

INTERNATIONAL AND NATIONAL LEGAL MECHANISMS OF JUDICIAL LIABILITY IN THE CONDITIONS OF ECONOMIC GLOBALISATION OF MODERN SOCIETY

Konul Akhundova¹

Abstract. The *subject* matter of the study is the conceptual, theoretical, empirical, methodological and applied foundations of international and national legal mechanisms of judicial liability in the context of economic globalisation of modern society. *Methodology.* The present study employed a combination of general scientific and special legal methodologies. Through meticulous analysis, the quantitative and qualitative characteristics of the economic and legal essence of an independent and impartial judiciary as the nation's sole arbiter of justice were systematically delineated. The synthesis yielded a comprehensive overview of the legal framework governing the judicial accountability of judges across diverse legal systems, with particular consideration for each system's economic level of development. The employment of a comparative legal methodology has facilitated the identification of both common and distinctive characteristics in both international and national legislation. This is a scientific development that is indicative of the legal mechanism for holding judges to disciplinary liability. The formal-legal method established the foundations for formulating conclusions regarding the effectiveness of existing national legal regimes for holding judges accountable. The *purpose* of the present article is to determine the specific features of international and national legal mechanisms of judicial liability in the context of economic globalisation in modern societies. The results of the study show that the existing international legal mechanism of judicial liability developed by international institutions is quite effective and promising for implementation within the framework of national legal regimes, and the national mechanism of judicial liability needs to be improved both in terms of procedure and means of its implementation in connection with the economic development of society. *Conclusion.* The establishment of functional indicators of the judiciary has been undertaken, which are convergent in combination with economic indicators of the population's well-being, conditions for opening one's own business, ensuring financial and banking stability, GDP growth, the level of development of relevant sectors of industry and the economic sphere as a whole, etc. Among the indicators that reproduce the productivity of all three branches of government, the following are highlighted: the government efficiency index – the executive branch, the legislation quality index – the legislative branch, the rule of law index – the judiciary. A direct dependence of the economic development and rule of law indices has been revealed, since under the condition of ensuring the latter, there is a guarantee of the harmonious existence of all sectors of society, and conditions are created to prevent the emergence of existential threats to the national interests of the state, including the provision of human rights and freedoms. The mechanism for bringing judges to disciplinary responsibility has been established in accordance with international standards, including 1) a special procedure for bringing judges to disciplinary responsibility, which is defined by law; 2) the formation of an independent body that should consider such cases; 3) ensuring the right of a judge to participate in such procedure directly or through a representative, to exercise his right of defence and to express his opinion; 4) the right to appeal against the decision taken on the basis of the results of this procedure; 5) the exhaustiveness of the sanctions that can be applied and their proportionality. Within the framework of the national legal systems of the countries under consideration, the features of holding judges accountable in relation to their professional activities and for offences committed outside them are determined, which mediate the implementation of the content of the immunity and immunity of such officials. The procedure for holding judges criminally and disciplinarily liable is highlighted separately, and the reasons, grounds, procedure and subjects of the above-mentioned proceedings are

¹ National Aviation Academy of AZAL CJSC, Azerbaijan
E-mail: k.akhundova@a-akhundoff.az
ORCID: <https://orcid.org/0009-0009-7975-8984>



determined, which indicates the special status of bodies that ensure the achievement of a social compromise in the influence of society on the judiciary, in combination with the construction of ensuring the immunity of judges.

Keywords: judiciary, economic globalisation, rule of law index, index of economic freedom, international mechanism, national mechanism, judicial responsibility.

JEL Classification: F69, K41, H72

1. Introduction

The socio-political and economic processes inherent in modern world society are characterised by the manifestation of the phenomenon of convergence, i.e., the rapprochement of different peoples, ethnic groups and nations, not only in the field of law, economy and culture. The mutual influence of the socio-economic, legal and political life of different countries is mediated through direct (international, unilateral and multilateral treaties) and indirect channels (export-import operations regarding various types of objects, cultural events, exchange of information of a certain nature and form) of communication. This implementation includes legal instruments that provide the fundamental pillars of the existence of the state, among which justice occupies a decisive place.

Indeed, the provisions of international and national legislation are pertinent in terms of establishing the basis of justice, as one of the primary functions of the judiciary. The judiciary is designed to ensure a compromise between the functioning of the other two branches of power (the legislative and the executive) and between public and private interests (ensuring public order and guaranteeing the protection of human rights and fundamental freedoms for each individual).

The primary slogan, which is furnished by the pertinent socio-legal institutions, in a contemporary civilised nation, is the declaration of an autonomous and unbiased judiciary as a constituent of the apparatus of public power established by society. The operationalisation of justice on these principles engenders the prerequisites for the dynamic and progressive movement of such a state towards the formation of a civil society, permeated with structures designed to balance the interests of all members of society with ensuring fair satisfaction.

The aforementioned processes are either directly or indirectly related to other processes taking place in society, including those of an economic nature. It is inevitable that such processes will become subject to legal regulation at both the national and international levels.

Taking into account the long existence of Ukraine and Azerbaijan in a single legal field, their achievements and development prospects in the issues of introduction of instruments for the functioning of the judiciary, as well as the need to study the legal

and economic conditions for the proper functioning of the judiciary, it was necessary to study the international and national legal mechanisms of judicial accountability as a means of ensuring the independence and impartiality of the judiciary in the conditions of economic globalisation of modern society using the example of the above-mentioned countries.

This issue has been the subject of research by a number of scholars from different perspectives of public administration, socio-legal and socio-economic nature.

Thus, the general features of the responsibility of judges have been considered in the context of: the general principles of public administration ensuring the independence of judges (Rikhter, 2020), the legal nature and content of the independence of judges with regard to the reform of the judiciary (Pivovar, 2014), the constitutional and legal principles ensuring the independence of a judge of the Constitutional Court (Berch, Belov, Bysaha, 2023), the fulfilment of a judge's duty to improve legislation (Uygur, Gürgey, 2022), the transition of the Spanish judicial system to the democratic principles of the existence of the state and society (Sánchez, 2009), the social function and responsibility of a judge (Lawton, 1968).

