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Abstract
The article highlights the content of mediation as an alternative method of administrative law dispute resolution through the prism of analysis of the relevant legislation. The relevance of this topic is primarily associated with the problems of resolution of administrative law disputes by the means of litigation. Therefore, mediation appears as a way to find a compromise for both parties, which can be achieved with the help of a mediator whose purpose is to resolve a conflict situation and assist in making a decision which would satisfy the interests of both parties. The purpose of this article is to study mediation as a method of alternative dispute resolution in the administrative process in its broadest sense, i.e., including administrative procedure and administrative proceedings, based on the comparative legal analysis of Ukrainian and German legislation. To achieve this goal and solve the tasks stipulated by it, the following scientific methods were used: systematic, formal legal, comparative legal, analysis and synthesis, and generalisation methods. The article examines the legislation on mediation: domestic and German. It is established that in the legislation and practice of European countries, mediation has been used for a rather long period of time in the resolution of administrative law disputes. Such a widespread use of mediation in administrative law issues is associated with Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe to member States on alternatives to litigation between administrative authorities and private parties, dated 5 September 2001, which emphasises that the use of alternative means of settling administrative disputes makes it possible to resolve these problems and bring the administrative authority closer to the public. The author substantiates the relevance of legal regulation of mediation as a means of resolving administrative law disputes in Ukraine.

Keywords: *mediation; mediator; administrative process; administrative law disputes.*

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Медіація в адміністративному процесі: порівняльно-правовий аналіз законодавства Федеративної Республіки Німеччина та України

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Анотація
У статті розкрито зміст медіації як альтернативного способу врегулювання адміністративно-правових спорів крізь призму аналізу відповідного законодавства. Актуальність даної теми обумовлена насамперед проблемами, пов'язаними з вирішенням адміністративно-правових спорів у судовому порядку. Відтак, медіація постає як спосіб знайдення компромісу для обох сторін, який можна досягти за допомогою фахівця-медіатора, метою діяльності якого є врегулювання конфліктної ситуації та допомога у прийнятті рішення, що задовольняло б інтереси обох сторін. Мета статті полягає у дослідженні медіації як способу альтернативного вирішення спорів в адміністративному процесі в його широкому розумінні, тобто включаючи адміністративну процедуру та адміністративне судочинство, на основі порівняльно-правового аналізу законодавства України та Німеччини. Задля досягнення поставленої мети та вирішення обумовлених нею завдань було використано такі наукові методи: системний, формально-юридичний, порівняльно-правовий, аналізу та синтезу, а також узагальнення. Досліджено вітчизняне та німецьке законодавство про медіацію. Встановлено, що у правовому просторі європейських країн медіація саме при вирішенні адміністративно-правових спорів застосовується досить тривалий проміжок часу. Таке поширене застосування медіації в адміністративних правовідносинах пов'язують з Рекомендацією (2001) 9 Комітету Міністрів Ради Європи державам-членам щодо альтернатив судовому розгляду спорів між адміністративними органами та сторонами-особами від 5 вересня 2001 р., в якій наголошується на тому, що використання альтернативних засобів урегулювання адміністративних спорів надає можливість розв'язати ці проблеми та наблизити адміністративний орган до громадськості. Обґрунтовано актуальність правового унормування медіації як способу вирішення адміністративно-правових спорів в Україні.

Ключові слова: *медіація; медіатор; адміністративний процес; адміністративно-правові спори.*

Introduction

The protection of human rights and freedoms is a fundamental constitutional principle of the Ukrainian state policy. A key indicator of the implementation of this principle is the existence of an effective mechanism for the protection of human rights and freedoms in case of their violation. Given the current political context in Ukraine, there is a need to expand the instruments for resolving disputes that may arise between a person and the state.

According to the statistical reports, in 2022, local administrative courts received 382,527 statements of claim, applications for review of a court decision due to newly discovered or exceptional circumstances, applications for securing evidence, for the resumption of lost court proceedings, appeals, motions and other materials against 559,321 cases and materials received in 2021 [1, p. 3] It is worth noting that the average number of cases and materials received for consideration in 2022 per district administrative court judge was 717, compared to 1031 in 2021. On average, a judge of a district administrative court spent 112 days to consider one case, while in 2021 – 78 days [Ibid., pp. 4, 9].

