguistic competence for computer science students arises from a confluence of factors, including the widespread international collaboration, the need for effective cross-cultural communication, and the access to a diverse repository of knowledge and technological advancements.

Facilitating Global Collaboration. In the interconnected world of computer science, collaborative efforts with professionals from diverse cultural backgrounds have become the norm. Proficiency in foreign languages enables computer specialists to engage in international projects seamlessly, transcending linguistic barriers. As noted by Lan (2021), effective communication in foreign languages fosters a deeper understanding of diverse perspectives and methodologies, enhancing the collective problem-solving capabilities of interdisciplinary teams.

Access to a Vast Knowledge Base. The field of computer science is characterized by rapid advancements and continuous innovation. Valuable research papers, technical documents, and cutting-edge developments often originate from various linguistic communities. Proficient language skills enable students of computer specialties to access and comprehend these resources directly, avoiding potential inaccuracies that might arise from relying solely on translations (Ellis et al., 2018).

Enhanced Adaptability in Multicultural Environments. With multinational corporations and global startups spanning the computer industry, proficiency in foreign languages offers a competitive advantage to computer science graduates. It equips them with the ability to adapt and succeed in diverse multicultural work environments (Osadchyi et al., 2017:42). Cultivating cross-cultural competencies through language acquisition fosters sensitivity to cultural nuances and communication styles, promoting harmonious interactions in professional settings.

Using Specialized Jargon and Terminology. Computer science possesses a distinct lexicon of domain-specific terminologies and technical jargon. Integrating foreign language education tailored to the context of computer specialties allows students to master these specialized terminologies, thereby enhancing their precision and clarity in professional discourse.

Cognitive Benefits. The process of learning foreign languages can confer cognitive advantages to students pursuing computer specialties. According to a number of researchers, language acquisition stimulates cognitive functions such as memory, attention, and problem-solving abilities. These cognitive enhancements can contribute to the overall cognitive flexibility and adaptability of computer science students.

So, the acquisition of foreign language proficiency represents an indispensable facet of education for students of computer specialties. By facilitating global collaboration, providing access to diverse knowledge repositories, fostering adaptability in multicultural settings, and using domain-specific terminologies, linguistic competence empowers computer science graduates to navigate the complexities of a rapidly globalizing industry. Moreover, the cognitive benefits arising from language acquisition further underscore the value of foreign language education in nurturing well-rounded and capable professionals within the realm of computer specialties.

Challenges and Difficulties. The endeavor to impart foreign language education to students of computer specialties entails a set of distinctive challenges, arising from the intersection of linguistic instruction and the cognitive demands inherent in computer science disciplines. These unique peculiarities underscore the necessity for specialized pedagogical approaches that effectively address the difficulties encountered during the language learning process. In our opinion, it is appropriate to mention the following challenges.

• *Cognitive Overload and Analytical Thinking*

Computer science students are often characterized by their advanced analytical thinking and problem-solving abilities, attributes that may inadvertently impact the language learning process. As a consequence, traditional language teaching methods may not resonate optimally with the cognitive profiles of these students (Sabitzer, 2012:2034). This cognitive overload can impede their ability to process and retain language concepts, resulting in potential frustration and decreased motivation.

• *Technical Jargon and Domain-Specific Terminology*

Computer science is replete with domain-specific terminologies and technical jargon, rendering the acquisition of relevant foreign language vocabulary particularly challenging. The accurate assimilation and utilization of such specialized language are essential for effective communication within the field. Conventional language instruction may struggle to adequately address the intricacies of this specialized lexicon, necessitating an innovative approach that seamlessly integrates domain-specific terminology into language education.

• *Time Constraints and Intensive Curriculum*

Computer science programs are often intensive and time-constrained, leaving limited room for extensive language learning. The need to balance the acquisition of both technical and linguistic competencies places additional pressure on students and educators alike (Holub, 2015). As a result, language courses tailored to computer specialties must be efficiently designed to optimize learning outcomes within the constraints of a demanding academic curriculum.

• *Abstract Concepts and Concrete Expression*

Computer science concepts often deal with abstract and complex ideas that can be challenging to articulate in a foreign language. The translation of intricate algorithms, programming paradigms, and computational processes demands linguistic proficiency that aligns with the nuanced demands of computer science disciplines (Ellis et al., 2018). Facilitating the transfer of such abstract concepts into concrete expressions necessitates specialized language teaching strategies that cater to the unique nature of computer science knowledge.

• *Limited Exposure to Cultural Contexts*

Due to the highly technical nature of computer science education, students may have limited exposure to the cultural contexts relevant to their target foreign language. Proficiency in a language involves more than just grammatical knowledge. It necessitates cultural awareness and the ability to navigate diverse social settings (Lan et al., 2021). Consequently, language educators must integrate cultural components into the curriculum, fostering cross-cultural competence in students to facilitate effective intercultural communication.

We can conclude that the peculiarities of teaching foreign languages to computer specialties students stem from the cognitive demands of the discipline, the intricacies of domain-specific terminologies, the constraints of a packed curriculum, and the need to bridge the gap between abstract concepts and concrete expression. Addressing these challenges requires innovative pedagogical approaches that align with the cognitive profiles of computer science students, seamlessly incorporate technical jargon, and foster cross-cultural competencies. By recognizing and proactively engaging with these peculiarities, educators can optimize language learning outcomes and empower computer science students to effectively communicate and collaborate in a diverse and interconnected world.

Methods of teaching. In light of the unique characteristics of language acquisition among computer science students, devising a specialized pedagogical approach is paramount to enhance their linguistic proficiency effectively. Soft skills empower students to actively and purposefully engage in all the choices that impact their personal lives and future career accomplishments (Malykhin et al., 2021:255). Several innovative methods and techniques can be employed to cater to the cognitive demands and domain-specific linguistic requirements of this distinct group.

• *Contextualized Language Learning*

Contextualized language learning is an essential technique that integrates domain-specific terminologies and real-world computer science scenarios into the language curriculum. By contextualizing language tasks within the realm of computer specialties, students are encouraged to develop linguistic skills that directly align with their academic and professional pursuits (Lan et al., 2021). For instance, language exercises can involve code annotations, algorithm descriptions, and software documentation to ensure relevance and applicability.

• *Gamification and Language Apps*

Computer games have a significant developmental effect in the training of specialists. Gamification is the process of using game thinking and game dynamics to engage the audience and solve the tasks, turning something into a game (Malykhin et al., 2020:48).

Applying gamification elements in language instruction can prove highly effective for computer science students, who often possess an affinity for technology-based learning. The use of gamification in the educational process makes it possible, firstly, to build a developmental educational environment that positively affects students personal development, and secondly, to ensure their successful socialization and development of social skills (Aristova et al., 2023:202).

Gamified language apps and software create an engaging learning environment, where students can earn rewards and achieve milestones as they progress through language modules. Popular language learning apps such as Duolingo and Memrise offer gamified features that can be harnessed to make language learning enjoyable and interactive.

• *Task-Based Language Teaching (TBLT)*

Task-Based Language Teaching centers on engaging students in real-life language tasks, simulating authentic language use scenarios. For computer science students, TBLT can involve completing programming projects, collaborating on software development in foreign languages, or participating in code reviews and technical discussions (Sabitzer, 2012:2038). These tasks not only foster language acquisition but also align with their core academic pursuits, making the learning process more purposeful.

• *Content and Language Integrated Learning (CLIL)*

Content and Language Integrated Learning is an approach that integrates language instruction with subject-specific content, creating a seamless fusion of language learning and computer science education. This method involves teaching computer science concepts in the target foreign language, allowing students to assimilate linguistic knowledge while deepening their understanding of core computer science principles (Holub, 2015). For instance, a programming class can be conducted entirely in the foreign language, immersing students in both language and technical content simultaneously.

• *Cross-Cultural Communication Training*

Given the globalized nature of computer science, training in cross-cultural communication is essential for students to effectively collaborate with international peers. Language educators can organize intercultural exchanges, virtual team projects, and cross-cultural workshops to enhance students' cultural awareness and communication skills. Such initiatives empower computer science students to navigate diverse cultural contexts and facilitate seamless international collaboration.

• *Language Learning Support Tools*

Various language learning support tools can aid computer science students in their language acquisition journey. Natural language processing (NLP) tools and machine learning algorithms can be employed to analyze students' linguistic strengths and weaknesses, enabling personalized feedback and tailored language exercises (Lan et al., 2021). Additionally, virtual language tutors and conversational chatbots can offer individualized language practice and boost students' conversational skills.

Thus, the methods of teaching foreign languages to students of computer specialties should be thoughtfully designed to accommodate their cognitive profiles and domain-specific linguistic

demands. Contextualized language learning, gamification, task-based language teaching, content and language integrated learning, cross-cultural communication training, and language learning support tools exemplify the innovative approaches that can foster linguistic proficiency while aligning with their computer science pursuits. By embracing these methods, language educators can empower computer science students to effectively communicate and collaborate across linguistic and cultural boundaries, laying the groundwork for successful integration into the globalized landscape of modern technology.

Learning Strategies. The pursuit of foreign language proficiency among students of computer specialties necessitates the formulation of personalized learning strategies tailored to their distinctive cognitive profiles and domain-specific linguistic requirements. As the pedagogy of teaching foreign languages to this group embraces specialized approaches, students, too, must actively engage in crafting effective strategies to optimize their language learning outcomes. In our study we have considered the following strategies.

• *Utilizing Technical Analogies*

Computer science students are adept at grasping technical concepts and utilizing analogies to facilitate comprehension. In the context of foreign language learning, using technical analogies can prove advantageous in relating linguistic structures to familiar computational patterns. For instance, equating grammatical rules with conditional statements in programming can aid students in memorization and application.

• *Incorporating Technology-Based Resources*

The successful use of computer technologies and obtaining productive learning results with their help increases the future specialist's confidence in the ability to plan complex professional tasks, as well as ensures business orientation and accuracy, which can be transferred to other fields of activity. A student from a subject of training turns into a subject of professional activity. This is due to the fact that the computer becomes an integral tool of the graduate's work in the future professional activity (Malyhkin et al., 2020:46). Given their affinity for technology, computer science students can use digital resources and language learning apps to enhance their language skills. Utilizing spaced repetition systems and flashcards can promote efficient vocabulary retention, while voice recognition technology enables interactive speaking practice (Ellis et al., 2018). Incorporating technology-based language resources aligns with their learning preferences and fosters a more engaged language learning experience.

• *Code Annotation in Foreign Language*

Incorporating foreign language annotation in code comments and documentation can serve as a dual-purpose approach for computer science students. By annotating code in the target language, students practice language application while simultaneously reinforcing their programming skills. This strategy bridges the gap between language learning and computer science education, creating a symbiotic relationship that bolsters proficiency in both domains.

• *Immersion through Technical Content*

Students of computer specialties can immerse themselves in foreign language learning by engaging with technical content in the target language. Reading programming tutorials, coding documentation, and research papers in the foreign language exposes students to domain-specific terminologies while honing their reading comprehension. This immersion approach intertwines language acquisition with the subject matter, rendering learning both purposeful and rewarding.

• *Participating in Language-Based Projects*

Collaborating on language-based projects that involve coding and language application provides students with practical language practice and fosters a sense of purpose in their language learning journey. Projects such as localization of software, developing multilingual websites, or contributing to open-source projects in foreign languages encourage active language use within the context of computer specialties (Lan et al., 2021).

• *Cross-Cultural Exchanges*

The cross-cultural dimension in teaching foreign languages pursues not only a pragmatic goal (to provide students with the necessary means for speech interaction with native speakers), but also a developing and general educational goal. Learning a foreign language means entering an unfamiliar world, becoming open to something new, experiencing a cultural community with native speakers, and giving communication a special fullness and multidimensionality (Postryhan, 2016:114).

Actively engaging in cross-cultural exchanges with native speakers of the target language allows computer science students to refine their language skills while gaining insight into diverse cultural norms. Virtual language exchanges, cultural exchange programs, and online language communities provide platforms for interactive language practice and intercultural communication.

The strategies of learning foreign languages by students of computer specialties entail a personalized and dynamic approach that aligns with their cognitive dispositions and domain-specific linguistic needs. Applying technical analogies, incorporating technology-based resources, code annotation in foreign languages, immersion through technical content, participating in language-based projects, and embracing cross-cultural exchanges constitute effective strategies that optimize language acquisition while fostering a meaningful integration of language and computer science disciplines. By actively engaging in these strategies, students of computer specialties can augment their linguistic proficiency, enhancing their communicative competence and empowering their success in an increasingly interconnected global landscape.

Conclusions. The present study has explored the distinct challenges and opportunities faced when teaching foreign languages to students pursuing computer specialties. Through a thorough review of the world scientific literature, we have explored the cognitive and linguistic peculiarities inherent in computer-related tasks, and their implications for language training. Adopting an analytical approach, we have identified the unique characteristics of language acquisition within the context of computer science training.

Our critical synthesis of prior research exposed the inadequacies of conventional language teaching methods in catering to the specific needs of computer science students. This highlighted the necessity for a tailored pedagogical approach that aligns with the cognitive profiles of computer specialists, to enable effective cross-cultural communication and international collaboration. Therefore, we proposed a specialized instructional framework that integrates domain-specific terminologies and contextualized language learning techniques, aiming to enhance language proficiency among these learners.

The importance of foreign language proficiency for students of computer specialties cannot be overstated. As the field of computer science continues to expand globally, linguistic competence has become a vital asset, enabling effective collaboration, access to diverse knowledge, and adaptability in multicultural settings. Our study has emphasized the significance of optimizing foreign language instruction for computer science students to foster their linguistic competence and enrich their potential in an interconnected world.

Teaching foreign languages to computer specialties students presents several challenges. Their advanced analytical thinking and problem-solving abilities can lead to cognitive overload when faced with traditional language teaching methods. Additionally, the presence of technical jargon and domain-specific terminology demands an innovative approach to language instruction. Moreover, the time constraints and intensive curriculum of computer science programs require efficient language courses that align with their academic pursuits. The transfer of abstract concepts into concrete expression and limited exposure to cultural contexts further complicate the language learning process.

To overcome these challenges, we have outlined a range of strategies that students of computer specialties can adopt to optimize their language learning experience. Utilizing technical analogies, incorporating technology-based resources, code annotation in foreign languages, immersion through

technical content, participating in language-based projects, and embracing cross-cultural exchanges constitute effective approaches to enhance linguistic proficiency while complementing computer science education.

In view of the above it can be concluded that teaching foreign languages to students of computer specialties requires a purposeful, tailored, and innovative pedagogical approach. By recognizing the unique cognitive and linguistic characteristics of computer science students, educators can bridge the gap between language learning and computer specialties, fostering effective cross-cultural communication and equipping them with valuable skills for success in a globalized world. As the demand for multilingual computer specialists grows, our findings underscore the importance of cultivating linguistic competence to empower the next generation of computer science professionals.

References:

1. Aristova, N., Makhovych, I. (2023). Heimifikatsiia yak zasib pidvyshchennia motyvatsii navchannia studentiv kompiuternykh spetsialnostei (Gamification as a means of increasing the learning motivation of students of computer specialties). Svit dydaktyky: dydaktyka v suchasnomu sviti: zbirnyk materialiv II Mizhnarodnoi naukovo-praktychnoi internet-konferentsii. Kyiv: "Vydavnytstvo Liudmyla", 201–204 (in Ukrainian).
2. Ellis, N., Wulff, S. (2018). Usage-based approaches to Second Language Acquisition. *Bilingual Cognition and Language*: *The state of the science across its subfields*. John Benjamins Publishing Company, 37–56. DOI: http://dx.doi.org/10.1075/sibil.54.03wul
3. Holub, T. Intensyfikatsiia navchannia anhliiskoi movy studentiv nemovnykh spetsialnostei (). Suchasni pidkhody ta innovatsiini tendentsii u vykladanni inozemnykh mov: Materialy X Mizhnarodnoi naukovo-praktychnoi konferentsii. 24 bereznia 2015. K.: NTUU «KPI». Retrieved from http://interconf.fl.kpi.ua/node/1254 (in Ukrainian).
4. Kugai, K. (2023). Specificity of teaching foreign languages to students of computer specialties. *The driving force of science and trends in its development*: collection of scientific papers «SCIENTIA» with Proceedings of the IV International Scientific and Theoretical Conference, July 14, 2023. Coventry, United Kingdom: European Scientific Platform, 125–126.
5. Lan, Yu-Ju, Grant, S. (2021). *Contextual Language Learning: Real Language Learning on the Continuum from Virtuality to Reality*. Springer.
6. Malykhin, O., Aristova, N., Melikova, S. (2021). Soft skills development strategies for computer engineering and information technologies undergraduate students devised in the process of learning English. *Environment. Technology. Resources.* Proceedings of the 13th International Scientific and Practical Conference. Volume 2, 255–260. DOI: 10.17770/etr2021vol2.6602
7. Malykhin, O., Yarmolchuk, T. (2020). Aktualni stratehii navchannia u profesiinii pidhotovtsi fazivtsiv z informatsiinykh tekhnolohii (Topical strategies in the professional training for information technologies specialists). *Informatsiini tekhnolohii i zasoby navchannia,* 76(2), 43–57 (in Ukrainian).
8. Osadchyi, V., Symonenko, S. (2017). Inozemna mova yak zasib formuvannia komunikatyvnoi kompetentnosti maibutnikh inzheneriv-prohramistiv (Foreign language as a means of communicative competence development of future software engineers). Informatsiini tekhnolohii i zasoby navchannia, 58(2), 38–48 (in Ukrainian).
9. Postryhan, A. (2016). Mova yak instrument mizhkulturnoi komunikatsii dlia formuvannia osobystosti (Language as a tool of intercultural communication for personality formation). *Stratehii mizhkulturnoi komunikatsii v movnii osviti suchasnoho VNZ* : zb. materialiv Mizhnar. nauk.-prakt. konf. Kyiv: KNEU, 112-115 (in Ukrainian).
10. Sabitzer, B. (2012). Computer Science Meets Foreign Languages. *INTED2012 Proceedings*. 6th International Technology, Education and Development Conference March 5th-7th, 2012. Valencia, Spain, 2033–2041.

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MODEL OF SOFT SKILLS FORMATION OF SOCIAL WORKERS IN THE CONDITIONS OF AN INSTITUTION OF HIGHER EDUCATION

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Abstract. The article analyzes the holistic process of forming soft skills of future social workers in higher education institutions; summarizes scientific and methodological developments in the formation of soft skills of students; defines the structural and functional model of soft skills formation in future social workers in the context of professional training; characterizes the set of basic structural blocks of the structural and functional model of soft skills formation of future social workers, namely target, content, theoretical and methodological. The content of each of the blocks identified in the model is briefly described. The factors that cause the problematic nature of building a model for the formation of soft skills are indicated. The characteristic features of professional training of social workers in higher education institutions are indicated. It is noted that the unity of all structural blocks in the structural and functional model of soft skills formation ensures the integrity of the professional training of future social workers in the educational process of higher education institutions. The article will be useful for students and teachers who are interested in the professional development of social workers.

Key words: social work, professional education, higher education institution, professional skills, social worker, soft skills.

Introduction. The development of soft skills remains a relevant topic of modern research. Implementation of social change and solving priority problems of the social sphere is ensured by a combination of theory and practical experience of social work professionals at all levels. Higher education institutions are faced with the problem of forming a new type of social worker who can accept challenges and effectively solve complex problems. Therefore, the basis of our study is the modeling of the process of forming soft skills in future social workers as a mechanism for improving the effectiveness of its formation in the conditions of professional training.

The purpose of the study is to determine the structural and functional model of soft skills formation in future social workers in the context of professional training.

The main tasks are to summarize scientific and methodological developments in the formation of students' soft skills, design a structural and functional model, and characterize the set of its main structural blocks.

Material and methods of the study. The modeling of the formation of soft skills of future social workers was carried out in several steps, namely: an interdisciplinary analysis of the chosen topic was performed; the object, subject, tasks and purpose of the study were determined; the scientific and methodological literature on the formation of soft skills was studied; approaches to the problem of forming soft skills in the professional training of future social workers were analyzed. The factors that cause the problematic nature of building a model of soft skills formation are identified. The content, methods, forms and means of organizing the process of professional training and formation of soft skills in future social workers are singled out and combined into a single whole. The scientific and methodological data on the formation of soft skills in students are summarized, and a structural and functional model of the formation of soft skills in future social workers in the context of professional

training in higher education institutions is developed. The structural blocks of the functional model are characterized: target, content, theoretical and methodological, organizational and methodological, and control and result. The research tools included studying and analyzing the documentation of the educational programs «Social Work» and «Social Pedagogy»: curriculum, standard and work programs, educational and methodological complexes of the educational program, reports and results of research, social and educational and social project activities of students - future social workers.

Results and discussion. Building a multidisciplinary model for the formation of soft skills of future social workers is a complex process, as it needs to combine the multidimensionality of the formation of soft skills and the specifics of professional training of social workers. According to Karpenko, the model of professional training should be based on specific aspects of professional activity, namely: «functional, personal, subject or content» (Karpenko, 2007:154). When modeling the formation of soft skills, the following features should be considered:

– soft skills are acquired, uncertified, difficult to track, social and psychological skills that a future specialist acquires through training and self-improvement and uses to carry out successful professional activities;

– soft skills are measured by quantitative indicators, the level of their formation is checked by visual demonstration;

– the right hemisphere of the brain is responsible for the development of soft skills;

– soft skills are variable and situational;

– soft skills are designed to help professionals find the best way to perform tasks that are not described in their job description;

– skills include stress tolerance, conflict management, creativity, critical thinking, goal setting, leadership, motivation, emotional intelligence, communication, decision-making, planning;

– are personal qualities that contribute to effective and harmonious interaction with other people;

– are the use of different models of behavior;

– skills are closely related to a person's character rather than professional knowledge;

– soft skills include social, intellectual, communication, volitional and other competencies.

Modeling the development of soft skills of future social workers should take into account the specifics of their professional duties and professionally important soft skills groups (OECD, 2009; OECD, 2019):

– communication skills (public speaking, presentation, personal brand, self-presentation, negotiation, conflict management, storytelling, interpersonal communication, business ethics, professional ethics, intercultural competence, networking);

– management skills (leadership, team building, motivation, project management, organization/organization, goal setting, result orientation, planning, time management/resource management, social activism, mentoring/facilitation, control);

– personal effectiveness skills (emotional intelligence, empathy, solving difficult situations, lifelong development, stress resistance, quick response, effectiveness under risk, client focus, creativity, reframing, initiative, innovation);

– information processing skills (flexibility of thinking, critical thinking, data search/analysis/synthesis, media literacy, observation, prudence, analytical thinking, logical reasoning, monitoring, trends in the professional field, processing of large amounts of information, establishing relationships);

– strategic skills (tactical thinking, strategic thinking, decision-making, ingenuity, image, alternatives, priority, systemic thinking, structural thinking, research thinking, problem-oriented thinking).

It is difficult to define a single model for the development of soft skills in future social workers, as it is necessary to consider the specifics of the research of each author.

The problematic nature of building a model for developing soft skills in students is due to several factors:

– ideas on the possibilities of soft skills development can be found in numerous English-language popular science publications: in personal blogs of foreign educators, business consultants, HR specialists or on the websites of educational institutions (Mosquera, Teaching English: website; British Council: website), but there are few scientifically based works on soft skills development of social workers;

– when developing soft skills in higher education institutions, attention is focused on the success of state and non-governmental social institutions;

– the phenomenon of soft skills can be considered using different scientific approaches;

– effective soft skills development requires the search for new opportunities and resources that ensure the training of social workers based on universal values, client orientation, flexibility and competence;

– formation of social worker's sociocultural values, professionally important knowledge, skills and abilities, and professional and personal qualities that underlie the formation of specialists' readiness for professional activity in the social sphere;

– formation of a competent specialist of a new type who can respond effectively to social changes.

This range of problems makes it possible to identify and combine the content, methods, forms and means of organizing the process of professional training and soft skills development of future social workers into a single whole.

The holistic process of forming soft skills in future social workers involves directing professional training to the development and improvement of the seven-component structure of soft skills by the following indicators: a desire to work in the social sphere and help people; awareness of oneself as an agent of change in the community and a commitment to a positive outcome; the desire to achieve goals and solve professional problems; understanding of the importance of developing soft skills, the ability to acquire them and the ability to develop them throughout life; knowledge of socially significant problems of social work; application of innovative technologies, methods and resources of social work; ability to emotional intelligence and empathy; ability to solve complex situations and to respond quickly and effectively; confidence in own practical skills and competence; ability to negotiate and manage conflicts; knowledge of and adherence to business and professional ethics; ability to communicate with representatives of other cultures and nationalities; ability to build an effective team to achieve a single result; effective planning and organization of professional activities; result orientation; ability to formulate and achieve goals; ability to think under time pressure and psycho-emotional stress; ability to make decisions and find alternatives; application of structural and systemic thinking; attentiveness and observation; application of analytical and logical thinking; ability to establish relationships.

In the methodological plane, professional training in the context of a higher education institution has characteristic features, namely: orientation of social worker's professional training to changes in the field of social work based on a combination of the principles of personal, activity and resource-environmental approaches; saturation of educational and professional programs with a selective component with a focus on the development of soft skills in students; use of means, forms and methods of non-formal education to increase the effectiveness of soft skills formation in higher education institutions. Thus, in the methodological context of soft skills formation, we are based on the idea that in a specially organized process of training future social workers, the conditions for its effective functioning should be ensured, namely: orientation to changes in the field of social work, operating with knowledge and resources of social work, ensuring the effectiveness and efficiency of professional activity, using communication tools in the performance of professional duties, management for the effectiveness of social work, co Summarizing the scientific and methodological data on the formation of soft skills in students, we have developed a structural and functional model of the formation of soft skills in future social workers in the context of professional training in higher education institutions,

which is characterized by integrity and consists of specific structural blocks that actively interact and influence each other (Karpenko, 2016: 303).

The structural-functional model of soft skills development in future social workers (Figure 1) contains the following structural blocks: target, content, theoretical and methodological, organizational and methodological, and control and result.

In order to more thoroughly match the designed structural and functional model to certain requirements of professional training, we will focus on the substantive characteristics of each structural block (target, content, theoretical and methodological, organizational and methodological, and control and result) and analyze their consistency with the essential properties of the formation of soft skills in future social workers in the context of professional training.

In this regard, it is advisable to highlight the content of the structural blocks of the designed model, which are the basis for the formation of soft skills in future social workers in the context of professional training. We consider it expedient to briefly describe the content of each of the blocks identified in the model.

The target block reflects the orientation of the professional training of social workers to the compliance with the social services commissioning, considering the mechanism of social interaction between the state and higher education institutions to train a social worker with formed soft skills. The purpose of implementing the structural and functional model is to develop soft skills in future social workers in the context of professional training. The target orientation of the professional training of social workers in higher education institutions correlates with the tasks of forming soft skills of

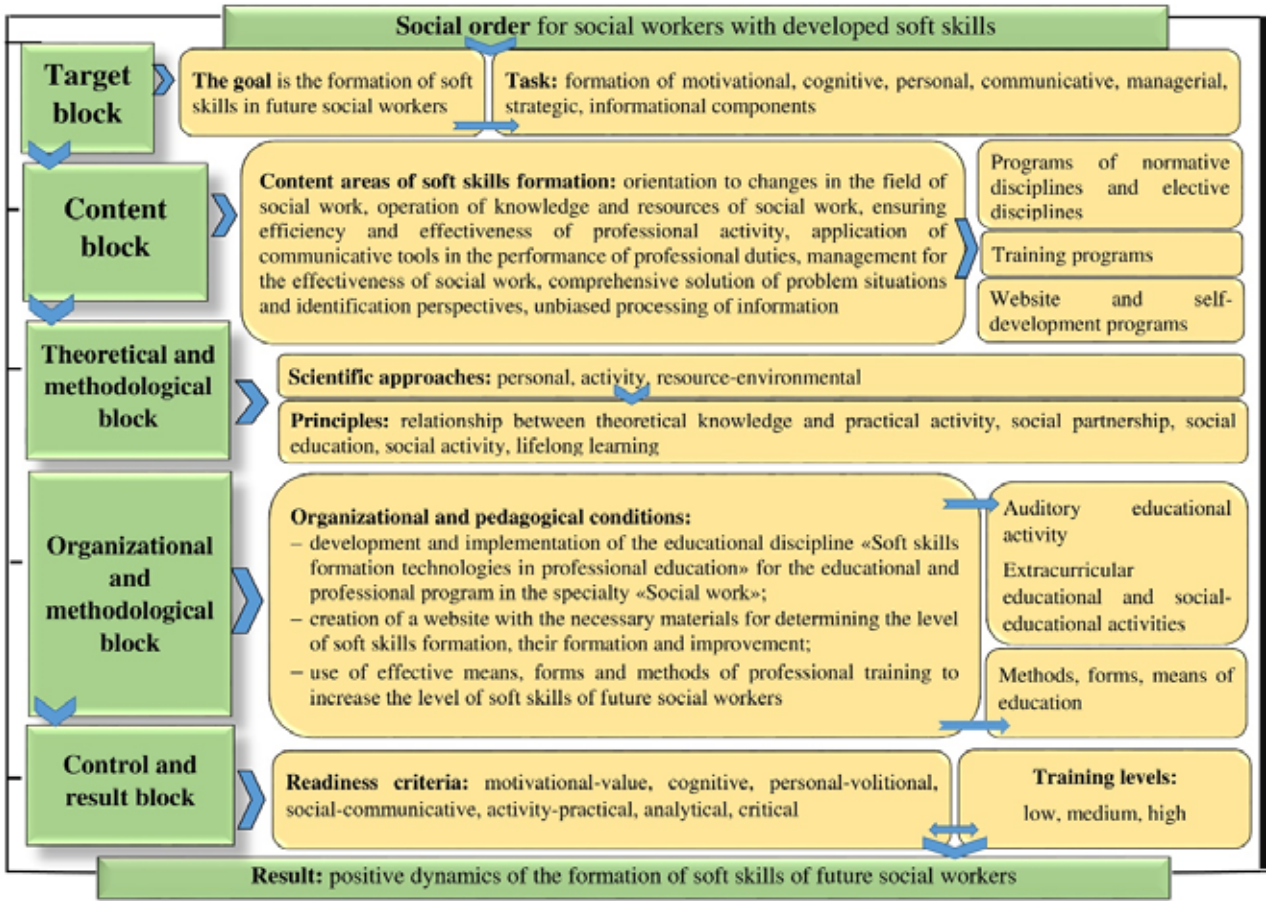

Figure 1. Structural and functional model of soft skills development in future social workers in the context of professional training

students, in particular the formation and development of motivational, cognitive, personal, communicative, managerial, strategic, and informational components.

The content block reflects the main characteristics of the areas of soft skills development (orientation to changes in the field of social work, operating with knowledge and resources of social work, ensuring the effectiveness and efficiency of professional activities, using communication tools in the performance of professional duties, management for the effectiveness of social work, complex problem-solving and determining prospects, impartial processing of information), implemented in the content of educational normative and website and self-development programs.

Theoretical and methodological blocks. To achieve the goals and test the tasks of forming soft skills in future social workers, it is important to formulate them in accordance with scientifically based approaches: personal, activity, and resource-environmental.

It is necessary to observe and consider the priority of the following general scientific and specific principles (the relationship between theoretical knowledge and practical activity, social partnership, social education, social activity, lifelong learning), which serve as guidelines for determining the strategy for developing soft skills of future social workers (Pavliuk; Liakh; Bezpalko; Klishevych, 2017):

– the principle of interconnection of theoretical knowledge and practical activity provides the opportunity for future specialists to apply the acquired knowledge in practical professional activities. The implementation of the principle of the relationship between theory and practice involves combining, expanding and enriching classroom and extracurricular educational and social and educational activities;

– the principle of social partnership indicates the need to consider the equality and cooperation of representatives of all subjects of the educational process and social partnership, the process of forming soft skills; provides conditions for cooperation for a wide exchange of practical experience of the object and subject of the educational process on the implementation of joint activities, projects, and solving common problems that lead to positive results;

– the principle of social education involves increasing the effectiveness of the process of forming soft skills based on the value orientations of students to produce global and positive changes in society. This principle plays a special role in the social and educational activities of students, as it defines all the components of professional training that affect the professional self-realization of a future social work specialist;

– the principle of social activity affirms the organization of professional training of future social workers, which stimulates students to professional and personal self-development, their initiative and efficiency in performing socially significant tasks in various spheres of society; the formation of soft skills is ensured by a high level of student activity, their ability to use knowledge, to independently manage them in professional activities; social activity of the student is considered as the highest value, which requires the desire to acquire and master the pinnacle of their professional experience;

– the principle of lifelong learning is «ensuring the content and coordination of learning activities at different stages of education, which is a continuation of the previous ones; forming the need and ability of the individual to self-learn; optimizing the system of retraining and professional development of employees; creating integrated curricula and programs; introducing and developing distance education» (Markozova, 2016). This principle emphasizes the need to create an environment of formal and non-formal education to actualize the creative growth of students through the use of active and interactive forms, methods and means, student-oriented in the formation of soft skills; accordingly, the principle enables the development of mentoring and coaching.

The organizational and methodological block should ensure the orderliness of classroom and extracurricular educational and social and educational activities of students to achieve the goals and objectives, be reproducible in the existing organizational and pedagogical conditions of social workers'

training. This component of the structural and functional model of soft skills formation provides an appropriate choice of methods, forms and means of educational and social and educational activities in accordance with the designed organizational and pedagogical conditions of professional training of social workers. We consider the following to be effective teaching methods: training, social projects, discussions, case studies, branding, creative methods of motivation, and creating situations of success. Among the forms of organizing training, we distinguish traditional and interactive ones (informational lectures, trainings, workshops, educational programs and projects, discussion meetings, art therapy, coaching, mentoring, intellectual quests, workshops, and master classes). The main means of training are massive open educational online platforms, social networks, information technology, and communication tools for training future social workers (Savelchuk, 2019).

Thanks to certain strategies of professional self-realization of specialists and mechanisms of formation of social work as a professional activity, there is a possibility of systematic use of forms, methods and means of professional training of future social workers to form soft skills, which is manifested through the multi variance of ways of organizing the educational process in higher education and non-formal education. When modeling the organizational and methodological block of the structural and functional model of soft skills formation, consider the following organizational and pedagogical conditions: content of the discipline «Technologies of soft skills formation in vocational education» and its introduction into the educational and professional program in the specialty «Social Work» to provide students with knowledge of soft skills and means, forms and methods of their formation and development; creation of a website for students with the necessary materials to determine the level of soft skills formation, their forms and methods of professional training of social workers to improve the level of soft skills of students in classroom and extracurricular activities.

The content of the professional training of future social workers, considering the development of soft skills, should be carried out in higher education institutions in specially designed educational and professional programs «Social Work», which is provided by the appropriate content of various types of classroom and extracurricular educational and social and educational activities.

Identification of organizational and pedagogical conditions for the formation of soft skills, which provides, on the one hand, the best and optimal choice of methods, forms and means of classroom and extracurricular educational and social and educational activities; and on the other hand, the implementation of these methods, forms and means of professional training will have flexibility and variability for the conscious formation of soft skills in future social workers.

The control and result block of the model we have designed should provide an assessment of the study of the process of forming soft skills in future social workers in the context of professional training. It is necessary to comply with the components of soft skills (motivational, cognitive, personal, communicative, managerial, strategic, informational), criteria (motivational and value, knowledge, personal and volitional, social and communicative, activity-practical, analytical, critical), levels of formation (low (minimal), medium (episodic and situational), high (permanent and sustainable)), result (positive dynamics of the formation of soft skills of future social workers). Thus, the effective block of the process of forming soft skills of future social workers synthesizes the real indicators of its effectiveness, reflecting the degree of achievement of the goals, and significant changes that characterize the qualitative and quantitative aspects of the functioning of the professional training process. The content essence of the resultant block is to increase the level of soft skills of future social workers.

The unity of all structural blocks in the structural and functional model of soft skills development ensures the integrity of the professional training of future social workers in the educational process of higher education institutions. We believe that its implementation will improve the quality of professional training in the field of social work, since the dynamic nature of its implementation leads to a different level of formation of all indicators of soft skills in future social workers.

Conclusions. In general, the substantiated structural and functional model of soft skills development of future social workers in the context of professional training reflects the integrity, consistency, interaction and logical interconnection of functioning between the components of all components of the structures. This model is open, constantly evolving and can be supplemented with new elements if necessary. The purpose of our model for the development of soft skills of future social workers in higher education institutions is to focus on improving the organizational and pedagogical conditions of professional training to ensure the effective development of soft skills in future social workers. In particular, regarding to the existence of a relationship between goals and results, it is noted that «the goals of professional activity in the social sphere are manifested in changes, shifts, development of a person, his or her ideas, understanding of situations, his or her practical skills and abilities acquired in purposeful activity» (Karpenko, 2016:302).

References:

1. Karpenko, O. (2007). Profesiyna pidhotovka sotsial′nykh pratsivnykiv v umovakh universytet·s′koyi osvity: naukovo-metodychnyy ta orhanizatsiyno-tekhnolohichnyy aspekty [Professional training of social workers in the conditions of university education: scientific-methodical and organizational-technological aspects]. Drohobych: Kolo, 374. [in Ukrainian]
2. Karpenko, O.G. (2016). The formation of professionalism in future social workers in the conditions of higher school. Geopolitical processes in the world today: Collection of scientific articles. «East West» Association for Advanced Studies and Higher Education. Vienna (Austria). 2016. − P. 301−304
3. Karpenko, O.G. (2016). The formation of professionalism in future society workers in the conditions of higher school. Geopolitical processes in the world today: Collection of scientific articles. "East West" Association for Advanced Studies and Higher Education. Vienna (Austria). 2016. – P. 301–304.
4. Markozova, O. O. (2016). Navchannya vprodovzh zhyttya-neobkhidna peredumova dosyahnennya zhyttyevoho uspikhu lyudyny [Lifelong learning is necessary a prerequisite for achieving human success in life]. Visnyk NYUU imeni Yaroslava Mudroho. Seriya: Filosofiya, filosofiya prava, politolohiya, sotsiolohiya, 2(29), 198–205. [in Ukrainian]
5. Mosquera I. Ideas to bring soft skills into the English classroom. British Council. Teaching English: website. URL: https://www.teachingenglish.org.uk/blogs/ingrid-mosquera-gende/ideas-bring-soft-skills-english-classroom
6. OECD: 21st Century Skills and Competences for New Millennium Learners in OECD Countries (2009). OECD Publishing. URL:https://doi.org/10.1787/218525261154
7. OECD: Future of Education and Skills 2030: OECD Learning Compass 2030. (2019) ESCO Publishing. URL: http://www.oecd.org/education/2030project/contact/OECD_Learning_Compass_2030_Concept_Note_Series.pdf
8. Pavliuk, R.O.; Liakh, T.L.; Bezpalko, O.V.; & Klishevych, N.A. (2017). Research-Based Training: Methodological Characteristics and Results of the Analysis of Educational Programs. Soc. Sci. 2017, 6, 152. DOI: https://doi.org/10.3390/socsci6040152
9. Savelchuk, I. (2019). Training of social workers in the innovative educational environment of a university: conceptual ideas and innovation mechanisms. «EUREKA: Social and Humanities». Tallinn: Publisher OÜ «Scientific Route» (Eesti). 59–66. DOI: 10.21303/2504-5571. 2019.00962
10. The Importance of Soft Skills. British Council: website. URL: https://www.britishcouncil.my/english/courses-adults/learning-tips/importance of-soft-skills

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MOTIVATION BASES FOR THE FORMATION OF STUDENTS' POLYPHONIC HEARING IN THE PROCESS OF PIANO TRAINING

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Abstract. The article discusses the motivational foundations of the formation of students' polyphonic hearing in the process of piano training. Definitions of the concept of polyphonic hearing relevant in scientific and pedagogical literature are analyzed. Modern approaches to the issue of execution and motivation are considered. Aspects of the formation of polyphonic hearing, its significance and specifics in the process of piano training, motivational bases of the formation of polyphonic hearing of students are singled out. The theoretical-methodological base of the study of this problem is built on the competence, cultural, activity approach. In the course of theoretical research, methods of analysis, generalization and comparison, systematization were used.