The national legal regime of judicial liability has become the subject of reflection: the example of Spain and Italy (Santos, 2018), the correlation between the institution of the appointment of judges and their legal liability in the context of ensuring guarantees of the independence of the judicial branch (Nikitin, 2014), the correlation between the categories of responsibility and duty of judges in the context of the activities of the German higher courts (Nikitin, 2014), judicial liability as a means of external control of the Supreme Court in the Chilean legal culture (Flores Calvo, 2020), the disciplinary liability of a judge in the legal field of Jordan (Moufleh, YAA, Thneibat, MJM, 2017), the nature of the legal liability of judges in the context of the relevant legal framework of Ukraine (Ovcharenko, 2018), the mechanism for implementing the institution of legal liability of judges in a comparative context on the example of Azerbaijan, Ukraine and Poland (Akhundova, 2024).

An analysis of the international legal regime of legal liability of judges was conducted in works devoted to the following issues: the implementation of international standards for holding these officials

accountable (Germak, 2024), the analysis of European standards in this area and the features of their implementation (Bondarchuk, 2021), and the legal liability of judges from the perspective of the implementation of international standards in the field of the judiciary (Salenko, 2014).

The achievements of the scientific community that have been documented in the literature only serve to emphasise the relevance of this study. It is clear that a more detailed study and design are required in the context of determining the legal nature of international and national legal mechanisms of judicial liability in the context of economic globalisation of modern society.

2. Independent and Impartial Judiciary among the Parameters of Sustainable Economic Development of the State

The economy of any state is, in reality, sensitive to all phenomena and processes that occur in it. This phenomenon is reflected in the activities and functioning of the state through the corresponding structures. In the traditional approach, these structures are divided into three branches of state power: executive, legislative and judicial. The focal point of this study, particularly in the context of this section, pertains to the impact of the judiciary's functionality on the national economy and its associated processes.

Moreover, in world practice there are functional indicators of the activity of the judiciary, which converge in combination with economic indicators of the well-being of the population, conditions for opening one's own business, ensuring financial and banking stability, GDP growth, the level of development of relevant industries and the economic sphere as a whole, etc. Therefore, within the framework of the generalisation of statistical data within the world economy, there are indicators of state development that directly or indirectly reflect the relevant economic indicators (Indicators.GlobalEconomy.com, 2024).

It is evident that, in addition to the group of indicators of basic economic indicators, there are groups of indicators of the labour force, money, energy and the environment, agriculture, and, in the context of the subject of this discussion, governance and political system. In the latter group, indicators that reproduce the productivity of all three branches of government are of significance: the government efficiency index – the executive branch, the legislation quality index – the legislative branch, and the rule of law index – the judiciary. With regard to the other indices in this group, the following should be noted. Corruption control, voting rights and accountability, perception of corruption, political rights, civil liberties, business start-up costs as a percentage of per capita income, as indices in this group, are obviously complex in nature and therefore relate to all branches of government: judicial, executive, legislative.

The available numerical data of the rule of law index in 2020-2022 indicate functionality, which can be reflected in the following chart, which contains data on representatives of global economic and geopolitical centres on different continents and directly Ukraine and Azerbaijan, which is shown in Figure 1 (Rankings.GlobalEconomy.com, 2024).

However, it is worth paying attention to the index of economic freedom for the same period for the indicated countries (Comparator.GlobalEconomy.com, 2024), which is to some extent relevant to the rule of law index, which is explained by the interdependence of the level of freedom and the lack of freedom from law enforcement, which clearly defines the boundaries of what is permitted, prohibited and encouraged by the state for the development of civil society and a liberal economy as the fundamental basis for the existence of an information society in a civilised modern state.

The data presented in Figure 2 corroborates the validity of the aforementioned assumption, demonstrating a direct correlation between the indices, which reflect the rule of law. This rule of

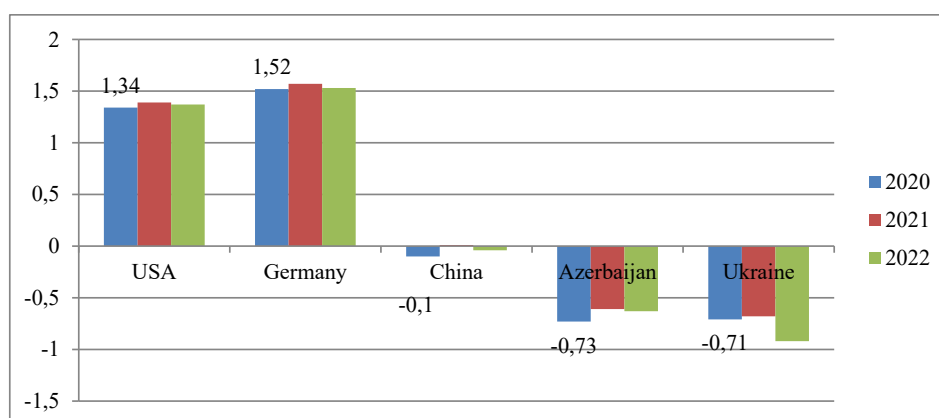


Figure 1

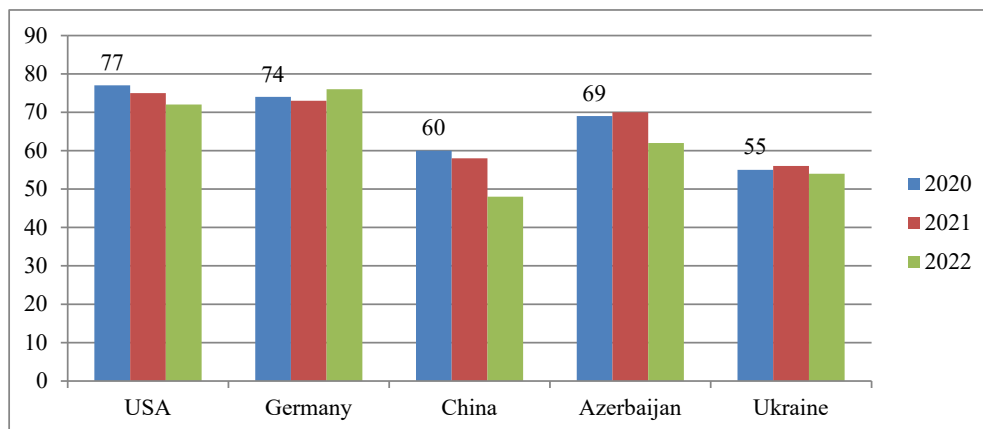


Figure 2

law is contingent upon economic freedom, which in turn is a determining factor in economic growth. It is only in such conditions that the parity of private and public interests can be achieved, the harmony of the existence of all segments of society can be ensured, and conditions can be created to prevent the emergence of existential threats to the national interests of the state, including the protection of human rights and freedoms.