However, in our opinion, given the ongoing martial law on the territory of Ukraine, it will also be more objective to analyse the judicial data of 2021 and 2020. Based on the analysis of the above indicators of the work of administrative courts before the outbreak of war, there is a tendency to increase the number of cases that come to court during the year. According to a comparative analysis of the annual performance indicators of district administrative courts for 2019 and 2020, most courts maintain a trend towards an increase in the number of cases coming to court. In some cases, this figure reaches 20-30%, or in absolute terms, the increase reaches 4000-5000 cases per year. In the situation of insufficient number of judges in Ukraine, this situation leads to overloading of judges and increase of time of court proceedings [2, p. 6]

The proclaimed European integration course of our state should not be overlooked, and the issue of which has become even more relevant in the context of martial law. In the legal space of European countries, mediation has been used to resolve administrative law disputes for a long time. Such widespread use of mediation in administrative legal relations is associated with Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternatives to litigation between administrative authorities and private parties of 5 September 2001 (hereinafter – the Recommendation). In particular, this Recommendation emphasises that judicial procedures are not always suitable for the

settlement of administrative disputes in practice, and that the use of alternative means of administrative dispute resolution makes it possible to solve these problems and bring the administrative body closer to the public [Ibid., p. 4].

The statistics on court decision-making, court workload, duration of court proceedings, and European integration legal reforms of the judiciary show that the resolution of administrative law disputes through the judiciary should not remain the only one of their resolution. That is why addressing the issue of improving the comprehensive system of protection of human rights and freedoms through the use of mediation as an alternative way to resolve disputes or conflicts is a relevant and significant issue of our time. This article will focus on mediation as an alternative to the judicial resolution of administrative law disputes.

In light of the above, the purpose of this article is to study mediation as a method of alternative dispute resolution in the administrative process in its broad sense, i.e., including administrative procedure and administrative proceedings, based on a comparative legal analysis of mediation legislation in Germany and Ukraine.

Literature review

Mediation is one of the new forms of conciliation in the domestic practice of resolving administrative law disputes, which are faced by almost all participants in administrative law relations. This can be explained by the fact that a key feature of administrative law relations is that a mandatory party to such relations, along with a private person, is a public authority, whose competence, for example, includes resolving issues directly related to the activities of this private person. In Ukraine, the study of the use of alternative dispute resolution methods issues has been conducted in various aspects, but mostly only in the context of private law disputes. However, Ukrainian scholars have recently begun to explore the possibility of introducing mediation into the process of resolving public law disputes, but this issue remains insufficiently scientifically researched. In particular, mediation as a method of alternative dispute resolution has been studied by the following scientists: M. Blikhar [3], D. Davydenko [4], O. Katsyora [5], S. Korinnyi [6], K. Rostovska [7], A. Serhieieva, A. [2], A. Sobakar [8; 9], K. Tokarieva [10], T. Tsuvina et al. [11–13], L. Vasechko [14], I. Verba [15], O. Yaroshenko et al. [16].

According to M. Blikhar, mediation should become one of the main guarantors of compliance with the principles of the rule of law, and help the judiciary as a universal institution of legal protection of the rights and freedoms of citizens and legal entities. In particular, one hundred per

cent implementation of the decisions proposed by the mediator should be extremely important in the application of mediation, which, in turn, will increase the authority of legal mediators and legal mediation as an institution and procedure for resolving legal disputes [3, p. 78].

K. Tokarieva concludes that mediation as a dispute resolution procedure with the participation of a neutral mediator can be used in disputes where at least one of the parties is a subject of public authority. Given the specifics of disputes in public relations, the introduction of mediation has many advantages: reducing the workload of administrative courts, reducing the duration and increasing the efficiency of administrative proceedings, and so on. In addition, mediation, where both the citizen and the public authority have equal rights to protect their interests, promotes the establishment of trust and social harmony between the state and citizens [10, p. 131].

According to D. Davydenko, the list of problems for introducing mediation into administrative law were defined, which is suggested to be divided into three groups: general, administratively oriented, technical. Common problems are conditioned by conceptual problems of mediation introduction, administratively oriented: provide impossibility of the development of alternative ways for solving disputes in administrative law, and technical: gaps in legislation concerning procedural aspects of carrying out mediation [4, p. 260].