It is emphasized that the formation of polyphonic hearing is possible under the conditions of understanding the theoretical foundations of polyphony and the specifics of its practical implementation. Consistently filling the content of piano training with polyphonic compositions, mastering the methods of working on them ensures the formation of students' polyphonic hearing. Among the motivational bases for the formation of students' polyphonic hearing in the process of piano training, we singled out interest in polyphonic music, mastering polyphonic works through discussion of topical issues of polyphonic art, public performances.

Key words: polyphonic hearing, polyphony, piano preparation, motivation.

Introduction. Comprehensive personality development of future musicians consists not only in improving their piano training, increasing motivation to study, but also in developing their creative abilities and intellectual culture. This means that modern art education must offer new approaches and principles on which the latest artistic and pedagogical activities will be based (Mozgalova & Baranovska & Zuziak & Martyniuk & Luchenko, 2022: 194).

In the context of the above, the problem of forming polyphonic hearing becomes especially relevant. The development of students' polyphonic hearing in the process of piano training is one of the urgent needs of today, since the musical art of the 20th – 21st centuries is enriched by the synthesis of polyphonic and homophonic-harmonic forms, the revival of ancient genres.

Polyphony, as a system of musical thinking, has broad definitions. In particular, it is considered in pedagogical and musicological aspects. G. Poberezhna and T. Shcherytsia note: "The artistic universality of the polyphonic principle gives reason to expand the range of consideration of its

expressive possibilities, correlating them with the main object of art in all its forms, which is man" (Poberezhná &Shcherytsia, 2004: 194). Some aspects of the formation of polyphonic hearing have been reflected in scientific investigations. The study of the perception of polyphony by future music teachers was conducted by M. Sybiriakova-Khikhlovska (Sybiriakova-Khikhlovska, 2007). In her works, L. Stepanova analyzes the issue of education of polyphonic hearing of younger schoolchildren on the basis of polyphonic Ukrainian folklore (Stepanova, 2011). S. Kvasha examines the issue of polyphonic hearing in the process of modern musical processes (Kvasha, 2011). V. Butsiak considers aspects of the development of polyphonic hearing of choirmasters in the process of piano training (Butsiak, 2022). S. Perminova investigates polyphonic hearing as "the ability to holistically perceive specific features of polyphonic music" (Perminova, 1999: 9). However, the motivational foundations of the formation of students' polyphonic hearing in the process of piano training remain unexplored. It is impossible not to note the research on the issue of students' piano training. Among them are works that reveal the methodical foundations of piano training (N. Mozgalova, O. Rebrova), reflect historical piano experience (N. Guralnyk, N. Kashkadamova), substantiate the peculiarities of cultural (O. Shcholokov), stylistic (V. Butsak, O. . Katrych) approaches. T. Vilyuzhanina, T. Kadykova, A. Rean and others investigated the essence of the motivational foundations of learning.

The purpose of the article is to substantiate the motivational foundations of the formation of students' polyphonic hearing in the process of piano training.

Materials and methods. The theoretical-methodological base of the study of this problem is built on the competence approach, which consists in the use of the knowledge acquired by students, the cultural approach, which contributes to the understanding of polyphony as a cultural phenomenon, considers polyphonic hearing through the prism of cultural heritage, the activity approach involves attention to the content, tasks of the concept of "polyphonic hearing", work methods for its formation. The study of the problem of the motivational basis of the formation of polyphonic hearing of students in the process of piano training involves the use of the following principles: integrity (consistency of the goal, the content of the formation of polyphonic hearing and piano training), reflexivity (ensures communication between the author of the polyphonic composition and the performer), the principle of hierarchical organization of motives (presupposes motivational the basis of the formation of polyphonic hearing). In the course of theoretical research, methods of analysis, generalization and comparison, systematization were used.

Results and discussion. The main tool of a musician is his musical ear, which constitutes a holistic perception of the external world in a sound complex. Understanding and interpreting polyphonic compositions, which are one of the main tasks of piano training, require the development of polyphonic hearing. Note that researchers consider polyphonic hearing as a kind of musical hearing, a musical ability that is formed on the basis of melodic hearing in the work on polyphonic compositions. Famous musicians defined the development of musical hearing as one of the most important tasks. In particular, this was emphasized by F. Chopin, F. Liszt, R. Schuman, M. Beklemishev, K. Mykhaylov, V. Puhalsky and others.

As the researchers note, musical hearing is determined by the perception of the pitch of intonation, metro-rhythm, dynamics, and timbre. Note that one of the components of musical hearing is the reproduction of a melody on a musical instrument, which serves as a means of holistic understanding of a musical composition. Polyphonic hearing is a multicomponent phenomenon that includes melodic, rhythmic, harmonic, timbre, and architectural hearing. Despite the fact that the study of musical hearing as a whole is considered in the methodological aspect of the study of solfeggio, let us emphasize its significant importance in piano preparation.

One of the types of musical hearing is polyphonic hearing. S. Kvasha understands polyphonic hearing as "the physical and psychological ability to holistic and at the same time differentiated

perception and control of the development of each voice in unity with others, as well as the ability to reproduce music of a polyphonic composition" (Kvasha, 2011: 179).

V. Butsyak defines polyphonic hearing as the ability to integrally and at the same time differentiated perception, comprehension and reproduction on a musical instrument (piano) or by voice with a musical instrument of several melodic lines (voices) with the following indicators: – expressive and meaningful performance on the piano of samples of polyphonic and polyphonic music; – distinguishing "by ear" types of polyphony and polyphony (subvocal, imitative, contrasting, mixed); – maintaining constant auditory control over the unfolding of the polyphonic musical fabric; – operating with the relevant conceptual apparatus (Butsiak, 2022: 179). Thus, researchers define the concept of polyphonic hearing as the process of perceiving polyphonic works. Based on the analysis of scientific sources, we made the following definition of polyphonic hearing: the ability to differentiate and follow different melodic lines unfolding simultaneously, to determine the functional connections between them.

Polyphonic hearing is a complex phenomenon that requires the perception of polyphonic fabric, the performer's ability to hear and analyze it. As the researchers note, polyphonic hearing requires a developed sense of rhythm. In particular, E. Kurt determines that the influence of metrorhythm in polyphony is so noticeable that it allows researchers to consider it the main indicator of style. Continuity, fluidity of polyphonic presentation can be achieved "thanks to the special role of rhythm: the formation of time relations not only in the horizontal plane, but also between voices as parallel time streams (Poberezhná & Shcherytsia, 2004: 173).

In the conditions of polyphonic presentation, melodically independent voices create an "ensemble of melodies", and the "criterion of compositional mastery" in advanced forms of polyphonic music is "the art of combining melodies" (Poberezhná & Shcherytsia, 2004: 172). The development of the ability to divide and switch attention becomes especially important for practical activities. In order to understand polyphonic compositions, it is worth working on mastering the polyphonic, multilayered nature of the piano texture, following all the voices of the piano. You should also study the musical and theoretical apparatus of polyphonic art, analyze polyphonic works, combine theoretical provisions and their practical assimilation.

Students' performance of polyphonic music requires a developed polyphonic ear. When working on polyphonic compositions, its development is possible according to the following algorithm:

1) change of passive form to active form;
2) formation of images of perception;
3) ability to auditory differentiation of voices;
4) auditory skills of distinguishing the main voice;
5) auditory control of the order of entry of voices.

Thus, polyphonic hearing actively develops in the process of performance training, mastering of piano skills and abilities.

In modern works, musical performance is considered as a complete and relatively independent socio-cultural and artistic phenomenon. It is a subject of social needs and interests, an object and an independent direction of scientific research, it exists as a practical (artistic-creative) activity that takes place according to its own laws and rules of functional-activity detection (Davydov, Zhaivoronok). Clarifying the opinion of scientists, we can say that musical performance is a full-fledged type of artistic creativity, parallel to the activities of a composer and playwright, but has some differences due to the specifics of performing activity, the level of development of relevant qualities and skills, the social significance and value of this art form.

Quite close, but in its own way, the performance is considered by well-known methodologists, teachers-instrumentalists and the performers themselves. He is considered:

• a holistic formation of creative spiritual practice, which ensures the sonorous realization of a musical work through the musical and creative activity of the performer (T. Hlushchuk);

• a musical fact that was previously dissolved in historical time, but today became available for study thanks to the "time-stopping" sound recording (N. Kashkadomova);

• the only means by which music materializes in objective reality, procedurally manifests itself in time space as ideological and artistic content, musical form and artistic value (N. Zhaivoroniuk);

• creative activity, in the process of which objectification for the listener is not the musical text, but the artistic content of the work (Shulgina V.)

• a property that involves the nervous, mental, intellectual, emotional spheres of a person, which help the individual to direct forces in the right direction (S. Barvik).

In the performing activity, as a type of creative activity, all the stages of the creative process, consisting of artistic perception, the need to create, the emergence of an idea, the search for extraordinary ways of its implementation and obtaining a valuable result based on the influence of the emotional possibilities of music and one's own experiences, are clearly revealed.

In the plane of these definitions, the fact becomes obvious that the performance process is a creative understanding and reflection in a live, spiritualized sound of the interpreter's idea of the composer's artistic and figurative intention. So, following the path outlined by the composer, the performer, through his own emotional perception and subjective understanding of the logic of musical development, enables the listener to understand the intonation significance of the sound material. This method inculcates in the performer a sense of independence in the creation of the musical process, improvisation, which are the basis of emotional immediacy, liveliness of the embodiment of the composer's idea, and true artistry. This is the path to independent, purely performing artistic creation, within which improvisation can be considered as a specific way of behavior of the performer, supported by technical mastery of the instrument, typical formulas of musical development, skills of artistic and conceptual development of the content and form of the work, intuition based on deep emotional layers of the experience of an artist capable of taking on a searching role in the process of sound embodiment of imagery (Davydov, 2011: 90).

It is worth noting that the significant growth of the technical skill of both individual performers and professional performing schools, as well as the improvement and automation of technical means of recording music stimulated the processes of distribution of standard performing versions by duplicating audio and video media, standardizing the traditions of music and performing schools, forming types of interpretation in world professional music and performance practice (Kononova, 2012: 13).

The performer must not only hear the polyphonic layers, but also reproduce them in the process of performance. The study of polyphonic compositions creates a typified understanding of the features of polyphonic works. Every performer possesses polyphonic thinking. Thanks to this, he perceives and reproduces the elements of polyphonic compositions and conveys their artistic content. The process of working on a polyphonic piece activates the process of learning and understanding the peculiarities of the musical language. In particular, during the study of polyphonic musical compositions in the process of piano training, students master polyphonic features through musical and theoretical concepts, learn to navigate in different genres and styles, master the understanding of the musical logic of form formation. Thus, the formation of polyphonic hearing in the process of piano training of students is connected with musical and worldview activities, the development of polyphonic perception for the performance of musical works.

The formation of polyphonic hearing requires the development of motivational bases for its formation. We assumed that the motivation for professional growth is determined by the presence of professional meanings in the person of obtaining high-quality professional growth. But psychologists point to the presence of the nature of motives, which is determined by the content of professional training, the content of activity.

There is no doubt about the importance of taking into account motivation in the study of any problem related to human activity at the current stage of the development of science, because the success of any

activity, including teaching, directly depends on the nature of motivation (T. Vilyuzhanina, T. Kadykova, A. Rean, etc.).

According to P. Prykhodko, the motivational structure of pedagogical activity is made up of motives of obligation; achievement motives; motives of interest and enthusiasm for the taught subject; motives of enthusiasm for communication with students (affiliation motives) (Prykhodko, 2012). And although the researcher deals with the problem of training specialists in the economic profile, we consider this division of motives to be correct. Especially important is the motive of liking the subject. If a student enters the program who identifies with a professional pianist, but does not have a sufficient previous level of piano training to become a concert performer, the motive of mastering the method of teaching piano playing will necessarily be dominant. For this, the student develops a personal development program, which his teacher does not even mention. This program can be formed in a certain qualitative dimension, or it can be subconscious. Its presence is an internal instruction of the student's personality for further implementation in life.

So, considering that motivation is a very important component of learning to play the piano, especially among Chinese students, the motivational and instructional component was determined as the first component. The motivational and instructional component, based on the analysis of literary sources and the corresponding tasks, consisted of the following elements:

– intentions to improve the quality of piano performance;
– the desire to master the method of learning to play the piano;
– formation of polyphonic hearing.

It is important to take into account a diverse range of motivations that can reinforce each other, creating a strong personal intention to achieve a result. T. Kremeshna summarizes a number of motivations for pedagogical activity that stimulate the desire for self-realization and contribute to pedagogical self-efficacy: "motives that reflect the need for what constitutes the content of the profession; motives related to the reflection of some features of the profession in public consciousness (motives of prestige, social significance of the profession); motives that reveal previously formed personal needs that were actualized during interaction with the profession (motives for self-disclosure and self-affirmation, material needs, features of character, habits, etc.); motives that reveal the peculiarities of the individual's self-awareness in the conditions of interaction with the profession (confidence in one's own personal suitability, in the possession of sufficient creative potential, etc.)" (Kremeshna, 2010).

Purposeful organization of the educational process, which is carried out in the system of formation of students' polyphonic hearing in the process of piano training, should also take into account the range of related motives that stimulate the future music teacher to self-realization. Among these, let's point out the motivation for professional musical and performance growth, the desire to get satisfaction from the performance success of students, from one's own performance, etc. Competitiveness is also an important motivation, the latter requires mastering special innovations that, on the one hand, do not violate the existing system of training future teachers of musical art, and on the other hand, make certain adjustments to it that contribute to the formation of their methodologically oriented self-realization in the system of piano preparation (Sian, 2016: 99).

The main approach that forms the motivational basis for the formation of students' polyphonic hearing is directing efforts to create motivation for learning, creating a positive attitude towards their study. Since, a positive attitude towards polyphonic music, polyphonic means contribute to the expansion of polyphonic knowledge. In this case, the study of polyphonic art enriches the content of students' cognitive needs. Solving problem tasks, which has cognitive value for students, is also of great importance for the formation of students' polyphonic hearing.

Formation of students' polyphonic hearing requires systematic and motivated work. Students must be aware of the purpose of forming polyphonic hearing, its importance for professional activity. Also, the development of motivation to master polyphonic works, the need for communication with

listeners is also an important condition. Realization of this need is possible by taking into account the communicative approach, which consists in mastering polyphonic works by discussing topical issues of polyphonic art. This has a positive effect on the development of students' motivation to develop polyphonic hearing. We emphasize that the execution process is possible only taking into account the internal needs of the students of education. This requires a positive attitude towards the reproduction of polyphonic compositions. The interest in polyphonic music that arises in the process of individual performing activities of students creates a motivation that stimulates the study of polyphonic works, immersing in their artistic content. It is motivation that helps the realization of goals and tasks, encourages the student to develop polyphonic hearing, reproduce the artistic conception of works, and capture the attention of listeners. In the process of piano training, the teacher needs to adjust the student's motivation for the formation of polyphonic hearing, the quality of performance of polyphonic compositions.

It is also important to encourage students to perform in public. The development of polyphonic hearing in the process of piano training requires long-term work.

Formation of students' polyphonic hearing involves the following:

– mastering polyphonic compositions of various stylistic directions;

– hearing and analysis of compositions with different types of polyphony;

– performance of polyphonic works.

Thus, the formation of polyphonic hearing affects the development of students' musical culture, the expansion of their worldview, and contributes to performance skills.

The motivational foundations of the formation of polyphonic hearing are aimed at understanding polyphonic language, the simultaneous sounding of melodies that may not coincide in the direction of movement, accents, and rhythm. The performer faces the task of a relief reproduction of each of the voices, their coordination, and the creation of an ensemble. The educational process should be focused on students studying a large number of polyphonic works, achieving a high level of their performance. This condition contributes to the motivation for performing activities, increasing the level of piano training.

Public performance of polyphonic works activates students' interest in polyphonic music. Public performances, increasing the executive responsibility of future music teachers, encourage them to more qualitative and focused listening work. Consistent, purposeful filling of the content of piano teaching with polyphonic works, systematic work of students on polyphony, creative use of acquired knowledge, abilities and skills regarding polyphonic works and work on them form the foundation for the development of polyphonic hearing of future music teachers.

Conclusions. Thus, the question of the formation of polyphonic hearing is the subject of understanding of modern pedagogical science. The ability to perceive all components of polyphonic music in a complex is necessary for the formation of polyphonic hearing. Polyphonic hearing acquires special importance in the process of piano training of students, it is a necessary condition for it. Among the motivational bases for the formation of students' polyphonic hearing in the process of piano training, we singled out interest in polyphonic music, mastering polyphonic works through discussion of topical issues of polyphonic art, public performances.

References:

1. Barvik, S. (2013). Stanovlennia vykonavskoi maisternosti osobystosti muzykanta. [Development of performance skills of a musician's personality]. *Kultura Ukrainy*, 43, 278–285. [in Ukrainian]
2. Butsiak, V. Rozvytok polifonichnoho slukhu khormeisteriv v protsesi fortepiannoi pidhotovky [Development of polyphonic hearing of choirmasters in the process of piano training]. Retrieved from: http://pedagogy-journal.kpu.zp.ua/archive/2022/82/28.pdf [in Ukrainian].

3. Viliuzhanina, T. (2006). Dynamika tsinnisno-smyslovoi sfery osobystosti v protsesi profesiinoho stanovlennia maibutnikh psykholohiv [Dynamics of the value-meaning sphere of personality in the process of professional development of future psychologists]: (Avtoref. Doctoral dissertation), Instytut psykholohii im. H.S.Kostiuka APN Ukrainy. [in Ukrainian].
4. Hlushchuk, T. (2016). Muzychno-vykonavske mystetstvo yak obiekt doslidzhennia ukrainskoho mystetstvoznavstva [Musical and performing arts as an object of research in Ukrainian art history]. *Kultura i suchasnist* : almanakh. Kyiv : Milenium, 1, 87–91 [in Ukrainian]
5. Davydov, M. (2010). *Vykonavske muzykoznavstvo* : entsyklopedychnyi dovidnyk. Lutsk : Volynska oblasna drukarnia[in Ukrainian]
6. Zhaivoronok, N. (2007). Muzychne vykonavstvo yak fenomen muzychnoi kultury [Musical performance as a phenomenon of musical culture]: (avtoref.dys.kand.myst), Kyivskyi natsionalnyi universytet kultury i mystetstv [in Ukrainian].
7. Kadykova, T. (2002). *Osoblyvosti dynamiky tsinnisnykh oriientatsii studentivpsykholohiv [Peculiarities of the dynamics of value orientations of psychology students]*. (Avtoref. Doctoral dissertation), Odeskyi natsionalnyi un-t im. I.I. Mechnykova. [in Ukrainian].
8. Kvasha, S. (2018). Polifonichnyi slukh yak predmet teoretychnoho osmyslennia v suchasnii muzychnii nautsi [Polyphonic hearing as a subject of theoretical understanding in modern music science]. *Molodyi vchenyi,* № 11(63), 178–181 [in Ukrainian].
9. Kononova, M. (2012*). Idealne yak etalonne v systemi katehorii muzychno-vykonavskoho mystetstva* (Ideal as a reference in the system of musical and performing arts categories) (Thesis abstract for Cand. Sc. (Musical Art), M. T. Rylsky Institute of Art, Folklore Studies and Ethnology, Kyiv [in Ukrainian].
10. Kremeshna, T. (2010). *Pмedagogical Self-Efficacy: The path to successful teaching:* textbook. Uman [in Ukrainian].
11. Liu, Sian (2016). Metodychno spriamovana samorealizatsiia maibutnoho vchytelia muzyky: katehorialnyi analiz [Methodically directed self-realization of the future music teacher: a categorical analysis]. *Aktualni pytannia mystetskoi osvity ta vykhovannia*, 1, 222–230 [in Ukrainian].
12. Mozgalova, N., Baranovska, I., Zuziak T., Martyniuk A., Luchenko O., (2022). Professional training of music and choreography teachers: artistic-communicative context. *Society. Integration. Education.Proceedings of the International Scientific Conference*, I, May 27th, 194–204. DOI: https://doi.org/10.17770/sie2022vol1.6889
13. Perminova, S. (1999). Formuvannia navychok spryiniattia khorovoho bahatoholossia u studentiv vuziv kultury na zaniattiakh z solfedzhio [Formation of choral polyphonic perception skills in students of cultural institutions during solfeggio classes] (Avtoref. Doctoral dissertation). Kyivskyi natsionalnyi universytet kultury i mystetstv. [in Ukrainian].
14. Poberezhna, H., Shcherytsia, T., (2004). *Zahalna teoriia muzyky* [General theory of music]. Kyiv: Vyshcha shkola [in Ukrainian].
15. Prykhodko, T. Motyvatsiia profesiinoho samovdoskonalennia vykladacha ekonomichnoho napriamku yak skladova yoho hotovnosti do pedahohichnoi diialnosti u vyshchii shkoli [Motivation for professional self-improvement of an economics teacher as a component of his readiness for teaching activities in higher education]. Retrieved from: http://www.economy.nayka.com.ua/?op=1&z=1011 [in Ukrainian].
16. Sybiriakova-Khikhlovska, M. (2007). *Formuvannia dosvidu spryiniattia polifonii u maibutnikh uchyteliv muzyky* : [Formation of the experience of perception of polyphony in future music teachers]. (Avtoref. Doctoral dissertation). Kyivskyi natsionalnyi universytet kultury i mystetstv [in Ukrainian].
17. Stepanova, L., (2011). *Metodyka rozvytku polifonichnoho slukhu molodshykh shkoliariv na urokakh muzyky* [Methods of developing polyphonic hearing of younger schoolchildren in music lessons] (Avtoref. Doctoral dissertation). Kyivskyi natsionalnyi universytet kultury i mystetstv. [in Ukrainian].
18. ChZhOU Siniui. Pedahohichni umovy formuvannia polifonichnoho slukhu maibutnikh uchyteliv muzychnoho mystetstva. [Pedagogical conditions for the formation of polyphonic hearing of future music teachers]. Retrieved from: https://pednauk.cuspu.edu.ua/index.php/pednauk/article/view/957/888 [in Ukrainian].

THEORY AND HISTORY OF CULTURE

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TERRITORIAL AND DEMOGRAPHIC TRADITIONS OF THE CHERNIHIV-SIVERSKYI REGION

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Abstract. The article presents a generalized analysis of the published national historical and theoretical historiography of the process of establishing the territorial and demographic traditions of the Chernihiv-Siverskyi population as part of Kyivan Rus. The territory of their settlement, demographic composition, evolution of the life and lifestyle of the northerners, which have become common traditions of the Indo-European peoples, are determined. The research methodology is based on the heuristic method of systematization of classical and modern scientific thought, historical, geographical, artistic historiography and archaeological sources, which formed the cultural direction of systematization of the reconstruction of the holistic process of the problem.

The main historiography to the topic was compiled by the editions of the classics of the historical school, which laid down the fundamental knowledge of social history and culture: from ancient times to medieval Ukraine-Rus, of which the Chernihiv-Siverskyi region was a component. An attempt is made to generalize the theory and historical practice of the transformation of the socio-cultural traditions of the Ukrainian population of the South-Eastern region on the basis of the created all-European and nationally original traditions of Ukraine-Rus. They laid common foundations for the life and livelihood of local tribes, the development of territories, agriculture, public organization, customary law, financial and trade relations, diplomacy, spiritual, cultural and artistic life. Because of the evolution of the development of the components of the Ukrainian nation, a historical transformation and socialization of the transmission of the main spiritual values from paganism to christianity took place. On these foundations, the national traditions of consolidating land allotment principalities – Kyiv, Chernihiv, Siver, etc. – have formed and entrenched; hereditary dynasties of the Riurykovych family, in particular the Chernihiv Olhovych, Davydovych; the corresponding composition of the population, characterized by the local climate, flora, fauna, which influenced the character and spirit of the people, proper names - ethnonyms, toponyms, hydronyms.

Key words: population, territory, northerners, livelihood, traditions, customs, Chernihiv-Siverskyi region.

Introduction. The relevance of the mentioned problem lies in the fact that, for the first time in cultural science, the dynamics of the sequence of formation of Ukrainian territorial and demographic traditions of the population of the Chernihiv-Siver region is analyzed on the basis of the achievements of the related sciences of domestic historiography, which constitutes an ancient, new, newest and modern point of view on the problem. The group of sciences adjacent to cultural studies is represented by historical and archaeological sources, including materials of congresses, conferences for jubilee dates, and historical events. Collective and author monographs stored in the funds of the National Library of Ukraine named after V. I. Vernadskyi, the National Library of Ukraine named after Yaroslav the Wise, in particular, the fund of rare and valuable books, old prints, are the priority carriers of scientific knowledge of the chosen topic. They compiled the culturological knowledge of the modern reconstruction of the historiographical heritage to the specified problem.

Main part. The origins of the scientific historiography of generalizing historical knowledge about the territorial and demographic features of the East Slavic tribes, including the Northerners,

were laid down by russian historians such as V. Tatyshchev in the work «Russian History» (Tatyshchev, 1963). According to the definition of the Institute of History of the National Academy of Sciences of Ukraine , it was the first publication where the author introduced the texts of «Ruska Pravda» and the Code of Law of 1550 into scientific circulation with «detailed author's scientific comments» (Yas, 2013). Works of V. Tatyshchev, according to O. Yas, «... laid the primary foundations of source studies, historical geography, topography, and ethnography» (Yas, 2013). It was due to his participation that the Ukrainian nation theoretically lost its historical territory, its demographic and ethnographic peculiarity, dissolving into the concept of the theory of the origin of the Russian nation from the history of the East Slavic tribes in the history and culture of Kyivan Rus. M. Karamzin in his work «History of the Russian State» (Karamzin, 1989) also used the history of East Slavic tribes, territory, and culture of Kyivan Rus to form his concept of formation and evolution, nation and statehood. «The history of Kyivan Rus was interpreted as a constituent part of the history of the Muscovite state, which coincided with the history of princely's and king's dynasties: the ancient period – from Riuryk to Ivan III ... etc.» (Udod, 2007). Also, «official Soviet historiography, denies the monarchical ideas of M. Karamzin». In the 21st century according to O. Udod, «Russian historiography continues to highly evaluate «History...», emphasizing its patriotic potential. (Udod, 2007).

The exceptional value of these works was and remains the historical knowledge of the specified authors about the territories of settlement of tribes, including the northerners, populace, life and livelihood, which for the first time in the Russian cultural tradition «began to sing the praises of wild nature – its wildness and sacredness». Ukrainian historiography was initiated by historians of the late 18th century under the name of «History of Little Russia», which, according to the modern historian I. Kolesnyk referred to «research of ancient Rus, which was conducted outside its borders under the «brand» of Russian history» from a dynastic point of view (Kolesnyk, 2000, p. 56). In her opinion, «the main idea of the works of historians was Ukrainian historical consciousness, ideas of national identity, which were reflected in reflections on the national character, the spirit of the Ukrainian people, observations on the relationship of the geographical environment with the state of the Ukrainian population, customs, appearance, habits and the livelihood of Ukrainians, which, together with history, formed folklore-ethnographic, antiquarian research, which was reflected in statistical, ethnographic studies, topographic descriptions» (Kolesnyk, 2000, p. 160).

This type includes the works of D. Bantysh-Kamenskyi, M. Markevych, Ya. Markovych, which became the first Ukrainian encyclopedic descriptions of events and facts of the territorial and demographic development of tribes and nationalities. About the political and socio-economic situation in the region, national character and customs, the construction of cathedrals and monasteries, literary monuments and folk customs of Ukrainian, which were described by D. Bantysh-Kamenskyi, are discussed in their investigations by modern historians V. Zamlynskyi, S. Pavlenko (Zamlynskyi, Pavlenko, 1995) and P. Tronko (Tronko, 2003). D. Bantysh-Kamenskyi writes about the formation of common traditions of a folk household nature that «the chronicler Nestor calls their settlements, (that is, tribes) hillforts, which were surrounded by a «wall», and sometimes strengthened by earthen ramparts. In battles, they did not wear breastplates, some entered battles even without shirts, sheltered from the cold under animal skins, loved music consisting of bagpipes, horns, pipes, divided the year into 12 months, giving each of them names according to the actions of nature» (Bantysh-Kamenskij, 1993, p. 2).

Publication of M. Markevych (Markevich, 1848) modern historian Zh. Totska defines as «a notable phenomenon in the development of historical and regional studies» (Totska, 2013, p. 59). Especially, in her opinion, the publications dedicated to the history of Chernihiv region «Sightseeing tracts in the Novgorod-Severskyi region» (Markevich, 1848), «Historical and static description of Chernihiv» in which the author described the city of Chernihiv, its geographical location, rivers, monasteries,

churches, buildings, fortifications, gardens, population, crafts, trade, education, city history, tracts and barrows.

Ya. Markovych, historian, archaeologist, geographer and ethnographer, collected materials and published the first part of the work «Notes on Little Russia, its inhabitants and works» (Markovich, 1798). According to I. Kolesnyh, «this is the first attempt to give not traditional military and political history, but the history of civil society, the inner life of the Ukrainian people, the study of the climate, the world of plants, animals, minerals, customs, clothing, character traits of the inhabitants, hydrographic and topographical descriptions» (Kolesnyk, 2000, p. 180). According to the modern historian N. Herasymenko, Ya. Markovych made an attempt to understand the problems of the ethnogenesis of the Ukrainian people, recognizing their autochthony, the national cultural and livelihood originality of the population of Ukraine, explaining the determining role of the natural and geographical factor in the formation of a person (Herasymenko, 2009).

Ya. Markovych himself considers the territory of the inhabitants of Ukraine-Rus to be the «cradle of the Rossi», while the ancestors of the «Rossi», in his opinion, were the Sarmatians, Scythians and Slavs who lived on the banks of the Dnipro. The author brings the description of the Old Age to the time of Yaroslav I. The second section is dedicated to the public system of Ukraine-«Little Russia». The Kyiv age is considered from the time of Oleg to Volodymyr I and the country is called Little Russia (Malorosiia), which was a single region. From the XI century it was divided into 3 principalities: Kyiv, Chernihiv, and Siver, and into «three lanes: North, South, Middle» (Markovych, 1798, p. 29), each of which had its own climate, labor production, and character. In particular, the Northern part was distinguished by the presence of territorial features of the land covered, by the author, «the black and red forest, this region is called Novgorod-Severskyi and the border districts of the Chernihiv governorship, lies between the rivers of the Dnipro, Desna, Besed, in the old days, tribes of northerners lived along the banks». Also described are the rivers Sula, Snov, Stryzhen, Seim, or by the ancient name «Sem» – i. e. (the 7th tributary of the Desna). Desna, according to the definition of Ya. Markovych was the second largest «riverine» (Markovych, 1798, p. 73).

On the right side of the Desna, as defined by Ya. Markovych, «is the «county» city of Novgorod-Siverskyi or simply Novgorod, founded by Grand Prince Yaroslav Volodymyrovych in 1045 and the province of Chernihiv, which are mentioned during the reign of Prince Oleg» (Markovych, 1798, p. 74). Ya. Markevych also describes the cities that belonged to the Chernihiv-Siverskyi region, such as Moromsk, Liubech, Kozelets, Pereslav, Romny, Hlynske, Lokhvytsia, Lubny, Starodub, Bereza, and others. The third section contains a physical description of these territories: «a healthy temperate climate, picturesque landscapes, fertile ground, a variety of industries, large and small rivers, large forests filled with game and animals» – all this, according to Ya. Markovych, gave the Poles a reason to call Ukraine «A land of milk and honey» (Markovych, 1798, p. 42). The main source of national welfare was agriculture. The fourth chapter of the work reveals the ethnopsychological features of local residents. According to the author, «the human spirit is a mirror of the environment of his ancestors, a miniature portrait of the country where it has mastered its home and life, and such people with a rich, generous climate and ground, hard work, hospitality, romanticism, could not be either Normans or barbarians» (Kolesnyk, 2000, p. 184).

Ya. Markovych considered the spirit or character of the Ukrainian people, as if anticipating the era of romanticism, from the point of view of such components as the national language, clothing, customs, and rituals. According to I. Kolesnyk, the researcher saw the imprint of a «happy» climate and «signs of the soul of its creators» in the language of Ukrainians. According to his conviction, «the Ukrainian language is a native language, gentle, pleasant, the «language of love», full of pathetic expressions, hypocoristic words. With great respect and love, he described Ukrainian folk songs, which always contained «magical words and pictures of nature, a simple and passionate expression

of love» (Kolesnyk, 2000, p. 184) The natural tendency of Ukrainians to the music he characterized as «Ukraine in Russia is the same as Italy in Europe» (Markovych, 1798, p. 58).

Academician M. Hrushevskyi laid down the fundamental knowledge on the determined topic in the multi-volume monograph «History of Ukraine-Rus» based on a wide source base, including the oral and written culture of the Rus people. M. Hrushevskyi in the first volume of «History of Ukraine-Rus» (Hrushevskyi, 1991) laid down the foundations of the scientific theory of the formation of the East Slavic ethnos and the identification of the territory of settlement of Slavs on the territory of Ukraine, using chronicles, archaeological excavations, data of Arab, Greek and Roman researchers, asserting, that Eastern Slavs are direct descendants of Ukrainians. According to his statement, the Eastern Slavic ethnos included Northerners, in particular he writes that «...to the east of the Polans on the left bank of the Dnipro sat the Northerners, who in his opinion are the largest Ukrainian-Rus tribe» and «...on the Desna River and along the Seim River and along the Sula River were called Siver» (Hrushevskyi, 1991, p. 193). This tribe occupied the area of the Desna basin and its upper reaches, which later belonged to the Smolensk region. Prince Volodymyr became a historical example of the development of the territory. At the end of the 10th century, to defend the borders of his principality from the Pechenegs, he «builds fortresses along the Sula River, puts a second line of defense behind it along the Trubizh River and the Seim River, and a third – along the Oster River and the Desna River» (Hrushevskyi, 1992, p. 313).

Chronicle sources, including the «The Tale of Bygone Years» (Chronicle of Rus, 1989) became the main source for the reconstruction of the geopolitics of Ukrainian-Slavicism, Kyivan Rus, including for M. Hrushevskyi. On the basis of chronicle data, he identifies the ethnographic territory of settlement, including the northerners, which was located «... in the basin behind the Dnipro, on the left bank, along the Desna, Seim and Sula» (Hrushevskyi, 1992, p. 313). In this territory, at the beginning of the X century, three important centers of the northerners, the cities Chernihiv, Pereiaslav, Liubech were formed, which were part of the unification of Kyivan Rus. Due to their ethno-Ukrainian characteristics, they became the northern fortposts of the Eastern Slavs. Later, according to M. Hrushevskyi «... XI century Pereiaslav becomes the center of the southern Sivershchyna, which is separated into a separate Pereiaslav principality. Chernihiv becomes the center of the northern Severshchyna, together with the neighboring territories of Radymychi, Vyatichi, and the Liubech city played a unifying role between the territories of Chernihiv and Radomytsia» (Hrushevskyi, 1992, p. 313). M. Hrushevskyi has pointed out that on the territory of Severshchyna, two powerful centers were formed, such as Pereiaslavshchyna i Chernihivshchyna, which did not have special differences in cultural and anthropological development. Until the 16th century in the Siver territory, there was «...a special local population with the tradition of the old name – the so-called Sevruks, in the forest and marshy regions of the middle Podesinnia, preserved its identity, although it was mixed with the neighboring Belarusian population» (Hrushevskyi, 1992, p. 134).

Current, i .e. during the period of M. Hrushevskyi's activity, «Podesinnia's Sivershchyna had a northern Ukrainian dialect with an archaic attraction, similar to the dialects of Kyiv Polissia, which clearly differs from the Posem and Posul dialects, created by more recent colonization» (Hrushevskyi, 1992, p. 134). According to M. Hrushevskyi, some varieties of the old Siver dialect, which was Ukrainian, were used in the dialects of the Podesinnia population «... and the fact that the northern part of the old Severshchyna is now covered with Belarusian dialects should not confuse us. The movement of the Belarusian population to the south could quite easily cover the northern borderlands. Thus, there is no reason to assume that the old settlers of Zadniprovia did not belong to the southern group from which the modern Ukrainian nation was formed» (Hrushevskyi, 1992, p. 133).

Deciphering the ethnonyms «siveriany», «siverci», «sivers», O. Plaksina connects their identity with the stage of cultural and ethnic development and their location in the all-Slavic community. Mastering the northern territories of Rus, the northerners, in her opinion, established themselves in

the upper reaches of the Desna, on the border with the northern Iranian population, as well as the Hungarians who lived in the forest-steppe between the Dnipro and Don rivers. The author of the work notes that «the extreme northern location of the northerners became the basis of their name» (Plaksina, 2016, p. 1–2). There is another version of the origin of the northerners from the term «black» which is related to the Greek tribes Melenkhlens, translated as «black cloaks» (Yanko, 1998, p. 384).

M. Popovych asserted that «the «Northern» tribe is of Iranian origin and for good reason because their territory extended to the confluence of the Visla and Niman rivers and the Baltic substratum population in the formation of the Iranian-speaking regions of the Northerners» (Popovych, 1999, p. 29). According to N. Kalnitska, the term «sever» comes from the Iranian word «seu» – black (Kalnitska, 2004, p. 9). A. Bodrukhyn adhered to the opinion that «Northerners got their geographical name from the river Siverskyi Donets» (Bodrukhyn, 2002, p. 7). M. Arkas attributed the tribe of the Northerners to the largest Ukrainian-Rus tribes, identifying the territory of hydronyms «... in the Desna River, along the rivers Suli, Seim... toponyms of the largest cities – Liubech, Chernihiv, Pereiasliv» (Arkas, 2015, p. 12). The Ukrainian affiliation of the northern tribes was determined by O. Terletskyi in the work «History of the Ukrainian State», saying that «the central tribe was the polans, to the east of them above the Desna lived the northerners, which was a logical result of the ancient Slavic colonization» (Terletskyi, 1923, p. 34). In his opinion, the northern tribes «represent the ethnic basis on which the Ukrainian nation was formed», and he considered Kyivan Rus to be «an old Ukrainian state...» (Terletskyi, 1923, p. 35).

The author of the work «History of Ukraine» T. Kostruba located the territory of the Northerners «to the north of the polans» in the present-day Chernihiv region, where, in his opinion, «a tribe of Ukrainian Northerners lived, bordering first with the Finnish, then with the Moscow tribes» (Kostruba, 1938, p. 12). S. Tomashivskyi also considered «Northerners to be the direct descendants of the Ukrainian population» (Tomashivskyi, 1919, p. 28). O. Yefymenko, pointed out that «Northerners, residents of the north... concluded their marriages on the playgrounds between local villages» (Efimenko, 1906, p. 9), who adhered to the characteristic features of the life and livelihood of the ancestral group, for which the family was the main a center of preservation of traditions.

Kh. Vovk confirms this rite: «Northerners went to playgrounds, danced there, played games, and each stole a woman with whom he was already in agreement about this, they had up to two or three wives» (Vovk, 1995, c. 222). In this era, stealing was already a form of relic, because it was practiced only with the prior agreement of the parties at meetings. This is a kind of marriage institution, because stealing girls was a practice among many ancient peoples. Unfortunately, no information about Northern's games, dances, and songs has been preserved. According to the collective monograph «Great History of Ukraine», «Northern games, dances and «devil's songs» are the oldest mention of a song on the territory of Ukraine» (Great History of Ukraine, 1993, p. 52).

