

CHAPTER «LAW SCIENCES»

SHADOW RULES IN THE CONTEXT OF LEGAL SYSTEMS STABLE DEVELOPMENT UNDER CONDITIONS OF UNCERTAINTY: UKRAINIAN AND COMPARATIVE ASPECT

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Abstract. The *subject* of the study is shadow norms as a factor of instability of the legal system. The *aim* of this section as part of a general study is to analyze the impact of shadow norms on the stability of the development of legal systems in the context of Russia's aggression in Ukraine (which in itself can be characterized as a state of uncertainty). The *research methodology* is presented by the following methods. Scientific research is based primarily on dialectical and structural system analysis, content analysis as a method of quantitative and qualitative evaluation of data, the method of legal comparative studies, extrapolation and formal legal method. The *hypothesis* of the study was partially confirmed, as it was found that shadow norms can in some cases even be useful, pointing out the mistakes of the government and legislator. However, in conditions of social and legal uncertainty (such as Russia's military aggression against Ukraine), shadow norms become particularly dangerous and widespread, posing a threat to the stable development of the legal system. As a *result of the study*, it was revealed that shadow norms are part of relevant norms that are unwritten, not binding, but extend their effect to a wide range of public relations, operate in parallel with official law, but contradict its letter or spirit. Shadow norms have varying degrees of public danger, starting with relative benefit or neutrality (as an indicator for state bodies that their actions are not perceived by society and need to be corrected) and

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ending with extremely dangerous manifestations (such as shadow norms of organized crime). According to the level of public danger the state has two main options for action: 1) adjust their actions in accordance with the public request (regarding shadow norms of the first type); 2) use the means of legal liability and introduce more stringent forms of control (in relation to shadow norms of the second type). It should be noted that under martial law, state bodies should focus on supporting the country's population (because there are no people or businesses who would not have suffered from military aggression in Ukraine at all), and not on controlling and applying legal responsibility. This would help at least partially stabilize the legal and social system, as they are at the limit of their capabilities at this stage. Moreover, the emergence and spread of shadow norms is often associated with distrust of state institutions, as well as the generation of shadow regulators by themselves. Especially if we are talking about the violation of basic human rights and freedoms by state bodies and officials, which occurs during a crisis state, which is military aggression. Shadow norms at the present stage have become a direct threat to the development of not only national legal systems, but also to the international global legal system, which is "captured" by shadow policy. This leads to a crisis in the activities of international organizations and international law as such.

1. Introduction

The legal system can be characterized as an incredibly complex organism with cybernetic and synergetic properties. Due to such complexity and many interrelations (both within the legal system itself and with non-legal environment), there are an unlimited number of factors that can directly or indirectly affect the sustainable development of the legal system.

The concept of sustainable development has replaced the concept of development as such. It is reflected both in scientific works [1, p. 301; 2] and has acquired a certain formalization in international and national documents [3; 4].

Summarizing normative and scientific approaches, sustainable development is linked to economic growth, environmental security, effective governance, ensuring and protecting human rights. This indicates that the concept of sustainable development is interdisciplinary, which is associated at least with Economics, Political Science, Sociology,

Psychology, Ecology, and others. However, Law as a social institution and science plays a special role in ensuring sustainable development, which is confirmed by numerous previous studies in this area [1, p. 302; 5; 6; 7; 8]. Law establishes peculiar rules of the game in society, that is, legal norms, which stabilizes other systems of society (political, economic, social and others). Although in a state of unpredictability and social crises, the legal system itself is negatively affected. Rules related to migration processes can be characterized as shadow norms (for example, the existence of a large number of local customs in parallel with the law in places of compact residence of migrants), with tax evasion (including registration and use of offshore companies). And they relate to any legal system to one degree or another. But for Ukraine, shadow norms of a completely different nature have recently become relevant.

The legal system of Ukraine is currently in conditions of extreme instability due to the military aggression of the Russian Federation, internal migration of the population, economic, social and humanitarian problems caused by military actions. However, there are also reasons that "tear" the social and legal system from the inside, counteract its effective progress, and in connection with the military actions, these factors have only worsened. Such phenomena can be called shadow norms (shadow regulators), manifested as a result of the so-called "shadow lawmaking". Occupying in one way or another a significant layer of social regulation in any legal system, shadow (informal) norms grow enormously in the critical conditions that are characteristic of Ukraine at the moment. Shadow norms tend to arise and take root fairly quickly, transform, generate new ones (simply because they are a response to the social conditionality of law, but in its negative aspects).