Materials and Methods

Based on the outlined subject matter – legislation on mediation in the administrative process – the main method of analysis is the formal legal method. The formal legal method was used to determine the content of legal provisions and to analyse the lawmakers' intent in writing such provisions. It allows to systematise the information obtained from legal acts, revealing the key aspects of mediation regulation in both countries.

The formal logical method was used to identify the basis for identifying shortcomings in national legal regulation and finding ways to overcome them.

By choosing the comparative method, we have the opportunity to identify common and distinctive features of the legislation of the Federal Republic of Germany and Ukraine. This allows the researcher to highlight good practices and innovations in both systems, as well as to identify opportunities for improvement in each state.

In order to update information and cover the latest legislative developments in both countries, we will conduct a systematic analysis of official documents, including draft laws, regulations and other sources.

The functional method was used to determine the areas of legal impact of mediation in administrative law relations, the subjects of administrative law regulation of mediation, and the importance of proper administrative law regulation.

The methods of analysis, synthesis, induction, deduction, and analogy were also used to formulate proposals and recommendations for improving the administrative law regulation of mediation in Ukraine, mainly based on the German experience.

This choice of above mentioned methods and approaches allows us to get a comprehensive undrstanding of mediation in the administrative process in both states.

As for the main stages of this article, they are aimed at conducting a comparative legal analysis of the legislation of the Federal Republic of Germany and Ukraine on mediation in administrative proceedings.

The first stage involves a clear definition of the object and subject of the study, as well as the formulation of the actual problem to be studied. In the context of this study, it is determined that the object is mediation in administrative proceedings in its broadest sense, and the subject matter is the legislation of the Federal Republic of Germany and Ukraine.

The second stage involves a systematic analysis of existing academic papers, monographs and legislation on the selected topic. Primary and secondary data are collected to provide a basic foundation for further analysis.

At the third stage, the choice of methods and approaches to be used for comparative legal analysis is justified. In particular, it is determined whether the legal or comparative method will be used, as well as the choice of criteria for assessing the legislation.

This stage involves conducting the analysis itself, taking into account the selected methods and approaches. The article examines the common and distinctive features of mediation in administrative proceedings in the Federal Republic of Germany and Ukraine. The conclusions are formulated on the basis of the findings.

At the final stage, the authors provide a justification for the choice of the methods, techniques and approaches used, and identifies possible prospects for further research in this area.

Results and Discussion

O. Melnychuk states that in the context of Ukraine's integration into the European legal community, it is important to develop an effective

administrative justice system, one of the tools to ensure which is an alternative out-of-court method of resolving legal disputes. The experience of European countries shows that mediation can increase the effectiveness of their settlement [17, p. 78].

As I. Verba concludes, improvement, optimisation and harmonisation of procedural legislation and the and the judicial system are aimed at achieving a balance in ensuring the public interests of society and private interests of an individual. Therefore, as in many rule-of-law countries countries of the world, today in Ukraine it is important to substantiate the ways of introducing the mediation into the structure of administrative procedures. Practice shows that the procedures and mediation procedures and methods developed in different countries may differ in content and effectiveness, but no approach has yet been implemented in the national legislation of Ukraine. any approach has been implemented in the national legislation of Ukraine [15, p. 186]

This section of the article will analyze the experience of legislative introduction of mediation in Germany, as a state which has already successfully passed the path of establishing mediation as a dispute settlement instrument, and Ukraine, as a state which is still on this path. A comparative legal analysis of certain provisions of the laws on mediation in Germany and Ukraine will also be carried out in order to identify similarities and differences, mainly for the reason of developing Ukrainian approaches both in theory and practice of mediation.

Historical background in Ukraine

Back in 2013, the Verkhovna Rada registered Draft Law No. 2425a-1 "On Mediation", but in 2014 the draft law was withdrawn.

In 2014. Ukraine signed the Association Agreement with the European Union. According to Article 1 of the Agreement, Ukraine and the EU should strengthen cooperation in the field of justice, freedom and security in order to ensure the rule of law and respect for human rights and fundamental freedoms. The EU countries agreed that ensuring the rule of law and better access to justice should include access to both judicial and non-judicial methods of dispute resolution.

Later, the Presidential Decree No. 276/2015 of May 20, 2015 approved the Strategy for Reforming the Judiciary, Judicial Proceedings and Related Legal Institutions for 2015–2020. According to clause 5.4 of the Strategy, it is envisaged to expand the methods of alternative dispute resolution.