In D. Samokvasov's work «Excavation of ancient graves and description storage and building of graves of antiquities», the author concludes that on the basis of his archaeological excavations, it is possible to confirm the data of the chronicles that such cities as Chernihiv, Pereiasliv etc. were the political centers of the tribes of northerns. Coins, a pagan burial method, and found treasures testify to economic relations with various tribes and countries. Household culture is represented by the remains of woolen and silk fabrics, earrings, pins, chain mail, dishes, keys, dice, yarn tools, grains, etc. Excavations at the Black Grave mound and the artifacts found there, namely, «a bronze image of a man (idol), two turkish horns, three iron helmets, three chain mails, swords, spears, two coins, gold, silver, bronze earrings, silver and gold pendants in the form of a crescent moon, beads and other things» in his opinion, then «the northerners were not as wild as the chronicle mention, but farmers» (Samokvasov, 1908, c. 20).

D. Doroshenko in his work «A Brief History of Chernihiv region» reports that «...the lands of Chernihiv region were inhabited by Northerners, one of the largest Ukrainian tribes or tribes of Rus»

(Doroshenko, 1918, p. 4). Referring to the chronicler, he specifies the territorial boundaries of the Severian tribes, in particular, they «...settled in the basins of the Desna and Seim rivers and called themselves «Sivers» (Doroshenko, 1918, p. 1). They occupied the territory of the Desna basin, the watershed of the Sozha and Desna rivers, separating the Notherns settlements from the Radymychi tribe, and the Oka river watershed from the Viatychi, and in the east the Dnipro River was the border from the Polans. To the south, as D. Doroshenko describes, «...the Northern settlements reached as far as the Sula River, and then there was already a large steppe» (Doroshenko, 2002, p. 12).

The scientist emphasizes «how the northerners settled around the time when the Kyiv state was founded, when Christianity began to come to Rus-Ukraine from Greece, i.e. in the 10th century» (Doroshenko, 2002, p. 13). According to the same author, «in the 9th century, the northerners had cities, the first of which is mentioned is Liubech» (Doroshenko, 1918, p. 3). In the toponymic dictionary, this period is associated with the historical event of the campaign of «Prince Oleg, who, going from Novgorod to Kyiv, captured Smolensk and Liubech in 882.» (Yanko, 1998, p. 384). D. Doroshenko reports that «in 907, the Prince of Kyiv concluded a trade agreement with the Greek emperor, in which he mentioned the cities of Kyiv, Chernihiv, Liubech, as such, obliged to pay tribute to the Greeks» (Doroshenko, 2002, p. 19). Also, D. Doroshenko, referring to the data of Ibn-Dast, informs about the Slavic traditions of the funeral rite, which is identified by a unique feature, in particular, «Rus merchants buried their comrades, together they put in the burial what was necessary for him in real life and livelihood and what, we still find during excavations», which distinguishes, as the author claims, «a certain way of life of the northerners of the 9th-10th centuries, an image of their culture» (Doroshenko, 1918, p. 16). According to the testimony of the same D. Doroshenko, «the Northerners did not have temples or idols, they prayed to their gods in the field, in the forest, they brought sacrifices to them – the spoils from their work from hunting, fishing, farming» (Doroshenko, 1918, p. 17).

Conclusions. So, on the basis of the available historiography, an attempt is made to generalize the theory and historical practice of the transformation of socio-cultural traditions of the Ukrainian population of the South-Eastern region on the basis of the created All-European and nationally original traditions of Ukraine-Rus. They became the basis for the formation of the Indo-European peoples, which included Ukrainian. From the theory and historical practice of the evolution of the development of public society, for almost all peoples and nations, the basis of the identity of the tribe, community, unions, and state formation were and remain, both in ancient times and in modern conditions of the ethno foundation. For many centuries, they were created and nurtured in the folk environment, passed down from generation to generation, continuously developed and at the same time kept certain stable features, which were established, spread, that is, became traditional. This traditional culture is closely connected with natural conditions, the historical existence of the people, their livelihood, activities, character, and psychology. It is expressed in various forms of material production - buildings, tools, crafts, clothes, food and spiritual component - customs, rites, traditional knowledge, works of art, works of oral folklor and written culture.

References:

1. Arkas M. (2015). Istoriia Ukrainy-Rusi. [History of Ukraine-Rus] Kyiv: Nash format, 464 s. [in Ukrainian].
2. Bantysh-Kamenskij D. (1993). Istoriya Maloj Rossii ot vodvoreniya slavyan v sej strane do unichtozheniya getmanstva.[The history of Little Russia from the settlement of the Slavs in this country to the destruction of the Hetmanate.] Kiev: Chas, 656 s. [in Russian].
3. Bodrukhyn V. (2002). Chernihivska zemlia-kniazivstvo: monohrafiia. [Chernihiv land-principality: monograph.] Luhansk : SNU im. V. Dalia, 132 s. [in Ukrainian].
4. Velyka istoriia Ukrainy: U 2-kh tomakh. (1993) Tom 1. [The Great History of Ukraine: In 2 volumes. (1993) Volume 1] Kyiv: Hlobus, 352 s. [in Ukrainian].

5. Vovk Kh. (1995) Studii z ukrainskoi etnohrafii ta antropolohii. [Studies in Ukrainian ethnography and anthropology.] Kyiv: Mystetstvo, 336 s. [in Ukrainian].
6. Herasymenko N. (2009). Markovych Ya. M. [Electronic resource]. Entsyklopediia istorii Ukrainy: T. 6: La-Mi / Redkol.: V. Smolii (holova) ta in. NAN Ukrainy. Instytut istorii Ukrainy [Encyclopedia of the history of Ukraine: Vol. 6: La-Mi / Editor: V. Smoliy (head) and others. NAS of Ukraine. Institute of History of Ukraine] Kyiv: Naukova dumka, 2009. 790 s. [in Ukrainian]. Access mode: http://www.history.org.ua/?termin=Markovich_Ya_M (access date: 29.09.2022)
7. Hrushevskyi M. (1991). Istoriia Rus: V 11t., 12 kn. Redkol.: P. Sokhan (holova) ta in. [History of Rus: In 11 volumes, 12 books. Editor staff: P. Sohan (head) and others.] Kyiv: Naukova dumka, T. 1. 1991. 736s. [in Ukrainian].
8. Hrushevskyi M. (1992). Istoriia Rus: V 11t., 12 kn. Redkol.: P. Sokhan (holova) ta in. [History of Rus: In 11 volumes, 12 books. Editor staff: P. Sohan (head) and others.] Kyiv: Naukova dumka, T. 2. 1992. 640s. [in Ukrainian].
9. Doroshenko D. (1918). Korotenka istoriia Chernihivshchyny. [A Brief History of Chernihiv region] Chernihiv: Vydavnytstvo «Siverianska dumka», 1918. 38 s. [in Ukrainian].
10. Doroshenko D. (2002). Korotenka istoriia Chernihivshchyny [Text] Pidhotovka do druku, vtsupna stattia ta prymitky O. Kovalenka, Chernihivska istorychna biblioteka. [A Brief History of Chernihiv region [Text] Preparation for printing, introductory article and notes by O. Kovalenko, Chernihiv Historical Library.] Chernihiv: Chernihivski oberehy, 71 s. [in Ukrainian].
11. Efimenko A. (1906). Istoriya ukrainskago naroda. [History of the Ukrainian people.] Sankt-Peterburg: Brokgauz-Efron, Vyp. 1. 391 s. [in Russian].
12. Zamlynskyi V. Pavlenko S. (1995). Bantysh-Kamenski. Istoriia Ukrainy v osobakh: XIX–XX st. [Bantysh-Kamenski. History of Ukraine in person: XIX–XX centuries.] Kyiv: Ukraina, S. 23–30. [in Ukrainian].
13. Kalnitska N. (2004). Formuvannia terytorialnykh volodin Chernihovo-Siverskykh kniaziv (druha polovyna XI – kinets XIII st.): istoryko-politychnyi aspekt : dys... kand. ist. nauk: 07.00.01; [Formation of the territorial possessions of the Chernihiv-Siver princes (second half of the 11th – end of the 13th centuries): historical and political aspect: dis... candidate. History Sciences (Ph.D.): 07.00.01;] Luhansk: SNU im. V.Dalia. , 202 s. [in Ukrainian].
14. Karamzin N. (1989). Istoriya gosudarstva Rossijskogo v 12-ti tomah. T. 1. Pod. red. A. Saharova. [History of the Russian state in 12 volumes. V. 1. edit. A. Sakharova.] Moskva: Nauka, 640 s. [in Russian].
15. Kolesnyk I. (2000). Ukrainska istoriohrafiia (XVIII-pochatok XX stolittia). [Ukrainian historiography (18th-early 20th centuries).]Kyiv: Geneza, 256s. [in Ukrainian].
16. Kostruba T. (1938). Istoriia Ukrainy. [History of Ukraine] Stanyslaviv: B. v., 1938. Kn. 2. Biblioteka tovarystva «Skala»; Ch. 14.: Slovianska Ukraina, 32 s. [in Ukrainian].
17. Litopys ruskyi. (1989). Per. z davnorus. L. Makhnovtsia; vidp. red. O. Myshanych. [Chronicle of Rus. (1989). Trans. from Old Russian L. Makhnovets; resp. ed. O. Myshanych] Kyiv: Dnipro, 591 s. [in Ukrainian].
18. Markevich N. (1848). Dostoprimechatelnye urochisha v Novgorod-Severskom uezde. Geograficheskie izvestiya. Vyp. 3. S. 87.[Sightseeing tracts in the Novgorod-Severskyi region. Geographic news. Issue. 3. S. 87]. [in Russian].
19. Markovich Ya. (1798). Zapiski o Malorossii, ee zhitelyah i proizvedeniyah. Ch. 1 [Notes on Little Russia, its inhabitants and works. Part 1] S-Peterburg, 98 s. [in Russian].
20. Markovich Ya.(1859). Dnevnye zapiski Yakova Markovicha. Ch. I. [Daily notes of Yakov Markovych. Part I.] Moskva: Tipografiya V. Gote, 535 s. [in Russian].
21. Plaksina O. (2016) Romenska kultura. Misto Yaroslavny № 2(34) 04.-05.2016. S. 1–3.[Romanian culture. The city of Yaroslavna № 2(34) 04.-05.2016. S. 1–3.] [in Ukrainian].
22. Popovych M. (1999). Narys istorii kultury Ukrainy. [Essay on the history of culture of Ukraine] Kyiv: «ArtEk», 728 s. [in Ukrainian].

23. Samokvasov D. (1908) Raskopki drevnih mogil i opisanie hranenie i izdanie. Mogilnih drevnostej. [Excavations of ancient graves and description storage and publication. Grave antiquities.] Moskva: Sinodalnaya Tipografiya, 24 s. [in Russian].
24. Tatyshchev V. (1963). Istoriya Rossijskaya. V 7 tomah.Tom 2.[Russian history. In 7 volumes. Volume 2]. Moskva-Lenigrad: Izdatelstvo Akademii nauk SSSR, 351 s. [in Russian].
25. Tomashivskyi S. (1919). Ukrainska istoriia: narys Stefana Tomashivskoho. [Ukrainian history: an essay by Stefan Tomashivskyi.] Lviv: Vchora i nyni. T. 1 : Starynni i seredni viky, 154 s. [in Ukrainian].
26. Tomashivskyi S. (1919). Ukrainska istoriia: narys Stefana Tomashivskoho. [Ukrainian history: an essay by Stefan Tomashivskyi.] Lviv: Vchora i nyni. T. 1 : Starynni i seredni viky, 154 s. [in Ukrainian].
27. Zh. Totska (2013). M. Markevych ta yoho kolektsiia dokumentalnykh materialiv z istorii Ukrainy kintsia XVI–XVIII st. U kraieznavchomu aspekti. Siverianskyi litopys. №1. S. 59–69. [M. Markevich and his collection of documentary materials on the history of Ukraine at the end of the XVI–XVIII centuries. In the local history aspect. Siver chronicle No. 1. P. 59–69.] [in Ukrainian].
28. Tronko P. (2003) Bantysh-Kamenskyi Dmytro Mykolaiovych. [Electronic resource]. Entsyklopediia istorii Ukrainy: T. 1: A-V. / Redkol.: V. Smolii (holova) ta in. NAN Ukrainy. Instytut istorii Ukrainy. [Encyclopedia of the history of Ukraine: Vol. 1: A-B. / Editor: V. Smoliy (head) and others. NAS of Ukraine. Institute of History of Ukraine.] Kyiv: Naukova dumka, 2003. 688 s. [in Ukrainian]. Access mode: http://www.history.org.ua/?termin=Bantysh_Kamenskyj (access date: 29.09.2022).
29. Udod O. (2007). Karamzin M.M. [Electronic resource] Entsyklopediia istorii Ukrainy: T. 4: Ka-Kom. Redkol.: V. Smolii (holova) ta in. NAN Ukrainy. Instytut istorii Ukrainy. [Encyclopedia of the history of Ukraine: Vol. 4: Ka-Kom. Editorial staff: V. Smoliy (head) and others. NAS of Ukraine. Institute of History of Ukraine.] Kyiv: Naukova dumka, 528 p. [in Ukrainian]. Access mode: http://www.history.org.ua/?termin=Karamzin_M (access date: 09. 29. 2022).
30. Yanko M. (1998). Toponimichnyi slovnyk Ukrainy: Slovnyk-dovidnyk. [Toponymic dictionary of Ukraine: Dictionary-reference] Kyiv: Znannia, 432 s. [in Ukrainian].
31. Yas O. (2013). Tatyshchev V. M. [Electronic resource] Entsyklopediia istorii Ukrainy: u 10 t. / redkol. V. Smolii (holova) ta in. NAN Ukrainy. In-t istorii Ukrainy. [Encyclopedia of the history of Ukraine: in 10 volumes / editor. V. Smolii (head) and others. NAS of Ukraine. Institute of History of Ukraine.] Kyiv: Naukova dumka, T. 10. T-Ya. [in Ukrainian]. Access mode: http://www.history.org.ua/?termin=Tatischev_V (access date: 09. 29. 2022).

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DEVELOPMENT OF CHINESE PIANO ART OF THE 20TH CENTURY IN THE CONTEXT OF ADAPTATION OF WESTERN INFLUENCES

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Abstract. The article examines the national and cultural factors influencing the development of Chinese musical culture, with a focus on the integration of genres and forms within the international context. The study aims to provide a comprehensive overview of the main trajectories of Chinese musical culture, particularly piano culture, as a conceptually integral national phenomenon. The research methodology employs historical, structural-typological, and comparative-analytical methods. Through the research process, it was discovered that the creation of a unique system of musical thinking in China relies on adapting external influences to the national artistic representation and aesthetics, shaped by a global perception. Among composer's approaches, arrangement and cyclicity emerge as the most specific types of thinking, facilitating the harmonious integration of traditions with modernization and the incorporation of Chinese music into the global context. This research opens up prospects for analyzing the piano heritage from the perspective of musical anthropology.

Key words: Chinese musical culture, Integration, Piano culture, National phenomenon, Modernization, Musical anthropology.

Introduction. Modern musical culture appears as a multifaceted mosaic structure, where vectors characterizing small forms in the systemic discourse of their functioning acquire special importance. National and cultural factors, which today are in close international relations, also remain an important aspect here. The latter is due to the fact that genres and forms that are integrated into the international musical space acquire the characteristics of one or another country and form a content-wise new layer of genre diversity. Any musical organization assumes a certain form, formation, style, as well as species specificity or genre. It is this specificity that often allows the musically organized system of sounds to be attributed to a particular national segment or figurative system. Chinese musical culture forms a distinctive segment of China's overall artistic development, which justifies the possibility of considering genre specificity from the standpoint of a coded cultural-national mentality. China is one of the most captivating countries currently drawing the interest of musicologists.

Main part. More and more musicologists, art historians, and cultural scientists are exploring various aspects of Chinese music, including O. Roschenko and O. Markova who delve into Chinese opera, instrumental and ensemble music; G. Karas who focuses on the professional music of Chinese national origins; O. Samoilenko who explores the psychology of Chinese music; L. Kiyanovska and I. Lyashenko who study arrangements and transcriptions of Chinese composers; and V. Moskalenko who examines the performance and interpretation of piano works.

Theoretical investigations into the forms of Chinese music have been conducted by S. Ship, and additional research can be found in the works of S. Eisenstad and others. Moreover, there has been a recent increase in activity among Chinese researchers in the study of their own culture. Among them, notable figures include Wang Anyu and Wang Lishan, who focus on the formation and development of the history of Chinese musical culture; Liu Xiaolong, Liu Fuan, Liu Chi, and Zhao Xiaosheng, who specialize in piano art; and Bai Ye, Wang Ying, Wang Chendo, Wang Yuhe, and Wei Tinghe, who conduct personified studies of Chinese musical heritage.

The analysis of these sources, it becomes obvious that although the universalizing-generalizing approach contributes to the holistic understanding of Chinese musical art, there is also a need to highlight the peculiarities of Chinese music through certain specifics of the concept, which consists of genres and forms. This study aims to address this need by outlining the specifics of form formation in Chinese piano music of the 20th and 21st centuries. Therefore, the **purpose of the study** is a comprehensive review of the main vectors of the development of Chinese musical culture, in particular piano culture, as a conceptually integrated national phenomenon.

Research methodology. The study involved a thorough analysis of a significant number of sources, which brought to light the key issues requiring investigation. These include analyzing Chinese musical art from the perspective of conceptual formation and identifying the variation cycle as the predominant form of musical expression. The research methodology employs historical, structural-typological, and comparative-analytical methods. This approach enables the identification and analysis of specific concepts regarding Chinese piano music, focusing on its formation and composition with respect to form and genre.

Results. The 20th century intensified the process of dialogue and fruitful interaction between Chinese culture and the European academic musical tradition. As in European musical culture, in Chinese, there is a stratification of the epochal style system into a number of subsystems – stylistic directions, which is connected with the general trend of strengthening individual and national art of the 20th century. Piano music by Chinese composers offers a fertile ground for studying the encoding of national culture in musical genres for several reasons. Firstly, a significant amount of such music has been accumulated over the past century, dating back to 1915 when the first works by Chinese composers for this instrument appeared. This rich historical heritage allows for the identification of certain genre-specific features.

Secondly, through the lens of music composed for the European piano, one can vividly trace the creative approach of Chinese composers in working with both national and non-national materials. The influence of Chinese musical traditions has distinctly shaped the piano style of composers from the People's Republic of China, presenting intriguing challenges for study.

Thirdly, exploring different stylistic directions in Chinese piano music serves as a means of promoting and popularizing the piano heritage of national composers. As a result, there arises a need to examine musical genres as specific components of national culture, analyzing the content encoded within them.

In the piano work of Chinese composers, the difference in stylistic directions is determined mainly by reliance on certain traditions or musical-aesthetic concepts. That is why the piano music of Chinese composers is the most fertile material for study. Until now, a fairly significant amount of it has been accumulated, which is due to the century-long history of piano music in China, starting from 1915 – the time of the appearance of the first work of a Chinese composer for this instrument. This allows you to identify certain commonalities and features at the level of style and certain genres. Chinese musical culture was certainly created in the East-West symbiosis, which led to certain differences in the structure of musical thinking. As O. Markova points out, «Eastern art is quite closed, in which for several centuries no new genre formations similar to traditional cyclical forms emerged, while European professional art created an open system that showed the ability for further evolution and genre modification» (Markova, 1992: 113).

At the same time, the piano compositions by Chinese composers emerge as a complex synthesis of national traditions intertwined with elements from non-national artistic cultures, leading to the emergence of new traditions based on this fusion. The national style, representing a conceptual system of common features inherent in the folk and professional creativity of a nation and nationality (Markova, 1992: 26), manifests itself in individual works and the creative expressions of specific composers across various directions.

It is evident that the foundation for this artistic creation lies in national traditions, which significantly influence the organization of musical material, i.e., the musical form. In Chinese piano art, composers heavily draw upon the rich reservoir of folk song creativity. Genuine examples of folk creations have survived to the present day and are actively incorporated into the works of composers from the 20th and 21st centuries, particularly in the realm of piano music

According to Ma Wei, Chinese piano music experienced significant development in the first third of the 20th century (Ma Wei, 1994: 24). This growth was influenced by European interest in the culture of the East. A notable example is C. Debussy's work «Pagodas» from the series «Estampes», which was inspired by an exhibition showcasing traditional Chinese musical instruments. Chinese composers started composing for Western Europe, incorporating their own intonations while integrating European musical and figurative elements into their art.

It is essential to emphasize that the fundamental characteristic of Chinese music, which has always been preserved and still endures, is its connection with national intonations and, most importantly for its form structure, its association with poetic art. This specificity has naturally influenced all existing musical forms today.

Dong Guangjun points out that in Chinese musical form, analogous to Chinese poetry, specific developmental components such as «qi, chen, zhuang, he» (起承转合) can be distinguished. The researcher explains that these terms denote particular stages of poetic form development. «Qi» represents the beginning of the presentation, «chen» signifies an increase in conflict, «Zhuang» denotes a decisive moment in the conflict, and «he» signifies its completion. These elements have been transformed into the musical form as follows: exposition, a traditional presentation of the theme, character, and images (qi 起); the approval of the theme with possible changes (cheng 承); development and elaboration of the theme (zhuan 转); and ultimately, the conclusion (he 起) (Dun Guantszyun', 2013: 22).

It is derived from this that there exists a connection with the traditional European form structure and composition, which was influenced by Aristotle. However, it is crucial to emphasize that improvisation, which was transferred to professional music from folk music and directly from Chinese poetry, is considered a distinct feature that has influenced the development and style of Chinese music

Improvisation, as a characteristic feature of China's national tradition, has had a significant impact on all traditional form-forming components. As a result, the boundaries of the form are not as clear-cut as in European music, and the form no longer solely dictates the composer's intention but instead creates the conditions for a multifaceted and multidimensional interpretive approach. In comparison to European music, Chinese music does not express hierarchical subordination between themes in a clear manner. Distinguishing between primary and secondary themes can be quite challenging. The gradual unfolding of the artistic image through thematic contrast is practically absent. Instead, the renewal of material and its development are often achieved through changes in metrotempo or by incorporating features of another genre within the same intonation material. In contrast to European forms, the principle of «comparing intonationally close material» is more prevalent here rather than the idea of «revealing something new» (Li Tsziti, 2004, 265).

Musical intonation bears the imprint of its time, making musical practice a repository of numerous archetypes that importantly reflect the social and national existence of individuals. Anthropological understanding of culture posits that it encompasses all aspects of human existence, distinguishing human society's life from that of nature, and includes both rational and irrational elements. The evolution of the anthropological approach to interpreting culture has led to a fragmentation of the concept into various ideas, each reflecting individual aspects and manifestations of culture. Among these aspects, we find the existence of intonation dictionaries of a particular era or of specific composers. However, there is also an attraction to certain genre spheres that organize a set of into-

nations into particular forms. This attraction to genre spheres characterizes the norms of musical thinking that contribute to the richness of musical perception, complementing the intonation dictionary of a given era.

Indeed, music is deeply connected to the culture of humanity. In philosophy, music exists as a metaphorical concept, and human music, performed at its highest level, seeks to imitate the music of the cosmos, as stated by T. Kablova. Music embodies both illogicality and spontaneity, and beyond this seemingly opposite connection, it becomes a metaphorical model not only of the cosmos but also of consciousness (Kablova, 2015: 24-26).

The development and formation of Chinese piano culture have followed a complex path, primarily due to a specific relationship with the piano itself, which was introduced by missionaries in the 17th century and did not immediately assimilate into Chinese musical culture. The first Chinese piano works emerged at the beginning of the 20th century. Interestingly, romanticism became the preferred style among Chinese composers. This choice is justified by the fact that romanticism allowed the preservation of national identity while gradually incorporating European instruments into their compositions. Chinese composers' attraction to European romantic aesthetics and elements of romantic language, evident since the early stages of national piano art in the 1910s and continuing until the late 1970s, can be attributed to the shared aesthetic aspects between Western European musical romanticism and Chinese national thinking and cultural traditions (Barnard, 2000: 67). This shared connection is exemplified in tendencies towards programming, cyclicality, and reliance on folk song and folk dance origins.

The works of the first composers of the 1910s-1930s – Zhao Yuanzhen (piano program miniatures «Peaceful March» – 1915, «About Chen»– 1917, «Children's March» – 1919, «Wedding March» – 1928, «Two-part invention» – 1930), Xiao Yumei (piano pieces: Nocturne op. 19 – 1916, «Mourning Prelude» – 1916, «New Fairy Dance» – 1923, Li Shuhua «Art revolution» – 1929, «Spring Dream on the Lake» – 1928, «Memory» – 1932 – in fact, imitation of works of romantic (partly classical) style.

According to their genre, they gravitated towards program music that was not burdened by a complex form. The reflection of the romantic-impressionist genre, which is manifested primarily in the titles of the works, their ideological inspiration, is also essential. That is, at this stage, there is an appeal to the visual association, which is an imprint of the information encoded in the name regarding traditional images, including those of a national character (Byan′ Men, 1996: 42-48). That is, there is an appeal to a special sphere of society's life, a manifestation of its spiritual and material culture, which is traditional folk culture and collective creativity of groups or individuals, determined by the hopes and expectations of society.

In accordance with improvisation in music, as a national tradition of China, which is rightly pointed out by Yan Chzhykhao, in his logical development, Chinese composers, creating examples of piano culture, begin to turn to attempts to reflect elements of national imagery in piano works, which is actually the origin of national oriented line of romanticism (Yan′ Chzhykhao, 2018: 16-18). Its essence consists primarily in turning to the European genres of piano music of the Romantic era and singling out the most relevant to the possibilities of improvisational ideas. Thus, among the most popular in the 1930s and 1940s were the following suites: «Chinese Suite» – 1934 Liu Xueyang; «Spring Journey» – 1945 Ding Shande; sonata and sonatina – Sonata b-mol, Ma Xitsuna; Sonatina – 1940, Jiang Wenye; Variations – Variations on a Chinese Folk Theme –1948 by Ding Shande. The genre of the piano concerto also aroused some interest in the composition community: in the 1930s and 1940s, concertos by Jiang Wenye – 1936 and Zhang Xiaohu – 1945 were created. But these were far from perfect in terms of artistic and compositional works, which at present have only preserved their historical significance. It can be argued that the appeal to cyclicity is becoming the most popular in creativity. Yes, the tendency to cyclicity, so characteristic of the European miniature of the 19th

century, becomes a characteristic feature of the work of composers of the PRC in the 1950s and 1970s (Chu Wanghua, Huang Anlun, Li Yinghai, Huang Huwei, Wang Jianzhong), when due to the political attitudes of the Chinese authorities, the influence of Western art was almost completely eliminated. If the formation of cycles in European music of the 19th century is explained by the «relative fragmentation, incompleteness of the romantic miniature» (Markova, O. 1990: 29), then in the work of Chinese composers, the merging of miniatures into a cycle contributes to the desire to imagine the world of musical images in all its diversity. Especially the influence of European classical-romantic art is expressed in form-creating means: this is evidenced by the use of simple and complex two- and three-part forms, variations, rondo.

The fact that avant-garde, as a European genre, entered Chinese piano culture in the 1980s is significant. Composers such as Chen Yi, Zhou Long, Tang Dong, Chen Qigang, Cao Guangping, Yao Henlu, Liang Lei, Chen Xiaoyun, Gao Ping, and others explored cyclicality in music. These composers represented various trends and approaches that engaged in a dialogue with both European and Chinese musical traditions.

Some composers, like Chen Yi and Zhou Long, embraced neo-folkloric trends in their works. Others, like Chen Qigang, delved into post-avant-garde phenomena. Additionally, different avant-garde currents actively utilized serial and serial techniques, sonorics, and aleatorics.

However, despite these diverse influences, many Chinese composers, including Tang Dong, turned to specific forms like the cycle «Eight Memories in Watercolor» and the Piano Concerto with Orchestra «Huanghe», created collaboratively by Yin Chengzong, Chu Wanhua, Liu Zhuang, Shi Shuchen, Shen Lihong, as well as a transcription for piano and orchestra of the cantata «Huanghe» by Xian Xinghai. Moreover, a significant number of cycles with diverse nature and genre content exist, indicating that Chinese musical culture encodes its content not merely within separate genres but rather through the cyclical nature of various musical forms.

It can be said that the musical form, which forms genre specificity as a compositional integrity, is a static concept that is unconscious relative to historical existence, and on the other hand, due to the ubiquity of use, which is determined by national traditional factors, as well as programmed images, acquires the character of a code of cultural identity. This allows us to say that cultural codes are symbolic in nature. This is also justified by the fact that the vast majority of Chinese music is programmatic, that is, it appeals to human thinking and consciousness.

Accordingly, in Chinese piano music, we find that Chinese composers preferred genres that best corresponded to their artistic and figurative ideas, aesthetics, and way of thinking. As a result, several types of genre imagery have dominated Chinese piano music at all stages of its development:

– cheerful, optimistic marching songs;

– energetic collective dances;

– contemplative landscapes, often tinged with elegiac shades (programmatic pieces, bucolic compositions;

– heartfelt lyrical songs, including love songs and lullabies;

– bravura gesticulations, showcasing strength and dexterity (etudes, toccatas);

– demonstrations of the composer's ingenuity and skill, as seen in inventions, fugues, and variations.

However, it is rare to find expressions of dramatic conflict, tragic images, or extreme mental states (such as fury, ecstasy, apathy, etc.) in Chinese piano music. Even in sonata compositions, thematic contrast rarely reaches the level of psychological conflict.

The modern piano work of Chinese composers represents, in the terminology of S.Tishka, the «stage of expansion» of the European tradition into the space of traditional Chinese culture. At the same time, the path of synthesis of expressive means of Chinese and European music, sketchily outlined at the early stage of the development of the genre branch of piano music by such authors as He Luting, Huang Qi, Ding Shande, has become more and more fruitful in recent decades.

According to Li Tsziti, a characteristic feature of Chinese music is the appeal to «ancient Chinese chants with poetic text», which allows more concretely determining the directions of development of musical thought (Li Tsziti, 2004: 228). It would be logical to assume that this significant development of arrangements among Chinese composers stems from their projection on folk song art. As Bian Meng points out in his work dedicated to the study of the formation and development of Chinese piano culture, «most often the authors themselves cannot accurately determine the type of intra-genre modification, because, firstly, they are closely related to each other and, in many respects, echo each other, and secondly, they represent a real creative process at their essential core, comparable in character to the work of composition itself» (Byan′ Men, 1996: 64).

Arrangements created by composers could differ from the original works, for example, in terms of structural or genre parameters. However, a prerequisite for piano arrangements was the renewal of the artistic form, such as its metrorhythmic aspect, based on the original characteristic features of the work. The genre of arranging in China has risen to an unprecedentedly high artistic level, involving not only the processing of well-known melodies but, first and foremost, the creative mastery of the traditions of national musical folklore. This enriches the expressive potential of the piano, its texture, and sound palette.

Conclusion. One of the main trends in the development of Chinese piano music is the expansion and elaboration of the European romantic genre system, which acquires a new interpretation within Chinese musical culture. Initially, Chinese composers mastered a limited number of piano genres from European professional music, including preludes, variations (often based on folk themes), programmatic pieces, and suites of miniatures.

Over time, the range of genres incorporating "foreign" material has significantly broadened, leading to greater diversity. This approach has contributed to the creation of a unique and distinctive component of Chinese piano culture, characterized by the prominence of cyclical genres with romantic elements. These cyclical genres have enabled the representation of the national mentality at a new level. Each of these techniques reflects the peculiarities of China's national musical tradition and signifies a distinct philosophical understanding of reality, different from that of Europe. The prospects of this research may be the derivation of the specified characteristic features as a code of the mentality of the nation, which from the standpoint of musical anthropology creates conditions for studying the creation of works as an imprint not only of the imagery laid down by the author, but as a carrier of immanent features of a historical and social nature, which in the case of Chinese music is decisive for mastery and analytical scientific explorations.

References:

1. Barnard, Alan. (2000) History and Theory in Anthropology. Cambridge: Cambridge University Press, [in English].
2. Bian Meng. (1996). The Formation and Development of Chinese Piano Culture, Beijing: "Chinese Music" Publishing House, 1996. [in Chinese].
3. Dun Guantszyun'. (2013) The form of qi, chen, zhuang, he in music and how it is used. *Huanghe's voice (21).* Chanji: Faculty of Music of Chanji College. No. 21. P. 1–4. [in Chinese].
4. Kablova, T. B. (2015) Zolotyy peretyn yak kompozytsiynyy pryntsyp transmirnosti v muzychniy kul′turi [Golden Section as a compositional principle of transcendence in music culture]: monohrafiya. Kyyiv : NAKKKiM. [in Ukrainian].
5. Li Tsziti. (2004) An introduction to the analysis of structure in Chinese music. Beijing: Publishing House of the Central Conservatory, 588 p. [in Chinese].
6. Ma, Vey. (2004). Kontseptsiya formy v muzyki Kytayu ta Yevropy: aspekty kompozytsiyi ta vykonavstva [The concept of form in the music of China and Europe: aspects of composition and performance]: dys. … kand. mystetstvoznavstva: 17.00.03. Odesa [in Ukrainian].

7. Markova, O. (1990) Intonatsiynist′ muzychnoho mystetstva: naukove obgruntuvannya ta problemy pedahohiky [Intonation of musical art: scientific substantiation and problems of pedagogy]. Kyiv: Muzychna Ukrayina [in Ukrainian].
8. Wāng, Yùhé. (2005) History of modern Chinese music. Beijing. 377 p. [in Chinese]
9. Yan′, Chzhykhao. (2018). Typolohichni osoblyvosti obrobok, aranzhuvan′ i transkryptsiy u fortepianniy tvorchosti kytays′kykh kompozytoriv [Typological features of arrangements, arrangements and transcriptions in the piano works of Chinese composers of the XX – early XXI centuries]. Lviv. [in Ukrainian].

THEORY AND INNOVATIONS OF PSYCHOLOGY

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THE 4X4 MODEL OF ORGANIZATIONAL CULTURE: A CRITICAL ANALYSIS OF THE THEORY AND JUSTIFICATION OF AN ALTERNATIVE OPTION

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Abstract. Purpose: to reasonably form an interdisciplinary model of organizational culture that will take into account a number of requirements and purposefully focus on the possibility of practical use.

Methodology: the modeling method was applied to fill with the content the hypothetical graphic model of organizational culture through the analysis of the interdisciplinary interpretation of the organization and the synthesis of the systemic and logical structure.

Findings: the model is hypothetical and after appropriate empirical and static studies with the following corrections, a conclusion can be made about the possibility and expediency of its application in practice.

Originality: an interdisciplinary approach using a systematic modeling method is the latest of scientific attempts to substantiate graphically organizational culture as a scientific concept and a phenomenon important for practical application.

Key words: organizational culture, interdisciplinary systemic approach, hypothetical graphic model.

Introduction. The theory of organizations and organizational culture includes a huge amount of various concepts and other related theoretical, practical and applied means for explaining, substantiating and managing these phenomena. A number of publications can be presented in this direction. Though, according to the results of feedback from management and HRM practitioners, it seems that the theory does not help them much in such matters (InContext; HR-liga; Harvard Business Review). The activities of recognized authorities in these fields are aimed at prolonging the «usefulness» of their ideas in various ways. At the same time, these ideas are characterized by the lack of clearly critical attitude. Therefore, the question of a critical fundamental review of the existing scientific theory regarding the organization, its various aspects, with a decisive focus on the suitability of its application in practice, is rather urgent. It should be noted that organizational culture can be considered as one of the fundamental phenomena of the organization existence and the promising direction of improving its professional functioning.

Literature review. The idea of this hypothetical model has been under development for about two years. A significant number of concepts of organizational culture in the Western European and North American scientific and information spheres was analyzed by prominent scholars (Schein, Sagiv & Schwartz, Homburg & Pflesser, Allaire & Firsirotu, Hatch & Cunliffe). Its representatives (Constantine, Hofstede, Cameron & Quinn, Ouchi, Handy) are very well-known in Eastern Europe, but somehow forgotten in the mentioned above spheres.

A review of the examined publications on real critical analysis (Krzyworzeka, 2012; Petriglieri, 2020) shows that there is still an authoritarian, traditional type of research that inhibits the processes of forming alternative ideas, among which something more powerful and suitable for practical application can be created. Thus, attempts of a descriptive nature to justify a rather complex phenomenon,

which is a professional organization and its culture, on the basis of a certain factor, testify to the existence of the long-lasting surface-level research. In the publications of 2021, the scholars (Isac *et al.,* 2021) highlight the results of applying the Cameron-Qween method to research the peculiarities of organizational culture at such global giants as Microsoft and Google. The methodology was developed on the basis of two classification criteria (flexibility-stability and orientation to the internal or external environment). The obtained results can state something abstract only in a general form. At the same time, this technique is developed on the basis of an approach that describes distortions or deformations of organizational processes. This approach is clearly outdated and does not meet the needs of practice.

In the collective publication (Dauber *et al*., 2012) the authors reproduce another attempt to create a model of organizational culture based on the analysis and combination into a single whole according to the most optimal structure of certain components using the configurational approach. The scientists talk about the need to apply an interdisciplinary approach to the development of a theory and model of organizational culture. However, this is not observed either in the text of the article or in the picture. Ideas from management, which have only taken shape in its components such as decision-taking, strategy and procedural components of management, are clearly dominant. It should be mentioned that an attempt was made to determine the role of internal and external environment, to single out such new components as legitimization and tasks. This option is obviously not capable of sufficiently improving the situation with practice-oriented theory. The most critical problems of this model are that there is no explanation of the content of organizational culture, as well as its external and internal components.

Around that time, another article was published with the idea of proposing a variant of organizational culture (Moon *et al.,* 2012), which is explained through the boundaries of three interpersonal motives: autonomy, competence, and cooperation. However, this attempt is even more inappropriate because of the attempt to involve one factor in the explanation of a rather voluminous phenomenon. But, researchers of motivation as a professional phenomenon Michael T. Lee, Robyn L. Raschke (2016) noted that the ideal situation is positioned in scientific publications on motivation. However, in practice, theories of motivation are imprecise, especially when it comes to specifying both causal conditions and outcomes. They tend to be even more vague when it comes to show how causal conditions relate to outcomes. Therefore, theorists develop only general lists of potential relevant causal conditions that moderate and/or mediate a broad definition of what has been found in competing theories of motivation. Such models are symmetric by design, and correlation is a measure for drawing conclusions based on general patterns of association, which is not sufficient in practice.

It is appropriate to add that management representatives try to apply a metaphorical approach to defining organizational phenomena. Thus, the article reviewing research on «teal organizations» (Wyrzykowska, 2019) indicates further efforts to conceptually explain the organization through metaphorical comparisons, in this case with colors. But this has already happened more than once, and the key problem of this approach is too much abstraction. When it is necessary to implement such concepts in practice, many implementation issues usually arise. It can be argued that within one management, numerous attempts to find the essence through intuitive-subjective choices have led to a dead end and therefore can be considered as a wrong path.

It should be noted that empirical research is dominated by the correlational strategy, which is limited in the potential depth of scientific research. Thus, recent publications are attempts to investigate purely staff involvement as a factor of organizational effectiveness (Zeidan and Itani, 2020), staff satisfaction with organizational activities (Isac *et al.,* 2021). Several hundred correlational studies, followed by critical generalization, must be conducted in order for a real shift to occur through the substantiation of a sufficiently valid theory. Therefore, for now, questions about what an organization is in an interdisciplinary sufficiently complete and most expedient interpretation remain relevant.