There are different opinions among various researchers on the question of the influence of the guarantees of independence and immunity of judges, including the creation of legal bases for their accountability, on the economic indicators of the development of the state and society, which can generally be summarised as follows.

The opinion is expressed that the economic index of the rule of law is directly related to the level of GDP per capita, is also a guarantee of ensuring sustainable prosperity of the economy and the well-being of the population, creates conditions for stimulating investment and trade, contributes to the formation and development of entrepreneurship and healthy competition, the creation of new jobs, etc. (Abdulmumin, 2017). The above considerations are fully confirmed by sociological surveys of respondents, and find statistical justification in the sources analysed above. At the same time, the researcher has appropriately established links between the rule of law index, which corresponds to the government's democracy index, in combination with education and maintenance of investment in human capital, infrastructure validation, stable monetary policy, monitoring of innovation and patent protection, partnership between raw materials, manufacturing and service industries and the level of GDP per capita. It is the growth of the first group of indicators that directly affects the growth of GDP per capita and is a means of achieving adequate development by developing countries that implement international standards in the field of human rights protection.

The presented considerations are fully supported by another researcher, who comprehensively considers the essence of the rule of law index in connection with the index of the effectiveness of the Chinese government and the mutual influence of the specified indicators of public authority activity on the liberal basis of the country's economic development (Zhan, 2010). The analysis provided an opportunity to project the Western model of determining the defining parameters of social development onto the level of Chinese realities.

The above position is also maintained with regard to the perception of the convergence of law and economics from the perspective of the implementation of the content of the rule of law principle, which is differentiated on the one hand as judicial autonomy and legal integrity, and on the other hand as the right to vote and accountability (Lane, 2011). Within the above parameters of the research, the analysis is based on World Bank statistics that link indicators of socio-economic development and economic development. Using the ASEAN+3 region as an example, it was found that, given the current dynamics of the relevant parameters, economic development cannot show signs of stability and predictability unless it is accompanied by the progressive implementation of the rule of law in one of the above-mentioned manifestations.

Based on the results of a study of the relationship between the rule of law and economic growth in developed and developing countries, using statistical data from the World Justice Project, a non-governmental organisation, the following conclusions have been drawn. The absence of corruption, public order, security, effective law enforcement, including an effective judicial system, and the utilisation of criminal justice as relevant structural components of the implementation of the content of the rule of law in a specifically selected state are directly related to the economy. Such a dependence is directly proportional in developed countries, and in developing countries

it is a functional dependence with certain uncertain parameters of social origin (Yang, 2012).

The conclusions drawn from the results of studying the quantitative and qualitative indicators of the economy and the functional transformation of the legal system of the countries of the former Soviet Union and the countries of Asia and Latin America are of significant and relevant interest. In confirmation of the aforementioned, it is posited that a direct dependence between the indicators of assessing the implementation of the rule of law in the relevant country's legal field and relevant indicators of economic growth can be formed only under the condition of economic stability, where its crisis elements are not permitted, for example, high inflation rates. The establishment of a liberal economy with clearly defined and comprehensible rules for all members of society is only possible on a voluntary legal basis (Shevchuk, Blikhar, Komarnytska, Tataryn, 2020).

In consideration of the subject of this study, it is reasonable to conclude that the relationship between the effectiveness of the judiciary and the economic development of the state is projected onto judicial independence and judicial oversight. This relationship is also relevant to the nature of the judicial system and a number of its other institutional features. In any case, the impact of judicial independence on the dynamics of the country's economic growth is direct (Sill, 2010).

The progression of impartiality and independence in the Taiwanese judiciary exemplifies the enhancement of numerous legal institutions, which has exerted a favourable influence on the nation's economic growth, demonstrating geometric progression. Concurrently, the independence of the judiciary, as a fundamental constitutional tenet, imposes constraints on the authority of the executive branch, while ensuring the preservation of human rights on the one hand and, on the other, serving as a prerequisite for economic restructuring and ensuring the enhancement of societal economic well-being. Moreover, a significant conclusion within the context of the subject of this work is that the degree of implementation of judicial independence and its impartiality is directly dependent on the quality of the judicial system itself, in particular its personnel. This conclusion correlates with the instruments of responsibility of the courts within the framework of relevant regulatory and legal provisions on existing standards in this area (Liu, 2011).

Based on the results of the study of the impact of an independent and impartial judiciary on the progressive economic development of the state, it is necessary to conclude that there is a direct connection between these social parameters of the development of a civilised society, where only a fully developed judiciary, which can fully ensure justice, impartiality and

efficiency in the settlement of a dispute on the merits, creates the prerequisites for the development of a liberal economy with prospects for the socio-economic development of the state and society.

3. International Legal Mechanisms of Judicial Responsibility

The international legal mechanisms of judicial responsibility have been reflected in international legal documents, in the jurisprudence of international courts and in academic research, which together have formed certain legal doctrines in this area.

Thus, within the framework of the Basic Principles on the Independence of the Judiciary, approved by Resolutions 40/32 and 40/146 of the UN General Assembly of November 29 and December 13, 1985 (Basic Principles on the Independence of the Judiciary, 1985), general provisions on the nature of the principle of independence of judicial bodies and its interrelation with such manifestations of a functional nature as: freedom of expression and association; qualification, selection and training; conditions of service and term of office; professional secrecy and immunity; punishment, removal from office and dismissal are reproduced. Thus, in the section on "Disciplinary Sanctions, Suspension and Dismissal", this legislative act proposes strict compliance with the procedure for calling a judge to account, in which efficiency and fairness are of paramount importance. At the same time, an independent mechanism for reviewing decisions to hold a judge accountable must be guaranteed.