On 15 December 2021, the Law of Ukraine "On Mediation" came into force [18]. This Law defined the legal basis and procedure for mediation as an

out-of-court conflict resolution procedure, the principles of mediation, the status of a mediator, requirements for mediators training and other issues related to this procedure. It may appear that Ukraine has a slowed

From a simple analysis of the dates of adoption of the laws, it may seem that Ukraine is delaying the introduction of mediation into the national dispute resolution system compared to Germany. Among the reasons for the slow introduction of mediation into the dispute resolution system of Ukraine, O. Katsyora [5] notes the following:

– low legal culture of the population;
– the novelty of this service for the country;
– the positions of the parties who were unwilling to agree to a compromise;
– the specifics of national justice;
– difficulty in selecting a mediator as a highly professional person;
– specifics of Ukraine's political and economic situation;
– low level of cooperation with international organisations;
– lack of adequate funding and insignificant state support;
– predominantly public principles of mediation development [5, p. 23].

The position of scholars Rostovska and Hryshyna is also worthy of attention, as they point out the following aspect as an obstacle to the introduction of mediation. The area of administrative disputes is the most difficult to apply the mediation procedure. This is due to the following peculiarities of such disputes:

– the parties to the dispute are unequal subjects – they have a power-subordination relationship;
– there are corruption risks due to agreements between an official and a private person;
– the public authority is guided by the public interest in its activities and does not have freedom in decision-making;
– the risk of accusing a public servant of exceeding his or her authority when entering into a mediation agreement [7, p. 185].

Partially agreeing with the opinions of the scholars mentioned above, we believe that these problematic aspects of the introduction of mediation into the Ukrainian dispute resolution system are not insurmountable obstacles, but rather national peculiarities and issues of time. Below, we will analyse the legislation of Germany and Ukraine and provide recommendations on how to make this path more effective for Ukraine.

Historical background in Germany

In July 2012, the German legislator implemented EU-Directive 2008/52/EWG ("EU Directive") [19]. The primary aim of the EU Directive is to ensure

the enforceability of an agreement reached via mediation, the confidentiality of the mediation, and the suspension of the statute of limitations for the duration of the mediation proceedings. Germany then adopted the "Act to Promote Mediation and Other Methods of Out-of-court Dispute Resolution" (in German, "Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung", BGBl. 2012 I, 1577; hereinafter the "Act"). The core elements of the Act are the enactment of the Mediation Act (hereinafter the "German Mediation Act") and amendments to the procedural codes, in particular the German Code of Civil Procedure. The German Mediation Act is the first codification of mediation and related provisions in German law prescribing, inter alia, basic principles, procedural rules, and minimum duties of the mediator. While the EU Directive is applicable to cross-border disputes only, the German Mediation Act does not distinguish between cross-border and domestic mediation. The Act focuses on mediation as a method of alternative dispute resolution.

For comparison, on July 21, 2012, the German Mediation Act was adopted. It is quite concise, as it consists of only 9 paragraphs. The Law of Ukraine "On Mediation" (hereinafter the "Ukrainian Mediation Act") was adopted on 16.11.2021 and consists of 21 articles.

The concept of "mediation"

The German Mediation Act defines mediation as a confidential and structured proceeding in which the parties, voluntarily and on their own responsibility, seek an amicable settlement of their dispute with the assistance of a mediator (sec. 1 para. 1) [19].

In its turn, the Ukrainian Mediation Act establishes the following definition: mediation is an extrajudicial voluntary, confidential, structured procedure during which the parties, with the assistance of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations [18].

In general, these definitions contain quite similar characteristics of the use of mediation. Both Mediation Acts establishes the goal of mediation as to seek a future-oriented solution to the dispute, thus allowing the parties to move forward and continue their cooperation. However, in the Ukrainian Mediation Act it is mentioned that mediation is first of all an extrajudicial procedure. Therefore, while the German Mediation Act refers to three types of mediation or related proceedings: the standard out-of-court mediation, the out-of-court mediation upon proposal by the court, and mediation in judicial conciliatory proceedings, the Ukrainian Mediation Act is primarily oriented at out-of-court mediation. We consider this discrepancy in the definition of mediation is primarily due to the fact that Ukraine is only at the initial stage of actual implementation of mediation. That is why

currently Ukraine is ready to introduce mediation only as an out-of-court procedure. However, an interesting fact is that the German Mediation Act contained three types of mediation at once.