So, the problem in the theory of organizational culture is that they try to investigate some part of the phenomenon with a superficial understanding of the key features of the whole - the organization as an average professional social group. Management in independent attempts to obtain a sufficient result here is doomed to failure. Presented theories in management tend to move away from explaining the content of organizational culture towards its connections with other components of the organization's functioning, and the need to investigate the structure is often not discussed. Also, there are problems with empirical data due to their excessive subjectivity, which is a key drawback of all attempts. Therefore, there is a need for real application of an interdisciplinary approach to the study of complex socio-professional phenomena, which are formed by a person and their central component are people, namely organizations and their cultures.

Justification of the «4x4» model of organizational culture. The interdisciplinary content of an organization as an average social professional group is the basis of the ideas of the organization interpretation from the position of isomorphism in biology (De Geus, 2004; Meyer and Davis, 2007; Konovalov, 2016), management (Adizes, 2004; Lehman, 2017), organizational theory (Morhan, 2006; Monastyrskyi, 2019) and psychology, which gave rise to the following conclusions: an organization is considered as an average social group formed as a result of the realization of the phylogenetic ability of people to unite to achieve the effect of synergy in the interest of meeting various needs in the conditions of life in a certain environment, to distribute functions in a joint activity (which is a prerequisite for the formation of a structure) and thereby realize the possibility of the physical and mental existence of each of its participants. The basis of the existence of the organization is the idea of achieving certain results of activities that are important for the environment due to sufficient competitiveness to use its resources (material and intellectual). The environment is a large social group, which along with its characteristics (economic, political, social, ethnic, religious, intellectual and educational, and others) determines the peculiarities of the formation and development of organizations. Organizations have their basic characteristics and structure, which expresses and realizes their ability to be sufficiently adaptive in their environment. The basic characteristics are certain key qualities, properties, processes, formation of the organization, which determine its adaptive potential and is derived from the idea of creation (place and functional role in the environment), the most optimal forms, ways, methods of practical implementation of the idea through the joint activities of its members.

Thus, as a result of the interdisciplinary approach to the peculiarities of organizational culture, certain sufficient ideas were formed at the level of insight (enlightenment). A structure of organizational culture was developed. It was named «4x4», which means 4 parts and 4 levels. At the same time, the analysis of the publications of Fried (2020) regarding the formation of the theory and model, as well as the concept of culture as a versatile phenomenon by Munch, R. and Neil J. Smelser (1993) contributed to the determination of the following signs and criteria for the formation of this model of organizational culture:

– something artificially created, has a certain purpose, is needed for something, is valued in this group;

– exists as a certain potential or property of the organization, does not depend on the situation;

– exists for a certain time as a formed and fixed phenomenon, which can still be inherited in full or in part;

– each element must have a place in the system, hierarchy and perform a certain function;

– connections and relationships between elements and structures must be taken into account;

– central elements are very stable properties of the organization;

– elements of the model must be specific and understandable phenomena for the possibility of using the model in practice;

– the model should not be subject to corrections or refinements due to the type and features of the environment, but should have the universality of parts and components, their interrelationships and mutual influences;

should include mechanisms that are related to the static and changing organizational culture.

The content of the model. The main components of the idea which can claim to be called a hypothetical model of organizational culture «4x4» is presented in Figure 1. At this time, and taking into account examples of the use of this form (Hatch, 1993; Hatch and Cunliff, 2006; Meyer and Davis, 2007; Moon *et al.,* 2012), the circle seems to be the most appropriate one. Its parts are defined as material, social, spiritual and informational sectors. The main basis of this version of the model is its systemic nature, in which the structural elements are relatively separated according to certain criteria, have certain connections and subsystems or elements. Also, the model should help to enable top managers to understand in detail the most appropriate option of organizational culture in each individual case and to effectively and purposefully influence the formed organizational culture.

Sectors in the model are considered equivalent. This fact creates the possibility of their autonomous research, as well as in interaction with some or with all sectors. Thus, there are enough varia-

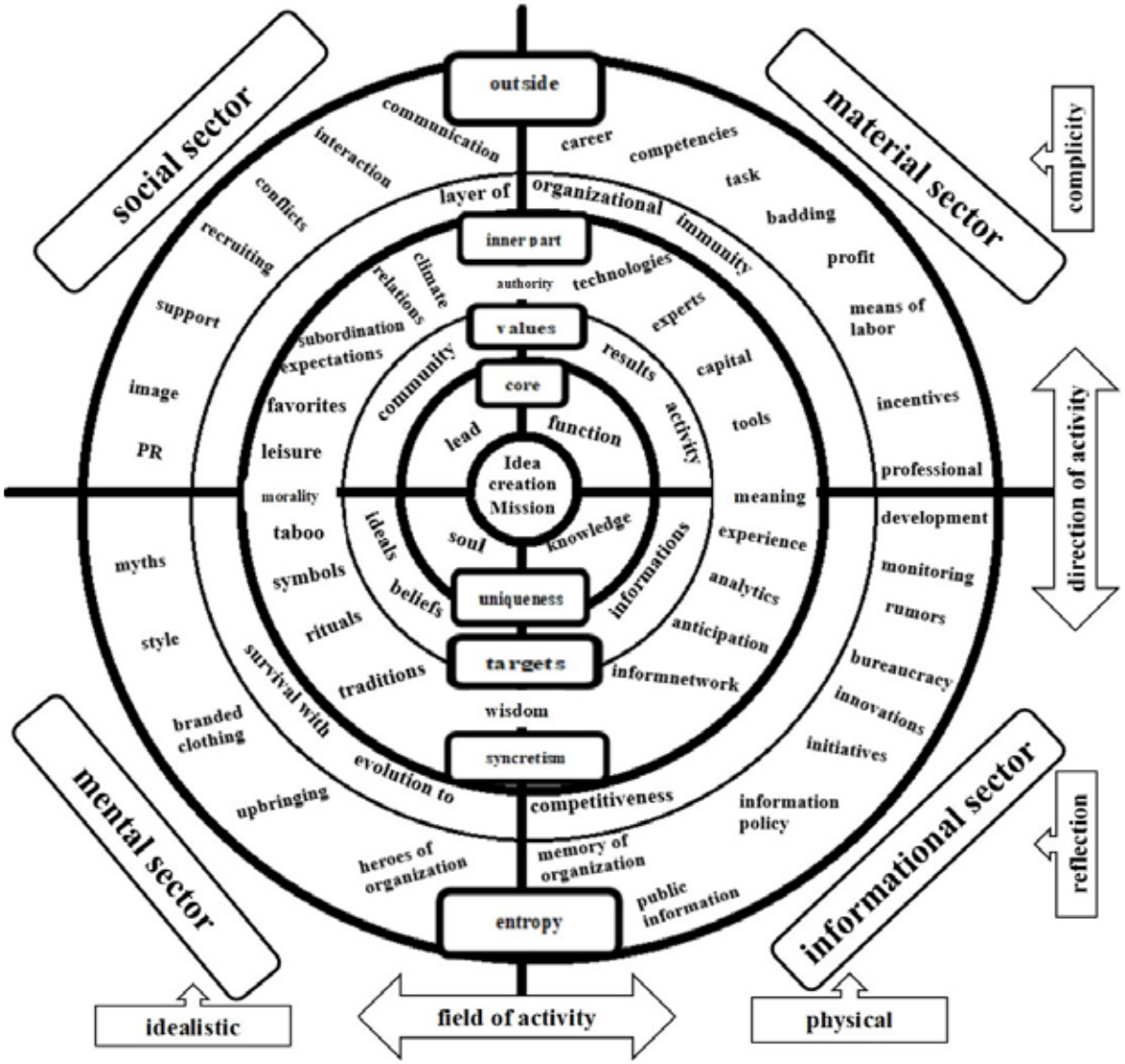

Figure 1. Hypothetical model of «4x4» organizational culture

tions to combine and this increases the chances to describe, explain, analyze and form a large number of phenomena that exist in various forms and manifestations of the organizational culture system.

Source: author's own elaboration.

Regarding the material sector and the expediency of its inclusion in the model, it should be noted that the idea of considering the material component in its pure form in the structure of the organizational culture has rarely been encountered in management. Thus, Schein (2010) included architecture, physical environment, technology and products, works of art, and style embodied in clothing as cultural artifacts. His idea did not find further constructive continuation in the form of empirical research. It was possible to find a material component in the structure of the model of corporate culture in Nadeiko's papers (Nadeiko, 2019). The author probably turned to the interpretation of the concept of «culture» in general and substantiated corporate culture as a very complex, multifaceted, dynamic phenomenon that includes material and spiritual in the behavior of the organization in relation to subjects of the external environment, as well as own employees. According to the scholar's point of view, it is a system of material and spiritual values, manifestations that interact and are inherent in the corporation, express its individuality, perception of oneself and others in the social and material environment, manifests itself in behavior, interaction, perception of one's own and the environment. In addition to the expediency of singling out the material sector, it is worth noting that a very large number of organizations aim to produce important and to some extent necessary for the environment very diverse material products. Not all of them are important and necessary, which indicates certain shortcomings in the functioning of the organization.

Social sector is singled out separately due to the fact that an organization is a social group with a focus on a certain type of professional activity, which is decisively filled with social properties. Among recent articles, a collective publication can be singled out that characterizes the content of this sector in general terms (Steffens *et al.,* 2021). At the same time, the theory of management and organizations has many attempts to include the phenomenon of leadership in organizational culture. And since culture is a property and characteristic of a certain human community, further ignoring the social aspect in organizational culture, at least as a hypothetical component, will continue to cause the effect of partial fragmentation and non-compliance with the principles of the system method.

Mental sector in its numerous variations, representations and names is presented in all attempts to justify organizational culture. It seems that the very large number of publications on the spiritual component of culture has diluted this concept to a very abstract and inflated meaning. However, it can still be said that spirituality in the organization has a good chance of being one of the four sectors. Surely, this is one of the most conservative sectors, which should ensure the presence of stable, sacred, special phenomena for every supporter of some organizational culture.

Informational sector is suggested as the last and fourth sectors, although there were no such clear proposals yet. Or at least such ideas could not be found in publications. However, it will probably be very difficult to do without the information sector in the organizational culture during the information age. At the same time, in some publications scientists have given quite thorough hints that the informational component is quite promising (Merlo, 2017). However, there were no ideas to bring the information to the status of a full-fledged sector. But, this is a hypothetical model in which nothing bad will happen if such an attempt is implemented in the future. Therefore, it is the information sector that is the biggest innovation in the proposed structure of organizational culture. This requires confirmation and arguments.

The second «4» in the name of the model is worth considering as it contains a characteristic of deep levels of culture. Certainly, in the Figure 1, 4 circles with thicker lines are clearly seen, which hypothetically and still abstractly indicate the idea of a center and further centrifugal layers of organizational culture. The ideas presented in the articles by Lehman (2017), Van Knippenberg (2020), Steffens *et al.,* (2021) served as the basis for developing the next part of the model.

The mission or the idea of creating an organization is considered as the most important and central part of organizational culture. The mission (idea of creation) in the model is understood as the fact that any organization should take its place in the environment, implement a certain task, act in order to provide or deliver the necessary things, products, services, personnel, knowledge, technologies, security to the environment and much more that any small or super large community of people needs. Of course, many will consider profit as the basic idea of creating a commercial or business organization. However, an organization with such a mission will not grow to at least some kind of organizational culture. Yes, perhaps due to this fact, there is such a world statistic that 9 out of 10 newly created organizations cease to exist within 1–2 years. It is likely that a purely profit orientation and a very superficial vision of one's potential place in the environment, which lays down the idea of creation that can grow into a mission, causes such total failures of start-ups. Therefore, the mission in the organization and its culture according to this model occupies the central place. This is the first of four levels that can be considered basic.

The next layer and, accordingly, the level according to depth in the model of organizational culture is the «core». The lower part of this layer is marked with the term «uniqueness». Therefore, the embedded idea in the model indicates the possibility of acquiring a special unique (or typical) organizational culture due to the features of its core. Also, for each of the sectors, through numerous attempts and brainstorming, the phenomenon that best relates to that part of the model was determined. Thus, the concept of «function» took the core layer of the material sector, which, according to the model, reflects the content of activity in material terms with an unquestionable orientation to its result as a fairly clear function. It goes without saying that this part of the core culture must come from the mission and define the further outer layers.

According to the social sector, the content of the core defines «lead» as a phenomenon that should be oriented to social and psychological processes both within the organization and in the environment outside it. Certainly, here the key role is played by the leaders of the organization, who, due to their status and relevant authority, can not only significantly contribute to the performance of the mission and function, but are also dependent on them and other parts of the core. The latter will be explained later. This part of the core is oriented and responsible for intragroup and intergroup processes that activate motives for joining the organization.

The spiritual sector in the core is represented by the concept of «soul», which most accurately reflects the content of this component of organizational culture as a certain organizational shrine, special organizational ideas. The term «ideology» has been used in this part of the model for a long time, but it has since been replaced. And it is not a fact that the replacement of terms was completely expedient. However, this phenomenon must exist under the sufficient influence of the mission, due to which it will be filled with the meaning of existence in the organization, the meaning of the activity, and the inspiration for it. It cannot be said that soul depends on lead or function. Or one cannot assert his unquestionable dominance over them. It seems that these parts can be balanced enough to accomplish the mission, and their successful combination has the potential to significantly influence the quality of organizational culture.

It remains to consider the core of the information sector, which is characterized by the term «knowledge», an alternative to which was «experience» for a long time. Both terms denote the information accumulated within the organization, which is necessary for the high-quality and effective performance of the mission. At the same time, the meaning of this part of the model is that the lead, soul or function should request the necessary information of sufficient quality and reliability. Without this function, the sector becomes unnecessary, that determines the specifics of organizational culture in certain cases. In this case, it may indicate to the pathology of the organization. Because of the ability to analyze and produce the most successful solutions with a mission orientation, knowledge or experience is an important part of the core. And through such

an example, its purpose and connections with other parts of the nucleus and the center can be explained.

Further from the center of the model is situated the third layer of organizational culture, which is designated as «inner part». The possibility of dividing the organizational culture into «inner part» and «outside» has been indicated in several attempts with adequate arguments (Hatch and Cunliff, 2006; Dauber *et al.,* 2010). Therefore, such ideas should not be ignored, as they are potentially useful for better justification of the model.

The «inner part» layer can also be characterized by the concept of «syncretism» as a combination or fusion, a complex manifestation or use of self-sufficient or even incompatible and incomparable phenomena, ways of thinking and views. The possibility of using «syncretism» and «entropy» in the existence and activity of organizations is sufficiently argued in publications on the biological direction of organization theory. Therefore, another potentially useful idea of the model lies in the plane of using phenomena that are widespread in many spheres of life, and it is through «syncretism» that it is possible not only to explain, but also to bring to a certain level of perfection the mechanism of combining the material, social, spiritual and informational sectors into a sufficiently integrated system. Thus, it is reasonable to assume that the inner part not only combines various phenomena and important components of the organization in its culture, but it is also a conservative, stable, traditional component of culture. This part of the culture should have everything that has been tested for benefit and safety, is important enough for the functioning of the organization through this layer of its culture.

Attention should also be paid to such an inner part element, which is the «values» layer. It is not allocated to a separate layer, but is a component close to the core. According to another, lower component, this layer is defined as «targets», since quite often in publications, these concepts in organizational culture are treated as interconnected, equivalent phenomena. Values and targets as an element of organizational culture are presented in almost all theories, concepts, and models. At the same time, values, targets were described a lot, and an excessive number of classifications according to various criteria were proposed. At this time, it is difficult to concretely and confidently offer values and/or targets for the sectors selected in the model in a few words. However, it is worth trying, as useful and successful ideas and suggestions may come later.

Thus, for the material sector, the option «results» and «activity» is possible, which only outlines the possible content of this part of the model. The main idea of this part is to specify the most valuable and targeted when performing the function corresponding to the activity for achieving the mission. For the social sector, filling through such a concept as «community», which includes many other qualities and characteristics, may be quite likely. However, this phenomenon as a concept currently has the most reason to be considered as a value and a target for the social sector. Of course, there are no limits to improvement and a more appropriate concept can be found. Such phenomena as «ideals», «beliefs» fit quite well to the mental sector. It is these concepts that are chosen to sufficiently accurately and voluminously characterize the content of this part of the model. In the information sector, it was not possible to offer something particularly original, and therefore the relevant phenomenon «information» has been used here as an important component of modern reality, which can serve as a value and a target at the same time.

Much attention should be paid to the main layer of the inner part. This functional element of the model should serve as the basis of real syncretism. In order to fill this and subsequent layers in a guaranteed and balanced way, it is extremely important to use the experience of people who are professionally engaged in this field and can fulfill the role of an expert. One experience here will not be enough. Therefore, it is possible to speak with confidence about the real and high-quality filling of further layers after an appropriate field study with the involvement of experts. And at this stage it is only appropriate to express the results of our own impressions about the possible content and

certain elements of the model under the correction of the conducted brainstorming with persons who expressed relevant opinions.

The most likely filling of the inner part by material sector can be «tools», «technology», «masters», «capital» and other phenomena important for the organization. More phenomena are proposed for the social sector: «climate», «formal and informal relations», «favorites», «expectation», «leisure». Such phenomena as «influential power» or «authority» can be placed between the material and social sectors. The spiritual sector is proposed to be filled with such concepts as «taboo», «characters», «rituals», «traditions». The zone between the social and spiritual sectors can be filled with «morality» as a related concept. Last was the information sector, which it is proposed to fill with «analytics», «information exchange», «planning», «anticipation», «solutions». In addition, the boundary between the information sector and the spiritual one is occupied by «wisdom», and the material one by «meaning of work». In this way, the idea of the internal part of the model of organizational culture was characterized.

In the further presentation of ideas, it is necessary to dwell in detail on the layer, which is proposed to be defined as «layer of organizational immunity». This part of the model has its own functional purpose. Thus, experience indicates that in some organizations there is something like immunity, which prevents the penetration of something potentially dangerous into important parts of organizations, filters attempts by external agents to influence the organization. Many organizations do not have this characteristic feature, that is why not only the result and activity suffer, but also the existence of the organization is threatened. And the peculiarity of this layer may be to have an opportunity for the organization and its culture to have purely beneficial external influences. Therefore, this layer can also be characterized as «survival with evolution to competitiveness». Immunity is a metaphorical concept. However, it is possible to apply isomorphism by analogy with the human body or other highly developed species with immunity. At the same time, this phenomenon is appropriate in order to use such a characteristic of organizational culture as a strength to fill it with content. This is the most hypothetical construct in the model, as nothing similar has been found in scientific and practical publications. Therefore, it is only possible to propose and mark the appropriate type of immunity for each sector. And then, through field research and the expert method, confirm, partially confirm or refute such a hypothesis and remove this detail from the model.

The last thing left is «outside», which also has such a key property as «entropy». It denotes instability, loss of order, imbalance in the system. In biological theories (Konovalov, 2016) regarding the content of the organization, this is one of the central concepts. Entropy is also known as the natural tendency to lose order in a system. Therefore, it is better to control such a tendency in the organization and its culture. Such part of the model is necessary in order to be able to clearly find out and understand in practice (perhaps also in theory) those agents of influence from the outside or in the external part that are useful for maintaining normal relations with the environment for obtaining necessary, new and promising resources. And also in order to find out those phenomena with which you can experiment, but very carefully filter through immunity. They can be those spheres of activity that are most in contact with the environment and allowed into the inner part of the culture only in a transformed form under the control of immunity and taking into account the mission.

Therefore, it is proposed to include such phenomena as «PR», «communication», «image», «conflicts», «recruiting», «proactivity», «interaction», «support» as hypotheses for «outside» by social sector. Between social and spiritual sectors it would be reasonable to place such notions as «mass media», «site», «booklets». Spiritual sector may include «form of clothing», «personal development», «patronage», «upbringing», «heroes and myths of the organization». This sector borders on the information sector due to the phenomenon of «organization memory», and the information sector itself is filled with such concepts as «public information», «monitoring», «quality, access and completeness of information», «bureaucracy», «labor organization», «innovation», «initiatives», «rumors». The

material sector borders on the informational phenomenon of «professional development» and the social «organizational style» and can hypothetically be filled with «means of work», «incentives work», «profit», «adaptation» or «badding», «quality tasks», «career».

Not all of the listed phenomena are indicated in the graphic model. This is due to the fact that its content in sectors and parts can be significantly adjusted in the process of sharpening the model. This may especially apply to «inner part» and «outside», which can only be hypothetically suggested now. It is planned to test the hypothesis in the future through a survey and an expert method.

Two more elements, which are the scope and direction of activity (idealistic and physical, reflection and participation), are proposed as filling in the ideas of this model. These phenomena hypothetically seem suitable and useful in order to further implement empirical research with mathematical processing of statistical data. It should be a clearly proven in reality model.

Conclusions. The proposed model of organizational culture «4x4» can currently be considered as one of the theoretical ideas. However, the difference lies in the application of an interdisciplinary approach, within which the search for scientific ideas in various sciences, their analysis and selection, and an attempt to critically involve the graphic model are carried out. The model can serve as an alternative approach so that scientific achievements in the humanitarian sphere of the organization functioning have more practical and realistic results. Currently, the model contains purely hypothetical constructs, which with a high probability may remain in it after empirical research. Especially «inner part» and «outside» require the participation of specialists in correcting their content. At the same time, it was not grounded that other parts of the model are perfect. It is the study of reality through obtaining information about the experience of practitioners and experts that can be the basis for transforming this model into a tool suitable for use. The perspectives of this model are focused precisely on the practical assessment of the existing organizational culture, understanding of the mechanisms of its functioning in each situation. Achieving this goal can significantly increase the effectiveness of managing organizational culture as a complex but important phenomenon of organizational activity.

References:

1. Adizes I. (2004). Managing Corporate Lifecycles: Complete Edition. *Adizes Institute Publications.* 460 p.
2. Dauber, D., Fink, G. Yolles, M. (2010). A Generic Theory of Organizational Culture. *Southern Management Association Meeting*. https://ssrn.com/abstract=1744040
3. Dauber, D., Fink, G., & Yolles, M. (2012). A Configuration Model of Organizational Culture. *SAGE Open*, *2* (1). https://doi.org/10.1177/2158244012441482
4. De Geus A. (2004). The Living Company. Growth, Learning and Longevity in Business. https://www.amazon.com/Living-Company-Learning-Longevity-Business/dp/1857881850
5. Fried E. I. (2020). Theories and Models: What They Are, What They Are for, and What They Are About. *Psychological Inquiry: An International Journal for the Advancement of Psychological Theory. 31 (4).* https://www.tandfonline.com/doi/full/10.1080/1047840X.2020.1854011
6. Hatch, M. J. (1993). The dynamics of organizational culture. *The Academy of Management Review. 18 (4).* 657–693. https://doi.org/10.2307/258594
7. Hatch, M. J., Cunliffe, A. L. (2006). Organization Theory: Modern, Symbolic, and Postmodern Perspectives (2nd ed.). *New York: Oxford University Press*. http://pu.edu.pk/images/journal/IAS/PDF/7-v3_1_18.pdf
8. Isac N., Dobrin C., Raphalalani L. P., Sonko M. (2021). Does organizational culture influence job satisfaction? A comparative analysis of two multinational companies. *Review of International Comparative Management. 22 (2).* DOI: 10.24818/RMCI.2021.2.138
9. Konovalov O. (2016). Organisational Anatomy. A manager's guide to a healthy organization. *Cambridge Scholars Publishing.* https://www.cambridgescholars.com/product/978-1-4438-8885-1

10. Krzyworzeka P. (2012). Kultura organizacyjna – ślepa uliczka teorii organizacji. *Management and Business Administration. Central Europe.* 1. 72–81. https://www.academia.edu/3035633/Kultura_organizacyjna_%C5%9Blepa_uliczka_teorii_organizacji
11. Lehman D. W. (2017). Organizational Cultural Theory and Research Administration Knowledge Management. *Society of Research Administrators international. The Journal of Research Administration. 2 (48).* 52–66. https://eric.ed.gov/?id=EJ1161988
12. Merlo T.R. (2017). Knowledge management technology: human computer interaction & cultural perspective on pattern of retrieval, organization, use, and sharing of information and knowledge. *Knowledge and Performance Management.* 1(1). 46–54. DOI: 10.21511/kpm.01(1).2017.05
13. Meyer Ch., Davis S. (2007). It's Alive: The Coming Convergence of Information, Biology, and Business. *M. Dobraia knyha.* https://www.management.com.ua/books/view-books.php?id=46
14. Michael T. Lee, Robyn L. Raschke. (2016). Understanding employee motivation and organizational performance: Arguments for a set-theoretic approach. *Journal of Innovation & Knowledge. 1(3).* 162–169. https://www.sciencedirect.com/science/article/pii/S2444569X16000068
15. Monastyrskyi H.L. (2019). Teoriia orhanizatsii: pidruchnyk. 2-e vydannia, dopovnene y pereroblene. *Ternopil. Krok.* http://dspace.wunu.edu.ua/bitstream/316497/37776/1/Teoriia%20orhanizatsii%202019.pdf
16. Moon H., Quigley N. R., Marr J. Carson. (2012). How interpersonal motives explain the influence of organizational culture on organizational productivity, creativity, and adaptation: The ambidextrous interpersonal motives (AIM) model of organizational culture. *Organizational Psychology Review. 2(2).* 109–128. DOI: 10.1177/2041386611433085
17. Menidin N. D. (2014). Morgan's Images of Organizations Analysis. International journal of innovative research & development. Vol. 3. Issue 13. https://www.researchgate.net/publication/277477383_Morgan%27s_Images_of_Organizations_Analysis
18. Munch, Richard, and Neil J. Smelser. (1993). Theory of Culture. *Berkeley: University of California Press*. http://ark.cdlib.org/ark:/13030/ft8q2nb667/
19. Nadeiko, M. M. (2019), "The enterprise system corporate culture theoretical foundations", Efektyvna ekonomika, [Online], vol. 11, available at: http://www.economy.nayka.com.ua/?op=1&z=7449 (Accessed 15 Jul 2023). DOI: 10.32702/2307-2105-2019.11.178
20. Petriglieri, G. (2020). F**k Science!? An Invitation to Humanize Organization Theory. *Organization Theory*, 1(1). https://doi.org/10.1177/2631787719897663
21. Schein E. H. (2010). Organizational Culture and Leadership, *4th Edition. Jossey-Bass.* https://ia800809.us.archive.org/14/items/EdgarHScheinOrganizationalCultureAndLeadership/Edgar_H_Schein_Organizational_culture_and_leadership.pdf
22. Steffens, N. K., Munt, K. A., van Knippenberg, D., Platow, M. J., & Haslam, S. A. (2021). Advancing the social identity theory of leadership: A meta-analytic review of leader group prototypicality. *Organizational Psychology Review*, *11*(1), 35–72. https://doi.org/10.1177/2041386620962569
23. Zeidan S., Itani N. (2020). Cultivating Employee Engagement in Organizations: Development of a Conceptual Framework. *Central European Management Journal. 28 (1).* 99–118. DOI: 10.7206/cemj.2658-0845.18
24. Van Knippenberg D. (2020). Meaning-based leadership. *Organizational Psychology Review. 10(1).* 6–28. DOI: 10.1177/2041386619897618
25. Wyrzykowska B. (2019). Teal Organizations: Literature Review and Future Research Directions. *Central European Management Journal. 27 (4).* 124–141. DOI: 10.7206/cemj.2658-0845.12

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THE IMAGE OF SERVICEMEN WITH DISABILITIES IN UKRAINIAN ONLINE MEDIA: PROBLEMATIC AND THEMATIC ASPECT OF PUBLICATIONS

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Abstract. The article examines the problematic and thematic aspect of publications in Ukrainian online media about military personnel who became disabled as a result of the Russian-Ukrainian war, classifies the messages by topic and identifies legal, social, medical, rehabilitation, psychological and educational aspects; the problems that most often concern this category of people are identified. The study uses the methods of analysis, classification, synthesis, monitoring and statistical calculation. The author emphasizes the conflicting attitudes of the state, Ukrainian society and the media towards servicemen and women with disabilities caused by war. The positive attitude of the state and medical professionals towards them and their glorification in the media correlates with the bureaucracy of state institutions, disrespect for the military, for volunteers with disabilities, lack of digitalization and proper information, poor quality medical services, extortion of bribes for granting disability status, negligence and unpreparedness to work with the military, and inaccessibility to various institutions, lack of systematic modern rehabilitation, which forces Ukrainian military personnel to travel abroad to receive quality treatment and prosthetics, a paucity of publications on psychological and educational topics, ambiguous attitudes in society, as people have not yet been able to develop a culture of communication with people with disabilities, and a lack of information in the media. It has been found that in some media there is a tendency to increase the number of publications about servicemen who have received disabilities as a result of the Russian-Ukrainian war, while in some publications there is no such tendency.

Key words: servicemen with disabilities, conflict, media, online media, Russian-Ukrainian war, state, Ukrainian society.

Introduction. As a result of the outbreak of the Russian-Ukrainian war in 2014 and the full-scale invasion on February 24, 2022, the number of people with disabilities is constantly increasing. Before the war, the official figure noted in open sources was 2.7 million Ukrainians. At present, during hostilities, the authorities do not name their number. According to Minister V. Lyashko, «the number of amputations has tripled on average compared to previous years» (Kovalevska Ye., 2022), «From February 24, 2022 to March of this year, almost 10,000 people applied for prosthetics. Among them, only 680 soldiers. Others – 9118 people – are civilians» (Kovalevska Ye., 2022).

Since such situations are known in history (for V. Gordienko, G. Gordienko, S. Philips, V. Fefelov, etc.), when the authorities tried to more or less financially provide the military with disabilities at the end of the war, but did not care at all about their integration into society, in particular, even got rid of them physically (the island of Valaam), Ukrainian society should not allow repetitions and should constantly monitor this process at the state, public, and media levels. The goal is to explore what problems of the military, who received a disability as a result of the war, are raised in the media, what are the topics of these publications, what is emphasized.

Methods. The study used methods of analysis (publications about the military with disabilities were analyzed and it was established what problems are most often raised in the media regarding the military who received disabilities as a result of the war), classification (publications were analyzed dispersed by thematic aspects), synthesis (based on the study of publications, a holistic substantiation

of the state of informing the public about the military with disabilities), monitoring (purposefully monitored publications about the military with disabilities in the indicated publications), statistical calculation (publications about the military with disabilities were counted in order to show conflict in the media).

Main part. According to the Law «On the Status of War Veterans, Guarantees of Their Social Protection», the status of a person with a disability as a result of the war is received by «persons from among the military personnel of the active army and navy, partisans, underground workers, workers who have become disabled as a result of injury, concussion, mutilation, diseases received while defending the Motherland…» (Khto nalezhyt do osib z invalidnistiu vnaslidok viiny?). We understand that, first of all, this person must be protected both at the social and legal levels, since he defends the independence of Ukraine at the cost of his own life and health.

Accordingly, in order to legally protect a person with a disability as a result of the war, on the pages of the media, lawyers provide a detailed list of actions and documents that will help in the decision to obtain this status: the legal possibilities of the individual, documents, the passage of a military medical and medical and social expert commission, etc. d. (Novak A., 2022; Yak veteranam oformyty invalidnist, 2023). In addition, the site «ArmyInform» refers to the receipt of a lump-sum allowance in the event of a disability to a soldier. This happens only after the certificate of the MSEC (medical and social expert commission) is provided. A special nuance is that «the established disability must be associated with the performance of military service duties or a deterioration in the health of a serviceman without a disability, which occurred as a result of an illness or accident that occurred during his military service» (Berezynskyi I., 2022). With a clear commentary by a lawyer, information on cash payments and the necessary documentation is posted on the TSN website in the publication by P. Zaits «Payments to the military for injury or disability: how to receive monetary compensation». Similar information can be found on the pages of the publication «Left Bank», which is provided by the deputy of the Verkhovna Rada D. Maslov. For example, we are talking about the amount of the payment: «the third group of disability is about 570 thousand hryvnia, the second group is 680 thousand hryvnia. With the first group – almost a million hryvnias» (Maslov D., 2022). In addition, there are gaps in the legislation on increased assistance, since it is received by those defenders whose health has been deteriorating for two years. But there are different situations, and health problems appear later, so the deputy proposes to eliminate this social injustice.

In order to receive one-time assistance, military personnel with disabilities must prove that they have a disability. Journalist Irina Ukhina calls this process a «bureaucratic hell for the military», which has been functioning for a long time and creates significant obstacles for the military after they receive a disability: “Wounded servicemen of the Armed Forces of Ukraine, while collecting documents and passing through military medical commissions, face endless queues and bureaucracy [32]. This issue is raised by Masi Naem, who was injured and lost an eye: «Queue lines and sometimes unfriendly attitude are not the only things that wounded soldiers face. The most difficult thing is to understand what documents you need to collect in order to apply for disability, receive a lump sum cash payment for injuries, leave for health reasons or additional rehabilitation means» (Ukhina I., 2023). With his assistance, a legal navigator was launched for wounded servicemen, where the following information was collected: «evacuation and transportation for treatment, treatment and a certificate of the circumstances of the injury, passing the military medical commission, treatment abroad, establishing a disability group in the MSEK and receiving one-time financial assistance» (Ukhina I., 2023).

Changes in this system, N. Nay believes, will help develop respect from civilians and the state in relation to the military. This problem is also highlighted on the pages of the Okna media resource in an interview with N. Naem, where he concludes that there is no culture of granting disability to the wounded in the Ukrainian space: «Then these approaches were Soviet with the humiliation of human dignity in principle. There was no philosophy. Now we want to create a certain philosophy, because

in society we have a feeling of great gratitude to the military. That is, now there is a moment when past mistakes can be corrected» (Brenzei Ya., 2023). The introduction of a legal navigator with the assistance of Masse Naema is mentioned in the Facts publication «Legal navigator for wounded soldiers. Masse Nayem on how to overcome the bureaucratic hell when applying for disability. The headlines in the publications speak for themselves on this issue "The problems with obtaining UBI status for thousands of our defenders have already gone beyond common sense. Many give up» (Cherniev Ye., 2023). Since quality medical services are not always provided to the military who have received injuries and disabilities, human rights activist Lyubov Galan and military man Masi Nayem created the Princip center. According to them, «the organization will first of all ensure that the state treats military personnel with dignity, who risk their lives and lose their health for its sake. We will ensure that the military is provided with services, in particular medical services, of high quality and with respect» (Voitiuk T., 2023). The publication raises the following issues: lack of knowledge about the actions that await the fighter and his family after being wounded; lack of escort of a wounded soldier abroad; sometimes extorting bribes while passing a commission to confirm their disability; failure to receive full rehabilitation and return to «zero» in this state; problems with the medical system, lack of digitalization, which is why the military is forced to stand in lines for days. One of the servicemen, Miroslav Otkovich, noted: «There is nowhere to sit down – you stand against the wall. Many guys are seriously injured. There are no information boards on which a list of documents should be written with which you need to go to the surgeon» (Voitiuk T., 2023).

The problems associated with the work of MSEK and VLK and their imperfect work are raised in the publication «The burnt warrior, miraculously survived, still cannot receive a disability». At the same time, it is noted that the military man is the father of three children, and his wife is a military man who has been defending Ukraine for a year. According to her, she was shocked by the attitude towards the military and spoke about the lawlessness that occurs in the medical and social expert commission ... Why did we go to this war? So that they can now take out our brains like this? (Obpechenyi voin, shcho dyvom vyzhyv, dosi ne mozhe otrymaty invalidnist, 2023). This is not a subjective opinion, since the publication contains the opinions of different military men and each of them confirms the lack of respect for the military when receiving a disability, corruption, and the bureaucracy of the system: «It's a pity that this is not an isolated case. The guys fought, got injured, and then they still prove that they were there and really suffered. ... We must bow at the feet of these guys. ... My heart bleeds when I see guys with amputations or on crutches in the queues in the offices, «Fellows complain about the shameful attitude towards them, corruption. Some are simply «chased» for half a year: they review documents for 3-4 months, then they are sent for aftercare, and in the end, they are refused» (Obpechenyi voin, shcho dyvom vyzhyv, dosi ne mozhe otrymaty invalidnist, 2023).

Thanks to media publicity, the military and journalists, firstly, try to make life easier for the military with disabilities by providing the list of documents that they need to establish disability, and secondly, they keep abreast of changes in the medical examination, since this process humiliates the dignity of the military since Soviet times, respectively, this needs to be changed.

The violation of the rights of people with disabilities is the restriction of their movement, the inaccessibility of premises, transport, etc. In order to find out the opinion of the military, who received a disability during the hostilities, regarding the accessibility of cities and suburbs, journalists conducted a survey and established the following. So, for example, in Lviv, servicemen complain about inaccessibility, the inability to reach their destination. S. Kostyshin, sergeant of the 24th mechanized brigade, his right leg was amputated, notes: «When you ride a wheelchair on the sidewalk, you can't always get off it. ... When I came to Lviv in a wheelchair for rehabilitation with my wife, the two of us could hardly cope with normal movement, and when I was left alone, I drove 20 meters from the house and realized that this was unrealistic, I returned on a crutch» (Varenyk N.). This publication raises the problems of unsettled public transport, few low-floor trams, lack of ramps or, if they really exist, they

are not always convenient. The military compare conditions in the US and Europe and note the real responsibility of social services in arranging the home of a person with a disability, which cannot be said about Ukraine.

They must think over the route in detail, since they cannot move freely everywhere. The article expresses the opinions of not only the military, but also the leadership of Lvov. In their opinion, they «strictly comply with state building codes. …. there is a housing accessibility program for persons with disabilities in wheelchairs and with visual impairments. ... Urban bus transport is predominantly low-floor. As for trams, this percentage is usually lower here, because the rolling stock is mostly old» (Varenyk N.). The popularity of the social taxi in Lviv is mentioned by its founder Yu. Lopatinsky, but this service does not work today, because it is not supported financially by the state. Therefore, the problem of getting to their destination is still acute for people with disabilities. The author of the publication takes care that in the future they are going to open rehabilitation centers in Lviv, such as «Indestructible» and «Superhumans», but the problem with accessibility has not yet been resolved (Varenyk N.).

In addition, the military needs psychological support, since not everyone can cope with and accept the events that have changed their lives. «How to psychologically rehabilitate the Ukrainian military» – this is the name of the publication on «VoksUkraine», which deals with adequate psychological assistance to military personnel. The website of the Gluzd media resource provides a list of organizations and centers where military personnel with disabilities can receive psychological assistance. For example, «Brothers», «Veteran Hub», Servicemen's Families Support Office, Crisis Center for Medical and Psychological Assistance, Veteran's House, etc. Despite the fact that this aspect is one of the most important, it has received insufficient attention from the media. There are single publications that do not constitute a system.

It is important to highlight the rehabilitation aspect, because in this way the user has the opportunity to understand what is being done by the state now in order to restore the health of the military. So, in the publication of G. Tereshchuk «If I could, I would return to the service» – defenders who are waiting for prosthetics, "we are talking about soldiers who have received disabilities and are undergoing rehabilitation. The journalist finds out how the rehabilitation of wounded soldiers takes place, how difficult it is for them to recover, talks about the peculiarities of the work of the rehabilitation center «Galicia», where about 250 people who have lost their arms or legs live for rehabilitation. The author is fond of the desire of the military with a disability to return to the battlefield after prosthetics: «And if there was an opportunity, I would return to the service», «... it makes me nervous that I am so fast because I wanted to fight more. ... I don't know if I can get back to the guys, I understand that they are unlikely to be taken to the front line. I want to go there and that's it» (Tereshchuk H., 2023). But many people have questions about how to proceed further: The sequence of actions is not clear: how does rehabilitation end, what is the period. And if during this period the stump is not ready for prosthetics, then what's next? Return where? Where to go for further rehabilitation until the prosthesis is ready and the hand is restored? (Tereshchuk H., 2023). So far, systemic rehabilitation has not been established in Ukraine. This is stated in the publication «Rehabilitation only on paper»: how in Ukraine they restore the health of the military after injuries. First of all, there is a shortage of rehabilitators, as well as the presence of a clear and understandable rehabilitation: "We have such a resort and sanatorium system, when people go to some sanatoriums, they do something there for 20 days and it's something like Soviet-style rehabilitation. ... In modern rehabilitation there is no massage, all kinds of baths, mud, leeches – this is some kind of game, this is some kind of Middle Ages.