Thus, against the background of general instability, shadow norms "shake" the legal system from the inside, hinder its stable development. And initially this happens at the level of national legal systems, but then it is "transferred" to the supranational level. In other words, shadow norms can "infect" related legal and social systems, as well as higher-order legal systems, threatening their stability. The aspect of the negative impact on the development of legal systems is a significant problem that requires analysis and development of mechanisms for reducing the legal norms sector, even in conditions of lack of foresight and conflict.

The aim of this section as part of a general study is to analyze the impact of shadow norms on the stability of the development of legal systems in the context of Russia's aggression in Ukraine (which in itself can be characterized as a state of uncertainty). Another component of the goal is the development of a set of measures to counteract the spread of shadow norms, depending on the degree of their danger.

The hypothesis of the study is the thesis that shadow norms are a special obstacle to the sustainable development of legal systems at the national and supranational levels in conditions of unpredictability.

2. Research methodology

Scientific research is based primarily on dialectical and structural system analysis, since the constant correlation of many phenomena relative to independent subsystems of the social system through the phenomenon of shadow regulators is considered. Also, in order to identify the mutual influence of individual elements of the social system, first of all, shadow regulators will be structured in the system with the possibilities of distribution and the degree of their interpenetration.

Content analysis as a method of quantitative and qualitative evaluation of data will help to collect source material by quantitative analysis of semantic units of information (words, phrases, search queries, questions, answers, appeals, images, and so on) related to the subject of the research, which are aimed at identifying the "pain points" of society in the field under study.

Great importance will be given to using the method of comparative law to study the experience of regulating public relations with different approaches and legal institutions. In this regard, it is necessary to identify their specifics and the possibility of using them in social and legal systems. For the success of the research, various practical approaches to combating shadow regulation and preventing its expansion will be analyzed, the consequences of the use of appropriate mechanisms in different states, and therefore in different social and legal systems, will be compared, and the most effective models will be identified, followed by justification of the feasibility or inexpediency of their application in Ukraine.

The method of extrapolation is widely used, because, first, it allows to extrapolate the most general knowledge of one scientific field to those related to it. And secondly, it will make it possible to use the experience of

socially and economically developed countries to create positive changes in the economic systems of developing countries.

Undoubtedly useful in the context of the purpose of the study is the use of a statistical method, which is necessary for screening the current state of shadow regulation in various areas of social life, as well as confirming the positive or negative consequences for the social system as a result of the application of certain legal mechanisms.

The formal legal method is the basis for the analysis of the legal tools currently available in Ukraine, through which attempts are made to reduce the number and prevalence of shadow norms. On this basis, the effectiveness of such measures will also be assessed using the expert assessment method.

The final result of the research will help to use the method of socio-legal modeling, which will create a functional model of the prevalence of shadow regulators in various areas of public life, identify shadow regulators by their degree of danger, and suggest the most desirable measures to reduce the segment of shadow norms of a certain type (starting from leveling or weakening the influence of certain social factors and ending with measures of criminal responsibility).

3. Role of shadow norms and the process of their formation

The understanding of shadow norms is extremely variable in modern world science, as well as the terms used in this field: "shadow law", "shadow norms", "shadow rules", "shadow law-making", "informal norms" (rules, law-making), "unlawful rules" (behavior) [9], "shadow politics", "shadow authorities", "shadow government" [10], "grey zone", "illegal rules" (behavior) are often used. Sometimes they are referred by authors as synonyms, and researchers emphasize this; sometimes they are used in the same or diametrically opposite context by default, without additional justification; and sometimes these categories are correlated in a certain way, based on a particular study (most often as part and whole or as cause and effect) [11, p. 24].

Sometimes shadow rules are understood, for example, some clarifications on relevant resources, corporate acts, contractual norms and other regulators that do not fit the description of official sources of law. So, for the words of J.D. Blank and L. Osofsky "The coexistence of both formal and informal law is a defining characteristic of the U.S. tax system.

This two-tiered system of law both dovetails with and exacerbates the inequities in substance and enforcement of law that others have identified" [12, p. 398]. In essence, we can fully agree with the author, noting nevertheless that the phenomena described above, as well as explanations of tax authorities and contractual acts are recognized as informal norms in the work.

As we have already pointed out in previous studies, shadow regulators are not always and not necessarily dangerous. Moreover, sometimes they can even be called useful, since they almost always point to problems in official sources of law or in the law-making process itself. The same statement is emphasized by some scientists. Among them R.C. Ellickson (quoted by S.V. Flynn [13, p. 151]) uses all of these findings to construct a theory in order to illuminate in what social contexts and with what content informal norms emerge to help people "achieve law without order." Specifically, he analyzes welfare-maximizing social norms, substantive (rancher-related) social norms, remedial social norms, procedural and constitutive social norms, and controller-selecting social norms. Through this analysis, Ellickson reaches the conclusion that "people manage to interact to mutual advantage without the help of a state or other hierarchical coordinator" [14, p. 33, 34, 35, 36, 37, 38]. Yes, without a doubt, it is easier for the actors of real relations to develop norms for themselves that would be effective and acceptable. The social conditionality of law is precisely expressed in this. But in this case, we will rather understand this category of rules as actual norms, but not as shadow ones.