The concept of "mediator"

German Mediation Act: A mediator is an independent and neutral person without decision-making authority who accompanies the parties during the mediation procedure (sec. 2 para. 1) [2].

Ukrainian Mediation Act: Mediator is a specially trained neutral, independent, impartial individual who conducts mediation [18].

The key difference between these two definitions is that the German version specifically states that the mediator has no decision-making authority, which is not the case in the Ukrainian law. In my opinion, this is a good example of improving Ukrainian legislation, since given the rather high level of abuse of rights and obligations, for example, in court, it is necessary to minimise the risks of such abuse during the mediation procedure.

It is also interesting that the German Mediation Act defines the main principles of mediation through the concepts of mediation and mediator without specifying them separately. In contrast, the Ukrainian Mediation Act contains Art. 4, which separately defines the principles of mediation, which generally coincide with the relevant German principles.

The principle of confidentiality

A separate paragraph in the German Mediation Act states the principle of confidentiality as one of the fundamental principles of mediation. The rule of confidentiality applies not only to the mediator, but also to any persons involved in the procedure. At the same time, there are exceptions when this obligation of confidentiality does not apply, namely: disclosure of the content of the agreement reached during mediation is necessary for the implementation or execution of this agreement; disclosure is necessary for reasons of public order (ordre public), in particular in case of significant harm to the physical or mental health of a person or to prevent a threat to the welfare of a child; the case concerns facts that are generally known [19].

The Ukrainian Mediation Act describes the principle of confidentiality by establishing obligations for all parties to the mediation not to disclose confidential information, unless otherwise provided by law or unless all parties to the mediation agree otherwise in writing. With regard to exceptions to such disclosure, the mediator shall be released from the obligation to keep confidential information to the extent necessary to protect his or her rights and interests in case a party to the mediation claims against the mediator for non-fulfilment or improper fulfilment of

the terms of the mediation agreement. In this case, the court, other bodies or officials considering the claims of the party to the mediation to the mediator or who have become aware of such claims shall take measures to prevent unauthorised persons from accessing and disclosing confidential information [18].

In general, the provisions of German and Ukrainian legislation are again similar, which indicates a similar approach to the issue of confidentiality of the mediation process. However, the German version describes in more detail the cases of exceptions to disclosure, while the Ukrainian version refers generally to court proceedings in which certain details of the mediation may be disclosed.

German and Ukrainian approaches of mediators preparation and training

Section 5 of the German Mediation Act imposes an obligation on the mediator to undergo training and regular professional development. It is interesting that the German law imposed the obligation to ensure training and advanced training on the mediator. Thus, the legislator outlined the range of special knowledge and skills that a mediator must have, but did not set time limits for training and advanced training. This means that it is up to the mediator to resolve this issue. However, the Law contains a special reservation: it is mandatory to undergo proper training and regular professional development in order to competently support the parties in the mediation procedure [19].

An important aspect of mediator training in Germany is supervision, which is professional support, mentoring, and consultation of a mediator with a more experienced colleague-mediator on problematic issues and challenges that the mediator has encountered during the mediation procedure. It is an opportunity to evaluate oneself as a specialist from the outside, an opportunity to maintain internal balance and equilibrium for further performance of one's duties properly [Ibid.].

The description of mediator training in Ukraine is more concise. The basic training of mediators shall be carried out according to the programme of at least 90 hours of training, including at least 45 hours of practical training. The programme of basic training of mediators shall include theoretical training and practical skills training. Mediators shall be trained by educational entities. The training of mediators, in addition to the basic training, may include specialised training in accordance with the training programmes developed by the educational entities. Upon completion of basic and/or specialised training and confirmation of the acquired competencies, a relevant certificate shall be issued. The certificate

confirming the completion of basic and/or specialised training of a mediator may include other information determined by the educational entity that provided the training. The certificate confirming completion of the basic and/or specialised training of a mediator shall be accompanied by a list of components of the training programme and acquired competencies. Educational entities that provide training of mediators shall keep registers of their graduates, which shall contain the information provided for in part four of this Article [18].