We don't have a rehabilitation school and there are very few people who understand what it is (Steblovska A., 2023). Now the number of centers with modern rehabilitation and the number of military people who need it are disproportionate. These words are confirmed in the publication «Steel limbs: how the military returns the legs and arms lost in the war with Russia». Expert A. Tolkacheva,

head of the Azov patronage service, notes that «Ukraine is sorely lacking rehabilitation centers and professional rehabilitation specialists. All this slows down the system» (Kovalevska Ye., 2022), rehabilitation and prosthetics have been developed in Ukraine in recent years; completely satisfied with the quality of the prostheses: «Vlad is very happy that he managed to get prosthetics abroad. He is reminiscent of his brethren who received a prosthesis in previous years. They complained about the discomfort and non-functionality of the product» (Kovalevska Ye., 2022).

In fact, immediately after the start of the war, the authorities adopted a law on the rehabilitation of victims during the war, in particular, «providing auxiliary means for the rehabilitation of persons who, during service, work and other activities, as well as as a result of living in the relevant territory, were injured, contused, mutilated or ill as a result of Russian armed aggression» (Rada ukhvalyla zakon pro reabilitatsiiu postrazhdalykh pid chas viiny rosii proty Ukraine, 2022). After some time, a decree appeared according to which the military can receive a prosthesis and begin to rehabilitate before the status of a person with a disability is established, since previously this could only be done after this process (Ukrainski viiskovi zmozhut otrymaty protez i rozpochaty reabilitatsiiu do vstanovlennia invalidnosti, 2022). In particular, in the media, you can find out what is the algorithm for obtaining auxiliary rehabilitation means. Thus, we can establish that systemic rehabilitation, which often echoes Soviet sanatorium treatment, has not been established now, there is modern rehabilitation, but there are not enough centers and specialists. Often, due to uncertainty about the quality of Ukrainian prosthetics, the military turn to foreign doctors, respectively, the state should take care of the proper quality of the production of Ukrainian prostheses and the modernity of the rehabilitation recovery of people.

In the educational environment, innovations have appeared regarding the military with disabilities, where we are talking about obtaining vouchers for training in order to be competitive in the labor market. We are talking about construction, structural engineering, cybersecurity, software engineering, etc. That is, the military, despite the acquisition of disability, have the opportunity to get an education and realize themselves in life.

Ukrainian society is in the process of integrating people with disabilities, so it does not always behave tolerantly either out of ignorance or unwillingness to delve into other people's problems. Journalists focus on changes in public consciousness regarding the perception of soldiers with disabilities, which is not always positive. As an example, the podcast «People on crutches, wheelchairs and prostheses will increase: how war will change our society» raises issues such as overcoming stress, depression after receiving a disability. Oleksandr Tereshchenko, cyborg, «People's Hero of Ukraine, emphasizes the importance of striving for independence. No one owes us anything» – this motto is the leading one among the military who received a disability. They come together and support each other. One of the problems, according to the military, is the attitude of society towards people with disabilities: «Sometimes it pissed me off when they stared at me. I wanted to come up and ask what was wrong with me or just, excuse me, send. There are many such compassionate ones who look at you through tears, pity you, cross themselves. This in abundance brings you back to what happened to you» (Yermolaieva V., 2022). The importance of general support is noted by V. Ilchuk, a veteran specialist in working with stress and overcoming the consequences of psychological trauma. He states: «PTSD (post-traumatic stress disorder) develops more in civilian life. When misunderstood by others. General support is very important» (Yermolaieva V., 2022).

In order to prepare society for the fact that the number of people with disabilities will increase, journalists publish stories from the life of the military, who survived injuries, amputations. As an example, in «Focus» in the article «Kadyrovites seized, in Donetsk they amputated a hand. The story of the captivity and rescue of Nikolai from Mariupol» Khodko talks about Nikolai Burlak, who lost a hand that could have been saved in captivity. In the publication «I woke up in a new body and did not know how to live on». The story of a military woman who lost her leg, «the main character Ruslana

Danilkina was afraid that the world would not accept her and that no one would need her, that is, for the victims, in the first place there is how they will be perceived by the environment. The author of the publication notes that the Danilkin family decided to make sure that Ruslana never felt like a «disabled person», but only as a heroine girl who will be of proud» (Kovalevska Ye., 2023).

Society does not yet understand how to behave, causing Ruslana to become even more depressed: «A person first looks at my legs, then looks up at me. At that moment, our eyes meet, and they are also uncomfortable. ... I try to smile at people who look at me, especially children, who are looking at what happened to me with interest. Parents try to divert their attention without explanation» (Kovalevska Ye., 2023). As you can see, there is a problem of perception of people with disabilities in society, the lack of a culture of social behavior contributes to the rooting of stereotypes and the deterioration of the moral state of a person.

A. Budko, who lost both legs at the front, also noticed that people often lower their eyes when they see amputations. To change the perception of society, Lviv-based photographer Marta Sirko, remembering «how in museums people stand in long lines to look at beautiful ancient Roman statues, although many also have no arms, legs or nose, I decided to make a photo shoot for this guy, to show people» living monuments, «the closest witnesses of the war», which should be carried away. This was also done in order, according to Alexander, to «inspire brothers not to be shy» and to emphasize that society must learn to manage their emotions and adhere to a culture of behavior towards people with disabilities: «... people are gradually overestimating the situation that exists and will be in our country» (Hromliuk I., 2023). Having been in America for prosthetics, Alexander shares his impressions of the attitude towards people with disabilities there: was common and is now considered normal (Hromliuk I., 2023). The military believes that we "have a few remnants of the «scoop», in which «there were no disabled people, because they were not seen» (Hromliuk I., 2023). The experience of people, both civilian and military, who lost limbs during the war, researches Associated Press photojournalist Emilio Morenatti (Pavlenko A., 2022), finds out how these people are trying to come to terms with the new reality, publishes their photos as evidence of this brutal war.

Not only the perception of the environment, but also the attitude in the family is changing towards a military man returning home with a disability. While it is the family that should be the support and support for the veteran, misunderstandings often begin, and the family is destroyed. There are cases when, on the contrary, it unites and becomes stronger. It depends on respect, lack of overprotection, perception as a full-fledged person. This is stated in the publication of A. Ivantsiv «If disability becomes a reason for people to end a relationship, this is not a relationship». The history of the family of a veteran of the Armed Forces of Ukraine. The military with disabilities sees the ideal society in «when there is respect for each other, regardless of whether I have an injury, whether I served, whether I did not serve. You need to help if you see that it is difficult for someone, or you can simply come to help anyone, regardless of whether it is a person with or without a prosthesis» (Ivantsiv A.).

Given the freshness of events, journalists, expressing admiration for the military with disabilities, often glorify them. On the one hand, this helps to increase respect for them in society, motivates those who find themselves in a similar situation and, only looking at someone's situation, the case finds the strength to live on, on the other hand, heroizing them, journalists impose on these people a mythical responsibility in doing something unrealistic, as a result of which society expects them to continue to perform heroic deeds.

For example, in Ukrainian society, they react negatively to those men who evade the draft and try to break through abroad. In this context, they glorify the military, who have a disability, but at the same time go to serve and defend Ukraine from the enemy. In the publication «About the military with disabilities who protect us, and healthy dodgers breaking through the border», V. Kruk, a Telegraph journalist, spoke about acquaintances who have disabilities and may not be called up for service, but acted differently. Yes, the author says that the question «How did it work?» notes that

he heard the answer of a «real man». For example, they remained silent at the military registration and enlistment office about their disability, because they understood that they would not be accepted like that: «I couldn't do otherwise – after all, an enemy attacked my country and Ukraine needs to be defended by someone» (Kruk V., 2022). That is, society will expect the same act from other soldiers with disabilities who, for health reasons, cannot afford it.

The military with disabilities is especially glorified, who, despite the difficulties, perform heroic deeds and thus help to raise large funds to help the Armed Forces of Ukraine. This is stated, for example, in the article by A. Khodko «How a veteran of the ATO on a prosthesis collected 7 million for the Armed Forces of Ukraine – the incredible story of Alexander Shvetsov». This man was injured in the east of the country, lost his leg to help the Armed Forces of Ukraine, decided to walk through Ukraine. The author admires this veteran and says: «This story is about extreme ingenuity, faith in victory and the Ukrainian character» [33]. Alexander's phrase testifies to patriotic loftiness and enduring character: It is not easy to walk on a prosthesis, but when this happens, you do not notice physical difficulties. ... it often happens that the stump of the leg hurts. And this time, the healthy leg also hurt, probably because it was under load» (Khodko O., 2022).

In this context, we can cite the publication «The Rada proposed to recruit people with disabilities into the army: conditions for mobilization», since such a title can attract attention and emphasize that even people with disabilities go to war. Thus, they try to show the differences between healthy men who refuse to go to serve, and people who have a disability and can go to serve voluntarily (U Radi zaproponuvaly nabyraty v armiiu liudei z invalidnistiu: umovy mobilizatsii). Similarly, it is said about the military with disabilities in the message «Let's put a foot and go on to fight: the wounded soldiers of the Armed Forces of Ukraine are ready to return to battle after rehabilitation» (Zhurbenko O., 2023). The desire to return to the front line is mentioned in the article by E. Kovalevskaya «Steel limbs: how the military return the legs and arms lost in the war with Russia», where the disabled military after rehabilitation or plan to return to «zero» («I will ask back because this war must be ended», or they have already done it («After prosthetics and rehabilitation, the military returned to serve in the Armed Forces of Ukraine») (Kovalevska Ye., 2022). about a military man who lost his leg by stepping on an anti-personnel mine, showing his efforts despite the pain: «The man did not stop training despite the pain. Six-time champion of Ukraine in middle-distance running Mykola Zaritsky visits the gym almost every day ... In the nearest future – to return to the army» (Vtratyv nohu i povertaietsia do viiska – istoriia biitsia Mykoly Zaritskoho z Sumshchyny, 2023). In the title «The story of an indestructible warrior who lost his leg in the war, and after treatment in Vinnitsa and prosthetics, descends from the mountains on a snowboard» and in the text Maxim Datsenko is heroized, giving him features of invincibility because of his attempts to ride, despite the missing limb, on a snowboard (Istoriia nezlamnoho voina, yakyi vtratyv nohu na viini, a pislia likuvannia u Vinnytsi i protezuvannia, na snoubordi spuskaietsia z hir, 2023). It is clear that these are the actions that arouse the admiration of readers, but the latter will consider that all other military men should show themselves in this way.

Journalists glorify not only the military with disabilities, but also ordinary people with disabilities, and at the same time help the military. «At street concerts, a disabled singer collected more than 210,000 hryvnias for the Armed Forces of Ukraine». Ivan Zamiga arranges concerts in different communities, raising funds for the military of the Armed Forces of Ukraine «He donates funds to volunteers or for targeted requests from the military – for the manufacture of trench candles, smoke bombs and other things. Now he is collecting for a car for the military», Ukrinform reports (Na vulychnykh kontsertakh spivak z invalidnistiu zibrav dlia ZSU ponad 210 tysiach hryven, 2023). Or «In the Lviv region, a blind schoolgirl collected more than half a million hryvnias for the Armed Forces of Ukraine». For these funds, a drone, a car, medical aid walkie-talkies, clothes, etc. were purchased for the military. In the publication, the author V. Andreeva emphasizes that «the young performer is

blind, but has many talents and hobbies. She plays the bandura, participates in various competitions and wins prizes» (Andrieieva V., 2023).

«Clothes for the Armed Forces of Ukraine from persons with disabilities – this article refers to the help from people with disabilities and seeking to contribute to the development of a common cause. Larisa Zhukova, head of the Department of Vocational Rehabilitation and Social Adaptation, speaks about their morale: «By helping the army and migrants, people with disabilities feel like part of something bigger, part of a big cause. This helps them feel needed and useful, raises their self-esteem, and improves their general moral state. And the highest award for them is the photo reports of grateful soldiers of the Armed Forces of Ukraine» (Osoby z invalidnistiu shyiut odiah dlia ZSU). People with disabilities, helping the Armed Forces of Ukraine, are trying in this way to draw the attention of society, on the one hand, to their active citizenship, on the other hand, by reminding them of their existence, problems, etc. Thus, one of the activists of the «We care about us» group notes: «People with disabilities have gathered in the park today to show their active citizenship and show their attitude to the state in which we are now. … we, like others, are actively joining the events, like the rest of the citizens of Ukraine» (Klymenko N., 2022).

On the website of the online edition «Ukraine», in the publication «Kindness without barriers: how people with disabilities help during the war», people with disabilities are volunteers who help the military. In particular, D. Schebetyuk «informs people with disabilities about the possibilities of evacuation, receiving payments, humanitarian aid», V. Shabunin «repairs cars for the Armed Forces of Ukraine and sends them to the front. Adapts vehicles for soldiers with disabilities», Yu. Ponkin «evacuates people with disabilities from Krivoy Rog and provides them with humanitarian aid», U. and V. Pchelkins «evacuate people with spinal cord injuries, help with humanitarian aid. … organize training for volunteers on accompanying people with back injuries who use wheelchairs» (Dobro bez barieriv, 2023), A. Murizidi, T. Gerasimova, Y. Mironyuk, A. Naumenko and others. By their example, they show how, if desired, you can help Ukrainian people during the war, despite certain disorders and health conditions.

After the start of the war, people with disabilities became more active and, in order to help those who received disabilities as a result of hostilities, they prepared a number of guides where they give advice to amputees who use a wheelchair, those with visual impairments, hearing impairments, and are also provided psychologist's advice to people with disabilities as a result of the war, their families, legal support, etc. As an example, «Inclusive society in Ukraine. Handbook of practical recommendations» in 2 parts.

The Ukrainian society financially helps defending soldiers who have received disability as a result of combat wounds. Volunteers often collect funds for them for treatment and prosthetics. Media support and place these messages on their pages. For example, «In Lviv, funds will be raised at an auction for the military Mikhail Varvarich, who lost his legs» (Your place), «Volunteers collected a million hryvnia in a day on a military prosthesis, which lost both arms, one leg and one eye in the war» (Svidomi) , «I lost my left leg, doctors are fighting for my right: a military man from Zhytomyr region needs help» (Pershiy Zhytomyrsky), etc.

In addition, the media publishes stories from the life of disabled military men, which is a positive trend, because in this way the reader learns at what cost Ukraine’s victory is won, on the other hand, it motivates those who received a disability: «A Volhynian who lost his legs in the war began to walk again», «Touching: Ukrainian stars united to support the military who lost the ending in the war», Back from hell. A photo report from a rehabilitation center that brings evacuees from Azovstal back on their feet, «Soldiers who lost their legs in Ukraine are learning to walk again in America», «An American company moved to Transcarpathia for the sake of the Ukrainian military», «The Carpathian soldier who lost his legs is returned to the USA and vision», «In the USA, free prostheses are provided for those soldiers who have lost their legs or arms of the Armed Forces

of Ukraine». Obshchestvenny publishes stories of military men with disabilities, tells how the wound was received, how a person adapts to life: «I lost my leg at the front, defending the Kherson region: a military man from Odessa is a pseudo «Maestro», he is waiting for a prosthesis», «It's as if they stuck to the body plasticine». A soldier from Chernivtsi lost his leg in the war and is learning to walk again on a prosthesis» and others.

Volunteers, psychologists, journalists, presenters express their opinion on their own pages on social networks regarding the military who received a disability. For example, the editor-in-chief of the editorial office of documentary programs on Channel One, Evgenia Podobnaya, expressed her opinion about the social and legal model in relation to people with disabilities, when «not veterans need to be adapted to the rest of society, but the country should be adapted to veterans», she focuses on the fact that at the moment, it will be easy to get grants for various kinds of public associations or «rehabilitation of veterans» stories, while there will be many who will only strive to earn money, therefore, in her opinion, the best option is for veterans to work with veterans, mastered new professions, helped their brethren morally, psychologically: «And above all, that veterans become psychologists and engage in the psychological rehabilitation of their brethren. It's about credibility and better understanding because people speak the same language» (Podobna E.). We believe that both those who received similar injuries and those without disabilities should work with the military with disabilities, since in this way the military will not close in on himself and will not interact in a limited environment.

Yulia Zabelina, a political journalist, volunteer, psychologist, notes: the military, who received a disability, usually do not want to be helped, they are treated in a special way «neither as a superman or hero, nor as someone who constantly needs emergency care. And to be treated as a person – a living person, accustomed to a different reality and wishing to be met here, in this new experience. We are talking about his injury, but we do not focus on it in order to continue to see the person after the injury» (Zabelina Yu.). The journalist watches how people try to mold the image of a hero, a superman, as if they a priori need a different relationship than other people. Dehumanization, the creation of a superhero, a myth, the bracketing of another part of society is happening, whether they want it or not. … «We need to combine return with integration» (Zabelina Yu.). Accordingly, society should learn as much as possible about the life of military personnel with disabilities, interact with them and integrate them into society as much as possible, adapt to new realities and adapt themselves.

In order to see changes in the media regarding the emergence of these problems and their activity in covering information about the military with disabilities, based on monitoring the publications of Suspilne Novyny for March 2021, 2022, 2023, we have established: on average, this publication publishes an average of 400 articles in 1-day messages. Over the course of three years, the number of publications about people with disabilities, although slowly, has been increasing. In March 2021, 40 notes were published, in March 2022, during a full-scale war, this number was 42, in March 2023, a trend became noticeable, despite the fact that the war has been going on since 2014, before the appearance of publications about military with disabilities. So, out of 50 messages, 10 were devoted directly to the military, where, first of all, we are talking about the wounded and rehabilitation actions: «A rehabilitation center for veterans is being equipped in Rivne. How it should work», «Re-learn everyday movements and recover from injuries», «How the rehabilitation department in Chernivtsi works», «I am a military man, so I'm not used to giving up: a fighter rehabilitated in the Rivne region dreams of becoming a psychologist», Lost his leg at the front, defending the Kherson region: a military man from Odessa pseudo «Maestro» is waiting for a prosthesis. These and other notes testify to the position of the media to focus on the needs of the military with disabilities, their losses, heroism, so that society understands and does not forget how Ukraine acquires independence and freedom. This trend should be followed by other media. Now, having compared the notes in Ukrayinska Pravda for the same period of time (March, 2023), we can note: there are 10 notes on the Suspilny website,

and only 1 on the Ukrayinska Pravda website (140 notes per day) («Upgrade» body. How modern technologies help the Ukrainian military to recover), on the Suspilny website (up to 60 notes per day) – also 1 («How to undergo rehabilitation after amputation and install a prosthesis with state support»), which indicates a certain lack of interest in this problem, which today is extremely relevant in a full-scale war.

There are many lawyers, media workers, practitioners of social services and other improvements in the fact that Ukrainian legislation needs to be changed, improved, ale, as it is indicated on the website of the National Assembly of people with disabilities, with which it is obvious є «as the unpreparedness of the state, so is the unpreparedness of the state to adapt to the new reality, ask and reform institutions» (Zhurbenko O., 2023).

Now lawyers, media professionals, social service workers and others are confident that Ukrainian legislation needs to be changed, improved, but, as noted on the website of the National Assembly of People with Disabilities, at the same time, «both the unpreparedness of society and the unpreparedness of the state to adapt to the new reality is obvious, simplify and reform institutions» (Zhurbenko O., 2023).

Conclusions. Thus, taking into account the study of publications in the media, we can name the aspects that are most often paid attention to: legal, social, medical, rehabilitation, psychological and educational. We note the conflict nature of the state, Ukrainian society, media in relation to the military with disabilities. With a positive attitude of the state towards the Ukrainian military, the passion for their courage, it is problematic to obtain the status of a person with a disability. This process is corrupt, bureaucratic, there is disrespect for the military, volunteers with disabilities, there is no digitalization service and proper information. The benevolent attitude of medical personnel correlates in some places with poor-quality medical services, extortion of bribes for granting disability status, negligence and unpreparedness to work with the military.

Problems with inaccessibility are even more acute than before the war, as there are now more people who are unable to reach their destination due to an acquired disability. The lack of systemic modern rehabilitation contributes to the departure of the military abroad in order to receive high-quality treatment and prosthetics. Educational and psychological aspects are presented sparingly in the media. Publications on this topic are rare. The problem of the perception of people with disabilities has been and remains one of the most important, since it is important for the military with disabilities to be able to adapt to the realities in which they find themselves. From the comments of the military, we see that this is important for them, and society has not yet been able to develop a culture of communication with these people. In this situation, it is necessary to use the military with disabilities as much as possible in all areas of life, not to let them close in a limited circle of contacts, and to treat them as full members of society. In the publications today, there is a noticeable tendency to glorify the military with disabilities, which, on the one hand, increases respect for them, contributes to the motivation of other people, on the other hand, imposes on them the responsibility to implement unrealistic things in some places.

Using the Suspilne Novyni website as an example, we note a trend towards an increase in messages about people with disabilities, in particular about the military who received a disability during the war. This indicates the activity of journalists, their interest in the topic. This trend should be clearly manifested in other publications, which is not always reflected in the media.

References:

1. Podobna Evgeniya. Storinka u Feisbutsi [Facebook page]. https://www.facebook.com/evgeniya.podobna [In Ukrainian].
2. Zabelina Yulia. Storinka u Feisbutsi [Facebook page]. https://www.facebook.com/yulia.zabelina.9 [In Ukrainian].

3. Andrieieva, V. (2023). Na Lvivshchyni nezriacha shkoliarka zibrala dlia ZSU ponad piv miliona hryven [In the Lviv region, a blind schoolgirl raised more than half a million hryvnias for the Armed Forces]. *Ukrainska pravda.* Retrieved from https://life.pravda.com.ua/society/2023/03/29/253582/ [In Ukrainian].
4. Berezynskyi, I. (2022). Odnorazova hroshova dopomoha u razi vstanovlennia invalidnosti [One-time financial assistance in case of disability]. *ArmiiaInform*. Retrieved from https://armyinform.com.ua/2022/06/14/odnorazova-groshova-dopomoga-u-razi-vstanovlennya-invalidnosti/ [In Ukrainian].
5. Brenzei, Ya. (2023). Yak podolaty biurokratychne peklo: Masi Naiem rozpoviv pro dopomohu poranenym viiskovym [How to overcome bureaucratic hell: Masi Nayem talks about helping wounded soldiers]. *Vikna.* Retrieved from https://vikna.tv/video/eksklyuzyvy/masi-nayem-rozpoviv-pro-dopomogu-poranenym-vijskovym/ [In Ukrainian].
6. Varenyk, N. «Dlia vizochnyka u Lvovi ye dva varianty – dim i balkon». Shcho mozhna zminyty? [There are two options for a wheelchair user in Lviv – a house and a balcony. What can be changed?]. *Tvoie misto.* Retrieved from https://tvoemisto.tv/exclusive/dlya_vizochnyka_u_lvovi_ie_dva_varianty__dim_i_balkon_chy_inklyuzyvnym_ie_nashe_misto_145719.html [In Ukrainian].
7. Voitiuk, T. (2023). «Boremosia, shchob medychni posluhy nadavaly yakisno». Yak pravozakhysnyi tsentr «Pryntsyp» dopomahaie poranenym biitsiam z VLK [We are fighting to ensure that medical services are provided in a quality manner. As a human rights center, Principle helps wounded soldiers from the VLC]. *Suspilne novyny*. Retrieved from https://suspilne.media/402548-boremosa-sob-medicni-poslugi-nadavali-akisno-ak-pravozahisnij-centr-princip-dopomagae-poranenim-bijcam-z-vlk/ [In Ukrainian].
8. Vtratyv nohu i povertaietsia do viiska – istoriia biitsia Mykoly Zaritskoho z Sumshchyny [He lost his leg and is returning to the army - the story of fighter Mykola Zaritsky from Sumy region]. *Sumski debaty.* 2023. Retrieved from https://debaty.sumy.ua/news/vtrativ-nogu-i-povertayetsya-do-vijska-istoriya-bijtsya-mikoli-zaritskogo-z-sumshhini [In Ukrainian].
9. Hromliuk, I. (2023). «Vtratyv nohy i teper maiu shist zaliznykh». Istoriia viiskovoho, yakoho nazyvaiut ukrainskym Remarkom [I lost my legs and now I have six iron ones. The story of a military man who is called the Ukrainian Remarque]. *BBC*. Retrieved from https://www.bbc.com/ukrainian/articles/c87vd3pm17yo [In Ukrainian].
10. Dobro bez barieriv: yak liudy z invalidnistiu dopomahaiut pid chas viiny [Goodness without barriers: how people with disabilities help during the war]. *Ukraïner*. 2023. Retrieved from https://ukrainer.net/dobro-bez-barieriv/ [In Ukrainian].
11. Yermolaieva, V. (2022). Liudei na mylytsiakh, vizkakh ta z protezamy stavatyme vse bilshe: yak viina zminyt nashe suspilstvo? [There will be more and more people on crutches, wheelchairs and with prostheses: how will the war change our society?]. *Hromadske radio.* Retrieved from https://hromadske.radio/podcasts/de-ne-stoiatymu-vystoiu/1113909 [In Ukrainian].
12. Zhurbenko, O. (2023). «Postavymo nohu i poidemo dali voiuvaty»: poraneni voiny ZSU hotovi povernutysia v bii pislia reabilitatsii [We will put our leg back and go on fighting: wounded Ukrainian soldiers are ready to return to battle after rehabilitation]. Sait Natsionalnoi asamblei liudei z invalidnistiu v Ukraini. Retrieved from https://naiu.org.ua/postavymo-nogu-i-poyidemo-dali-voyuvaty-poraneni-voyiny-zsu-gotovi-povernutysya-v-bij-pislya-reabilitatsiyi-video/ [In Ukrainian].
13. Ivantsiv, A. «Iakshcho invalidnist staie dlia liudei pryvodom zakinchyty stosunky, tse ne stosunky». Istoriia rodyny veterana ZSU [If disability becomes a reason for people to end a relationship, it is not a relationship. A family story of an Armed Forces veteran]. *Suspilne novyny.* Retrieved from https://suspilne.media/342530-akso-invalidnist-stae-dla-ludej-privodom-zakinciti-stosunki-ce-ne-stosunki-istoria-rodini-veterana/ [In Ukrainian].
14. Istoriia nezlamnoho voina, yakyi vtratyv nohu na viini, a pislia likuvannia u Vinnytsi i protezuvannia, na snoubordi spuskaietsia z hir [The story of an unbreakable warrior who lost his leg in the war, and after treatment in Vinnytsia and prosthetics, he goes snowboarding down the mountains]. *Vinnytsia.info*. 2023. Retrieved from https://www.vinnitsa.info/news/istoriya-nezlamnoho-voyi-

na-yakyy-vtratyv-nohu-na-viyni-a-pislya-likuvannya-u-vinnytsi-i-protezuvannya-na-snoubordi-spuskayet-sya-z-hir.html [In Ukrainian].
15. Klymenko, N. (2022). Yak tvorchi liudy z invalidnistiu v Pervomaisku zbyraly koshty dlia ZSU [How creative people with disabilities in Pervomaisk raised funds for the Armed Forces of Ukraine]. *Hard City*. Retrieved from https://thegard.city/articles/216849/yak-tvorchi-lyudi-z-invalidnistyu-zbirali-koshti-dlya-zsu [In Ukrainian].
16. Kovalevska, Ye. (2023). «Ia prokynulasia v novomu tili y ne znala, yak zhyty dali». Istoriia viiskovoi, yaka vtratyla nohu [I woke up in a new body and didn't know how to live on. The story of a soldier who lost her leg]. *BBC Ukraina*. Retrieved from https://www.bbc.com/ukrainian/articles/cd1m2ynm34ro [In Ukrainian].
17. Kovalevska, Ye. (2022). Stalevi kintsivky: yak viiskovym povertaiut nohy i ruky, vtracheni na viini z Rosiieiu [Limbs of steel: how soldiers are getting their legs and arms back lost in the war with Russia]. *BBC Ukraina*. Retrieved from https://www.bbc.com/ukrainian/features-63004666 [In Ukrainian].
18. Kruk, V. (2022). Pro viiskovykh z invalidnistiu, yaki nas zakhyshchaiut, ta zdorovykh ukhyliantiv, yaki proryvaiutsia cherez kordon [About the military with disabilities who defend us and the healthy fugitives who break through the border]. *Telehraf*. Retrieved from https://www.telegraf.in.ua/blog/10110389-pro-zahisnikiv-z-invalidnistju-jaki-nas-zahischajut-ta-uhiljantiv-jaki-prorivajutsja-cherez-kordon.html [In Ukrainian].
19. Maslov, D. (2022). Vyplaty viiskovym ta yikh simiam – pytannia chesti y sovisti derzhavy [Payments to the military and their families are a matter of honor and conscience for the state]. *LB*. Retrieved from https://lb.ua/blog/denys_maslov/522075_viplati_viyskovim_ih_simyam-.html [In Ukrainian].
20. Na vulychnykh kontsertakh spivak z invalidnistiu zibrav dlia ZSU ponad 210 tysiach hryven [At street concerts, the singer with a disability raised more than 210 thousand hryvnias for the Armed Forces]. *Ukrinform*. 2023. Retrieved from https://www.ukrinform.ua/rubric-regions/3682978-na-kirovogradsini-spivak-z-invalidnistu-zibrav-dla-zsu-ponad-210-tisac.html [In Ukrainian].
21. Novak, A. (2022). Yak otrymaty status osoby z invalidnistiu vnaslidok viiny [How to get the status of a person with a disability as a result of war]. *Ukrainska pravda*. Retrieved from https://www.pravda.com.ua/columns/2022/08/1/7361342/ [In Ukrainian].
22. Obpechenyi voin, shcho dyvom vyzhyv, dosi ne mozhe otrymaty invalidnist [The miraculously surviving burned soldier is still unable to receive a disability]. *33-y Novyny*. 2023. Retrieved from https://33kanal.com/news/207768.html [In Ukrainian].
23. Osoby z invalidnistiu shyiut odiah dlia ZSU. Departament sotsialnoi polityky [People with disabilities sew clothes for the Armed Forces of Ukraine. Department of Social Policy]. Retrieved from https://socialpolitica.dniprorada.gov.ua/osobi-z-invalidnistyu-shiyut-odyag-dlya-zsu/ [In Ukrainian].
24. Pavlenko, A. (2022). Tila viiny. NV publikuie zhorstoki y chesni foto ukraintsiv, yaki vtratyly kintsivky cherez viinu, zniati zhurnalistom Emilio Morenatti [Bodies of war. NV publishes brutal and honest photos of Ukrainians who lost limbs because of the war, taken by journalist Emilio Morenatti]. *NV*. Retrieved from https://nv.ua/ukr/ukraine/events/viyna-v-ukrajini-chesni-foto-lyudey-yaki-vtratili-kincivki-vid-fotografa-associated-press-novini-50243539.html [In Ukrainian].
25. Rada ukhvalyla zakon pro reabilitatsiiu postrazhdalykh pid chas viiny rosii proty Ukrainy [The Rada adopts a law on rehabilitation of victims of Russia's war against Ukraine]. *Ukrinform*. 2022. Retrieved from https://www.ukrinform.ua/rubric-society/3445790-rada-uhvalila-zakon-pro-reabilitaciu-postrazdalih-pid-cas-vijni-rosii-proti-ukraini.html [In Ukrainian].
26. Steblovska, A. (2023). «Reabilitatsiia lyshe na paperakh»: yak v Ukraini vidnovliuiut zdorovia viiskovykh pislia poranen [Rehabilitation only on paper": how Ukraine restores the health of soldiers after injuries]. *Suspilne media.* Retrieved from https://suspilne.media/398714-zitta-vijskovih-pisla-poranen-zminuetsa-nazavzdi-intervu-zi-spivzasnovnikom-reabilitacijnogo-centru/ [In Ukrainian].
27. Tereshchuk, H. (2023). «Iakby ya mih, to povernuvsia b na sluzhbu» – zakhysnyky, yaki chekaiut na protezuvannia [If I could, I would return to service – defenders waiting for prosthetics]. *Radio Svoboda*. Retrieved from https://www.radiosvoboda.org/a/protez-poranennya-reabilitatsiya-viyna/32273011.html [In Ukrainian].

28. U Radi zaproponuvaly nabyraty v armiiu liudei z invalidnistiu: umovy mobilizatsii [Rada proposes to recruit people with disabilities: conditions of mobilization]. *PRO VSE.ck.ua.* Retrieved from https://provce.ck.ua/u-radi-zaproponuvaly-nabyraty-v-armiiu-liudey-z-invalidnistiu-umovy-mobilizatsii/ [In Ukrainian].
29. Ukrainski viiskovi zmozhut otrymaty protez i rozpochaty reabilitatsiiu do vstanovlennia invalidnosti [Ukrainian soldiers will be able to receive a prosthesis and start rehabilitation before disability is established]. *Bilopillia City*. 2022. Retrieved from https://bilopillia.city/articles/246884/ukrainski-vijskovi-zmozhut-otrimati-protez-i-rozpochati-reabilitaciyu-do-vstanovlennya-invalidnosti [In Ukrainian].
30. Ukhina, I. (2023). Biurokratychne peklo dlia poranenykh [Bureaucratic hell for the wounded]. *DW*. Retrieved from https://www.dw.com/uk/burokraticne-peklo-dla-poranenih-vijskovih-ak-projti-medkomisiu-i-ne-zbozevoliti/a-65108875 [In Ukrainian].
31. Khodko, O. (2022). Yak veteran ATO na protezi nazbyrav 7 mln na ZSU – neimovirna istoriia Oleksandra Shvetsova [How an ATO veteran raised 7 million for the Armed Forces on a prosthesis – an incredible story of Oleksandr Shvetsov]. *Fokus*. Retrieved from https://focus.ua/uk/voennye-novosti/535901-veteran-ato-na-protezi-nazbirav-7-mln-na-zsu [In Ukrainian].
32. Khto nalezhyt do osib z invalidnistiu vnaslidok viiny? [Who are the persons with disabilities as a result of war?] *Ofitsiinyi portal Kyieva. Kyivska miska rada.* Retrieved from https://kyivcity.gov.ua/pilhy_dovidky_ta_sotsialnyi_zakhyst/invalidam/khto_nalezhyt_do_invalidiv_viiny/ [In Ukrainian].
33. Cherniev, Ye. (2023). Problemy z oformlenniam statusu UBD dlia tysiach nashykh zakhysnykiv uzhe vyishly za mezhi zdorovoho hluzdu. U bahatokh opuskaiutsia ruky [The problems with obtaining combatant status for thousands of our defenders have already gone beyond common sense. Many are giving up]. *Hordon*. Retrieved from https://gordonua.com/ukr/blogs/egor-chernev/problemi-z-oformlennjam-statusu-ubd-dlja-tisjach-nashih-zahisnikiv-uzhe-vijshli-za-mezhi-zdorovogo-gluzdu-u-bagatoh-opuskajutsja-ruki-1656275.html [In Ukrainian].
34. Yak veteranam oformyty invalidnist [How veterans can apply for disability]. *Ukrinform.* 2023. Retrieved from https://www.ukrinform.ua/rubric-polytics/3681770-ak-veteranam-oformiti-invalidnist.html [In Ukrainian].

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PROGRAM FOR PROMOTING POST-TRAUMATIC GROWTH OF TEENAGERS INJURED AS A RESULT OF RUSSIA'S MILITARY AGGRESSION AGAINST UKRAINE

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Abstract. This article focuses on a program that aims to create a rehabilitative environment to assist adolescents in dealing with the aftermath of traumatic experiences caused by armed conflicts and to facilitate their post-traumatic growth.

The paper offers theoretical support for a program that centers on establishing a specialized rehabilitation environment. The main objective is to notably diminish the adverse effects of psychological trauma on children and activate positive transformations in their personalities, serving as indicators of post-traumatic growth.

The purpose of this article is to acquaint the psychological community with the main outcomes of implementing this program in the practical work of an extracurricular child institution. The program was designed for a specific target group, underwent practical testing, and demonstrated positive advancements in the psychological rehabilitation process of adolescents affected by armed conflicts.

Key words: rehabilitation environment, psychotraumatic events, post-traumatic growth, psychosocial support, psychological exercises, psychocorrective intervention, psychological development.

Introduction. In the context of the full-scale war in Ukraine, the negative consequences have led to a significant increase in the number of children facing extremely challenging life circumstances, experiencing psychotraumatic events, and becoming victims of war. This situation urgently calls upon psychologists to find and apply effective methods, tools, and approaches in their practical work with such children. The primary aim of all these efforts is to improve the psychological well-being of children affected by the war, prevent and mitigate post-traumatic effects, and promote post-traumatic growth.

Among the potential negative consequences of psychotraumatic experiences, researchers identify the following: anxiety disorders, panic disorders, depression, impaired self-control, outbursts of aggression, substance abuse, and post-traumatic stress disorder (PTSD) (Breslau, Peterson, Kessler, Schultz, 1999: 908-911).

However, in addition to the negative changes, researchers have recently been increasingly focusing on the phenomenon of post-traumatic growth (PTG), defining it as significant positive changes that occur as a result of encountering a powerful psychotraumatic event (Solomon, Dekel, 2007: 303-312), (Schaefer, Moos, 1992: 149-170), (Zhang, Xu, Yuan, An, 2018: 474).

The authors of the concept of post-traumatic growth, R. Tedeschi, L. Calhoun, and other researchers, consider this phenomenon to go beyond the mainstream of psychological thought, including coping strategies and overcoming behavior concepts. They emphasize that post-traumatic growth is not merely a restoration of the disturbed psychological state of the affected individual but rather an experience of profound personal transformation (Tedeschi, Shakespeare-Finch, Taku, Calhoun 2018), (Tedeschi, Park, Calhoun, 1998: 1-22), (Taku, McDiarmid, 2015: 224-231). This experience fundamentally alters a person's worldview and core beliefs, making them more mature, adaptable, creative, and content. Post-traumatic growth is a relatively widespread phenomenon, with estimates suggesting that anywhere from one-third to over two-thirds of individuals

who have undergone significant psychotraumatic events experience it (Mattson, James, Engdahl, 2018: 475-480), (Linley, Joseph, 2004: 11-21).

It is essential to recognize that negative and positive consequences of psychotraumatic stress are not mutually exclusive – challenging experiences and disruptions coexist alongside positive personality transformations, the discovery of new meanings, and shifts in life priorities. Researchers note that the affected individual requires not only a reduction in stress levels (as seen in PTSD therapy) but also assistance in fundamentally reevaluating their core beliefs about the world, life, and trauma, in order to stimulate processes of post-traumatic growth (Zoellner, Rabe, Karl, Maercker, 20086: 245-263), (Prati, 2009: 363-388).

Methods. The main purpose of the research presented in this article is to identify the factors contributing to post-traumatic growth in adolescents who have been affected by armed conflicts. Accordingly, the following objectives have been outlined: 1. Develop and implement a psychosocial rehabilitation program for children affected by armed conflicts. 2. Investigate the dynamics of post-traumatic growth processes in children based on the developed program.

The program aimed at fostering post-traumatic growth in adolescents was developed as a result of practical work carried out by psychologists with children who experienced the impact of psychotraumatic events during the armed conflict in Eastern Ukraine in 2014. The program's trial group consisted of children who suffered from physical, sexual, and psychological abuse and witnessed military actions directly, such as shelling, mine explosions, and other traumatic events, resulting in symptoms of post-traumatic stress disorder. The program was implemented at the "Lisova Zastava" children's recreation and wellness facility in Dimer village, Kyiv Oblast, as a psychological rehabilitation format from 2015 to 2019.