The following principles, which are directly related to the content of the independence of judges, are indicated in the prolonged declarative provisions set out in the norms of Recommendation No. R (94) 12 to Member States on the Independence, Efficiency and Role of Judges, approved by the Committee of Ministers of the Council of Europe on October 13, 1994 (Recommendation No. R (94) 12, 1994): the relevant regulatory framework in the form of constitutional provisions and provisions of other legislative acts in appropriate interpretations that implement the requirements of these recommendations in national legislation, in particular by incorporating them directly into the system of certain domestic national law; the effectiveness of the mechanism of interaction and separation of the judiciary from the executive and legislative branches of government; the effectiveness of the personnel policy on the formation of the judiciary and the relevant professional development of these persons through certain procedural and functional mechanisms, including control and supervision; removal of any obstacles to decision-making in the administration of justice by the relevant judge through certain organisational and legal

structures; functioning of an effective mechanism for the distribution of cases among judges of the relevant court; exclusivity of the list of grounds for recusal of a judge from consideration of a case and imperative and clear regulation of the recusal procedure itself.

The content of principle III, "Appropriate working conditions", on the creation of adequate working conditions that enable judges to work effectively, reiterates the need to create a social status and a level of remuneration commensurate with their dignity and the responsibility they assume when they take up the duties of a public person authorised to exercise the functions of the judiciary.

The norms that reveal the content of principle VI "Failure to perform duties and disciplinary violations" correspond to the above provisions. Thus, it is established that the ineffective and impartial performance of duties or the commission of a disciplinary offence shall lead to the adoption of the necessary countermeasures against such a person, which shall not affect the independence of the judiciary, including: removal from the case, assignment of the judge to other duties within the court, penalties (reduction of remuneration), temporary suspension from judicial functions. There are certain restrictions on the application of the above measures, such as the impossibility of requesting the recall of a judge appointed for an indefinite period, except in certain clearly defined cases (inability to conduct judicial proceedings, commission of a criminal offence or serious disciplinary misconduct). An additional guarantee of a judge's independence is the creation, within the framework of the procedure for holding a judge accountable, of a specially empowered body which must impose disciplinary sanctions and take disciplinary measures if these are not taken by the court. In this case, the Supreme Court may directly replace the aforementioned body or exercise control over its activities. In addition to the subject matter of the above-mentioned procedure, the procedure for considering these cases has additional requirements, the essence of which is to formalise the judicial procedure itself in accordance with the requirements of the Council of Europe (Council of Europe, 1950). In consideration of the research conducted in this area and the content of the analysed principles, it is evident that the necessity arises to consider such a case within a reasonable timeframe and to exercise the right to respond to the accusation brought against the judge (Denysova, Blaga, Makovii, Kaliuzhna, 2022).

Of great practical and rational importance is the European Charter on the Status of Judges of July 10, 1998 (European Charter, 1998), which, within the framework of unification of approaches of European countries to legislative definition of the legal status of judges in Europe, declared both the basic principles of implementation of the content of independence

and impartiality of judges and the specifics of manifestation of these categories within the following components of legal personality of judges: selection, appointment and initial training; appointment and non-transferability; promotion; liability; remuneration and social protection; termination of powers. At the same time, among the factors of the component of the content of the independence of judges, the features of their accountability within the requirements defined by international law are clearly visible. That is, de facto, the quantitative and qualitative content of such an important legal category as the independence of judges is developing, in which the content and procedure of holding these officials accountable occupy a rather significant place.

The European Charter on the Status of Judges of July 10th 1998, in section 5 "Liability", defines the grounds for the impeachment of a judge - the failure of a judge to fulfil one of the duties clearly defined by law. The composition of the body responsible for considering the case of impeachment must include at least half of the elected judges. The judge is guaranteed the right to defence and to have the case reviewed by a higher court. The only requirement is that the list of sanctions that may be imposed on a judge must be defined by the law on the judiciary, and their application must comply with the principle of proportionality. A compensatory remedy for damage caused by a judge's misconduct is for the state to file a recourse action in court after the matter has been agreed with a special body independent of the executive and legislative branches of government.

Under the provisions of the Bangalore Principles of Judicial Conduct (Bangalore Principles of Judicial Conduct, 2006), indicators for the implementation of the content of the principles are defined, the purpose of which is to establish standards of ethical behaviour for judges. It is evident that the primary indicator is concerned with ensuring the independence of judges. It is imperative that judges maintain an independent position, both in relation to society as a whole and in relation to the specific parties involved in the court case in which they must make a decision. Furthermore, it is essential that they defend and support guarantees of the performance of judges' duties, thereby preserving and increasing the institutional and operational responsibility of judges.

The research on international legal mechanisms of judicial responsibility is multifaceted, most of which can be characterised as follows.

In connection with the above, it is correct to believe that there are mandatory and recommendatory provisions of international law that reflect the relevant norms and principles in the field of the judiciary and the status of judges, including the legal responsibility of judges. When forming and ensuring the conditions for the functioning of their own judicial systems,

including the regulation of relations between the branches of government, the behaviour of judges, issues of their selection, appointment, promotion and, of course, responsibility, they should be guided by the subjects of international law, which are the states-participants in the relevant agreements (Salenko, 2014).

The implementation of international standards in the field of the judiciary and ensuring the independence of this branch of government, as well as determining the procedure for holding judges accountable from the perspective of ensuring human rights and implementing relevant international standards, is a modern, civilised approach based on the content of the principle of the rule of law. It is proposed to increase the effectiveness of the work of the judicial branch of government in ensuring the protection of human rights and freedoms in order to increase the role and responsibility of the legislative, executive and judicial authorities (Kryzhanovskiy, 2011).

Based on the results of the study of European standards of the judiciary and the status of judges, a conclusion is drawn about the compliance with the following features: regulated by the norms of international law; is mandatory or recommendatory in nature; the presence of a single approach to the content of such a standard leads to the formation of a single judicial practice. It is precisely such considerations that served as a prerequisite for the widespread application of the European Court of Human Rights in the issue of forming international standards in this area of judicial practice. It is proposed to differentiate the standards formed by the judiciary in the field of justice as recommendatory (Babenko, 2021). Such an approach cannot be accepted to a certain extent, taking into account the content of Art. 46 of the Council of Europe, which is also supported in scientific works (Makovii, Kuznichenko, Budyachenko, 2022).