As we had the opportunity to see, sometimes shadow rules can even be useful. Some of them are relatively harmless, "highlighting" at the same time the shortcomings of the legislator. They require the attention of the public and the legislator rather than the police. As a rule, they do not require a special legal reaction. At the same time, some (for example, the criminal subculture) are well-established, structured and well-known in narrow criminal circles. It is such regulators that require the close attention of the internal affairs bodies. That is, the initial structuring of shadow regulators and their ranking by the level of public danger is the basis for combating them and for reducing the segment of their use.

The same is true at the present stage, but in wartime shadow norms take on such an acute and dangerous character against the background of

general social instability that they can lead to a social explosion much faster. Therefore, in critical situations, they require attention more than ever.

During the natural development of social relations, a large number of actual norms arise, only some of which will later become law. Others of them can:

- 1) die out together with the corresponding relations;
- 2) disappear due to the emergence of more effective regulators of different nature;
- 3) exist alongside the right, without intersecting with it at all or supplementing its norms;
- 4) exist alongside the right and contradict it covertly or explicitly.

So, the latter type of actual behavior regulators is understood as shadow norms [15, p. 505].

Understanding the essence of shadow (informal) regulators is possible for the most part through an analysis of the process of rulemaking and the formation of law. Moreover, not every rule-making will be understood as law-making. There are many social regulators in society: morality, customs, traditions, religion, corporate rules, law etc. They are all inherently rules. This means that legal regulators and sources of law are primarily norms (rules of conduct), but not every norm is law.

So, the society simultaneously operates a large number of social regulators, which have varying degrees of recognition, dissemination and formalization. They also differ in their consequences if they are violated.

That is, first of all, the types of social norms are not limited to the above list (there may be other social regulators that are less significant or limited in their scope of operation). And, secondly, the law acts as one of the social regulators, in certain aspects similar to others or different from them. The defining feature of law is only its binding nature, support by force of state coercion, and the specific consequences of violating legal regulations. Although in countries of the religious type of legal systems, religious norms are also supported by the force of state coercion.

Law occupies a specific position among other social regulators. On the one hand, legal norms are not universal or the most widespread rules of behavior in society, and on the other hand, the characteristic features and functions of law determine its special place in the system of regulatory regulation.

For a deep understanding of the essence of shadow norms, it is necessary to pay attention to the correlation of related concepts, such as: rule-making, legal formation (formation of law), law-making. Although all these concepts relate to the formation of rules of behavior in society, each of them has its own specifics and is associated with the creation of regulators of a certain type.

First of all, it should be understood that no rule of behavior arises from scratch. Each of them has social prerequisites, which represent actual social relations that require regulation and ordering.

That is, any regulation is based on a social request, namely, the emergence of certain social relations. In response to the emergence of such relationships, rules of behavior of a very diverse nature begin to form. Social relations cannot always (and most importantly, they should not always) be regulated by official law, so the answer to the existence of actual relations that need to be regulated is the emergence of a set of social norms: ordinary, moral, corporate, religious, legal and others. The process of forming all these norms in society (including legal ones) is called "rule-making" [16, p. 16; 17, p. 74; 18, p. 92]. Thus, rule-making is the broadest of the above concepts, since it covers the creation of prescriptions of all types: technical norms, social norms, and a special type of social norms – legal.

Rule-making can be defined as a complex process of forming all social regulators in society [16, p. 16; 18, p. 92].

The greatest amount of rule-making in relation to other categories is also due to the fact that when it comes to creating social norms other than legal ones (moral, corporate, religious, etc.), then rule-making begins in society and ends there too without rising to the official level. If we are talking about the creation of legal regulations, then through the formation of law, rule-making goes to law-making (the process of law formation begins in society, and ends at the level of official bodies or officials).

The formation of law (legal formation) is a process that covers all stages of creating legal norms as a type of social regulators. Law formation begins in society, and ends at the level of state bodies and officials with the procedure of law-making.

The stages of formation of law (legal formation) are:

- the emergence of actual relations in society that require legal regulation;
- the emergence of actual norms regulating such relations before the creation of legal norms, instead of them or in parallel with them;

– analysis of social prerequisites and awareness of the needs for legal regulation of certain public relations;

– law-making, i.e. official registration and authorization of legal norms.