The main goal of the program is to prevent the emergence and overcome the consequences of post-traumatic stress while promoting the process of post-traumatic personal development in children with traumatic experiences.

The program's objectives include the following:

1) Stabilizing the child's psycho-emotional state and creating conditions for their post-traumatic growth through a specially designed rehabilitation environment.

2) Providing opportunities for processing traumatic experiences.

3) Restoring the damaged psychological integrity of the individual and fostering a sense of belonging to the larger society.

4) Cultivating mental skills for reevaluating one's life script, restoring a sense of psychological stability, safety, balance, and activating personal resources.

5) Activating the ability to receive support from others and developing the capacity to provide support to others in return.

6) Strengthening constructive coping reactions, fostering the development of a new cognitive self-perception schema in the face of altered realities.

The intended beneficiaries of the proposed program are children and adolescents who have been exposed to traumatic events arising from difficult life circumstances, distressing incidents, and highly stressful situations. This encompasses children from families of internally displaced individuals, those who have resided in regions of armed conflict or proximity to conflict zones, children living in occupied territories, offspring of military personnel, and children impacted by diverse adverse conditions (orphans and "social orphans," those in foster families and family-style children's homes, as well as those with special needs and disabilities).

The program is designed to run for a duration of two weeks, with each day featuring specific content for sessions, objectives, practical exercises, and expected outcomes. Structurally, this program comprises 14 steps, as each day represents a specific step in achieving the predetermined goals and objectives of the program.

The program utilizes a comprehensive set of practical methods and therapeutic approaches that are interconnected within the framework of this program. These methods include coaching, elements of cognitive-behavioral psychotherapy, play therapy, body-oriented therapy, dance-movement therapy, storytelling therapy, art therapy, psychodrama, as well as canine therapy, equine-assisted therapy, metaphorical card association method, and the BASICPh model of flexible stress management. As auxiliary methods for the rehabilitation and wellness of children, the following were employed: phytotherapy, rhythmics and choreography, fly-yoga, decorative-applied arts sessions, music sessions, reading books, watching films and cartoons, movement games, and journaling.

An individualized rehabilitation trajectory is tailored for each participant in the program, encompassing a diverse array of activities and engagements aimed at facilitating the child's recovery and personal growth. The program places considerable emphasis on cultivating and reinforcing a positive self-image. Several integral components of the program are devoted to nurturing the capacity to maintain a harmonious balance between personal boundaries and openness to new experiences, fostering personal resilience, and cultivating empathy towards others.

Results. A study was carried out with a total of 308 participants to assess the effectiveness of the developed program. Among them, 203 individuals formed the experimental group (105 girls and 98 boys aged 15–17 years, with an average age of 16 years), while the control group consisted of 105 participants (57 girls and 48 boys, with an average age of 16 years). The study involved three measurements for both the experimental and control groups of adolescents: the first measurement was conducted before the program implementation (baseline assessment), the second measurement immediately after the program (short-term effect), and the third measurement after 6 months of program completion (long-term effect).

The study of post-traumatic growth (PTG) utilized the Posttraumatic Growth Inventory by R. Tedeschi and L. Calhoun, adapted by M. Sh. Magomed-Eminov. Additionally, measurements were taken for personal identity, which represents an integrative form of self-perception, the ability to see oneself from an external perspective, and reliance on self-image as reality. For this purpose, the L.B. Schneider test, the V.B. Nikishina test, and the K.A. Petrush test were selected.

Analysis. Table 1 displays the quantitative levels of post-traumatic growth (PTG) prior to implementing the Program, while Figure 1 provides a visual representation of the data.

The section covering the entire range of the Posttraumatic Growth Inventory (from 0 to 105 points) was divided into three categories: from 0 to 32 points, from 33 to 63 points, and from 64 to 105 points. The findings revealed that only about 21% of all participants reported a "high level" of post-traumatic growth (≤ 32 points). Approximately 34% of respondents showed a "moderate level" of post-traumatic growth, while 45% demonstrated a "high level" of post-traumatic growth. The distribution trends of PTG levels were similar in both groups and were statistically confirmed. These data indicate that nearly half of the adolescents did not display positive personality changes related to their traumatic experiences, did not integrate traumatic events into their life experiences, and did not perceive it as a source of strength and value.

Table 1

Levels of post-traumatic growth measured by the "Posttraumatic Growth Inventory" prior to the implementation of the Program

Level of Posttraumatic Growth	Experimental Group		Control Group		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	43	21,01	22	20,87	2,33	p > 0,1
Medium	69	34,26	36	33,99	1,66	p > 0,1
Low	91	44,73	47	45,14	0,63	p > 0,1

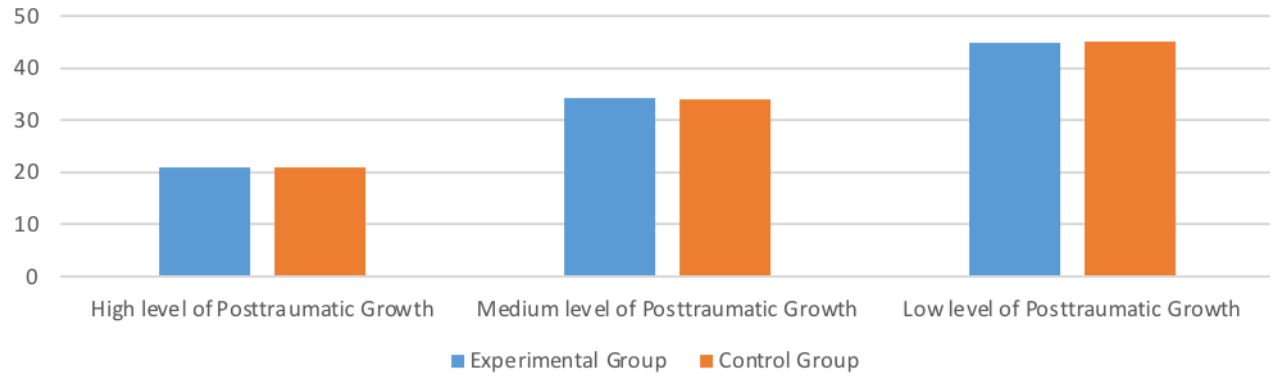

Figure 1. Levels of post-traumatic growth measured by the "Posttraumatic Growth Inventory" prior to the implementation of the Program

The study of personality identity types using L.B. Schneider's test before the program implementation is presented in Table 2 and visually represented in Figure 2.

Table 2

The distribution of personality identity types according to L. Schneider's test before the program implementation

Type of Identity	Experimental Group		Control Group		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
Diffuse	100	49,13	58	55,27	2,33	0,05
Moratorium	57	28,14	29	27,84	1,66	p > 0,1
Pseudo-positive	34	16,75	13	12,59	0,63	p > 0,1
Achieved	12	5,98	5	4,30	0,54	p > 0,1

The research results indicated non-significant differences in the distribution of personality identity types and similar trends in both the experimental and control groups. The differences between the experimental and control groups were found to be statistically insignificant, except for the level of diffuse identity, which was slightly higher in the control group at a significance level of p=0.05.

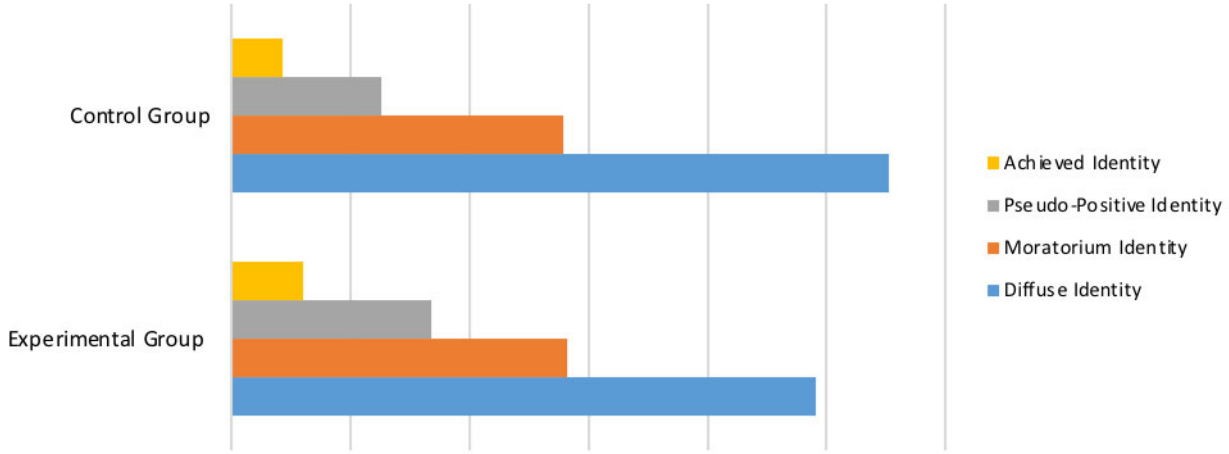

Figure 2. The distribution of personality identity types according to L. Schneider's test before the program implementation

As we can see, the majority of adolescents in both the experimental and control groups exhibit a diffuse type of personality identity. This suggests that these individuals lack strong goals, values, and beliefs and do not actively try to form them. Such adolescents may experience dissatisfaction with themselves and their abilities, doubts about their ability to earn respect from others, and uncertainty about the value of their own personality, bordering on indifference towards their own self. There might be a loss of interest in their inner world and rigidity in their self-concept, meaning a reluctance to change despite a generally positive attitude towards themselves. They may imagine that their personality, character, and actions could be met with contempt, misunderstanding, or criticism from others. The presence of internal conflicts, doubts, and disagreements with oneself can lead to low self-esteem. All of this often leads to doubts about their ability to make changes or take action. Additionally, self-blame and the readiness to hold themselves responsible for their failures and shortcomings might be observed.

In both groups of participants, the moratorium identity status emerged in the second position. A moratorium is a status of identity in which an individual experiences an identity crisis and actively seeks to resolve it by exploring various potential solutions. The moratorium status is typically associated with high levels of anxiety.

The pseudo-identity, or premature identity, ranked third in the quantitative dimension among the studied adolescents in both the experimental and control groups. Premature identity is often combined with high levels of authoritarianism and low levels of independence. It usually arises when a person has not made independent life choices, and their identity is not consciously acknowledged; rather, it may be an imposed identity.

Thus, the overall picture of personal identity in both the experimental and control groups appeared to be similar and, at the same time, problematic. The issue of identity diffusion in adolescence can become a persistent state that may negatively impact the individual's overall personality development in the future. It can also have adverse effects on specific aspects of the personality, such as self-perception, self-esteem, and self-regard. Addressing and resolving identity diffusion is crucial for fostering healthy personal growth and positive self-concept in adolescents.

The study of levels of personal identity before the implementation of the Program using the test by V.B. Nikishina and K.A. Petrashevsky is presented in Table 3 and visually depicted in Figure 3.

Before the implementation of the Program, the experimental and control groups showed practically similar levels of personal identity, with average and low levels being predominant. The average level is characterized by moderate expression of socio-psychological adaptation, positive self-concept, a stable system of values, as well as moderate levels of reflexivity and authoritarianism. The low level of personal identity is characterized by a low expression of socio-psychological adaptation, instability in self-concept and value system, and moderate levels of reflexivity and authoritarianism combined with high independence. The high and very low levels of personal identity were signifi-

Table 3

Distribution of levels of personal identity according to the test by V.B. Nikishina and K.A. Petrashevsky before the implementation of the Program

Level of Identity	Experimental Group		Control Group		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	12	6,11	6	5,91	0,25	p > 0,1
Medium	100	49,14	50	47,54	0,33	p > 0,1
Low	82	40,47	42	40,19	0,31	p > 0,1
Extremely Low	9	4,28	7	6,36	0,26	p > 0,1

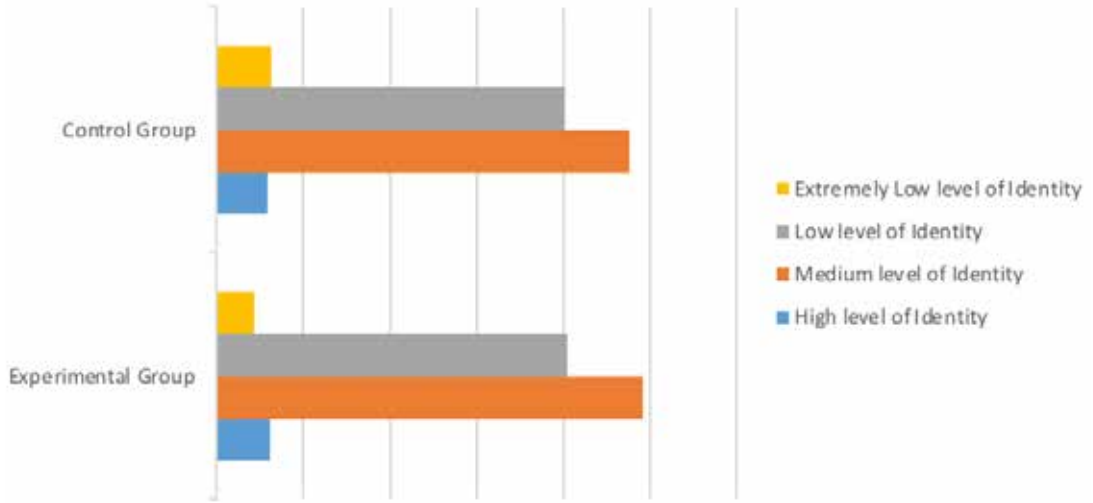

Figure 3. Distribution of levels of personal identity according to the test by V.B. Nikishina and K.A. Petrasch before the implementation of the Program

cantly lower. Despite some differences, all distribution trends in both groups were similar, and the differences did not reach statistical significance. Thus, it can be concluded that the experimental and control groups had similar characteristics in terms of the level of personal identity at the beginning of the experiment.

Table 4

The levels of post-traumatic growth, as measured by the "Posttraumatic Growth Inventory", increased in the experimental group after the implementation of the Program

Level of Posttraumatic Growth	Experimental Group before the implementation of the Program		Experimental Group after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	43	21,01	52	25,79	1,56	p = 0,6
Medium	69	34,26	128	63,35	3,29	p < 0,01
Low	91	44,73	23	10,86	3,25	p < 0,01

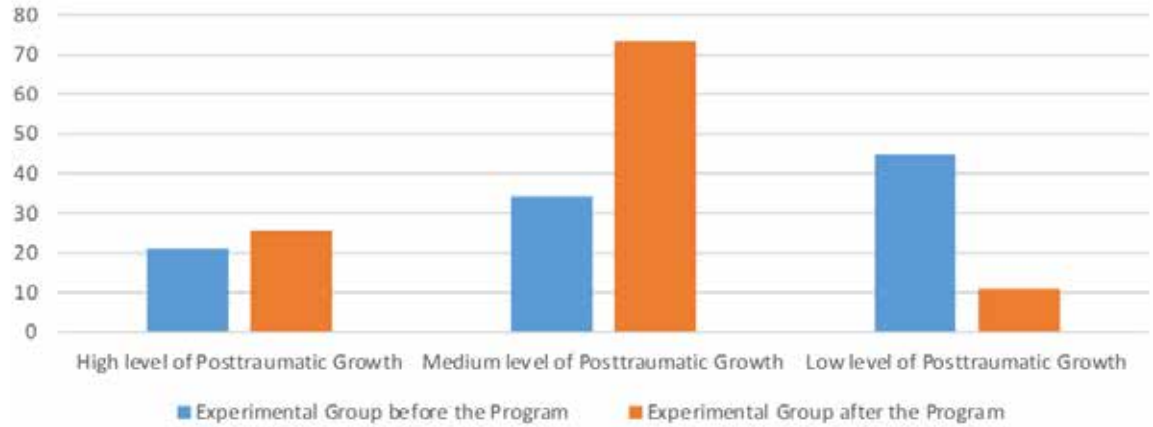

Figure 4. The levels of post-traumatic growth measured using the "Posttraumatic Growth Inventory" after the implementation of the Program

Right after the Program was introduced in the health facility, there were noticeable positive improvements in both the indicators of post-traumatic growth and levels of personal identity. Table 4 illustrates the quantitative changes in post-traumatic growth levels within the experimental group, while Figure 4 provides a visual representation of these shifts.

Therefore, after the implementation of the Program, the majority of adolescents in the experimental group noted significant positive psychological changes in their personalities as a result of experiencing challenging life circumstances related to military actions. Under the influence of the Program, there was a significant shift in their initial life schema, and post-traumatic growth emerged as a potential consequence of a cognitive attempt to reassess the individual's beliefs about themselves and the world.

The positive shifts in the system of adolescents' personal identity under the influence of the Program are presented in Tables 5 and 6, and visually represented in Figures 5 and 6.

The results of data processing from the testing show that significant shifts occurred in the structure of adolescents' identity in the experimental group after completing the Program. The most notable change is the decrease in pseudo-positive identity, indicating a greater awareness, increased independence in setting their own goals, and a stronger focus on their own opinions, self-concept, and personal prospects.

Additionally, there was a considerable reduction in the level of diffuse identity. This result indicates that adolescents have developed greater confidence in their abilities, self-worth, and self-perception. A significant increase was observed in the moratorium score, indicating that after undergoing the Program, adolescents started to contemplate more about their life prospects, searching for their own identity, and seeking role models to emulate.

Table 5

The distribution of types of personal identity according to L. Schneider's test after the implementation of the Program in the experimental group

Type of Identity	Experimental Group before the implementation of the Program		Experimental Group after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
Diffuse	100	49,13	45	22,14	3,71	p < 0,01
Moratorium	57	28,14	123	60,52	4,26	p < 0,01
Pseudo-positive	34	16,75	10	4,78	5,21	p < 0,01
Achieved	12	5,98	25	12,56	4,29	p < 0,01

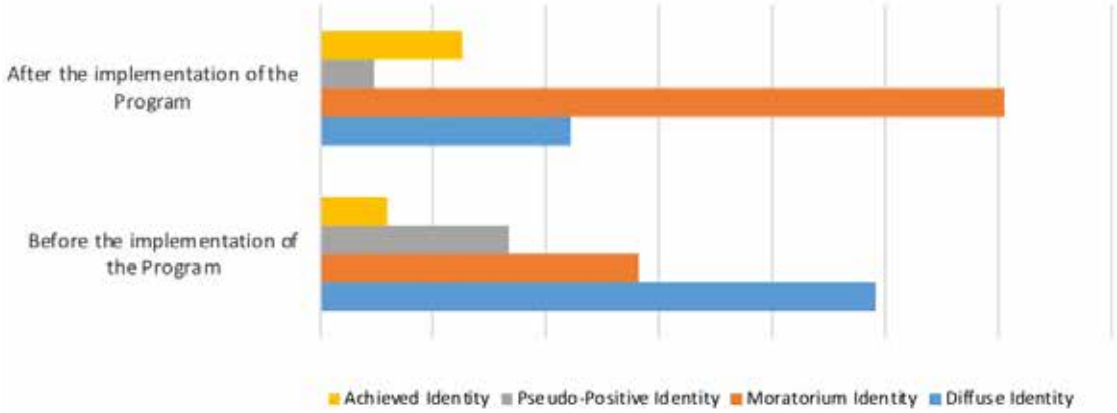

Figure 5. Distribution of types of personal identity according to the method of L. Schneider after the implementation of the Program in the experimental group

Table 6

The distribution of types of personal identity according to the test developed by V.B. Nikishina and K.A. Petrush was assessed after the implementation of the Program in the experimental group

Level of Identity	Experimental Group before the implementation of the Program		Experimental Group after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	12	6,11	22	11,01	4,10	p < 0,01
Medium	100	49,14	147	72,54	2,35	p < 0,01
Low	82	40,47	31	15,19	4,62	p < 0,01
Extremely Low	9	4,28	2	1,26	4,79	p < 0,01

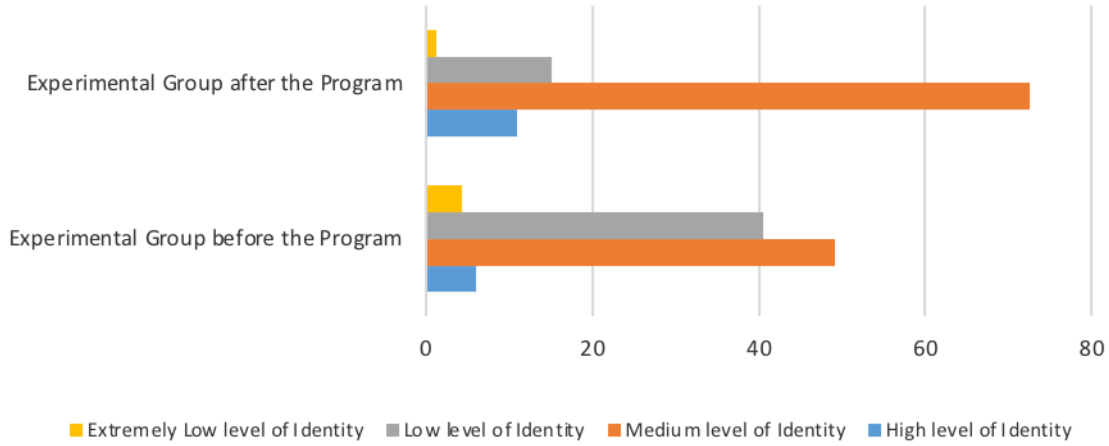

Figure 6. The distribution of types of personal identity according to the test developed by V.B. Nikishina and K.A. Petrush was evaluated after the implementation of the Program

The moratorium often indicates an identity crisis, which is common during adolescence. However, this crisis also provides an opportunity for transition towards positive identity or, at least, the possibility of such an attempt. Moreover, there has been a significant increase in the number of adolescents with positive personal identity.

Attained identity implies that adolescents have formed a specific set of personally meaningful goals, values, and beliefs. They perceive them as personally significant, which provides a sense of direction and self-awareness in life. Representation of achieved identity involves having a positive self-regard, which is associated with a positive evaluation of one's qualities and a stable connection with society, as well as a complete coordination of identification with the group and differentiation from the group.

The obtained results from measuring the levels of personal identity indicate that the implementation of the Program led to a significant increase in the high level of personal identity. A high level of personal identity is characterized by a strong socio-psychological adaptation, positive self-regard, a stable system of values, high levels of reflexivity and independence, and low levels of authoritarianism.

Thanks to the Program, there was also a significant reduction in the very low level of identity. This level is characterized by a low degree of socio-psychological adaptation, instability in self-regard and value system, and low levels of reflexivity and independence.

Table 7

Levels of posttraumatic growth at 6 months after implementing the Program in the experimental group according to the posttraumatic growth inventory

Level of Posttraumatic Growth	Experimental Group after the implementation of the Program		Experimental Group six months after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	52	25,79	57	28,13	1,56	p > 0,1
Medium	128	63,35	122	60,75	1,28	p > 0,1
Low	23	10,86	24	11,12	1,24	p > 0,1

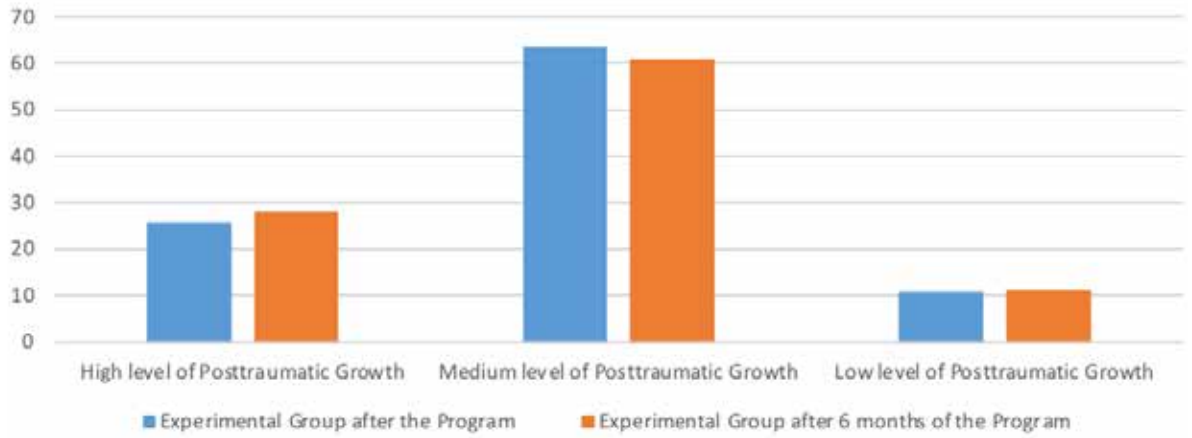

Figure 7. Levels of posttraumatic growth using the posttraumatic growth inventory at 6 months after Program implementation

The predominant level of identity both before and after the implementation of the Program in the experimental group was the average level. However, there were statistically significant quantitative shifts towards an increase in the average level at the expense of the low and very low levels. Thus, the overall changes in the structure of personal identity in the investigated adolescents from the experimental group were positive, and the effectiveness of the Program was proven.

The findings revealed a favorable short-term impact of Program implementation on fostering post-traumatic growth among adolescents who had encountered traumatic events. Subsequent testing conducted six months after the Program in both the experimental and control groups allowed for the identification of its positive long-term effects.

Table 7 presents the quantitative indicators of post-traumatic growth levels in the experimental group after six months, depicted visually in Figure 7, while Table 8 provides the results for the control group, illustrated in Figure 8.

As measurements of posttraumatic growth levels in the experimental group at 6 months after completing the Program show, significant shifts did not occur. Positive changes after undergoing the Program remained stable, indicating evidence of the Program's enduring effects over time. Although a slight increase in individuals with high and low levels can be noted, along with a simultaneous decrease in those with moderate levels, this may suggest further strengthening of the personality for those who progressed from moderate to high levels and unfortunately, a decline to low levels for individuals who did not sustain their position at the moderate level over time.

The measurements in the control group show that there were no significant shifts in posttraumatic growth levels, although certain positive changes in the distribution of these levels were observed. The

Table 8

Levels of posttraumatic growth using the posttraumatic growth inventory 6 months after the experiment in the control group

Level of Posttraumatic Growth	Control Group before the start of the experiment		Control Group six months after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	22	20,87	23	22,79	1,58	p > 0,1
Medium	36	33,99	37	35,03	1,29	p > 0,1
Low	47	45,14	45	42,18	1,63	p > 0,1

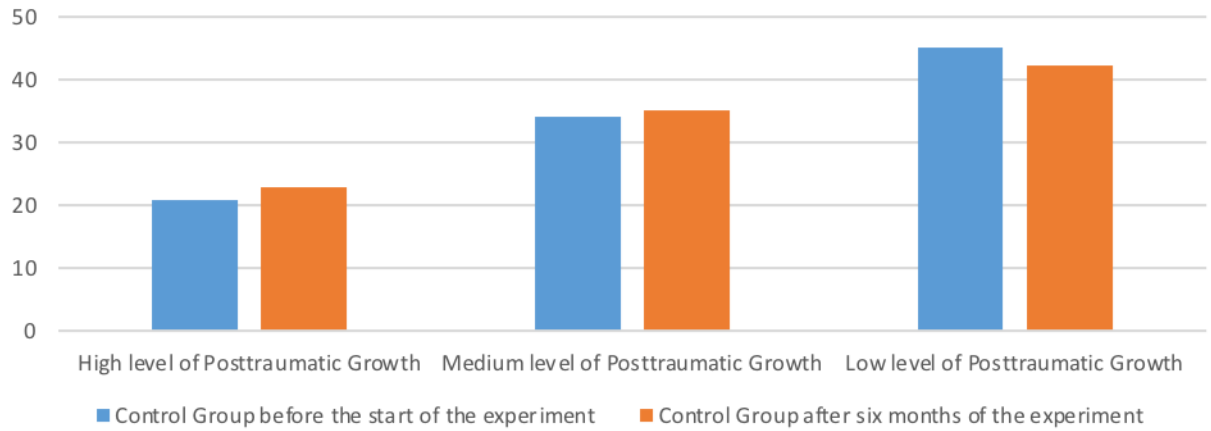

Figure 8. Levels of posttraumatic growth using the posttraumatic growth inventory 6 months after Program implementation

increase in the number of individuals with high and moderate levels, along with a decrease in those with low levels, though not substantial, suggests that over the 6-month period, the psychological state of several participants stabilized, their personality strengthened, and their attitudes towards their own experiences, life, others, and the world as a whole may have changed. However, these shifts did not alter the existing state within the control group.

Quantitative shifts in the types of adolescent personal identity after 6 months of Program implementation in the experimental group are presented in Table 9 and visually illustrated in Figure 9. Similarly, for the control group, these shifts are documented in Table 10 and visually depicted in Figure 10.

Table 9

Distribution of types of personal identity in the experimental group using l. Schneider's methodology six months after Program implementation

Type of Identity	Experimental Group after the implementation of the Program		Experimental Group six months after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
Diffuse	45	22,14	50	24,98	0,23	p > 0,1
Moratorium	123	60,52	116	56,90	0,64	p > 0,1
Pseudo-positive	10	4,78	12	5,78	0,37	p > 0,1
Achieved	25	12,56	25	12,56	0,06	p > 0,1

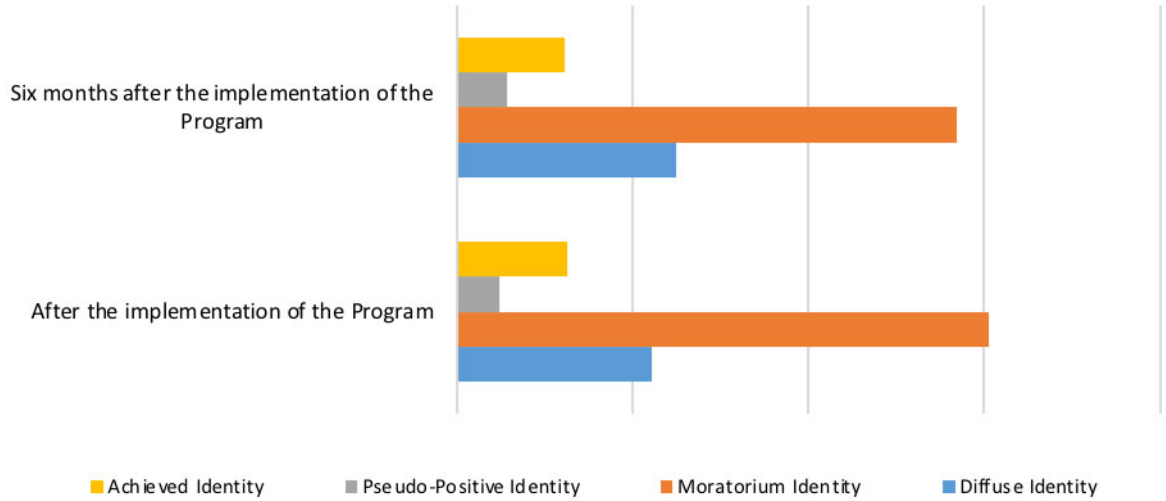

Figure 9. Distribution of types of personal identity in the experimental group using L. Schneider's methodology six months after Program implementation

As indicated by the results, the shifts in indicators of personal identity types in the experimental group after 6 months of completing the Program were statistically non-significant. Although some changes occurred, they did not impact the achieved effect of the Program. Specifically, diffuse identity

Table 10

Distribution of types of personal identity in the control group using L. Schneider's methodology six months after Program implementation

Type of Identity	Control Group before the implementation of the Program		Control Group six months after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	Number	(%)	number	(%)		
Diffuse	58	55,27	57	54,17	1,29	p > 0,1
Moratorium	29	27,84	30	28,84	1,27	p > 0,1
Pseudo-positive	13	12,59	11	11,09	0,39	p > 0,1
Achieved	5	4,30	7	5,90	0,85	p > 0,1

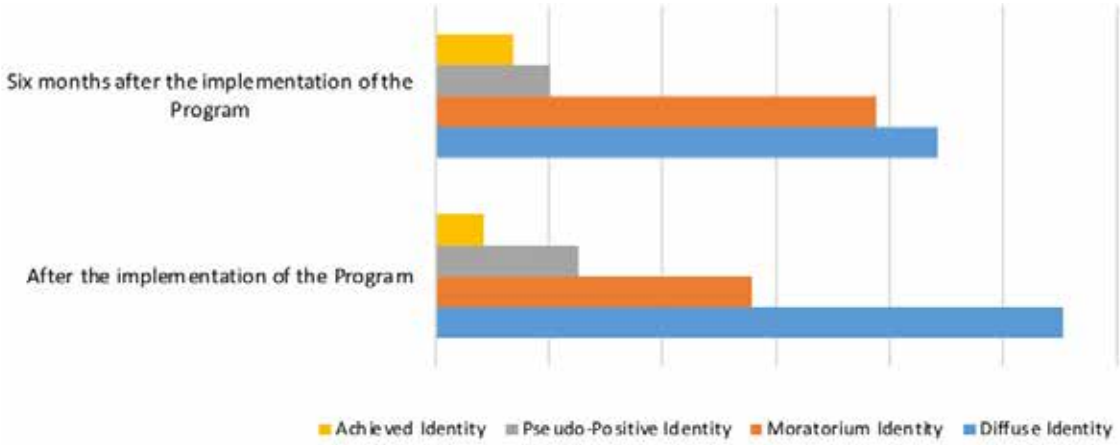

Figure 10. Distribution of types of personal identity in the control group using L. Schneider's methodology six months after Program implementation

and pseudo-identity increased, while the indicator of attained positive identity remained unchanged. This may suggest that there were sufficiently strong positive changes resulting from the completion of the proposed Program.

As indicated by the results, the shifts in indicators of personal identity types in the control group after 6 months of completing the Program were statistically non-significant. Minor changes occurred, where diffuse identity and pseudo-identity decreased, while moratorium and positive identity, on the contrary, increased. This can be considered as generally positive dynamics. However, since these shifts were not significant, it can be asserted that the Program for promoting posttraumatic growth in adolescents proved to be a more effective and efficient factor than other measures implemented in the control group.

Quantitative shifts in the levels of adolescent personal identity after 6 months of Program implementation in the experimental group are presented in Table 11 and visually illustrated in Figure 11. Similarly, for the control group, these shifts are documented in Table 12 and visually depicted in Figure 12.

According to the results of measurements in the experimental group, positive shifts induced by the Program continued even after its completion. There was a decrease in the proportion of very low and low levels of personal identity, an increase in the moderate level, and a decrease in the high level. However, all these shifts were statistically non-significant, indicating a sustained influence of the Program on the personality of the adolescents who underwent it.

The research results indicate that certain positive shifts in adolescents from the control group occurred within 6 months after the experiment. These shifts may have been facilitated by the psychological support and work conducted by psychologists in the school. Additionally, various specialized

Table 11

Distribution of types of personal identity in the experimental group using V.B. Nikishina and K.A. Petrasch's methodology six months after Program implementation

Type of Identity	Experimental Group after the implementation of the Program		Experimental Group six months after the implementation of the Program		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	number	(%)		
High	22	11,01	21	10,67	0,13	p > 0,1
Medium	147	72,54	152	75,19	0,34	p > 0,1
Low	31	15,19	26	13,06	0,37	p > 0,1
Extremely Low	2	1,26	2	1,28	0,04	p > 0,1

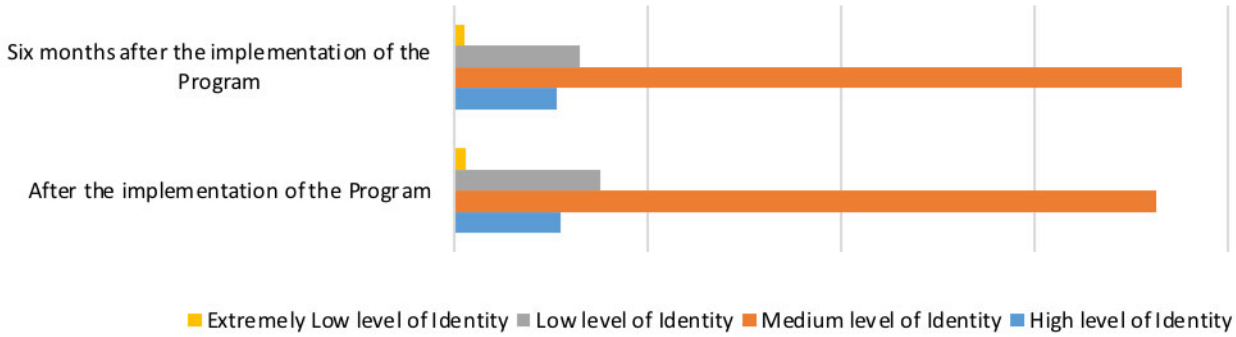

Figure 11. Distribution of types of personal identity in the experimental group using V.B. Nikishina and K.A. Petrasch's methodology six months after Program implementation

Table 12

Distribution of types of personal identity in the control group using V.B. Nikishina and K.A. Petrasch's methodology six months after Program implementation

Type of Identity	Control Group before the start of the experiment		Control Group six months after the experiment		Fisher's criterion φ 1,64≤φ≤2,31	Level of statistical significance p
	number	(%)	Number	(%)		
High	6	5,91	7	6,87	1,24	p > 0,1
Medium	50	47,54	51	49,05	1,31	p > 0,1
Low	42	40,19	42	40,19	0,12	p > 0,1
Extremely Low	7	6,36	5	4,05	1,05	p > 0,1

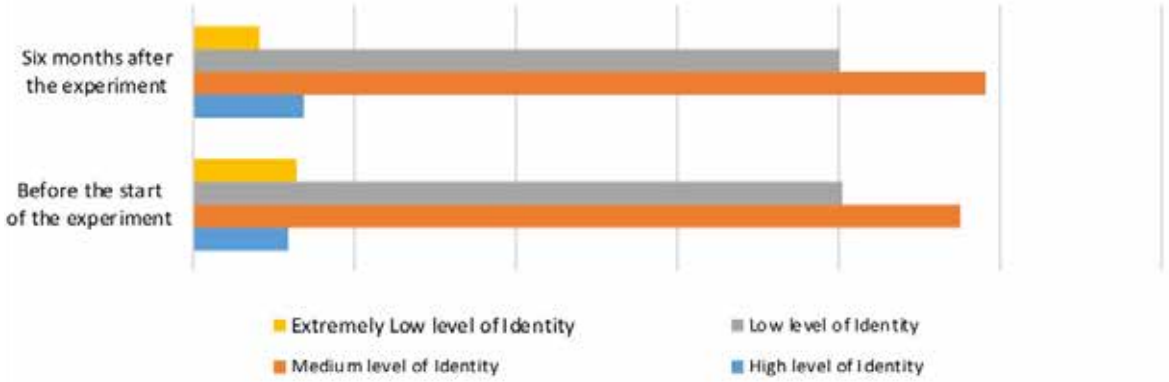

Figure 12. Distribution of types of personal identity in the control group using V.B. Nikishina and K.A. Petrasch's methodology six months after Program implementation

psychological support programs conducted by charitable foundations and organizations working with adolescents might have contributed to these shifts. However, despite the positive changes observed in the measurements, they were not statistically significant in terms of personal identity. Therefore, it can be concluded that the isolated positive influences, although detected by measurements, did not yield statistically significant results, possibly due to the absence of a comprehensive format and a specially organized safe environment during the interventions.

Conclusions. The proposed Program for promoting posttraumatic growth in adolescents successfully influenced the participants' personal identity in a positive way. It managed to decrease the proportion of individuals with very low identity levels and significantly increase the proportion of those with high identity levels. The majority of adolescents who underwent the Program developed and strengthened their social-psychological adaptation skills, acquired more stable value orientations, and enhanced their positive self-attitude, reflectiveness, and independence.