Such considerations have also been confirmed by the case-law of the European Court of Human Rights, for example in the case of disciplinary liability of a judge on the basis of information concerning facts established in criminal proceedings, if such information has been analysed in the context of the rules of professional ethics, even in the case of acquittal of a person in criminal proceedings (Decision of the European Commission of Human Rights in the case of "X. v. Austria", 1982) or when such proceedings have been closed (Decision of the European Commission of Human Rights in the case of "C. v. the United Kingdom", 1987). Another case law of the European Court of Human Rights concludes that in the context of paragraph 2 of Art. 6 of the Council of Europe, the presumption of innocence should be applied to criminal proceedings and, in terms of the content of the provisions of this convention, the disciplinary procedure for a judge is radically different, since the

standards of proof in such circumstances are of the opposite nature (Judgment of the European Court of Human Rights in the case "Ringvold v. Norway", 2003).

Among the international standards in the field of judicial accountability proposed for implementation, the following stand out: 1) exclusion of the administration of courts from this procedure; 2) definition of such a procedure only by law; 3) formation of an independent body that should consider such cases; 4) ensuring the right of a judge to participate in such a procedure directly or through a representative, to exercise his right to defence and to express his opinion; 5) the right to appeal against the decision made on the basis of the results of the implementation of this procedure; 6) exhaustiveness of the sanctions that can be applied and their proportionality (Sulaymanov, 2021).

Taking into account the tendencies to further legitimise the judiciary in a democratic society, to improve the functionality of this form of power and, consequently, the responsibility of judges, the question arises as to whether these areas of the legal status of the judge should be projected into the judicial contribution to law-making through case law. In this regard, a certain expansion of the responsibility of judges is proposed, both in qualitative and quantitative terms, in particular by introducing flexible legal formulas for such responsibility, on the example of disciplinary, civil and deontological responsibility (Romboli, 2022).

Thus, international legal mechanisms for the responsibility of judges are reflected in the norms developed at the level of regulatory legal documents of a universal nature, as well as in the case law of international courts, following the example of the decisions of the European Court of Human Rights. In today's conditions the issue of implementation of such norms into the national legislation is a priority in every country, including Ukraine and Azerbaijan.

4. National Legal Mechanisms of Responsibility of Judges

It should be noted that both Ukraine and Azerbaijan consistently comply with the provisions of the international legal acts analysed above. In particular, the constitutional norms of the mentioned countries consistently implement the principle of independence and impartiality of judges as the main principle of administration of justice in domestic judicial proceedings, which determines the content of legal responsibility of such officials. At the same time, the scientific approach is correct, according to which the inclusion of such normative material in constitutional provisions is a significant factor in observing the rights of citizens to the protection of their rights and freedoms by an independent court (Pivovar, 2014).

Within the framework of Chapter VIII "Judiciary" of the Constitution of Ukraine, the independence of the judiciary is regulated in the context of 1) the normalisation of the essence of this principle of justice together with the immunity of the judge (Art. 126); 2) the manifestation of this category together with the rule of law in the process of administration of justice through its corresponding basic principles (Art. 129); 3) the powers of the High Judicial Council, which is entrusted with the functions of ensuring the independence of judges (Art. 131). In addition, the essence of the independence of the court and judges is projected onto the legal status of the Constitutional Court of Ukraine (Article 147) and its judges (Article 149). The content of Article 126, among the means of ensuring the independence and immunity of judges, also includes a special mechanism for holding such persons accountable and preventing them from being held accountable for a judicial decision taken by them, except for the commission of a crime or disciplinary offence (The Constitution of Ukraine, 1996).

In contrast, the Constitution of the Republic of Azerbaijan (The Constitution of Azerbaijan, 1995) contains the embodiment of the principle of independence of courts and judges precisely in the context of the separation of powers into legislative, executive and judicial branches, each of which is independent of the others within the limits of its own powers (Article 7). At the same time, unlike the Fundamental Law of Ukraine, Article 127 of the Constitution of the Republic of Azerbaijan considers the independence of judges along with the basic principles and conditions of administration of justice, and the essence of their immunity is defined in Article 128. At the same time, in the content of the first of the above articles, the independence of judges is interpreted in terms of the requirements reflected in the Recommendations of the Committee of Ministers of the Council of Europe No. (94) 12 "Independence, effectiveness and role of judges", which, as mentioned above, is also reflected in the framework of Chapter VIII "Judiciary" of the Constitution of Ukraine. In addition, unlike the Ukrainian legislation, the Azerbaijani legislation extends the above-mentioned provisions of Article 10 of the Universal Declaration of Human Rights and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms with regard to a comprehensive approach to the perception of the categories of independence and impartiality as a component of the legal personality of the court and the judge and the sign of justice as a corresponding procedural activity. Among the structural elements of the implementation of the principle of the independence of judges in the field of guaranteeing their inviolability, the above-mentioned article

identifies a special model of criminal liability of these officials, with clear limits and a strictly formalised procedure within the framework of a special law.

The Law of the Republic of Azerbaijan on Courts and Judges (1997) should be recognised as one that continues the introduction of legal certainty in the implementation of the content of the independence of judges in the Republic of Azerbaijan, which, in addition to general provisions, also identifies special provisions that determine the essence of the independence of both courts in general and judges directly, who are the bearers of judicial power in this state. Among the general provisions, the following are particularly noteworthy: 1) ensuring the implementation of the content of the constitutional norms on the independence of the judiciary as the main characteristic of the judiciary in the structure of the distribution of all branches of public power and as the defining characteristic of the judiciary (Preamble); 2) the interrelation between the judiciary and the corresponding legal status of judges, provided that the latter are independent (Article 8); 3) the separation of the courts as a different form of legal entity under public law from other similar entities as a component of the content of their independence (Article 19); 4) the creation of conditions for the organisational support of the independence of judges (Article 86); 5) the inclusion in the content of the legal status of judges of the obligations to preserve and protect the independence and dignity of judges (Article 95); 6) the inclusion in the list of the rights of judges of the right to independence (Article 98). Specific rules for the implementation of the independence of the judiciary are laid down in Art. 100, which define the content of the manifestation of independence as depoliticisation, immutability and inviolability for the duration of the exercise of powers, restrictions on appointment to another post, on accountability, on deprivation of powers and on removal from office, the independence of the functioning of the judiciary and of the procedure for the administration of justice provided for by law, the inadmissibility of establishing restrictions and interference in judicial proceedings, ensuring the personal security of judges and providing material and social guarantees. As demonstrated in Article 122, the aforementioned essential manifestations of independence are also projected on jurors. The purpose of this is to ensure the achievement of a single result of justice, namely the adoption of a fair and impartial decision on the relevant case.