So, as we can see, law-making is the last, final stage of the formation of law. The creation of only legal norms (unlike other social regulators) is mediated by a special, strictly regulated procedure called law-making. The result of law-making is actually a legal norm that differs in its specific legal content and way of influencing public relations, and the result of rule-making can also be another social norm (religious, moral, political, corporate).

Thus, law-making is the final stage of the formation of law (legal formation), which is carried out in accordance with the established procedure and is associated with the adoption, modification or cancellation of legal norms. Lawmaking can be defined as a subspecies of law-making related exclusively to the adoption of laws by the state parliament according to a strictly regulated procedure. While rulemaking is a process of creating absolutely all social regulators of a non-legal and legal nature.

All regulators (norms) that are formed as a response to a public request (except for legal ones) can be called "factual norms" and united under one general category. Actual norms can "grow" into legal ones if the legislator feels the need for this. But with the same success they can be effective, acting in parallel with the sources of law, complementing them and often replacing them in the regulation of public relations.

At this time, shadow (informal) norms should be called only that part of them that does not just act in parallel with official law, but contradicts it (and the contradiction can be expressed both in relation to the letter of the law and in relation to its spirit).

Shadow norms have no official expression and are unwritten rules. Also, it is impossible to talk about their general obligation, because in most cases they are created and applied by specific entities to regulate specific relations, and their implementation is not ensured either by state coercion or by a system of any measures.

So, shadow law-making is the process of creating a special kind of social norms that regulate a specific sphere of public relations, which do not come from the state, are not protected by the force of state coercion and are not characterized by formal certainty. As a legal phenomenon, shadow

rule-making can be considered as a negative fact that appears due to the inadequate quality of the law-making process in the state.

As already noted, "shadow law-making" is the creation of norms that are not official law, but are secretly used to regulate a wide range of public relations [19, p. 43].

V. Baranov reveals the complex negative background of the shadow side of legal reality. In his opinion, shadow law is a negative manifestation of legal pluralism, a specific form of wrong, a dangerous kind of negative unofficial law, which is a set of antisocial mandatory, which is in a state of struggle with official law, established by the participants of public relations themselves, prescriptions, symbols, rituals, gestures, jargon, with the help of which all stages of illegal activity are regulated, a shadow law order is formed, protected by special moral, mental, material and physical sanctions [20, p. 123–124; 17, p. 18].

Thus, we can conclude that the main reasons for the appearance of shadow rule-making are the unsatisfactory functioning of official norms, the adoption of normative acts that do not meet the existing needs of society, gaps in the legal field, in practical relations of people, as well as in the existence of non-legal elements in rule-making activities. The use of unofficial privileges, abuse of authority by the official apparatus, as well as representatives of law enforcement agencies, lead to the formation of a significant number of shadow rules of conduct, as well as the so-called "shadow justice".

4. Negative manifestations of shadow rules in modern legal systems: national and international aspects

It is claimed that, there is practically no sphere of public life that would not be "affected" by shadow norms. And, it is argued, the fight against informal rules should be carried out, taking into account the social sphere of their distribution, the national or international aspect (manifestation in another legal system or even at the supranational level), as well as the degree of public danger. Moreover, preventive measures (ideally by non-legal methods) should prevail over combat measures of a legal nature, including criminal liability [11, p. 30].

The statement that shadow norms are inherent in all legal and social systems without exception does not eliminate the need to monitor them and

reduce their segment in social regulation. They become especially dangerous during crisis phenomena, such as military operations on the territory of Ukraine. In such conditions, shadow norms literally "flourished", covering almost all spheres and levels of society with their influence. Moreover, shadow rules of behavior are "successfully" generated by both private actors and the state represented by its institutions.

Shadow norms in the economic sphere deserve special attention, since the stability of the economic system is always the basis for the stability of the legal system. As quite rightly noted "Abandoning or ignoring modernity and its economic, social, and political requirements would not be an economically sustainable option for such states either. In order to induce economic growth, a legal system has to reflect social and economic concerns of the people" [21, p. 433]. Although the author has expressed himself in this way in relation to Islamic legal systems, this statement will be absolutely true in relation to legal systems of any type.

In Ukraine, the shadow economy has always formed a significant layer since our country gained independence. The reasons for this were distrust of the internal affairs bodies, relatively high tax rates combined with very low social guarantees, extremely complex tax administration, oligarchization of economic relations, unfavorable conditions for medium and small businesses, non-transparency in the use of budget funds, and so on. The extraction of amber and wood, the fuel market, relations with tax authorities and counterparties were imbued with hidden rules of conduct.