Thus, the German provisions are interesting in that they mainly deal with self-education and self-organisation of mediators, which indicates that candidates are highly motivated to prepare for the status of mediator. Germany also has a unique supervision system, which is an important aspect of training aimed at acquiring practical skills and cooperation between "junior" and "senior" mediators. In Ukraine, as for now, mediation training seems to be more formalised and theoretically oriented. Therefore, the practical vector in the training of German mediators is extremely important for research and further implementation, especially considering the fact that Ukrainian mediation system is only at the initial stage of its formation and functioning.

Returning to the issue of obstacles to the introduction of mediation caused by the following factors: the existence of power-subordination relations between the parties to the dispute; a high degree of corruption risks in agreements between an official and a private person; limited or absence of freedom of decision-making by the subject of authority, who is guided by the public interest in his/her activities; the risk of accusing a public servant of exceeding his/her authority when concluding a mediation agreement, etc. [7, p. 185], it should be noted that this problem has no simple solution and requires a comprehensive approach.

Such an approach in general may consist of the following blocks:

1) determination of the range of public authorities which, in principle, may enter into mediation agreements;
2) determination of the list of legal relations in which mediation procedures are possible;
3) establishment of the limits of discretionary powers, which will include the possibility of determining the terms of a mediation agreement and its conclusion for a certain range of public authorities;
4) clear legislative consolidation of the criteria for the application of discretionary powers when concluding a mediation agreement.

The last of these points will have a dual purpose. On the one hand, it will contain requirements that must be met both by the decision made within

the scope of discretion and by the procedure for its adoption. On the other hand, it will act as a certain guarantee that will protect the authority from accusations of abuse of power.

Conclusions

The article makes a comparative legal analysis of the provisions of German and Ukrainian legislation on mediation. It is established that along with similar provisions of the laws on mediation in Germany and Ukraine, there are certain differences. Some differences were identified in the process of training mediators, as German training seems to be more practice-oriented than Ukrainian training.

As a general conclusion, it can be noted that mediation can serve as a rather effective way to resolve administrative and legal disputes, given the geopolitical situation in Ukraine, both during and after the war. Mediation is distinguished by its flexibility and more equal relations between the parties than in administrative and judicial proceedings. An important feature of mediation is that it is primarily aimed at reaching a compromise by establishing a dialogue between the parties.

The German experience analysed above is extremely useful for Ukraine, as Ukraine often relies on the experience of this country in the lawmaking process. Thus, taking into account Germany's experience in the field of mediation, foreign standards of mediator's activity and domestic practice will allow to formulate proper and effective legal regulation of mediation in Ukraine. In particular, this will help to improve the mediation training process by making it more practically oriented and creating a platform for interaction between mediators, for example, by introducing supervision.

Recommendations

Taking into account the context of comparative legal analysis of the legislation on mediation in administrative proceedings of the Federal Republic of Germany and Ukraine, a number of recommendations for the training of mediators in Ukraine are provided below:

1. It is recommended to actively implement the best international practices in the training of mediators, in particular the experience of Germany. Among the specific areas of improvement, it is worth mentioning supervision. As noted above, this is a kind of mentoring that allows both junior and senior mediators to assess themselves as a specialist who, on the one hand, is able to pass on their experience, and on the other hand, accumulate the knowledge gained. It is also an opportunity to maintain internal balance and equilibrium in order to continue to perform their duties properly.

And generally, the involvement of foreign experts, organisation of international seminars and trainings will facilitate the exchange of knowledge and improve training system.
2. In training mediators, it is important to focus on the development of psychological and socio-cultural competences. Knowledge of professional mediation techniques should be complemented by communication skills, understanding of interpersonal relationships and cultural sensitivity.
3. It is recommended that effective cooperation be established with industry organisations and the judiciary to tailor mediator training to the specific needs of the administrative justice system. This could include joint training, reciprocal programmes and exchange of experience.
4. In particular, it is important to ensure access to innovative knowledge in the field of mediation. The introduction of e-resources, virtual training and online platforms for information exchange will facilitate fast and effective learning.
5. It is recommended to actively conduct information campaigns and promote the idea of mediation in the administrative process. Involving the public in discussions, publishing articles and appearing in the media can create a favourable climate for the development of mediation practice.
6. Involvement of mediators in active participation in research and publications will contribute to the development of the theoretical framework and exchange of experience in the field of mediation.

These recommendations will help improve the system of training mediators in Ukraine and make it more efficient and relevant to the current challenges of the administrative process.