After implementing the Program in the experimental group, the indicator of diffuse identity, while increasing over time, remained significantly lower than in the control group. Additionally, pseudo-positive identity, which may be imposed and not aligned with one's true self-concept, was significantly less present in the experimental group. This suggests that the adolescents who completed the Program possess a more self-aware attitude towards themselves, their beliefs, and values, and have a clearer personal stance compared to the participants in the control group.

Although positive shifts and a decrease in prematurely imposed identity levels occurred in the control group over time, the achieved positive identity somewhat decreased in the experimental group but remained significantly higher than in the control group. Moratorium, as a transitional state and manifestation of identity crisis, was the dominant type in the experimental group and significantly

higher than in the control group. This indicates that the adolescents who underwent the Program are more inclined to seek their own personal position, construct a positive self-image, find ways to build their perspective, establish constructive relationships with others and the world, and approach their limitations and mistakes without prejudice, attempting to integrate events into their own experience.

As a result, the overall dynamics and structure of personal identity in the experimental group differed significantly from the control group, and the statistical significance of these differences was confirmed. The Program contributed to an increase in positive identity and moratorium, which is a likely transition to positive achieved identity in the future, while the diffuse and prematurely imposed pseudo-identity significantly decreased. In contrast, the control group predominantly exhibited diffuse identity, with positive identity being the least prevalent.

References:

1. Breslau, N., Peterson, E. L., Kessler, R. C., Schultz, L. R. (1999). Short screening scale for DSM-IV posttraumatic stress disorder. *American Journal of Psychiatry*. 156(6) : 908–911.
2. Linley, P. A., & Joseph, S. (2004). Positive change following trauma and adversity: A review. *Journal of Traumatic Stress*, 17, 11−21.
3. Mattson E., James L., Engdahl B. (2018). Personality factors and their impact on PTSD and post-traumatic growth is mediated by coping style among OIF/OEF veterans. Military medicine. Vol. 183. № 9–10: 475–480.
4. Prati, G. (2009). Optimism, Social Support, and Coping Strategies as Factors Contributing to Posttraumatic Growth: A Meta-Analysis. *Journal of Loss and Trauma*. 14(5): 364–388.
5. Schaefer, J. A., & Moos, R. H. (1992). Life crises and personal growth. Personal coping: Theory, research, and application. In B. N. Carpenter (Ed.), pp. 149–170.
6. Solomon, Z., & Dekel, R. (2007). Posttraumatic stress disorder and posttraumatic growth among Israeli ex-pows. *Journal of Traumatic Stress*. № 7. Vol. 20: 303–312.
7. Taku, K., & McDiarmid, L. (2015). Personally important posttraumatic growth in adolescents: The effect on self-esteem beyond commonly defined posttraumatic growth. Journal of Adolescence. 44: 224–231.
8. Tedeschi, R. G., Park, C. L., & Calhoun, L. G. (1998). Posttraumatic growth: Conceptual issues // Posttraumatic growth: Positive changes in the aftermath of crisis In R. G. Tedeschi, C. L. Park, & L. G. Calhoun (Eds.), Mahwah, NJ: Erlbaum. P. 1−22.
9. Tedeschi, R.G., Shakespeare-Finch, J., Taku, K., & Calhoun, L.G. (2018). Posttraumatic Growth: Theory, Research, and Applications (1st ed.), Routledge. 264 p.
10. Zhang, Y., Xu, W., Yuan, G., An, Y. (2018). The Relationship Between Posttraumatic Cognitive Change, Posttraumatic Stress Disorder, and Posttraumatic Growth Among Chinese Adolescents After the Yancheng Tornado: The Mediating Effect of Rumination. Frontiers in Psychology, 9: 474.
11. Zoellner, T., Rabe, S., Karl, A., & Maercker, A. (2008). Posttraumatic growth in accident survivors: openness and optimism as predictors of its constructive and illusory sides. *Journal of Clinical Psychology*. 64 (3): 245–263.

THEORY AND DEVELOPMENT OF POLITOLOGY

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THE COMMITTE OF THE REGIONS AND ITS ROLE IN EU COHESION POLICY DEVELOPMENT

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Abstract. The Cohesion Policy and the Committee of the Regions as its institutional instrument are among the most effective components of the EU functioning. There are used the method of system-structural analysis, descriptive, generalization and historical ones. The Committee of the Regions formation peculiarities are highlighted as an effective mechanism for the Cohesion Policy implementation, outlines the responsibility spheres of the institution and the commissions that allow them to be ensured. Attention is also paid to cross-border cooperation functioning aspects, which strengthens regional development and helps to solve some common problems, such as the transport infrastructure of neighboring states. After the russian-Ukrainian war started, the Committee focuses on supporting the affected regions of Ukraine, helping with their recovery. Another initiative of the Committee is the organization of summer camps for Ukrainian children for their psychological and emotional support. The activities of the Committee are effective and widely diversified.

Key words: Committee of the Regions, region, institution, Cohesion Policy, cross-border cooperation, EU, development program.

Introduction. The European Union is an organization that aims to build a socially oriented model of society. The democratic state development is impossible without the effective functioning of its regions. The Committee of the Regions is an effective component of the EU's regional development policy, the Cohesion Policy. The effective development of one country regions contributes to the increase of regional development of the neighboring states adjacent territories in compliance with the legislation and sovereignty, in this way cross-border cooperation is implemented. This is in the field of interest of a number of scientists. Thus, M. Fontes reveals the role of cross-border cooperation and the Cohesion Policy in the effective functioning of the transport infrastructure. The problems of encouraging youth entrepreneurship in rural areas are highlighted in the works of A. Astromskienė (Astromskienė et al, 2014). The cross-border development of the «Danube» Euroregion takes place in the studies of K. Czakó (Czakó et al, 2014), and the «green» initiatives of the EU aimed at protecting the environment – in the publications of G. Messina (Messina, 2021). The Neighbourhood Policy and the Committee of Regions role in its implementation are revealed by G. Oikonomou (Oikonomou, 2018). Hogenauer AL investigates the peculiarities of questioning EU affairs by regional parliaments (Hogenauer, 2017). The Ukrainian scientific school, represented by S. Fedonyuk (Fedoniuk, 2020), O. Pikulyk (Pikulyk, 2020) and others, are also studying the experience of implementing the EU regional development policy.

The purpose and tasks of the research. The purpose of this work is to characterize the peculiarities of the EU Committee of the Regions functioning as an institutional component of the Cohesion Policy. To achieve this, a number of tasks have been set, such as outlining the essence and of the institution structure, highlighting its main tasks and spheres of influence, analyzing the Committee

of the Regions cooperation with the main EU development platforms, revealing the peculiarities of supporting the institution of Ukraine after a full-scale invasion.

Research methods. In the process of researching the main aspects of the Committee of the Regions functioning, some scientific research methods were used, namely the method of system-structural analysis, descriptive, generalization and historical ones, each of which is a system of techniques and means that make it possible to solve scientific tasks. The essence of the method of system-structural analysis highlightes the fact that the object of research, the Committee of the Regions, is considered as a single entity (system) taking into account the specifics of the structure, interrelationships, relationships of all structural components of the European Union, identifying the role of each of them in the overall communication process. The descriptive method makes it possible to single out the units of researched objects analysis for the purpose of their further study and interpretation, such as the study of the peculiarities of the Committee's support for Ukrainian children in modern realities.

The method of generalization is a way of moving to a higher degree of abstraction by identifying common features (properties, relationships, development trends, etc.) that are characteristic of the processes and phenomena of the studied area. When studying the activity of a political institution, this method allows to determine the peculiarities of its development, trends in the implementation of the results of its activity in the EU, in particular, regional initiatives in the field of the Cohesion Policy, to highlight the main directions and priorities of interregional communications of countries.

The use of historical and comparative-historical methods makes it possible to track the development trends of the research problem, observe the dynamics of the researched object, as well as the study of scientific opinion concerning the coverage of the features of the creation and functioning of the Committee of the Regions and its role in the EU Cohesion Policy. The set of scientific research methods that were used in the study of the specifics of the Committee of the Regions' activities allow for the optimal organization of the scientific process and contribute to the achievement of the research goal.

Results and the discussion. Regional policy is an important tool of the European Union. At the beginning of the formation of the common market, regional policy was envisaged only as a perspective concept, declared in the preamble of the Treaty of Rome. The concept of the EU regional policy changed in the future, as did the role of individual regions and territories in the development of the European community. Until the mid-1970s, it was, first of all, in the hands of national authorities, later the role of the regions became more tangible.

The European Committee of the Regions represents the interests of local and regional authorities of the EU. This institution is headed by the president – Vasco Alves Cordeiro, since June 2022. In total, the organization has 329 members and 329 deputies from all EU countries, elected at the local or regional levels. Meetings take place in Brussels 6 times a year to discuss legislative initiatives and approve resolutions for further EU actions. The administration of the Committee of the Regions is headed by the Secretary General, its powers include responsibility for the preparation and implementation of decisions of the structural units: the Plenary Assembly, the Bureau, the Conference of Presidents and the President himself. Currently, these duties are headed by Petr Blizhkovski (About, 2023).

The national delegations which are the members of Committee of the Regions are presented from each of the 27 EU states. All of them reflect the overall political, geographical and local or regional balance of each state. The EU Council officially appoints the Committee of the Regions members, upon proposal of the member states. Each national delegation elects a chairman and appoints a coordinator. The coordinators' role is to liaise between the Committee of the Regions administration and the members of their national delegation. There are some differences in quantity members from member states. Thus, Belgium has 12 representatives, Bulgaria – 12, Czech Republic – 12, Denmark – 9, Germany – 24, Estonia – 7, Ireland – 9, Greece – 12, Spain – 21, France – 24, Croatia – 9, Italy – 24,

Cyprus – 6, Latvia – 7, Lithuania – 9, Luxembourg – 6, Hungary – 12, Malta – 5, Netherlands – 12, Austria – 12, Poland – 21, Portugal – 12, Romania – 15, Slovenia – 7, Slovakia – 9, Finland – 9, Sweden – 12 (Members, 2023).

The main task of the Committee of the Regions is to bring EU citizens and EU institutions together by encouraging citizens to participate in various events and debates. The Committee helps to bridge the gap between the work of EU institutions and its citizens.

The Committee of the Regions is a political institution, as it is an assembly of local and regional representatives of the EU. Every year, the Committee representatives make about 250 visits, visiting representatives of European and international institutions, heads of states and governments, majors of regions, and also participate in dozens of events and official ceremonies. Issues of organizing visits are the responsibility of the Protocol Service.

The Committee of the Regions has six areas of responsibility:

1) local democracy, subsidiarity;
2) mobility and transport, trans-European networks;
3) environmental protection, energy and climate changes;
4) education, youth, culture and sports;
5) health care, employment and social affairs;
6) economic, social and territorial cohesion.

The Committee adheres to three main principles: closeness to people, multi-level self-government, subsidiarity.

The Committee of the Regions consists of six commissions (groups of members) that prepare conclusions and resolutions for consideration by the Plenary Assembly:

– Territorial cohesion policy and EU budget (COTER);
– Economic policy (ECON);
– Natural resources (NAT);
– Environmental protection, climate change and energy (ENVE);
– Citizenship, governance, institutional and external affairs (CIVEX);
– Social policy, education, employment, research and culture (SEDEC) (Our work, 2023).

A number of EU platforms and networks are used to implement and influence the Committee of the Regions. These include Eastern Partnership (CORLEAP), EU 2020 Monitoring Platform, Subsidiarity Monitoring Network, Atlas of Decentralized Cooperation for Development, Network of Regional Hubs, Euro-Mediterranean Assembly (ARLEM), Multi-stakeholder Platform on SDGs, Governat of Mayors, European Grouping of Territorial Cooperation, Cities and Regions for Integration.

CORLEAP and ARLEM initiatives in the field of good neighborhood policy are used to share practical experience. In 2003, the implementation of the European Neighborhood Policy was announced and started. It is aimed at strengthening cooperation with neighboring countries, including through Committee of the Regions activities. In particular, the Committee announced two initiatives. The first – the Conference of Regional and Local Authorities for the Eastern Partnership (CORLEAP) – is aimed at the eastern borders of the EU: EU countries, Armenia, Azerbaijan, belarus, Georgia, Moldova, Ukraine. Bilateral projects are aimed at the development of regions between the EU and each of the partner countries, and multilateral cooperation is mainly a platform for political dialogue, energy negotiations, security and economic integration. The second initiative – the Assembly of Local and Regional elected Representatives from the EU and Mediterranean countries (ARLEM) – covers the EU and 15 countries close to the Mediterranean, such as Egypt, Turkey, Algeria, Morocco, Syria, Tunisia, Albania, Bosnia and Herzegovina, Israel, Jordan, Libanon, Mauritania, Palestinian Authority, Monaco, Montenegro. It is aimed at strengthening interregional cooperation. This initiative has observer status of the Union for the Mediterranean Parliamentary Assembly (Oikonomou, 2018).

In addition to these initiatives, the Committee of the Regions is also a political platform and forum for the development of local democracy and inter-institutional cooperation and has a direct impact on another EU policy – the European Grouping of Territorial Cooperation (Pikulyk, Balak, 2020). Further cross-border cooperation of the Committee include involvement in the integration of new member countries through Joint Consultative Committees and Working Groups; cooperation with the OECD and the Council of Europe to strengthen political dialogue with local and regional governments in the EU.

The Committee is a part of the EU legislative initiative, in particular, its commissions prepare feedback on EU legislative proposals, the Committee members gather for plenary sessions to vote and approve these feedbacks. The Committee of the Regions involvement is also important in local and regional administrations, not just in Brussels. In its activities, the Committee promotes the need for political dialogue and cross-border cooperation. It organizes consultations of local and regional administrations, experts to study their opinion on discussed issues. Intra-regional groups are the forms of special interest groups among the Committee members to discuss local or regional issues, sometimes even from different countries.

The Committee of the Regions uses a tender system to fulfill its purpose. To join the tender, a corresponding application should be leaven. CoR uses two types of contracts in its activities:

– low-valued (up to 60,000 euros), to which at least three candidates are involved;

– medium-valued (from 60,000 to 140,000 euros), to which at least five candidates are involved (Our work, 2023).

In accordance with Art. 163 of the Financial Regulation and P. 3 of Annex I FR the Committee of the Regions it is required to publish a list of contracts annually. For transactions value more than 15,000 euros, the subject and amount of the transaction should be indicated (table 1).

Moreover, the largest amount of funds in 2022 was allocated for digitization of local and regional initiatives, while the smallest amounts covered the costs of translation into the languages of some small EU countries.

The Cohesion and Regions' Cross-Border Development Policy are ones of the foundations of the EU functioning. When, after the implementation of the transport infrastructure based on the EU Trans-European Transport Network, the expectations in Portugal and Spain did not come true, the reason was less developed cross-border regions. To avoid this, new transport infrastructure was built.

Table 1

List of some specific contracts based on a framework contract of CoR in 2022*

FW Contractor LE Name List	LC Contract Amount (Eur)
the most expensive projects	
PRACSIS	1.714.043,93
Computer Task Group IT Solutions SA	1.341.008,46
NETCOMPANY-INTRASOFT SA	1.282.106,64
Instant News Services, VASS EU Services, C-DEV SA, INSPIIRO.ME	1.075.895,58
EQUANS Services	760.452,61
the most cheapest projects	
ACOLAD Latvia SIA	17.512,10
ACOLAD Luxembourg SA	16.201,29
AVATAR OU*	15.816,78
BPOST	15.300,00
Stichting Europees Instituut Voor B	15.242,50

** Source: European Committee of the Regions. (2023). About. Retrieved from https://cor.europa.eu/en/about/Pages/default.aspx.*

Geographically, the territory covered NUTS3 level regions: 18 from Portugal and 7 from Spain. The involvement of INTERREG programs made it possible to solve existing disparities and eliminate them (Fontes, 2014).

In 2011, the European Committee renewed the EU Strategy for the Danube Region. This is a comprehensive development plan that focused on a certain geographical area: Austria, Hungary, Slovakia, Romania, Bulgaria. The primary goal was to enable long-term cooperation between the countries belonging to the Danube River basin, increase economic development, improve transport infrastructure to overcome territorial disparities in development through the Cohesion Policy measures. In general, the implementation of the Strategy gave positive results, but there were noticeable differences in regional approaches (Czakó, 2014).

Almost ¼ of the total population of the EU lives in rural areas. During the 2014–2020 program period, attention was paid to young people involved in agriculture or other types of employment in rural areas through the support of micro and small entrepreneurship. The European Parliament encouraged the involvement of young people in rural areas in member states, creating new promising sources of income. The urgency of the problem is evidenced by the fact that a third of young people aged 15-24 are unemployed in Lithuania, which is one of the highest indicators in Europe. That is why in 2014–2020, conditions were created to support young people in entrepreneurship, focusing on attracting investments, commercial activities in rural areas on more favorable terms (Astromskienė et al, 2014).

In 2020, the political priorities for the development of the Committee of the Regions for 2020–2025 were announced (Bringing Europe closer.., 2020). There are three main priorities of it functioning:

1) Bringing Europe closer to people: democracy and the future of the EU;

This means engaging with local and regional politicians through local dialogues, increasing women's participation in politics, young locally elected politicians, listening and responding to citizens; three-dimensional democracy: European, national and regional or local; observance of EU fundamental values and identities such as freedom, local democracy, rule of law, human rights and equality; citizens' trust in 1 million EU local and regional leaders: working hand-in-hand within the EU's main political families, relations with regional or local networks, associations and Brussels offices, working with the enlargement countries and the EU's neighbors, improving the EU's democratic architecture through the conference on the Future of Europe, synergies between regional, national and EU parliaments, EU inter-institutional relations.

2) Managing fundamental societal transformations: building resilient regional and local communities;

This includes green development, which includes sustainable growth, global advocacy on biodiversity and climate change, climate-neutral EU by 2050. The latter provides for zero pollution, circular economy, protecting biodiversity, rural development, energy efficiency, clean mobility, European Green Deal. Transformations include strengthening resilience in local communities, migration, demographic change, digital EU regions and cities, UN sustainable development goals. Strengthening resilience in local communities will include improving European coordination, sustainable EU recovering for all communities, managing disasters in regions and cities. Migrations will provide comprehensive, humanitarian and fair, supporting integration, fight human trafficking. Among the demographic changes, it is worth noting managing population aging, decline and depopulation, brain drain, quality employment, social rights and work-life balance. Digitalisation means education, training and skills, tackling the digital divide, infrastructure and connectivity, digital public services and incentives for local business, 5G deployment at local and regional level.

In Europe, cities are the most dynamic for implementing energy policy and technological development. The implementation of the Green Deal proposed by the European Commission in accordance

with the Paris Agreement will contribute to the use of clean energy resources, the development of a circular economy, the restoration of biodiversity and the reduction of emissions. The plan should operate in 2021–2027 and has a budget of 100 billion euros. The main goal is the prospective involvement of all territories and administrative levels of the member countries and the achievement of climate neutrality by 2050 (Messina, 2021). The Committee of the Regions should be actively involved in implementing this, playing a strategic role at the local level. This will make the Program viable for the digitization needed to promote energy transformation and environmental literacy.

3) Cohesion: place-based EU policies.

Economic, social and territorial cohesion is fostered and respected in all EU policies that affect people and their places of living. Cohesion is not about money, but about values. Attracting private investment, tackling disparities in Europe, multi-level governance and partnership, simplification of EU policies, showcasing cohesion's added value in the daily of people, renewed European economic governance, cross-border cooperation, adequate European investment. The last direction will include smart mobility, support for all regions and cities, tackling the urban-rural divide, Cohesion Policy, rural development, saving of EU resources, innovation and entrepreneurialism, investing in sustainable transport across the EU, adapting local economies.

Democracy and the future of the EU remains the priorities of the Committee of the Regions. A new chapter for EU democracy, alongside communication campaigns on the Cohesion and the Green Deal, are forming a major initiative for the Committee and its members. The main goals of this in 2023 are to assist local and regional elected representatives and local authorities to support representative and participatory democracy in view of the European elections in 2024 and beyond; reinforcing European values, youth participation and gender equality; and promoting the active involvement of citizens and local and regional authorities in EU policy shaping (Our goals, 2023).

The European Union cannot tackle social, economic and territorial disparities through the Cohesion Policy alone. All EU initiatives and policies, like the post-COVID recovery plan, should fight against inequalities and promote the Cohesion. It must be a fundamental value of the EU. The Cohesion Policy should remain the main tool for a harmonious development of every European region. However, all EU policies should tackle disparities among territories in accordance with the principle not to harm to cohesion, introduced in 2022 by the European Commission’s 8th Cohesion Report. A principle that needs to become reality through a direct involvement of the Committee of the Regions, in line with the request made by the European Parliament (All European policies.., 2023).

In recent years, the Committee has faced new challenges, as well as European and global security in general. When in 2022 the Committee was forced to respond to a full-scale invasion of russia into Ukraine, unacceptable from the point of view of a democratic society. This somewhat changed the priorities of the EU’s regional development, and there was a revision of the tools and audience targeted by the EU’s Cohesion Policy. The Committee expressed unquestionable support for the integrity of Ukraine and included Ukrainian children in youth exchange projects.

After russia’s full-scale invasion of Ukraine, in Marseille, at the Committee of the Regions summit on March 2–3, 2022, representatives of EU regional and local authorities agreed on a Declaration of EU Regions and Cities on Solidarity with Ukraine. At the next meeting on March 30, 2022, CoR members developed concrete measures for further implementation. Mr. V. Klychko, the head of the Association of Ukrainian Cities and the mayor of Kyiv, was announced as an honorary member of the Committee of the Regions. Info-Support Hub for Regions and Cities was created to implement specific initiatives. The main areas of such support were:

– European Alliance of Cities and Regions for the Reconstruction of Ukraine;
– humanitarian aid to Ukraine;
– positioning and advocacy;
– summer camps for Ukrainian children (CoR Stands in Solidarity.., 2022).

The purpose of the European Alliance of Cities and Regions for the Reconstruction of Ukraine is to coordinate joint measures for the reconstruction of the state, strengthen cooperation with the «Ukrainian reconstruction platform», disseminate information and accelerate dialogue at the local and regional levels to promote reconstruction, provide expert assessment for the reconstruction of cities and regions after russian destruction.

Among the requests for humanitarian aid are appeals from the «Kyiv of the Future» and «Children of Nikopol» charitable funds; construction and transport materials transferred to the city of Kharkiv; humanitarian support for children and elderly people with disabilities for the Ovidiopol community of Odesa region; assistance to Chortkiv community of Ternopil region.

Positioning and advocacy consists in defending the interests of Ukraine and its regions on the international and European arena, the development of the aforementioned Declaration, the integrity and freedom of Ukraine.

Summer camps for Ukrainian children are an initiative of the European Committee of Regions and the Association of Ukrainian Cities. It was launched in 2022 and is aimed at the visit of Ukrainian children to cities and regions of Europe that are safe to meet, study, and communicate with their peers. The initiative is aimed at children and young people of primary, secondary and higher education aged 6–17 and accompanying persons at the rate of one adult per ten children. The duration of the camp is 4–5 weeks or more, depending on the capabilities of the host country. Such visits are free for Ukrainians, as all expenses are borne by the host parties and local investors. This initiative is based on the Concept of summer activity camps for children and young people from Ukraine. The result of this activity is that more than 1250 children visited the cities of Nimes, Athens, Rome, Tampere, Gdańsk, Pontimao and EU regions such as Preili, Wielkopolska, Lubelskie, Maramures, Podkarpackie, Pomorskie, Bavaria, Lodzkie (Concept of summer activity.., 2022). In order to further adapt Ukrainian children to a peaceful life and provide them with the necessary psychological and emotional support, it is planned to involve other cities and regions of Europe, organize information and consultation sessions, and involve stakeholders with relevant experience in this area to support local and regional initiatives in their activities. In order to spread information about EU activities of this kind, the Committee website has links to relevant booklets.

Conclusions. The Committee of the Regions, as an EU institution, includes representatives from all EU member states and has clearly defined spheres of influence. The committee consists of commissions, which, in turn, act according to the defined competences. Thanks to inter-territorial and cross-border cooperation, the Committee has the opportunity to contribute to the solution of urgent issues in various areas, such as the development of transport infrastructure, the involvement of young people in entrepreneurial initiatives in rural areas. In 2022, the Committee of the Regions offered support to the regions and territorial communities of Ukraine affected by the russian invasion, initiatives were launched to improve the health and support of Ukrainian children. The Committee of the Regions is an effective and active tool of the EU Cohesion Policy.

References:

1. Astromskienė, A., Slavickiene, A., Gudaitiene G. (2014). The priorities of young rural population enterprise activity. *Procedia – Social and Behavioral Sciences*, *156*, 345–349. doi: 10.1016/j.sbspro.2014.11.200
2. Czakó, K., Fekete, D., Poreisz, V. (2014). Economic Differences of Countries by the River Danube. *Procedia Economics and Finance*, *9*, 163–175. doi: 10.1016/S2212-5671(14)00017-3
3. European Committee of the Regions. (2020). *Bringing Europe closer to people: The political priorities of the European Committee of the Regions 2020–2025*. Brussel. doi: 10.2863/14213
4. European Committee of the Regions. (2022). *Concept of summer activity camps for children and young people from Ukraine.* Brussel. Retrieved from https://cor.europa.eu/en/engage/Documents/

Concept%20of%20summer%20activity%20camps%20for%20children%20and%20young%20people%20from%20Ukraine/COR-2022-02345-00-00-LET-TRA-EN.pdf
5. European Committee of the Regions. (2023). *About.* Retrieved from https://cor.europa.eu/en/about/Pages/default.aspx
6. European Committee of the Regions. (2023). *All European policies must fight social and territorial disparities and promote cohesion.* Retrieved from https://cor.europa.eu/en/news/Pages/european-policies-fight-social-territorial-disparities-promote-cohesion.aspx
7. European Committee of the Regions. (2023). *CoR Stands in Solidarity with Ukraine.* Brussel. Retrieved from https://cor.europa.eu/en/engage/Pages/cor-stands-in-solidarity-with-Ukraine.aspx
8. European Committee of the Regions. (2023). *Members.* Brussel. Retrieved from https://cor.europa.eu/en/members/Pages/National-delegations.aspx
9. European Committee of the Regions. (2023). *Our goals*. Retrieved from https://cor.europa.eu/en/engage/Pages/new-chapter-4eudemocracy.aspx
10. European Committee of the Regions. (2023). *Our work*. Retrieved from https://cor.europa.eu/en/our-work/Pages/default.aspx
11. European Committee of the Regions. (2023). *Summer Camps for Ukrainian children*. Retrieved from https://cor.europa.eu/en/engage/Pages/summer-camps-for-ukrainian-children.aspx?origin=spotlight#CorContainer
12. Fedoniuk, S. V. (2020). Rehionalna polityka [Regional Policy]. Boiar, A. O., Fedoniuk S. V. (Ed.). *Yevropeiskyi Soiuz [European Union]* (pp. 336–337). Kyiv: Maslakov, 2020 [in Ukrainian].
13. Fontes, M.J., Ribeiro, A., Silva, J. (2014). Accessibility and Local Development: Interaction between Cross-border Accessibility and Local Development in Portugal and Spain. *Procedia – Social and Behavioral Sciences*, *111*, 927–936. doi: 10.1016/j.sbspro.2014.01.127
14. Hogenauer, AL. (2017). Regional parliaments questioning EU affairs. *Journal of Legislative Studies*, *23(2)*, 183–199. doi: 10.1080/13572334.2017.1329986
15. Messina, G. (2021). The role of the committee of the regions (CoR) to implement the Green Deal at the local level: an overview of Italy. *AIMS Geosciences*, *7(4)*, 613–622. doi: 10.3934/geosci.2021037
16. Oikonomou, G. (2018). Sub-State Mobilization in «High Politics»: The Role of Regional and Local Governance in the Implementation of the European Neighbourhood Policy. *European Integration Studies, 12*. doi: 10.5755/j01.eis.0.12.20869
17. Pikulyk O. B., Balak I. O. (2020). *Skhidne partnerstvo: novi priorytety spivrobitnytstva [Eastern partnership: new priorities of cooperation], V Mizhnarodna naukovo-praktychna internet-konferentsiia Aktualni problemy rehionalnykh doslidzhen* (pp. 208-211). Lutsk: Vezha-Druk [in Ukrainian].
18. Pikulyk, O. B. (2020). Komitet rehioniv [Committee of the Redions]. Boiar, A. O., Fedoniuk S. V. (Ed.). *Yevropeiskyi Soiuz [European Union]* (pp. 70–73). Kyiv: Maslakov [in Ukrainian].

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CZECH REPUBLIC TOWARDS WAR AND INDEPENDENCE OF KOSOVO: MILITARY AND POLITICAL ASPECTS

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Abstract. The subject of this work is the analysis of the war in Kosovo and the involvement of the Czech Republic in the conflict and independence of Kosovo. The research includes analysis of the participation of the Czech Republic in the ending of the war in Kosovo, and the participation of Czech politicians in resolving the Kosovo conflict.

The aim of this article is to develop an evidence-based comprehensive study of the Czech approach to the conflict in Kosovo by showing and analyzing the key features of the conflict as well as the main issues of Czech participation in it. The key pillar of the approaches is a sovereign state acting in accordance with its national interests and important roles played by individual state agencies as well as by non-state, non-governmental and social actors, but also international organizations.

Key words: war in Kosovo, Czech Republic, foreign policy, peacekeeping missions, Kosovo independence.

Czech Republic involvement in stabilization missions in Kosovo

In 1989, the Czech Republic defined its security policy strategy and the path to integration with the Euro-Atlantic zone, the EU and NATO. An important step towards NATO structures was the accession in 1994 to the Partnership for Peace Program. As part of the completed program, the Czech Armed started ideological, technical and organizational transformation of its Forces, which gradually began to meet the standards of the armies of Western countries in the completed fields. When cooperating with NATO, the Czech government declared the inclusion of Czech units in NATO and EU missions in war-torn regions. After the Czech Republic joined NATO in March 1999, the scope of cooperation with the Alliance was significantly expanded. The NATO command responsible for creating mission forces in the Balkans expected military support from the new members.

When NATO launched the "Deny Flight" air operation in March 1999, the Czech government declared to direct a military unit to future peacekeeping forces that were to ensure peace and stable development of Kosovo. Czech President Vaclav Havel assured that real peace would still require much diplomatic effort. It also meant that the Czech Republic should not only engage in Kosovo not only militarily, but also with efforts to rebuild the region after the war. Foreign Minister Jan Kavan agreed with the president and said that the Czech Republic foresees significant financial assistance after the end of the war (Hospodářské news: 07.06.1999). When Serbian troops withdrew from Kosovo, it was occupied by NATO allied troops (KFOR, Kosovo forces) in Operation Joint Guardian. The Czech Republic also contributed troops to KFOR.

Following the end of the NATO Air Company, KFOR units deployed to Kosovo on 12 July 1999 and were responsible for civil and border protection. The Czech Republic joined the international group "Joint Guardian" and sent a reconnaissance company of 140 soldiers of the Czech army, the number of which was gradually increased. Soon Slovakia joined the Czech Republic.

From February 19, 2002, after the signing of an intergovernmental agreement between the ministries of defense, a joint Czech-Slovak contingent was sent in the strength of a mechanized battalion to the joint base in Sajkovac.

The first troops of NATO forces entered Kosovo on June 12, 1999 (Hospodářské noviny, June 14, 1999). Part of the Czech troops went to Kosovo only on June 28. The company of 126 soldiers later found itself in the Podujeva region in north-eastern Kosovo (Hospodářské noviny, 29 June 1999). The participation of the Czech Republic in Kosovo was the smallest of all 30 NATO countries involved. The government was criticized for this by both President V. Havel and the opposition. Pavel Severa (KDU-ČSL) said that "*the only company of Czech soldiers is not a good showcase for the Czech Republic and it should be shown that we do not want to be a secondary NATO member*" (Hospodářské noviny, June 11, 1999).

As early as mid-2001, the establishment of a joint Czech-Slovak branch of KFOR was considered (Hospodářské noviny, 10. 7. 2001). The Czech and Slovak governments decided to deploy a joint unit of 494 soldiers (including 393 Czechs), which was approved in August 2001 (Hospodářské noviny, 16 August 2001, Hospodářské noviny, 23 August 2001). The first Czech-Slovak battalion in the international units of KFOR in the South Serbian province of Kosovo began operations in April 2002. The battalion was subordinated to the International Center Brigade (Hospodářské noviny, 3 April 2002). Czech soldiers have commanded this international brigade since August 2005. Under their command, a quarter of Kosovo troops and 1,500 allied troops took control (Hospodářské noviny, 1 August 2005).

The Czech campaign operated in the Multinational Brigade "Centrum" and had a base in the village of Gornji Sibovač. Its main tasks included the protection of the 42 km Kosovo-Serbia border, but also ensuring the safe return of refugees and creating conditions for the restoration of peaceful coexistence between Kosovo Serbs and Albanians. Among other things, the campaign constantly protected isolated and particularly vulnerable areas inhabited by Serbs. In May 2001, the number of soldiers increased to 400, and in February of the following year, a joint Czech-Slovak mechanized battalion was created, teaching 500 soldiers. Considering that the above-mentioned battalion was created jointly by two countries, it should be stated that the Czech Republic and Slovakia were involved in the mission almost symbolically from the beginning of KFOR's creation. The Czech Republic officially announced that they could not afford to send more troops and bay equipment for financial reasons.

Against this background, there were strong controversies among the Czech political elite, the ruling party and the forces of the parliamentary opposition. For example, ČSSD wanted to increase the state budget deficit in connection with the expansion of the mission, ODS proposed to finance the soldiers by selling government bonds, with which KDU-ČSL again disagreed (Hospodářské noviny, 9 June 1999).

In the Chamber of Deputies, the majority of ODS, USA and KDU-ČSL MPs voted for the extension of the Czech mission in KFOR, as did most of the Social Democrats. The one who disagreed was KSČM (Hospodářské noviny, June 18, 1999). However, Defense Minister Vladimir Vetchy said that "*the plan to deploy forces in Kosovo is currently closed and that the Czech troops will only be reinforced after six months, when changes in the alliance change*." (Hospodářské noviny, 16. 6. 1999). This point has also been confirmed by NATO. Although the Czech decision was welcomed, the immediate reinforcement of the Czech campaign to the battalion was rejected because the deployment of troops in Kosovo was already agreed by NATO (Hospodářské noviny, 17. 6. 1999).

At the end of 2010, the governments of the Czech Republic and Slovakia announced the withdrawal of their troops from the NATO mission in Kosovo. Slovak forces left Kosovo by the end of 2010, while Czech forces were reduced and ended their mission in mid-2011. The withdrawal from Kosovo, in line with the Alliance's decision to reduce the number of KFOR, allowed to strengthen the Czech contingent in Afghanistan. From 1999, the Czech Republic and Slovakia formed a joint KFOR battalion as part of the Multinational Brigade "Centrum". In October, the Czech contingent was reduced from 270 to 90 soldiers, and by mid-2011 it was completely withdrawn.

At the same time, after the war in Kosovo in 1999, an initiative to create a multinational Czech-Polish-Slovak brigade began to take shape. It was based on Polish experience in the functioning of the

Multinational Corps North-East*[1], Lithuanian-Polish Battalion of UN Peacekeepers (LITPOLBAT)**[2] and the Ukrainian-Polish Battalion of UN Peacekeepers (UKRPOLBAT). As already mentioned, the Czech Republic and Slovakia formed one joint battalion for the mission in Kosovo.

Creating such a brigade on the border of three countries would be an important impulse for further political and European integration and reviving the V-4 Visegrad Group, which is in crisis. The initiative to create a multinational Czech-Polish-Slovak Brigade was initiated in October 2000 by the Minister of Defense of Slovakia during a meeting in Bratislava with the Polish counterpart. In May 2001, the Ministers of Defense of the Czech Republic, Poland and Slovakia signed a letter of intent on the creation of a joint tripartite unit with the headquarters in Topolčany, Slovakia. The agreement on the formation of the brigade was signed on September 20, 2001 in the Orava Castle in Slovakia.

The tasks of the brigade were to bring the Slovak army closer to NATO; peacekeeping mission in Kosovo, although this has not yet been publicly discussed. The countries assigned 11 officers each to the brigade headquarters, headed by the Slovak colonel Regula. The following national units were responsible for the headquarters: 6th Airborne Battalion from the 6th Brigade of Landing Structures from Glinie; 46 artillery detachment from Pardubice (Czech Republic), quick reaction battalion from Martina (Slovakia). The plan of formation and training of brigade units (their merging into one common component) provided for the completion of this process and the achievement of combat readiness for service in Kosovo by the end of 2005 (P. Prętkiewicz, 2011:48). In March 2003, the brigade staff went on a study trip to Kosovo in order to learn about the geographic and military conditions in the region of future combat service. The officers also visited the UKRPOLBAT in Kačanik and the Czech-Slovak battalion.

The project of creating a multinational Czech-Polish-Slovak Brigade gained great support in NATO, the help of equipping the staff with modern communication equipment, computers and vehicles. In 2004, Slovakia was admitted to NATO. Unexpectedly for Poland, a year later, the Czech Republic proposed disbanding the brigade due to Slovakia's accession to the Alliance (Tůma M., 2009). The agreement on disbanding the brigade was signed by the defense ministers of the three countries on May 30, 2005. The brigade was disbanded on June 22, 2005. The joint statement stated that it had fulfilled its primary objective, which was to bring Slovakia to NATO. Unofficially, the Czech Republic recognized that Poland was beginning to play a dominant role in the brigade, a military leader, and these considerations actually determined the position of the Czech Republic. Thus, an initiative that could have been a positive cooperation within the Visegrad Group and its showcase in the international community was crossed out. On June 22, 2005, in Topolčany, Slovakia, a ceremony was held to disband the multinational Czech-Polish-Slovak Brigade. All three countries continued to be involved in the mission in Kosovo, but to varying degrees and with different international force structures. Poland, the Czech Republic and Slovakia were forced to return to the idea of a joint brigade – battle group already in 2013. In line with the new defense strategy, the European Union has started to set up regional international battlegroups. The European Union recognized the Visegrad Group countries in 2013 as creating the European Union Visegrad Battle Group. In the V-4 dimension, the brigade, which was disbanded in 2005, began to be recreated. Poland assumed the task of the framework (leading) country. The brigade was on duty as an EU rapid response unit from 1 January to 20 June 2016. It consisted of 3,900 soldiers, including 1,870 Poles. The Visegrad Group countries carried out the same task again in 2018 from 1 January to 30 June. The course of history, the development of new concepts of European security confirmed that the idea of a brigade organized by three

[1] *The Northeast Multinational Corps is a NATO operational compound. It was established in 1997 in Szczecin by Poland, Germany and Denmark. It started functioning on September 18, 1999. In 2005, it reached full efficiency of the staff and operational readiness. In April 2004, Estonia, Lithuania and Latvia joined the WKPW. A year later, Slovakia and the Czech Republic joined, and in 2008, the USA and Romania. In the following years, Slovenia, Hungary, Sweden, Great Britain, Turkey, France and the Netherlands did so. In 2019, 18 countries already belong to the Corps.

[2] **LITPOLBAT – Lithuanian-Polish N+Battalion of UN Peacekeepers, was established in March 1997. It reached operational readiness on December 31, 1998. It was intended to participate in peacekeeping missions. It consisted of 800 soldiers: 420 Polish, 360-380 Lithuanian. He took part in missions in Kosovo, Syria, Lebanon, Iraq and Afghanistan. It operated until June 30, 2008.

countries of the Visegrad Group for a mission to Kosovo was right and purposeful and should not have been abandoned in 2005.

In addition to military personnel, several dozen Czech citizens were also employed in Kosovo as part of UNMIK (UN Mission in Kosovo), in the administrative or logistics division, in the health service, education and in the UNMIK international police force and other humanitarian organizations. The Czech Republic was also represented at the level of the chief administrator of Pristina. A former Czech politician, Jiří Dienstbier, held a high position in the UN diplomatic structures responsible for the policy towards the states of Kosovo and the former Yugoslavia (Girgle, P., 2006: 133).