However, now, under martial law, there is a risk of expanding shadow law-making in the economic sphere is simply incredible. To the problems already listed above, the following have been added: business is in a really unsatisfactory state, trying to somehow survive, and the government, instead of providing support, introduces overregulation of economic relations. So, for six months of martial law, the government provided entrepreneurs from certain regions (which are located in the war zone) who had no income during this period with only one-time assistance in the amount of 6500 UAH (which is approximately just 200 euros). Moreover, even this assistance has not yet been received by many entrepreneurs (as noted by the government, due to problems on the ground).

Also, the government has introduced a new service, which means that the company's employees can also receive support of 6500 UAH. However,

in practice, everything turns out to be not so simple. Users of the Portal "Diia" (through which the application is made) in the comments note the impossibility of processing the application due to technical problems. Besides, if an employee works in a combat region, but the company is registered in another region, then, unfortunately, there will be no assistance. According to the legislation, Chernihiv, Sumy, Kharkiv, Kherson, Mykolaiv, Zaporizhia, Donetsk, Luhansk, Kiev, Zhytomyr, Odessa, Volyn, Dnipropetrovsk regions and the city of Kiev fall under the program. But in fact (as evidenced by the messages of users of the portal under the news), even representatives of these regions find it extremely difficult to issue an application and receive one-time financial assistance, even in such a small amount [22; 23].

It should be noted that with the outbreak of hostilities, the government first introduced several quite positive changes for the economy, which is in such a crisis. So, on February 24, 2022, in accordance with the Law of Ukraine "On the Legal Regime of Martial Law", a martial law regime was introduced in Ukraine. On March 15, 2022, the Law of Ukraine No. 2120-IX "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Concerning the Operation of Norms for the Period of Martial Law" was adopted, according to which it provides for the specifics of collecting tax obligations, including in relation to payers of the simplified tax system, namely:

- from April 1, 2022 and for the period of martial law for individual entrepreneurs (sole proprietors), single tax payers of groups I and II, the payment of the single tax is voluntary. Anyone who does not want to pay tax during martial law simply does not fill out a declaration for the specified period;
- during mobilization, sole proprietors belonging to groups II and III of single tax payers, as well as legal entities belonging to group III, may by their own decision, not pay Single Social Contribution for employees called up for military service in the Armed Forces of Ukraine.
- starting from April 1, 2022, sole proprietors and legal entities whose income does not exceed UAH 10 billion during the previous calendar year can switch to paying a single Group III tax at the rate of 2% of total income.

Also, since the beginning of hostilities, the government of Ukraine has canceled fines for non-use of the payment transactions recorders (PTRs) by entrepreneurs.

At first glance, it looks good. At the same time (although neither military operations as such, nor martial law, have yet ended), the government resumed fiscal inspections of businesses. And although a moratorium has been imposed on the use of fines during martial law, businesses are afraid to conduct business under pain of punishment in the future. Moreover, all these benefits will indeed be canceled from July 1, 2023. Starting from this date, tax inspectors will be able to carry out full-fledged documentary and factual (which involves a personal visit to taxpayers) inspections. Full-fledged fines will also return from July 1, 2023, although martial law in the country will still be in effect (as well as the crisis state of the economy). Tax holidays for entrepreneurs of Groups 1 and 2 will also be canceled [24].

Another problem is the introduction by the government of the administration of VAT invoices "in manual mode", when VAT refund is carried out inefficiently, selectively and is associated with numerous corruption risks. This is likely to lead to the formation of a whole layer of new shadow norms in the economic sphere, since businesses, because of their desire to survive without state support in crisis conditions, will develop new schemes (sometimes legal, but contrary to the spirit of law; and sometimes completely illegal).

This looks negative, but quite natural, because in such difficult conditions (in which the population of Ukraine and the economic system of our state found themselves), people need financial, psychological, and social support, but not even more severe sanctions. Feeling the injustice and indifference of the state, the population resorts to shadow regulation measures, which is now observed in Ukrainian society. By itself, Ukrainian society at the present stage is seen as very monolithic and united in the face of the threat, but opposition to the state is growing more and more. This can be clearly seen in the information environment at the beginning of the military aggression and now.

Another example of shadow regulation is volunteering. Volunteer activity during the armed aggression has also leaked countless shadow norms in Ukraine. It should be noted that volunteers made a huge contribution to the fact that the Ukrainian army survived in the first months of the war, but along with this, a huge number of organizations and individuals appeared, whose activities indicate numerous abuses in this area.