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Mechanisms of Citizen Participation in Public Administration: Experience of Foreign Countries

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Abstract
Considering Ukraine's aspiration to become a full member of the European Union and participate on equal terms with other European states in defining global policies and goals for the future, the effective functioning of public participation mechanisms in governance is not only a goal for Ukraine, but also a requirement of the EU. In this sense, it is appropriate to investigate the peculiarities of the functioning of the mechanisms of citizen participation in public administration in different states, evaluating their experience and taking into account the principles and ideas that can be useful in reforming the Ukrainian legal system in this direction. The purpose of the article. Analysis of foreign experience of regulatory and practical support for the functioning of mechanisms of citizen participation in public administration, determination of advantages and disadvantages of various models of setting up government-public communications, as well as an outline of prospects for the development of mechanisms of public participation in state administration in Ukraine. Methods of analysis. The research uses general scientific and special methods of scientific knowledge. The purpose and tasks of the research include analysis and synthesis of information, comparison of foreign approaches to understanding public participation and its mechanisms, as well as formulation of the author's conclusions on specific issues, recommendations for theoretical and practical use. The results. The theoretical and practical aspects of ensuring the effectiveness of citizens' participation in public administration are analyzed. The standards in this area, the best foreign approaches and practices, and promising directions for the development of participatory democracy in Ukraine are outlined. Prospects for further research. The findings contained in this study can be applied during the improvement of national legislation and the implementation of regulatory provisions on effective public influence on public administration. In the future, it would be appropriate to pay attention to the peculiarities of ensuring the functioning of the mechanisms of citizen participation in the management of state affairs in other countries, in particular in Asian countries, Canada, the USA, etc.

Keywords: *public administration; public participation; participatory democracy; digitalization of public administration; electronic initiative.*

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Механізми участі громадян у публічному управлінні: досвід зарубіжних країн

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Анотація
З огляду на прагнення України стати повноправним членом Європейського Союзу та на рівних умовах із іншими європейськими державами брати участь у визначенні глобальної політики й цілей на майбутнє, ефективне функціонування механізмів громадської участі в управлінні є не лише метою для України, а й вимогою ЄС. У цьому сенсі доречно дослідити особливості функціонування механізмів участі громадян у публічному управлінні в різних державах, оцінюючи їхній досвід та беручи до уваги принципи та ідеї, які можуть стати в нагоді при реформуванні української правової системи в цьому напрямі. Аналіз зарубіжного досвіду нормативного та практичного забезпечення функціонування механізмів участі громадян у публічному управлінні, визначення переваг та недоліків різних моделей налаштування владно-громадських комунікацій, а також окреслення перспектив розвитку механізмів громадської участі в управлінні державою в Україні. У ході дослідження застосовано загальнонаукові та спеціальні методи наукового пізнання. Мета та завдання дослідження передбачають аналіз і синтез інформації, порівняння зарубіжних підходів до розуміння громадської участі та її механізмів, а також формулювання авторських висновків із визначеної проблематики, рекомендацій для теоретичного та практичного використання. Проаналізовано теоретичні та практичні аспекти забезпечення ефективності участі громадян у публічному управлінні. Окреслено стандарти у цій сфері, кращі зарубіжні підходи і практики та перспективні напрями розвитку демократії участі в Україні. Напрацювання, які містяться в цьому дослідженні, можуть бути застосовані під час удосконалення національного законодавства та реалізації нормативно-правових положень щодо ефективного громадського впливу на публічне управління. У подальшому доречно було б звернути увагу на особливості забезпечення функціонування механізмів участі громадян в управлінні державними справами в інших державах, зокрема в країнах Азії, Канаді, США тощо.

Ключові слова: *публічне управління; громадська участь; демократія участі; цифровізація публічного управління; електронна ініціатива.*

Introduction

In the process of developing participatory democracy, it is important for every state to study foreign experience in the introduction and functioning

of mechanisms for citizens' participation in public administration. In the history of the formation of the legal system of independent Ukraine, there are many examples of borrowing the norms of legislation of other states and international institutions. In addition, having set the goal of membership in the EU, Ukraine undertook to adapt its domestic legislation to the acquis communautaire of the EU, and therefore, is currently in the process of meaningful reformation of the national system of regulatory legal acts. At the same time, the long-term practice of improving the current legislation and adopting new legislation based on foreign models has proven that the "blind" borrowing of legal norms that function qualitatively in the legal system of one state or organization is not a guarantee of their proper implementation in another. The same applies to the "premature" introduction of relevant norms of foreign legislation, i.e. the situation when the state adopting the new law is not yet ready to answer the question of how it will be implemented in practice. Therefore, the analysis of foreign experience should be carried out gradually and carefully, and the proposals formulated on its basis should be checked for effectiveness in the legal system of a particular state, taking into account the specifics of its internal organization and management system.