The Law of the Republic of Azerbaijan merits particular attention with respect to the particulars of implementing the content of the immunity of judges. This is achieved by introducing a special procedure and grounds for removing a judge from office and holding him accountable. In addition, the law defines a clear model for holding judges accountable,

involving the Judicial and Legal Council and based on the decision of the Prosecutor General of the Republic of Azerbaijan (Article 101). It is also important to note the special regulation within the framework of the regulatory legal act in question, which deals with the issue of bringing judges to disciplinary liability. This regulation reflects the issue of the range of reasons preceding the initiation of disciplinary proceedings against a judge (Article 111), an exhaustive list of grounds for bringing this type of legal liability (Article 111-1), and the procedure for bringing it to liability (Article 112). The latter ensures the legitimisation of the relevant entity (the Judicial and Legal Council) which initiates disciplinary proceedings against a judge, as well as its powers. The special legal regime of the Judicial and Legal Council is clearly regulated in the provisions of the Law of the Republic of Azerbaijan on the Judicial and Legal Council (Law of the Republic of Azerbaijan on the Judicial and Legal Council, 2004). This Law essentially establishes an institution of social compromise that influences the judiciary by society, in combination with the design of ensuring the immunity of judges.

Within the Ukrainian legal field, a comparable regulatory act is constituted by the Law of Ukraine "On the Judiciary and the Status of Judges" (The Law of Ukraine "On the Judiciary and the Status of Judges", 2016). Within this framework, general provisions on the independence of the court and the judges are contained in Art. 1 (on the independence and impartiality of the courts), Art. 6 (concerning the content of the independence of the courts, in particular with regard to relations with other public authorities), Art. 7 (as regards the implementation of the content of the right to a fair trial). Concurrently, specific provisions concerning the essence of independence as a defining feature of the legal status of judges are replicated within numerous legal provisions of this statute. Hence, Article 48 lists among its substantive components: 1) the procedure for appointment, prosecution, dismissal and termination of powers of a judge; 2) his/her immunity and immunity; 3) irremovability of a judge; 4) the procedure for administration of justice determined by the procedural law, secrecy of court decisions; 5) prohibition of interference in the administration of justice; 6) liability for contempt of court or judge; 7) separate procedure for financing and organisational support of courts established by law; 8) proper material and social security of judges; 9) functioning of judicial governance and self-government bodies; 10) means of ensuring personal security of judges, their family members, property, as well as other means of their legal protection as defined by law; 11) the right of a judge to resign; 12) establishment of the obligation of other participants in public relations to respect the independence of judges and not to encroach on it; 13) inadmissibility

of narrowing the content and scope of guarantees of judicial independence as defined by the current legislation. At the same time, Article 52 defines the establishment of independence as a component of the legal status of a judge in terms of the respective type of judicial proceedings or administrative position held by a judge, Article 57 imposes on a judge the obligation to administer justice independently when taking the oath, Article 69 imposes on a judge the requirement of independence in the administration of justice, Article 69 establishes the requirement of independence for a candidate for the position of a judge. Articles 126, 129, 133 reveal the essence of judicial self-government as one of the guarantees of judicial independence, while Article 146 creates material and financial prerequisites for ensuring judicial independence.

It is necessary to take into account the fact that the Ukrainian legislation in the content of the analysed regulatory and legal acts clearly delimits the features of bringing the judge to responsibility in relation to his professional activity and for committing an offence outside it, which mediates the implementation of the content of the immunity and inviolability of the judge (Article 49). Simultaneously, the initial category of infractions encompasses both criminal and disciplinary culpability. The subsequent category encompasses criminal or administrative culpability, with a substantial emphasis placed on the conduct of entities such as the High Council of Justice and the Prosecutor General of Ukraine. The High Council of Justice in Ukraine, as an autonomous constitutional body of state power and judicial self-government, operates in accordance with the Law of Ukraine "On the High Council of Justice" and establishes a procedure for bringing judges to one or another type of legal liability, thereby creating a compromise option for combining the construction of the independence of judges and bringing them to responsibility (The Law of Ukraine "On the High Council of Justice", 2016).

A review of the extant scientific research on the national legal regime of judicial responsibility reveals the following achievements. A thorough analysis of the legal framework governing judicial responsibility in Poland reveals that a singular model of disciplinary liability for judges is conspicuously absent. Concurrently, the distinctive constitutional provision of irremovability of judges constitutes a pivotal prerequisite for differentiating the legal status of this category of officials from other professions. In the context of the study of the legal status of a judge of the Constitutional Court of Poland, particular attention is paid to the responsibility of such a person before a special body from the point of view of the international standards expressed above regarding the instance-subject side of such a process. However, given the independence of the Constitutional Court,

an exception is made, according to which the Constitutional Court itself directly makes decisions on disciplinary proceedings against its judges. The model of the two-instance procedure for disciplinary proceedings against judges of the Constitutional Court, which has been formulated, provides for achieving a balance between the guarantees of the person on the part of the judge regarding the administration of justice and the concept of the structure of the judicial power that takes place in a given country (Zubik, Wiacek, 2007).

The scientific position regarding the separate opinions of judges that take place in the appellate instance is correct. It is proposed that the fact that a separate opinion of a judge under such circumstances entails individual responsibility of judges and demonstrates the transparency of the procedure for collegial adoption of a judicial decision be recognised (Hogg, Amarnath, 2017). Moreover, the possibility for a judge to express a separate opinion indicates the existence of his own judgement, which is not subject to a certain collegial principle, which reflects the basic principles of judicial proceedings in the sphere of the implementation of the rule of law.

The study of the procedure for disciplining judges in the Chilean legal system is quite critical. Attention is drawn to the inconsistencies of the existing procedure with international standards and constitutional provisions, in that the main functions of the procedure are vested in the country's Supreme Court, rather than in a special independent body. In this context, the author believes that the leveling of the constitutional guarantee of the independence of judges is clearly visible, as well as the lack of compliance with the formal and substantive content of the procedure for disciplinary proceedings against judges, which results in the need for appropriate legislative changes (Bordali, 2018).

The study of national legal mechanisms for the liability of judges in the legislation of Azerbaijan, Ukraine and some other countries has made it possible to identify the main factors ensuring the independence of the judiciary and judges as its representatives. Attention is drawn to the features of the liability of judges, in particular disciplinary liability. The peculiarities of the procedure for bringing a judge to disciplinary responsibility are highlighted, as well as the correlation between the rights of a judge as a person entitled to protection and the concept of the judiciary with the relevant public functions, primarily justice.