As noted above, it is the activities of the state that often "provoke" the appearance of shadow norms. This is exactly the ban on leaving the country for men aged 18-60 years, despite the presence of chronic diseases, work in other countries, as well as lack of military experience and other things. This fact can be seen as one of the biggest mistakes of the government, which systematically undermines confidence in state institutions. First, it is a violation of the constitutionally enshrined right to freedom of movement and turns Ukraine into a huge "closed zone". Secondly, the legislation contains a clear list of exceptions that allow men to cross the state border, even under martial law. But often, even if a man falls under one or even several points from among the exceptions, he receives a refusal to cross the border from representatives of the border service. This happens for several reasons. One of them, the border guard service uses explanations of the law, which often do not follow from the text of the law itself, and create additional obstacles for individuals (this in itself is a manifestation of shadow norms). In addition, during the period of military aggression, border guards received not only huge powers, but also the possibility of very broad discretion in the interpretation and application of legal norms. Sometimes the ban on departure occurs with the wording "the full package of documents was not provided". However, it is not specified which documents were not provided. Not to mention the fact that the provision of most of these documents is not provided for in the legislation at all. This creates significant corruption risks and causes a response from society.

The problem is that leaving the country is prohibited even for those men who have a legal deferral from mobilization (in particular, students of Ukrainian and foreign universities). According to the legislation of Ukraine, students, doctoral students, and university teachers cannot be mobilized into the Armed Forces. However, traveling abroad is also prohibited for them. In addition, internet forums and relevant channels in instant messengers actively discuss cases when boys who are not yet 18 years old were not allowed to go abroad.

In this regard, attempts are being made to resolve this negative situation. Thus, the Verkhovna Rada of Ukraine has registered Draft Law No. 9075, which proposes to establish new rules for crossing the border during war for certain categories. It is noted that the limited opportunity for male citizens to travel abroad "contradicts at least Article 24 of the Constitution of Ukraine". Therefore, it is suggested to make an exception for students. Permission to travel abroad should apply to students of foreign universities – for training,

as well as other men who are not subject to mobilization during a special period [25]. That such a proposal remains at the level of only the draft law, while the problem is overgrown with numerous corruption risks and shadow norms at all levels (starting from military enlistment offices and ending with border control offices).

Therefore, the described situation is an example of creating shadow norms at the level of the state itself. The answer to them, quite naturally, is other shadow norms that are generated by people who, for various reasons, want to leave the country, but do not have the legal opportunity to do so. Moreover, we remember that the constitutional right of these individuals to freedom of movement is primarily violated.

This causes considerable concern, given the principles of correlation between official and shadow law, which were previously developed by scientists, namely: First, informal lawmaking has more vitality than the traditional law of the state. Second, in a clash between traditional state law and informal private law, the latter is likely to prevail. Third, legal characterizations are likely to be of little effect, unless supported by informal private law. Fourth, a result supported exclusively by the law of the state is likely to be perceived as inhumane and unjust. Fifth, an argument is likely to be persuasive if it can be supported by both the law of the state and informal private law. Sixth, discretionary decisions are likely to be based on informal private law [26, p. 332; 27, p. 153, 156]. Thus, law reveals itself as a multitude of autonomous systems operating simultaneously with the formal law of the state. Each system shapes the other systems with which it has contact. Only total isolation will prevent any legal system from being shaped by others. Indeed some isolation is required for any autonomous system to be truly "autonomous," for any group with such a system must be insular to some extent. The degree of that insularity determines the shape and the strength of the autonomous system itself [26, p. 332]. Therefore, shadow norms in an unspoken duel almost always defeat official law.

And the state represented by its bodies in fact has two ways:

- 1) adjust their actions in accordance with the public request;
- 2) use the means of legal liability and introduce more stringent forms of control.

In addition, the state has an additional opportunity, namely, to slow down informal law-making. As said T. Phillips "Once agencies began using rulemakings

consistently, however, the courts, the White House, and Congress subjected informal rulemaking to a significant transformation, resulting in increased procedural requirements that slowed rulemaking to a crawl" [28, p. 497]. But we consider this option as a semi-measure between the previous two.

Russia's military aggression against Ukraine has exacerbated the "suppuration" in the form of shadow norms not only in the national legal system, but also in international law. Numerous international organizations have found themselves helpless in this situation due to the previously laid down mechanisms for their formation, financing or decision-making. This is also seen as a manifestation of shadow norms (namely, shadow politics). Referring to perfectly fair statement, "sustainable development is about – if it is about anything – ensuring that legitimate human needs are met without sacrificing environmental resources in the process. If one is to believe that states have "adopted" sustainable development as the way forward, this needs to be reflected in what goes on within international organisations of which they are a part. International organisations must be active, not passive, players in global developments reflecting the interests of their members." [29, p. 55]. However, at the present stage, due to numerous shadow agreements and regulators, international organizations are no longer serving the goals of stability in the world and the stable development of legal systems.