Political involvement of the Czech Republic in resolving the conflict in Kosovo

The priority of the foreign and security policy of all governments in the Czech Republic in the 1990s was integration with the North Atlantic Alliance. Any other variant, be it neutrality, regional cooperation, or possibly a lower form of cooperation with NATO, was not considered in the Czech Republic (Kohl R., 2004: 32). The decision to join the Alliance was made in 1997 during the governance of the right-wing minority coalition of Vaclav Klaus. Thus, the Czech Republic, together with Poland and Hungary, were the first to enter the process of NATO enlargement. Accession was completed in 1999 under the rule of the Czech Social Democratic Party (ČSSD).

Although the change of government from the previous right-wing coalition meant some change in domestic policy, foreign policy priorities remained the same. In the ČSSD election manifesto, in the foreign policy chapter, support for accession to NATO was explicitly expressed. At the same time, the program talked about supporting the vote in the referendum on the accession of the Czech Republic to NATO (ČSSD. Volební program, 1997: 45). This referendum ultimately did not take place and on 12 March 1999 the Czech Republic became a member of the North Atlantic Alliance.

Public support for entry was also needed, and the media campaign served this purpose: "*the communication strategy focused mainly on the basic explanation of NATO's functioning, the essence of membership rights and responsibilities, a number of arguments for and against NATO membership were discussed, and the fundamental transformation of the Alliance after 1989 was emphasized*" *new a peaceful NATO*" (Kohl R., 2004: 33).

The first public shock to NATO was caused by the war in Kosovo. The Rambouillet negotiations failed and NATO decided to take military action. This move overturned the idea of many people who believed that the new NATO was only oriented towards peacekeeping, leverage, and greatly shook public support. The Czech political scene was strongly divided over the operation and sent conflicting signals abroad. At the beginning of the conflict, most Czech politicians supported the decision of NATO chief Javier Solana, who ordered air strikes on Yugoslavia on March 23, and the next day NATO began bombing.

One of the few supporters of this intervention at the time was President Václav Havel. President Havel called on Yugoslav President Slobodan Milošević to meet the demands of the NATO-led international community to end violence against Kosovo Albanians. Havel interviewed Reuters in 1999, where he said: "*I believe that there is one factor in the NATO intervention in Kosovo that no one can doubt: the air strikes, the bombs, are not motivated by material interests. Purely humanitarian: principles are at stake, human rights, which have been given a priority that goes beyond state sovereignty and which undermines the legitimacy of the Yugoslav Federation, even without a UN mandate. I am equally convinced that only time will allow an objective assessment of what is happening in Yugoslavia today and its impact on NATO*."

Although the government agreed with this action and also allowed NATO aircraft, mainly the US, to fly over the territory of the Czech Republic and rail transports, this attitude was not uniform and convincing. The two largest parties, ČSSD and the Civic Democratic Party (ODS), were not internally united and held different views on the intervention. ODS chairman Vaclav Klaus and ČSSD chairman Miloš Zeman, as well as the UN Minister of Human Rights in the former

Yugoslavia, J. Dienstbier, condemned the military procedure. Overall, the government's response has been quite inconsistent.

Tensions in the ODS between the center of Prague and the regions deepened the opinion of the political council about the effectiveness of NATO's intervention against Yugoslavia. Statements by senior leaders about the bombing of S. Milošević's army reinforced the suspicion of a large part of the members that the Presidium was used to making decisions on its own, ie without feedback from local party organizations. It was probably not so strong tension that appeared a year ago between the ODS parliamentary party and the then prime minister and party chairman V. Klaus. It became clear when V. Klaus stated that Kosovo's ethnic cleansing intensified after the launch of airstrikes against military targets in Yugoslavia. Some party members who understood his words that their leader indirectly accuses the Alliance of having provoked the expulsion of Albanians from Kosovo were offended by V. Klaus' statement. Their unwelcome reaction was to be expected as the earlier embarrassment was due to the prior statement by the ODS Politburo that "*nothing will solve the bombs and recommendations to return to the negotiating table*". Some regions where the belief prevailed that Milošević could only be taken up as a force demanded that such serious issues be addressed primarily through democratic debate within the party before a final position was adopted. However, according to ODS leadership, the Constitution empowered the bureau to make needed decisions between broader management sessions – that is, the board of directors. Undoubtedly, the management decides the fastest when it has the fewest people. However, such a way of directing is possible only when the party leader, even without party debate, agrees with the party masses. In ODS it was probably the same. However, in the case of NATO's intervention in Yugoslavia, the Civic Democrats applauded as the entire Czech public opinion. As for the situation in the party, the unilateral approach of V. Klaus and the office to the activities of the Alliance made the weakening of democratic mechanisms within the ODS visible.

A similar position was held by the Minister of Foreign Affairs, Jan Kavan. Minister J. Kavan proposed a peaceful solution to the Kosovo crisis in cooperation with Greece. The proposal contained "*a clear Czech-Greek demand for the disarmament of the KLA, and in particular a proposal to resolve the conflict after solving the problems related to the stabilization of the region affected by the effects of the Kosovo crisis*" (Kavan, 1999). Propozycja świedczyła, że czeska dyplomacja próbowała aktywnie przyczynić się do rozwiązania konfliktu. W maju kierownictwo NATO przedstawiło tekst wspólnej inicjatywy czesko-greckiej, proponując kroki w kierunku politycznego rozwiązania kryzysu w Kosowie. Najważniejsze było to, że nie był to całkowicie innowacyjny projekt tylko dla Kosowa (choć oczywiście był to projekt podstawowy i centralny), ale propozycja w pełni była zgodna z siedmiopunktową inicjatywą G8 The proposal showed that Czech diplomacy was actively trying to contribute to the resolution of the conflict. In May, the NATO leadership presented the text of a joint Czech-Greek initiative, proposing steps towards a political solution to the Kosovo crisis. The most important thing was that it was not a completely innovative project only for Kosovo (although of course it was a basic and central project), but the proposal was fully in line with the seven-point initiative of the G8. The Czech-Greek project was elaborated and supplemented in detail, perhaps even by a widely discussed UN Security Council resolution. The most controversial was the central chapter of the project on the end of the Yugoslav-Kosovar conflict. Depending on what happened in the past, the Czech-Greek draft, in addition to the mandatory demands to stop fighting and allow all Kosovo refugees to return to ensure comprehensive autonomy for the province of Kosovo, also assumed that: "*... Kosovo will remain and will not be declared Yugoslavia protectorate; most Serbian troops are withdrawing from Kosovo, but some will remain here as a guarantee of Yugoslavia's sovereignty; a brief alliance (48 hours) interrupts the bombing to allow the UN Security Council resolutions to be adopted, and once these resolutions have been adopted by Belgrade, the interruption of the air strikes will gradually turn into a ceasefire; finally, international peacekeeping forces supervising the implementation of UN resolutions will be NATO forces, permanent members of the Security Council*

(Russia and China) and neutral countries associated with the Balkans (Ukraine)". The initiative, the points of which were in many respects similar to the proposals already submitted by the international community, did not cause much reaction in the North Atlantic Alliance.

Prime Minister Zeman refrained from openly criticizing the military attack on Yugoslavia but stated that the crisis had not been resolved diplomatically. He was in favor of the NATO operation, according to which international law allows responding to humanitarian disasters that need to be prevented. However, he stressed that the government preferred a political peace solution to a military one, and therefore the Czech Republic, despite being a member of NATO, would not participate in the operation in Yugoslavia. He also told reporters: "*I think it's naïve to think that seven days after joining NATO, we could exercise our veto power and block a decision that NATO took after many months of careful analysis*." (Mladá fronta Dnes, 30. 3. 1999). Prime Minister M. Zeman has been criticized for his inconsistent policy towards the Kosovo crisis. When M. Zeman said that "*the Czech Republic must fulfill its obligations as a member of NATO*"; at the same time, he said that: "*the decision to bomb Yugoslavia was taken before the accession of the Czech Republic to NATO*". His interior minister claimed that "*the country would take in 5,000 refugees from Kosovo, but lower-ranking officials said the country could not afford to take in so many*."

The situation inside the two largest parliamentary parties was also unclear. Deputy Vladimir Łasztówka (ČSSD) openly claimed that the airstrikes would not solve anything, and in his opinion it was also an attack without a UN mandate (Hospodářské noviny, 26 March 1999). Senator Ivan Havlichek doubted that all means of resolving the situation had been exhausted. The government of Zeman ČSSD with the bombing of Yugoslavia finally agreed, 341 participants (more than half) of the Social Democratic Congress sent a letter to the Yugoslav ambassador in Prague expressing regret for NATO aggression (Hospodářské noviny, 12. 4. 1999). Paradoxically, however, the entire congress supported the current course of government policy.

The impact of the peace proposal was minimal, and its general message indicated the ambiguous approach of the Czech political scene and public opinion to the NATO action. Even public opinion did not indicate that the Czechs supported the alliance in the intervention. The Czech public condemned the intervention, "however, after a week of bombing, the presence of consensus and dissent was almost equal. 42.1% agreed with the intervention and 45% opposed it, and 12.5% of respondents still had no clear opinion (Český rozhlas 7)."

For Czech foreign policy, the KFOR mission and the direction of development assistance remained the main link. Bilateral relations between the Czech Republic and NATO can be considered as standard, with particular emphasis on supporting the activities of the European Union and profiling the common foreign and security policy in Kosovo. "*Within the CFSP, it promotes the growth of the EU's political role and responsibility for its overall development*." The Czech Republic also supported Serbia and Montenegro's negotiations on a Stabilization and Association Agreement.

After Jerzy Paroubek assumed the position of prime minister in April 2005, the government's policy has not changed. He visited 8-9. June Serbia and Montenegro. Met with Kosovo Foreign Minister Cyril Svoboda. "*During the visit, the Czech Republic offered both sides (Pristina-Belgrade) diplomatic and political assistance in the negotiation process, provided that both sides agreed to it. Any aid will be in line with EU and UN policies*." (Němec, Štěrba, 2006). However, there was no specific offer of this help from the Czech minister and therefore it could be perceived as declarative.

The Czech Republic also supported Ahtisaari's efforts to negotiate the future status of Kosovo, in which the EU would play a leading role. "*In the context of the negotiations in Kosovo, the Czech Republic underlines the need for a unified and balanced approach by the European Union*." At the same time, the Czech Republic expressed its readiness to participate in the upcoming European Security and Defense Policy civilian mission in Kosovo (Report on the Foreign Policy of the Czech Republic, 2008: 42).

With regard to ESDP in the Czech Republic, its complementarity with NATO was underlined. The state also supported the negotiations on the Stabilization and Association Agreement, which were "*the first comprehensive agreements between the EU and the Balkans*" (Cameron F., 2007: 132).

Conclusions. The participation of the Czech Republic in Kosovo was the smallest of all NATO countries involved, the state sent 126 soldiers. The government was criticized for this by both the president of the Czech Republic, V. Havel, and the opposition. There were accusations among politicians that only a company of Czech soldiers is not a good showcase for the Czech Republic. Politicians believed that the Czech Republic could not be a secondary member of NATO. Compared to Poland, the Czech Republic, which together with Slovakia since 1999 formed a joint KFOR battalion as part of the Multinational Brigade "Centrum", quickly withdrew from Kosovo. In October 2010, the Czech contingent was reduced from 270 to 90 soldiers, and by mid-2011 it was completely withdrawn.

In the Czech Republic, the government of M. Zeman had a difficult task. An analysis of the speeches of members of the ČSSD and opposition parties in the parliament shows that many politicians opposed the government's support for NATO, emphasizing historical ties with Serbia. Taking into account the state's strategy of integration with NATO and the EU, Prime Minister M. Zeman publicly announced that he prefers diplomatic solutions and supports the Alliance's attack on preventing a humanitarian catastrophe. He then supported all NATO activities and the Czech Republic made its airspace available to the Alliance's aviation.

A slightly clearer attitude than the Prime Minister was presented by the then Minister of Foreign Affairs, J. Kavan, who advocated that international law should allow for reacting to impending humanitarian disasters. But he, like M. Zeman, stressed that he would prefer a diplomatic solution to the conflict. In this spirit, he began to prepare his own peace initiative for Kosovo, the text of which he withheld at the last moment from both journalists and most constitutional officials. M. Zeman found great support for his plan in Greece, but the country's politicians, especially senators, strongly condemned his initiative. The attitude of Czech politicians was partially compensated by President V. Havel. Even V. Havel was in favor of a peaceful solution to the conflict until the last moment, but when NATO decided to launch air strikes, he opted for them and, through his statements, guided the uncertain statements of the government and other Czech politicians. The position of the Czech politicians' authorities was probably influenced by Russia's reaction to the NATO air strikes, which accused the Alliance of mass bombing being inconsistent with the UN Security Council Resolution.

References:

1. The Alliance entered Kosovo, Hospodářské noviny, 14/06/1999. International forces entered Kosovo on the basis of UN Security Council resolution ch. 1244 of 10 June 1999. See Resolution 1244 (1999).
2. The first thirty Czech soldiers for the KFOR operation went to the Balkans, Hospodářské noviny, 29/06/1999.
3. Vetchý wants a bigger unit for KFOR, Hospodářské noviny, 11/06/1999.
4. The Czech-Slovak unit in Kosovo will start working at the end of next year, Hospodářské noviny, 10/07/2001.
5. The Slovak government approved the creation of the Czech-Slovak KFOR unit, Hospodářské noviny, 16/08/2001 and The government confirmed participation in the KFOR mission, Hospodářské noviny, 23/08/2001.
6. NATO will not yet use Czech reinforcements for Kosovo, Hospodářské noviny, 17/06/1999.
7. Prętkiewicz, Cooperation of the Visegrad countries in the field of security and defence, SEW-typescript, Warsaw 2011.
8. Tuma M., Janoshec J., Prochazka J., Defense Policy of the Czechoslovak and Czech Republic (1989–2004), Ministry of Defense of the Czech Republic, Prague 2009.
9. Girgle, P.: A Brief History of the States. Kosovo, Prague, Libri 2006.

10. Kohl R. (2004): Czech Security Policy 1993–2004. In.: Pick, O.; Handl, V., (eds.): Foreign policy of the Czech Republic 1993–2004. Successes, problems and perspectives. Prague, Institute of International Relations.
11. ČSSD, Election program, 1997. p. 45 (ČSSD, Volební program, 1997. p. 45)
12. Czech Republic: Kosovo Exposes Foreign Policy Differences // https://www.rferl.org/a/1091455.html
13. They said about the intervention, Mladá fronta Dnes, 26 March 1999.
14. Kavan: The government does not want a ground operation, Hospodářské noviny, 12 April 1999.
15. Radio Prague, Czech Radio 7, Public Opinion Survey.
16. Report on the Foreign Policy of the Czech Republic, 2005, p. 234.
17. Niemec, Shterba, 2006: Discussion on the future status of Kosovo.
18. Cameron F. (2007): An introduction to European foreign policy. London, Routledge: p. 132.

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TRANSFORMATION OF THE INSTITUTE OF PARLIAMENTARISM IN UKRAINE AND THE BALTIC COUNTRIES (1990-2004): A COMPARATIVE ANALYSIS

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Abstract. The article shows that the parliaments of Ukraine and the Baltic countries were the main platform for state-building decisions in the specified period, which changed not only the existing system, but also themselves. In general, this article attempts to consider the transformation of the institution of parliamentarism in Ukraine and the Baltic countries by the method of comparative analysis. The article contains an overview of the process of transformation of the institution of parliamentarism in the studied countries in historical, political and legal contexts. It reflects the correlation between the constitutions adopted at national referenda, in particular in Lithuania and Estonia, which did not undergo significant amendments in the future in terms of the functioning of the institution of parliamentarism. The adopted constitutions at the legislative level in Ukraine and Latvia, in particular regarding the activities of the parliaments, were subsequently changed under certain conditions. If in Ukraine such changes regarding the powers and status of the parliament were due to political considerations during the revolution of 2004, then in Latvia such changes were in the context of the requirements of the latest period, because this country restored its statehood together with its 1922 Constitution.

Key words: parliament, constitution, independence, deputies, elections, referendum.

Introduction. As a result of the failed coup attempt in Moscow in 1991, Ukraine and the Baltic states (Lithuania, Latvia, Estonia) became independent. In the first transit period, in particular before the development and approval of the main «rules of the game» according to the new constitutions, these countries continued to be parliamentary republics in which the highest legislative body played a key role in the formation of the government and the entire executive vertical of power.

On the eve of the adoption of the Act on State Independence in August 1991, the Ukrainian Parliament, the absolute majority of which was made up of representatives of the Communist Party, had serious discussions between the center-right and the left regarding this decision. In the Baltic countries, everything was more clearly in favor of the course of their own independent state building. The majority of the political elite and the public of the Baltic countries believed that their statehood was interrupted by the occupation by the USSR back in June 1940. Therefore, having restored their independence, they began to revive the elements of the political system that was formed and operated in them even before the loss of their statehood (ie in the interwar period). In connection with the proclamation of the restoration of independence, such actions of the political elite of the Baltic countries gave reason to believe that their state-building process was forcibly interrupted by the Soviet Union (June 17, 1940). Given the statist aspirations of both the majority of the political elite and the public of the Baltic countries, which began to actively manifest themselves at the end of the 1980s, they could not lose the historic chance that appeared in August 1991. At the same time, it is also worth considering the fact that independence was proclaimed in August 1991 by parliamentarians elected during the elections in the USSR on an alternative basis in February-March 1990.

According to usual practice, the parliaments of these and other Soviet countries still under the USSR were called Verkhovna Rada of the corresponding Soviet Socialist Republic. Taking into account the fact that with the declaration of restored independence in these countries, their names

changed (getting rid of «sovietness» and «socialism»), the parliaments, in the first period, began to be called the Verkhovna Rada, respectively: of Ukraine, the Republic of Lithuania, the Republic of Latvia and the Republic of Estonia. Subsequently, both the names themselves, as well as their status and powers, underwent a certain transformation.

The purpose of the article is to carry out a comparative analysis of the transformation of the institution of parliamentarism in Ukraine and the Baltic States in the period from 1990 to 2004.

The task of the article is to highlight the evolution of the legislative power as a socio-political institution in Ukraine and the Baltic States from 1990 to 2004 in comparison.

Research methods are: historically comparativistic, in particular in the part of comparison of socio-political and legal processes, as well as phenomena in Ukraine related to the institution of parliamentarism in the conditions of its formation, functioning and evolution; statistical, which was used to determine the proportion of representativeness of parliament representatives in each of the studied countries in relation to the population (as of 1991).

Ukrainian experience of parliamentary transformation. The last convocation of the Verkhovna Rada of the Ukrainian SSR was elected on March 18, 1990. It was this term of parliament that adopted the Declaration on State Sovereignty of Ukraine on July 16, 1990, and the Act of Proclamation of Independence of Ukraine on August 24, 1991. In the aforementioned Act, the Ukrainian parliament is positioned for the first time under the name Verkhovna Rada of Ukraine (Akt, 1991), despite the fact that the Resolution on the Declaration of Independence itself was still under the old name (Verkhovna Rada of the Ukrainian SSR) (Postanova, 1991). It should be noted that since the Resolution of the Verkhovna Rada of the Ukrainian SSR On the Proclamation of Ukraine's Independence of August 24, 1991 stated that a national referendum on independence should be held on December 1, 1991 (Postanova, 1991), it was held simultaneously with the election of the first President of Ukraine, who became the Speaker of the Parliament L. Kravchuk (Visnyk, 2012).

If we take the size of the full membership of the Verkhovna Rada (450 people's deputies) and the number of the existing population of Ukraine that lived in 1991 (according to the State Statistics Service – 51.944 million people (Naselennia, 1991), then in the ratio per 1 deputy, the proportion of representativeness of the population was 1:115,431.

During the first term of the Verkhovna Rada of Ukraine, attempts were made to establish a system of balance of power and to form a constitutional model of the Commission created in the parliament (Ukraina, 2007: 954), however, early elections (parliamentary and presidential) in 1994 moved this process to the next convocation.

As a result of early parliamentary elections in 1994, the elected second convocation of the Verkhovna Rada and newly elected President L. Kuchma created a new joint Constitutional Commission to draft the text of the Basic Law. On June 8, 1995, the main participants in the political process concluded the «Constitutional Treaty» (Konstytutsiinyi, 1995) for one year. According to the powers specified in this Treaty, Ukraine becomes a presidential republic (under which the government is formed and reports to the president) during the year.

Already on June 28, 1996, the parliament adopts the Constitution of Ukraine, which states: «The only body of legislative power in Ukraine is the parliament - Verkhovna Rada of Ukraine» (Article 75) (Konstytutsiia, 1996). According to the constitutional model of 1996, the Verkhovna Rada of Ukraine consists of 450 people's deputies, starting at the age of 21, who are elected for four years (Konstytutsiia, 1996). That is, the form of government in Ukraine, according to the Constitution adopted in 1996, becomes parliamentary-presidential.

The powers of the Verkhovna Rada changed somewhat after the adoption of amendments to the Constitution of Ukraine during the presidential elections and the «Orange Revolution» of 2004. Thus, on December 8, 2004, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Amendments to the Constitution of Ukraine» (Zakon, 2004), according to which: The term of office of the Verkhovna

Rada is five years (instead of four); In the Verkhovna Rada, based on the results of the elections, a coalition of parliamentary factions is created, which includes the majority of deputies from the constitutional composition, which makes proposals to the President of Ukraine regarding the candidacy of the Prime Minister of Ukraine, as well as regarding candidacies for the Cabinet of Ministers of Ukraine; «The powers of the Verkhovna Rada include... the appointment by the President of Ukraine of the Prime Minister of Ukraine, the Minister of Defense of Ukraine, the Minister of Foreign Affairs of Ukraine, the appointment of other members of the Cabinet of Ministers of Ukraine, the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State the Committee of Television and Radio Broadcasting of Ukraine, the Chairman of the State Property Fund of Ukraine, the dismissal of the specified persons from their positions, the resolution of the issue of the resignation of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine» (Zakon, 2004). It is worth noting that after the adoption of these changes, the Verkhovna Rada was elected for a term of four years; the institution of a parliamentary coalition did not exist (on the contrary, a situational majority was formed during the consideration and voting of draft laws); The Verkhovna Rada approved the candidate for the position of head of government on the proposal of the President (without making such a proposal to the President on the part of the parliamentary coalition). These changes will finally enter into force on January 1, 2006. That is, in Ukraine in 2004 there was a legal transformation of the form of state government from a presidential-parliamentary republic to a parliamentary-presidential one, according to which the Verkhovna Rada will play a much more important role in the part of forming and controlling the Cabinet of Ministers of Ukraine and its head – the Prime Minister.

During the specified period, there were four convocations of the Verkhovna Rada of Ukraine (1st convocation: 1990–1994; 2nd convocation – 1994–1998; 3rd convocation – 1998–2002; 4th convocation – 2002–2006).

Consequently, Ukraine was able to finally establish and approve its political and legal system in 1996, adopting its own Constitution on June 28. The Verkhovna Rada shared powers with the president regarding the executive vertical and other state authorities, which underwent a certain transformation as a result of the 2004 constitutional reform.

Lithuanian practice of parliamentary construction. In Lithuania, during the proclamation of the Act on the Restoration of its Statehood (March 11, 1990), the Verkhovna Rada of the Lithuanian SSR was renamed the Verkhovna Rada of the Republic of Lithuania (Istoriia, 2018: 370), which was elected on February 24, 1990. Already on July 7, 1992, this Verkhovna Rada The Council renamed the parliament the Sejm (in historical terms it is also called «Restored» or «Reviving» (Istoriia, 2018: 371)). Simultaneously with the elections of the first round to the parliament on October 25, 1992, a national referendum on the new Constitution of Lithuania was held, during which the Basic Law of this state was approved. It is worth noting that before the appearance of this Constitution, the newly elected parliament first restored the Constitution of 1938 and immediately replaced it with the Temporary Basic Law (Istoriia, 2018: 372), which was in effect during the transition period (from March 11, 1990 to October 25, 1992). In this way, the pre-occupation political and legal model of Lithuania was restored and the Constitution and laws of the USSR were abolished on its territory. Already in the new Constitution of 1992, the status and powers of the supreme legislative body were established. Thus, in Chapter 5 of the Constitution of Lithuania, it is determined that the Seimas consists of 141 representatives of the people, who are elected for four years (under a mixed election system) not earlier than 25 years of age (Konstytutsiia, 1992). In general, the Constitution of Lithuania of 1992, in terms of the status and activity of the Seimas, did not undergo significant changes during the studied period. This makes it possible to assume that the Basic Law of this state was drawn up professionally from the very beginning and approved according to the requirements of the time.

If we consider the level of representativeness of the deputies of their constituents, in particular in terms of the ratio of the number of one representative in the Parliament of Lithuania to the population

that lived in this country in 1991 (3.704 million people (Population, 1991), then according to calculations, the ratio is 1:26, 269.

During the specified period, there were four convocations of the parliament of the Republic of Lithuania (1st convocation: 1990–1992; 2nd convocation – 1992–1996; 3rd convocation – 1996–2000; 4th convocation – 2000–2004).

In general, the parliament of the Republic of Lithuania, especially during the first transition period (1990–1992), had a significant patriotic potential and became the main center of state-making decisions in the country. At the constitutional level, his status and powers and, having restored the office of the president, acted in the political and legal field of the presidential-parliamentary republic.

Latvian variant of parliamentary transformation. In Latvia, after the elections on March 18, 1990, the Verkhovna Rada of the Latvian SSR was active in the number of 201 deputies (History, 1990). After its proclamation on May 4, 1990, of the Declaration «On the restoration of the independence of the Republic of Latvia», the name of the state, and therefore the parliament, was changed (to the Verkhovna Rada of the Republic of Latvia). This was the status of the Latvian parliament at the time of the declaration of independence on August 21, 1991. On the same day (August 21), he adopted the Constitutional Law «On the State Status of the Republic of Latvia» (Istoriia, 2005: 412). At the same time, in fact, the Constitution of Latvia (Satversme) of the 1922 model was restored, to which certain amendments were subsequently made. From that time until the autumn of 1992, there were discussions on the adoption of the Constitution. The final decision on the Constitution was adopted by the newly elected Parliament of Latvia, the first since the restoration of independence (June 6, 1993), which began its work on July 6, 1993. The restored Constitution of Latvia also reflected the institution of the President of this country, who is elected by the Sejm.

The Parliament of Latvia, according to the restored Constitution, began to be called the Seimas. Section 2 of this Constitution stated that the Sejm consists of 100 representatives of the people, who are elected from the age of 21 by the proportional voting system, for a term of four years (Latvijas, 1922).

It is appropriate to note that if we take into account the number of members of the Parliament of Latvia (which became 100 with the Constitution of 1922) and the population of Latvia (as of 1991 – 2.658 million people (Statistical, 1991), then one representative accounted for 26,580 inhabitants.

During the specified period, there were five convocations of the parliament of the Republic of Latvia (1st convocation: 1990–1993; 2nd convocation – 1993–1995; 3rd convocation – 1995–1998; 4th convocation – 1998–2002; 5th convocation – 2002–2006).

In the first period of Latvia's restored independence, due to the creation of a significant number of acts in the legislative base, even the deputies themselves did not know which laws should be adopted first (Istoriia, 2005: 424). Subsequently, amendments to the Constitution of the Republic of Latvia, which related to the work of the Seimas, were introduced and supported. Thus, on January 27, 1994, a separate law (entered into force on February 26, 1994) changed the provision of Clause 8 of the Constitution of Latvia, according to which citizens who have reached 18 (instead of 21) years of age can be elected in parliamentary elections (Latvijas, 1922).

On December 4, 1997, the Parliament adopted a number of amendments to the Constitution regarding the activities of the Seimas, which entered into force on December 31, 1997. In particular, these changes state that: the Seimas are elected for four (not three) years; elections to it must be held on the first Saturday in October; If, in the event of the dissolution of the Parliament, elections to the Seimas take place in another period of the year, then such Seimas shall meet no later than one month after its election and its powers shall expire after three years on the first Tuesday of the following November, simultaneously with the opening of the newly elected Seimas; No criminal prosecution or administrative fine may be imposed against a member of the Seimas without the consent of the Seimas; Amnesty is carried out by the Diet (Latvijas, 1922).

On April 30, 2002, the parliament adopted a law (entered into force on November 5, 2002), which changed the provisions of the Constitution of Latvia regarding the declaration of the solemn oath of a member of the Sejm to strengthen Latvian as the only state language, and also defined Latvian as the working language of the Sejm (Latvijas, 1922). Therefore, although Latvia renewed the validity of its first Constitution of 1922, in particular in the part of the functioning of the Sejm, the Basic Law required some adjustment to the new circumstances of the modern period.

Estonian model of parliamentarism. This country elected its last Soviet parliament (the Supreme Council of the Estonian SSR) on March 18, 1990, which consisted of 105 deputies, who on March 30, 1990 adopted the Resolution «On the State Status of Estonia» (Verkhovna, 1990). On May 8, 1990, the parliament passed a law invalidating the name of the state (Estonian SSR) and its symbols and restored its previous name – the Republic of Estonia, its symbols and articles of the 1938 Constitution (Zakon, 1990). Accordingly, the name of the legislative body changed to the Verkhovna Rada of the Republic of Estonia.

The events of August 1991 in Moscow contributed to the fact that on August 20, the Estonian Parliament promulgated the Resolution «On the State Independence of Estonia» (Postanovlenye, 1990). On June 28, 1992, a national referendum adopted the Constitution of Estonia, according to which the legislative power belongs to the Riigikogu (the name of the parliament), which consists of 101 deputies, who are elected according to the proportional system, starting from the age of 21 (Konstytutsiia, 2015). In general, during the first decade, the Estonian constitution did not undergo significant changes, in particular in terms of regulating the status and activities of its legislative body.

If we take into account the proportional composition of the population of Estonia as of 1991 (1.567 million people (Statistics, 1991) and the number of members of parliament (101), then the ratio of representativeness of each people's representative in proportion is 1:15,522.

During the specified period, there were five convocations of the parliament of the Republic of Estonia (1st convocation: 1990–1992; 2nd convocation – 1992–1995; 3rd convocation – 1995–1999; 4th convocation – 1999–2003; 5th convocation – 2003–2007).

Therefore, the Estonian model of the formation and functioning of the legislative body (Rijgikogu) was close to the interwar period, especially according to the constitutional model of 1938, and embodied the modern parliamentary republic according to the 1992 Constitution.

Results and their discussion. The Baltic countries, having restored their states, put the main emphasis on decision-making precisely on the parliaments, which became the main centers of political life in these countries. It was in the parliaments that representatives of the people adjusted social and economic life in the post-Soviet period. In addition, the parliaments themselves, as the central and only bodies of legislative power, were institutionalized in the political and legal field of the mentioned countries. According to their constitutions (Lithuania and Estonia adopted them in referendums and did not change them, and Latvia restored the constitutional model of 1922, which was amended during the first decade of restored independence). Although Latvia made a number of changes to its constitutional model of 1922 during the mentioned period, in particular in the part concerning the Seimas, this did not change its status in the political system of this country. Ukraine, with the election of its first president on December 1, 1991, had significant discussions about the form of state government and the place of parliament in it. This issue was resolved after the election of the second term of the Verkhovna Rada and the new president in 1994. They, through compromises, adopted and approved the Constitution of Ukraine in 1996, defining the status and functions of the parliament, the president, and other bodies of state power and local self-government. In connection with the confrontation during the so-called During the «Orange Revolution», in the context of the 2004 presidential elections, it was for political reasons that a compromise was reached between the participants in the process regarding the increase in the powers of the Ukrainian parliament and their reduction in the power of the president. That is, in Ukrainian practice, the status and powers of the

highest institutions of power, in particular the parliament, the president, the government, etc., were changed for political reasons (for the benefit of the interested parties), and not for philosophical and legal expediency. This made it possible to believe that during the transit period in Ukraine there was an advantage of political expediency over the constitution, which became «flexible» depending on the interests of certain power groups.

As for the **discussion**, it will be interesting to analyze: how important it is to search for the form of government during independence and change it in their Constitutions; Should the Constitutions be «firm» or «flexible», both during the period of transition to democracy and the market economy, and in general; Should separate laws regarding the status and activities of state authorities and local self-government bodies, which do not affect the constitutional provisions of these institutions, be amended, and should the powers of these institutions be changed in the Basic Law; What should be the most optimal indicator of the representation of one deputy in relation to the number of individual people (in particular, voters); Should it be a universal proportion for all, or should it be separate for each country.

Conclusions. Thus, in Ukraine in the period from 1991 to 2004, a political and legal transformation of the form of state government took place, according to which the «rules of the game» were changed in terms of powers between the parliament, the president and the government. If in the first years of independence the political model of Ukraine was only being formed and the Verkhovna Rada with 450 deputies retained a decisive place in the system of state power, then with the adoption of the 1996 Constitution, it shared this status with the president. Already with the constitutional reform of 2004, the status and powers of the Verkhovna Rada increased, which allows it to have a much greater influence on the formation and activity of the Cabinet of Ministers of Ukraine and the political-rights process as a whole.

The Baltic countries, having formed constitutional models in the first years of regained independence, continued to retain the status and powers of parliaments. Thus, in 1992, Lithuania and Estonia held referendums on the constitutions of their states, which reflect the status and powers of parliaments. It was these constitutions that were popularly supported by the majority of votes in the mentioned countries, which made it possible to have a more legitimate and resistant text of Basic Laws. However, among the Baltic states, it was Lithuania that formed a more numerous parliament (Sejm) with 141 members and granted significantly greater powers to the president, who is elected by the people. It is the presidential-parliamentary form of government in Lithuania that is quite similar to Ukraine in the specified historical period. In addition, another similarity between the Lithuanian practice and the Ukrainian practice is the simultaneous holding of elections and a referendum. It was Ukraine that held a referendum on independence on December 1, 1991, simultaneously with the presidential elections, and Lithuania, together with parliamentary elections on October 25, 1992, held a referendum on its Constitution. Estonia, on the other hand, formed its own parliament (Riijikogu) with 101 deputies, who are supposed to elect both the president of the republic and approve the government. That is, the Riigikogu is the highest body of state power in Estonia, which forms all other branches, and therefore this country is a parliamentary republic. Latvia, unlike its «Baltic sisters» (Lithuania and Estonia), with the declaration of restoration of independence, fully preserved the Constitution of the 1922 model, which defines the status of the parliament (Sejm). However, since the new period requires different approaches, amendments were made to this constitution that did not fundamentally change the system of state administration and the status and powers of the parliament. Since in Latvia (as in Estonia) the supreme legislative body determines other bodies of state power, in particular, elects the president and approves the government, that is why this country is a parliamentary republic.

As for the representation of their people by members of parliament, in 1991 it was 1:115,431 in Ukraine, 1:26,580 in Latvia, 1:26,269 in Lithuania, and 1:15,522 in Estonia.

References:

1. Akt proholoshennia nezalezhnosti Ukrainy (1991). (Act of Proclamation of Independence of Ukraine). URL: https://zakon.rada.gov.ua/laws/show/1427-12#Text [in Ukrainian].
2. History of the legislature (1990). URL: https://www.saeima.lv/en/about-saeima/history-of-the-legislature/ [in English].
3. Istoriia Latvii XX st. (2005). (History of Latvia of the 20th century) / Bleiere D. ta in. Ryha: «Iumava» [in Russian].
4. Istoriia Lytvy kozhnomu (2018). [History of Lithuania for everyone] / Bumblauskas A., Eidyntas A., Kulakauskas A., Tamoshaitys M. Kyiv: «Baltiia-Druk» [in Ukrainian].
5. Konstytutsiia (Osnovnyi Zakon) Estonskoi Respubliky (2015). (Constitution (Basic Law) of the Republic of Estonia). URL: https://www.riigiteataja.ee/viitedLeht.html?id=10 [in Ukrainian].
6. Konstytutsiia Lytovskoi Respubliky (1992). (Constitution of the Republic of Lithuania). URL: http://lib.rada.gov.ua/static/LIBRARY/catalog/law/lit_konst1.htm [in Ukrainian].
7. Konstytutsiia Ukrainy (1996) (Constitution of Ukraine). URL: https://wipolex-res.wipo.int/edocs/lexdocs/laws/uk/ua/ua013uk.pdf [in Ukrainian].
8. Konstytutsiinyi Dohovir mizh Verkhovnoiu Radoiu Ukrainy Prezydentom Ukrainy pro osnovni zasady orhanizatsii ta funktsionuvannia derzhavnoi vlady i mistsevoho samovriaduvannia v Ukraini na period do pryiniattia novoi Konstytutsii Ukrainy (1995). (Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the basic principles of the organization and functioning of state power and local self-government in Ukraine for the period before the adoption of the new Constitution of Ukraine). URL: https://zakon.rada.gov.ua/laws/show/1k/95-vr#Text [in Ukrainian].
9. Latvijas Republikas Satversme (1922). URL: https://likumi.lv/doc.php?id=57980 [In Latvian].
10. Naselennia (1991). (People) URL: https://www.ukrstat.gov.ua/operativ/operativ2007/ds/nas_rik/nas_u/nas_rik_u.html) [in Ukrainian].
11. Population Devision (1991). URL: http://web.archive.org/web/20230704140423/https://population.un.org/wpp/ [in English].
12. Postanova Verkhovnoi Rady Ukrainskoi RSR Pro proholoshennia nezalezhnosti Ukrainy (1991). (Resolution of the Verkhovna Rada of the Ukrainian SSR Proclaiming the Independence of Ukraine). URL: https://zakon.rada.gov.ua/laws/show/1427-12#Text (in Ukrainian).
13. Postanovlenye Estonskoi RSR O hosudarstvennoi nezavysymosty Estonyy (1990). (Decree of the Estonian RSR On the state independence of Estonia). URL: https://web.archive.org/web/20210831013332/https://www.gorby.ru/userfiles/estonia_20(1).pdf) [in Russian].
14. Statistical Database (1991). URL: https://data.stat.gov.lv/pxweb/en/OSP_PUB/START__POP__IR__IRS/IRS010/table/tableViewLayout1/) [in English].
15. Statistics Estonia (1991). URL: https://andmed.stat.ee/en/stat/rahvastik__rahvastikunaitajad-ja-koosseis__rahvaarv-ja-rahvastiku-koosseis/RV021/table/tableViewLayout2) [in English].
16. Ukraina: politychna istoriia. XX – pochatok XXI st. (2007) [Ukraine: political history. 20th – beginning of the 21st century]. Redrada: V.M. Lytvyn (holova) ta in. Redkol.: V.A. Smolii, Yu.A. Levenets (spivholovy) ta in. [in Ukrainian].
17. Verkhovna Rada Estonskoi RSR Pro derzhavnyi status Estonii (1990). (Verkhovna Rada of the Estonian SSR On the state status of Estonia). URL: https://uk.wikisource.org/wiki/Постанова_Верховної_Ради_Естонської_РСР_про_державний_статус_Естонії [in Ukrainian].
18. Visnyk TsVK (2012). [Bulletin of the CEC]. №3(24). URL: https://www.cvk.gov.ua/wp-content/uploads/2020/06/2012_3_Visnik_Cvk.pdf [in Ukrainian].
19. Zakon ESSR «O symvolyke Эstonyy» (1990). (ECRS Law on the Symbols of Estonia). URL: https://web.archive.org/web/20190906230101/http://estonia.news-city.info/docs/sistemsf/dok_ierskz.htm [in Russian].
20. Zakon Ukrainy Pro vnesennia zmin do Konstytutsii Ukrainy (2004). Law of Ukraine On Amendments to the Constitution of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2222-15#Text [in Ukrainian].

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