5. Conclusions

The study of international and national legal mechanisms of judicial responsibility in the conditions

of economic globalisation of modern society has led to the following conclusions.

This issue has been the subject of research by representatives of the state administration, socio-legal and socio-economic sciences, which demonstrates its complexity and ambiguity.

In world practice, there are functional indicators of the activity of the judiciary, which converge in combination with economic indicators of the population's well-being, conditions for starting one's own business, ensuring financial and banking stability, GDP growth, the level of development of relevant sectors of industry and the economic sphere as a whole, and so on. Among the indicators that reflect the performance of all three branches of government are the following: the Government Effectiveness Index – executive branch, the Legislative Quality Index – legislative branch, and the Rule of Law Index – judicial branch. The empirical study shows that there is a direct relationship between the indices of economic development and the rule of law, since, under certain conditions, the latter guarantees the harmony of existence of all the cells of society and creates conditions that prevent the emergence of existential threats to the national interests of the state, including the protection of human rights and freedoms.

The study of international legal documents, the jurisprudence of international courts and academic research has established international standards for the mechanism of disciplining judges. These include: 1) a special procedure for bringing a judge to disciplinary responsibility, which is defined by law; 2) the establishment of an independent body to consider such cases; 3) the guarantee of the right of a judge to participate directly or through a representative in such proceedings, to exercise his right of defence and to express his opinion; 4) the right to appeal against the decision taken on the basis of the results of this procedure; 5) the exhaustiveness of the sanctions that can be applied and their proportionality.

It has been established that the establishment of international standards on the issue of bringing judges to disciplinary liability occurs through two channels: firstly, the regulatory provisions of international regulatory legal acts and secondly, the judicial practice of international courts, in the area of mandatory and recommended application.

A conclusion is made on the implementation of the stated provisions of international legislation on the liability of judges to the national legal system of Azerbaijan, Ukraine and some other countries. A scientific approach is advocated for the constitutional and legal formation of means of implementing the immunity of judges through the establishment of a special legal regime for bringing them to liability. Simultaneously, it has been demonstrated that the

direct continuation of European legislation within the Republic of Azerbaijan is indicative of a comprehensive understanding of the categories of independence and impartiality as integral components of the legal personality of the court and judge. Furthermore, it is evident that the signs of justice are considered to be a corresponding procedural activity.

In the context of special legislation that delineates the legal status of judges, the framework distinguishes between general and special legal regimes for the implementation of the content of judicial independence. It also explores the correlation between these regimes and the essence of the immunity of judges. Furthermore, it provides a definition of the formal and substantive elements of the procedure for holding

the aforementioned officials legally liable. In the context of the national legal regimes of the countries under consideration, the features of holding judges liable in view of their professional activities and for committing offences outside of them are determined. These features mediate the implementation of the content of immunity and immunity of such officials. The procedure for holding judges criminally and disciplinarily liable is distinct. The reasons, grounds, procedure and subjects of the aforementioned proceedings are determined. This indicates the special status of bodies that ensure the achievement of a social compromise in influencing the judiciary by society, in combination with the construction of ensuring the immunity of judges.

References:

- Rikhter, V. V. (2020). Public Administration Independence of Judges in Ukraine. *Legal science*, Vol. 4(106), No. 2, p. 146–151.
- Pivovar, I. V. (2014). Independence of Judges in the Context of Modern Legal Reforms. *Scientific Bulletin of the International Humanitarian University. Series: Jurisprudence*, Vol. 1 (10-1), p. 46–48.
- Berch, V. V., Belov, D. M., & Bysaha, Y. M. (2023). Independence of Judges in the Context of Modern Legal Reforms. *Scientific Bulletin of Uzhhorod National University. Series: Law*, Vol. 80(1), p. 102–106.
- Uygur, G., & Gürgey, FIC (2022). 'Improve the Law' as a Judicial Duty on the Borderlines of Free Speech: Judges as Responsible Epistemic Agents. *Krytyka Prawa-Niezalezne Studia nad Prawem*, Vol. 14(4), p. 60–73.
- Sánchez, ABB (2009). The Judiciary, Accountability, and Transition to Democracy in Spain. *Foro Internacional*, Vol. 49(4), p. 163–179.
- Lawton, F. (1968). The role and responsibility of the judge. *Medicine, Science, and the Law*, Vol. 8(4), p. 243–248.
- Santos, F. (2018). The Disciplinary Responsibility of Judges and Magistrates in Spain and Italy. *Revista General de Derecho Publico Comparado*, Vol. 23, p. 243–248.
- Nikitin, S. (2014). Appointment of Judges and Legal Responsibility of Judges Guarantees of Independence in Russia. *Culture of Judicial Independence: Rule of Law and World Peace*, p. 411–418.
- Kinski, L., Fromage, D., & Blauberger, M. (2024). Responsible judges or judging responsibilities? EU Court of Justice, Bundesverfassungsgericht and EU economic governance. *Journal of European Public Policy*, Vol. 31(4), p. 1051–1074.
- Flores Calvo, G. E. (2020). Judicial Accountability as External Control of the Decisions of the Supreme Court in the Chilean Legal Culture (PhD Thesis), Santiago: Pontificia Universidad Catolica de Chile.
- Moufleh, YAA, Thneibat, MJM. (2017). The Disciplinary Responsibility for the Judge Pursuant to Law Jordanian Independence the Judgment. *Journal of Law and Political Sciences*, Vol. 14(2).
- Ovcharenko, O. M. (2018). Legal responsibility of judges: issues of theory and practice. (Doctoral Dissertation). Odesa: National University "Odessa Law Academy".
- Akhundova, K. (2024). Peculiarities of ensuring the responsibility and independence of judges in the administration of justice (on the example of the Republic of Azerbaijan, Ukraine and the Republic of Poland). *South Ukrainian Law Journal*, Vol. 2, p. 3–9.
- Germak, K. O. (2024). Disciplinary responsibility of magistrates in the modern legal system: procedural aspects. *Analytical and comparative jurisprudence*, Vol. 4, p. 669–673.
- Bondarchuk, R. A. (2021). Administrative and legal regulation of the procedure for bringing a judge to disciplinary responsibility (PhD Dissertation). Zaporizhzhia: Zaporizkyi natsionalnyi universytet.
- Salenko, O. (2014). International standards in the field of judicial system and status of judges, their content and classification. *National Legal Journal: Theory and Practice*, June 2014, p. 263–269.
- Indicators.GlobalEconomy.com (2024). The Indicators.GlobalEconomy.com. Available at: https://ru.theglobaleconomy.com/indicators_list.php
- Rankings.GlobalEconomy.com (2024). The Rankings.GlobalEconomy.com. Available at: https://www.theglobaleconomy.com/rankings/wb_ruleoflaw/
- Comparator.GlobalEconomy.com (2024). The Comparator.GlobalEconomy.com. Available at: <https://www.theglobaleconomy.com/compare-countries/>
- Abdulmumin, Z. (2017). Factors Developing Countries Can Consider to Achieve Developed Economy Status (PhD Thesis), California Southern University.
- Zhan, Y. L. (2010). The Administrative Performance Evaluation Study of the Weights to Strengthen the Rule of Law (PhD Thesis), Hunan Normal University (People's Republic of China).