At the level of interstate relations, shadow politics has also recently manifested itself "in all its glory". Thus, only a few international players (such as Lithuania, Poland, Latvia, Czech Republic, Slovakia, the United States, Great Britain and some others) support Ukraine unambiguously, consistently and harshly (as required by time and conditions). Other countries and specific politicians are "captured" by shadow agreements and negotiations, however, publicly mostly supporting Ukraine.

Such a large number of shadow norms is a direct threat to the stable development of not only national legal systems, but also the global international legal system.

5. Conclusions

The hypothesis of the study was partially confirmed, as it was found that shadow norms can in some cases even be useful, pointing out the mistakes of the government and legislator. However, in conditions of social and legal uncertainty (such as Russia's military aggression against Ukraine), shadow

norms become particularly dangerous and widespread, posing a threat to the stable development of the legal system.

Shadow norms are part of relevant norms that are unwritten, not binding, but extend their effect to a wide range of public relations, operate in parallel with official law, but contradict its letter or spirit.

Shadow norms have varying degrees of public danger, starting with relative benefit or neutrality (as an indicator for state bodies that their actions are not perceived by society and need to be corrected) and ending with extremely dangerous manifestations (such as shadow norms of organized crime).

According to the level of public danger the state has two main options for action:

1) adjust their actions in accordance with the public request (regarding shadow norms of the first type);

2) use the means of legal liability and introduce more stringent forms of control (in relation to shadow norms of the second type).

It should be noted that under martial law, state bodies should focus on supporting the country's population (because there are no people or businesses who would not have suffered from military aggression in Ukraine at all), and not on controlling and applying legal responsibility. This would help at least partially stabilize the legal and social system, as they are at the limit of their capabilities at this stage.

Moreover, the emergence and spread of shadow norms is often associated with distrust of state institutions, as well as the generation of shadow regulators by themselves. Especially if we are talking about the violation of basic human rights and freedoms by state bodies and officials, which occurs during a crisis state, which is military aggression.

Shadow norms at the present stage have become a direct threat to the development of not only national legal systems, but also to the international global legal system, which is "captured" by shadow policy. This leads to a crisis in the activities of international organizations and international law as such.

The prospects for further research of the shadow regulation sector lie in identifying the level of influence of shadow norms within a particular group of individuals, certain states and the mechanism of spreading shadow norms beyond one legal system as a result of legal coherence processes. This research can also serve as a theoretical and practical basis for developing a mechanism for countering shadow norms of varying degrees of danger.

References:

1. Lorenzo Johanna Aleria P. (2018). "Development" Versus "Sustainable Development"?: (Re-)Constructing the International Bank for Sustainable Development, *51 Vand. J. Transnat'l. L.*, 399.
2. Dearden N. (2015). The U.N. development goals miss the point – it's all about power. *Common Dreams*. Available at: www.commondreams.org/views/2015/09/25/un-development-goalsmiss-point-its-all-about-power
3. Report of the World Commission on Environment and Development: Our Common Future. Available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>
4. UN General Assembly. (2015, September 25). Transforming our world: The 2030 agenda for sustainable development. UN G.A. Res. A/RES/70/1. Available at: www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1
5. Davis K.E., & Trebilcock M. (2008). The Relationship between Law and Development: Optimists versus Skeptics, *56 Am. J. Comp. L.*, 895.
6. Trubek David M. (2012). Law and Development 50 Years On. *University of Wisconsin Legal Studies Research Paper*, no. 1212. Available at: <http://ssrn.com/abstract=2161899>
7. Lee Yong-Shik (2015). Call for a New Analytical Model for Law and Development. *Law & Dev. Rev.*, 1, 10–27.
8. Lee Yong-Shik (2017). General Theory of Law and Development. *Cornell Int'l L.J.*, 415.
9. Ovchinnikov A.I., Mamychyev A.Y., & Litvinova S.F. (2015). Extra-Legal and Shadow Functioning of Public Authorities, in Mediterranean. *Journal of Social Sciences*, vol. 6(3), pp. 387–393.
10. Axelrod D. (1992). Shadow Government: The Hidden World of Public Authorities – And How They Control Over \$1 Trillion of Your Money. *Wiley*, 352.
11. Mikhailina T., & Grynyuk R. (2020). The Spread of Shadow Norms Beyond State Legal System: challenges of a globalized society. *European journal of transformation studies*, no. 1, pp. 22–33.
12. Blank Joshua D., & Osofsky L. (2022). The Inequity of Informal Guidance. *Vand. L. Rev.*, 1093.
13. Flynn S.V. (2005). A Complex Portrayal of Social Norms and the Expressive Function of Law. *U. West. L.A. L. Rev.*, 145.
14. Ellickson R.C. (1991). Order Without Law. How Neighbors Settle Disputes. Harvard: Harvard University Press, 316.
15. Mikhailina T. (2020). Shadow Norms as a Threat to National and International Security: Social and Legal Aspects of Counteraction. *Public security and public order*, no. 24, pp. 503–513.
16. Mikhailina T. (2015). Zahalnoteoretychnyi analiz skladovykh elementiv katehorii "normotvorchist" [General theoretical analysis of the constituent elements of the category "rule-making"]. *Naukovyi visnyk Mizhnarodnoho humanitar-noho universytetu. Seria Yurysprudentsia – Scientific Bulletin of the International Humanitarian University. Series: Jurisprudence*, iss. 15, book 1, 15–17. (in Ukrainian)

17. Mikhailina T. (2018). Rol integratyvnoho potentsialu pravosvidomosti u reformuvanni pravovoi systemy [The role of the Integrative Potential of Legal Awareness in the Reform of the Legal System]. Vinnytsia: DonNU imeni Vasylia Stusa, 312. (in Ukrainian)
18. Khahulina K.S., Malyha V.A., Stadnyk I.V. (2008). Teorya gosudarstva i prava v shemakh i opredeleniyah [Theory of State and Law in Schemes and Definitions]. Donetsk: Nord-Press, DonNU, 344. (in Russian)
19. Mikhailina T. (2015). Sotsialno-pravovi fenomen tinovoi pravotvorchosti ta prychny ii poiavy [The socio-legal phenomenon of shadow law-making and the reasons for its appearance]. *Naukovyi visnyk Kharkonskoho derzhavnoho universytetu. Seria: Yurydychni nauky – Scientific Bulletin of Kherson State University. Series: Legal Sciences*, iss. 2, book 1, 41–44. (in Ukrainian)
20. Baranov V.M. (2002). Tenevoe pravo [Shadow law]. Nizhniy Novgorod: NA MVD Rossii, 165. (in Russian)
21. Maliheh Zare X. (2019). Creating Laws for Economic Growth in a Hybrid Islamic Legal System. *Cal. Interdis. L.J.*, 429 p.
22. Otrymannia dopomohy 6500 hrn v "Diia": vidpovidi na poshyreni zapytania [Getting help 6500 UAH in "Diia": answers to frequently asked questions]. Available at: <https://news.dtk.ua/society/community/75347-otrymannia-dopomogi-6500-grn-v-diyi-vidpovidi-na-poshireni-zapitannia> (in Ukrainian)
23. Otrymaite 6500 hrn na kartku ePidtrymky! Derzhava vyplachue dopomohu pidpryemtsiam i naimanym pratsivnykam [Get 6500 UAH on the support card! The state pays assistance to entrepreneurs and employees]. Available at: <https://armyinform.com.ua/2022/03/07/otrymajte-6500-grn-na-kartku-yepidtrymky-derzhava-vyplachuye-dopomogu-pidpryemczyam-i-najmanym-pracivnykam/> (in Ukrainian)
24. Dlia FOP povernut "dovoenni" podatky, perevirky ta chastynu shtrafiv: scho vidomo [Pre-war taxes, inspections and part of fines will be returned for private entrepreneurs: what is known]. Available at: <https://apostrophe.ua/ua/news/economy/taxes/2023-02-25/dlya-flp-vernut-dovoennyye-nalogi-proverki-i-chast-shtrafov-cho-izvestno/291641> (in Ukrainian)
25. Pravyla vyizdu cholovikiv za kordon mozhut zminyty: scho proponuiut v Radi [The rules for men traveling abroad may change: what is proposed in the Parliament]. Available at: <https://tsn.ua/exclusive/pravila-viyizdu-cholovikiv-za-kordon-mozhut-zmyniti-scho-proponuyut-v-radi-2281879.html> (in Ukrainian)
26. Weyrauch W.O., & Bell M.A. (1993). Autonomous Lawmaking: The Case of the "Gypsies". *Yale L.J.*, 323.
27. Weyrauch W.O. et al. (2001). The Family as a Small Group. *GROUP DYNAMIC LAW: EXPOSITION AND PRACTICE*, 153, 156.
28. Phillips T. (2021). A Change of Policy: Promoting Agency Policymaking by Adjudication. *ADMIN. L. REV.*, 495 p.
29. French Duncan A. (2004). The Role of the State and International Organisations in Reconciling Sustainable Development and Globalisation. *International Law and Sustainable Development: Principles and Practice*, pp. 53–71.