- Lane, J.E. (2011). Law and economics in the ASEAN +3 region: the rule of law deficit. *International Journal of Social Economics*, Vol. 38(10), p. 847–857.
- Yang, J. (2012). On Relationship between Rule of Law and Economic Growth. *Korean Corruption Studies Review*, Vol. 17(4), p. 81–105.
- Shevchuk, V. O., Blikhar, M. M., Komarnytska, I. I., & Tataryn, N. M. (2020). Rule of Law and Economic Growth. *Financial and Credit Activity-Problems of Theory and Practice*, Vol. 1(32), p. 278–289.
- Sill, K. L. (2010). Institutional Design and the Economy: Disentangling the Effects of Judicial Independence and Judicial Review on Economic Development (PhD Thesis), Louisiana State University and Agricultural & Mechanical College.
- Liu, X. K. (2011). The realization of judicial independence in taiwan and its implications on the mainland (PhD Thesis), Huazhong Normal University (People's Republic of China).
- Basic Principles on the Independence of the Judiciary (1985).
- Recommendation №. R (94) 12 (1994). Recommendation №. R (94) 12 to Member States on the Independence, Efficiency and Role of Judges.
- Council of Europe (1950). Convention for the Protection of Human Rights and Fundamental Freedoms.
- Denysova, A. V., Blaga, A. B., Makovii, V. P., Kaliuzhna, Y. S. (2022). The Right to a Fair Trial: the ECtHR Case-Law and Its Implementation the Ukrainian Judiciary. *Prawo i Więź*, Vol. 40, p. 109–127.
- European Charter (1998). European Charter on the Status of Judges.
- Bangalore Principles of Judicial Conduct (2006). The Bangalore Principles of Judicial Conduct.
- Kryzhanovskiy, V. Y. (2011). International Standards of Judicial Protection of Human Rights and Their Implementation in the System of Legal Protection in Ukraine. *Current policy issues*, Vol. 42, p. 116–123.
- Babenko, H. O. (2021). European standards of the judiciary and the status of judges. *Analytical and comparative jurisprudence*, Vol. 4, p. 353–356.
- Makovii, V., Kuznichenko, O., & Budyachenko, O. (2022). Status and prospects of the execution of judgments of the European Court Of Human Rights in Ukraine. *Baltic Journal of Economic Studies*, Vol. 8 (3), p. 115–124.
- Decision of the European Commission of Human Rights in the case of "X. v. Austria" (1982). The decision of the European Commission of Human Rights 06 October 1982 in the case of "X. v. Austria" on the inadmissibility of the application № 9295/81.
- Decision of the European Commission of Human Rights in the case of "C. v. the United Kingdom" (1987). The decision of the European Commission of Human Rights of 07 October 1987 in the case of "C. v. the United Kingdom" on the inadmissibility of application № 11882/85.
- Judgment of the European Court of Human Rights in the case of "Ringvold v. Norway" (2003). Decision of the European Court of Human Rights of 11 February 2003 in the case of "Ringvold v. Norway" of the application № 34964/97.
- Sulaymanov, O. R. (2021). Disciplinary Responsibility of Judges: the International Standards and the National Legislation of Uzbekistan. *Frontline Social Sciences and History Journal*, Vol. 1(7), p. 1–13.
- Romboli, R. (2022). Responsibility of the Judges, Jurisprudential Law and Legitimation of the Judicial Power in the Democratic State. *Revista de Estudios Politicos*, Vol. 198, p. 153–185.
- Constitution of Ukraine (1996). The Constitution of Ukraine. Available at: <http://surl.li/ykhqcb>
- The Constitution of Azerbaijan (1995). The Constitution of the Republic of Azerbaijan. Available at: <https://president.az/en/pages/view/azerbaijan/constitution>
- The Law of the Republic of Azerbaijan on Courts and Judges (1997). The Law of the Republic of Azerbaijan on Courts and Judges. Available at: <https://rm.coe.int/ct-legislation-azerbaijan-courts-and-judges/16806415cb>
- The Law of the Republic of Azerbaijan on the Judicial and Legal Council (2004). The Law of the Republic of Azerbaijan on the Judicial and Legal Council. Available at: https://legislationline.org/sites/default/files/documents/73/Azerbaijan_law_judicial_legal%20council_2004_am2014_en.pdf
- The Law of Ukraine "On the Judiciary and the Status of Judges" (2016). The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2016. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)080-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)080-e)
- The Law of Ukraine "On the High Council of Justice" (2016). The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2016. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)067](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)067)
- Zubik, M., Wiacek, M. (2007). "On Controversial Issues concerning the Scope of Disciplinary Responsibility of the Judges of the Constitutional Tribunal" – A Polemic. *Przegląd Sejmowy*, Vol. 3, p. 69–84.
- Hogg, P., & Amarnath, R. (2017). Why Judges Should Dissent. *University Of Toronto Law Journal*, Vol. 67(2), p. 126–141.
- Bordali, S. A. (2018). The unconstitutionality of the disciplinary regime of judges in Chile. *Ius et Praxis*, Vol. 24(2), p. 513–548.

Received on: 05th of October, 2024

Accepted on: 23th of November, 2024

Published on: 30th of December, 2024