The Constitution of Ukraine enshrines the right of a citizen to participate in the management of state affairs [1], accordingly, the duty of the state is to create all the conditions for citizens to be interested in such participation, to be informed about the mechanisms of participation, to have unimpeded access to the tools of participation and to see its results, that is, they could assess the consequences of their own influence on the activities of public administration bodies.

The analysis of the current legislation of Ukraine on the participation of citizens in the management of state affairs, as well as the practice of implementing its provisions, shows the presence of a significant number of shortcomings both in the legal regulation of this area and in the practical provision of public participation. Thus, for qualitative improvement, which is undoubtedly required by the national legal regulation of citizen participation in public administration, as well as the determination of new promising forms of public participation, it is necessary to conduct a study of the mechanisms of citizen participation in public administration in foreign countries.

Therefore, ***the purpose of this study*** is the analysis of legal regulation and law enforcement practice regarding the participation of citizens in the public administration of selected foreign countries (Estonia, Latvia, Lithuania, Finland, Germany, Italy, France), on the basis of which proposals for improving the legislation will be formulated in the future of Ukraine in this area.

Literature review

The principles of citizens' participation in the management of state affairs were the subject of research by such domestic scientists as V. Averyanov, Yu. Bityak, A. Grabylnikov, I. Dakhova, V. Kolpakov, A. Selivanov, K. Shvets. In addition, I. Boyko, T. Kolomoets, D. Luchenko and other scientists analyzed separate forms of public participation and investigated the issue of improving the current legislation in order to increase the effectiveness of citizen participation in state management. It is worth noting that today the issue of public participation is extremely relevant, and complex studies, which would include the definition of theoretical and legal foundations, an overview of the national normative and legal regulation of citizen participation, an analysis of foreign experience and international standards of public participation, as well as systematized proposals with improvement of the defined area – absent.

Materials and Methods

The sources of this study are the scientific works of foreign experts in the field of public participation. The work uses general scientific and special methods of scientific knowledge. The purpose and tasks of the research include analysis and synthesis of information, comparison of foreign approaches to understanding public participation, as well as formulation of conclusions on the outlined issues, recommendations for theoretical and practical use.

Results and Discussion

Let's begin the analysis of foreign approaches to ensuring effective participation of citizens in public administration from the experience of the Baltic countries (Estonia, Latvia and Lithuania). One of the latest studies on the state of public participation in governance, devoted to the impact of citizen participation on public sentiment during the crisis in the Baltic States, conducted by the Security Institutions Management Research Group (Vilnius, Lithuania) in 2022, contains a comparative analysis of the mechanisms of public influence on public administration in Latvia, Lithuania and Estonia, statistics of public participation and indicators of its effectiveness. The authors found that the relationship between citizen participation, feelings of security, and attitudes toward the future varies from country to country, despite the same nature of the crisis and geographical proximity of these countries. At the same time, citizens' sense of security is directly related to the level of trust in the government as an element of public participation.

The conducted research of public attitudes in three countries allowed the authors to say that public participation in the process of managing a

state in a state of crisis is of decisive importance for overcoming the crisis and restoring stability in all spheres of life. Thus, the participation of citizens can have a threefold impact: 1) citizens as informants ("sensors"); 2) citizens who react to events under the supervision of public authorities ("reactive sensors"); 3) citizens who directly participate in crisis management ("proactive sensors").

Therefore, according to the researchers, during a state or world crisis (regardless of its causes), public participation should not be limited exclusively to receiving information from public authorities (informing the population), citizens can and should be involved in crisis public management, because they are the ones, who primarily respond to a crisis or disaster, as well as those who are directly affected by it.

The governments of the Baltic countries pay considerable attention to the development of digital forms of interaction with the public. The convenience and efficiency of such forms is emphasized. Using smartphones and social media, citizens can participate as "smart sensors", meaning they can monitor alerts, collaborate with local governments, support community preparedness and recovery processes, and provide valuable feedback. According to researchers, the state should improve communication channels with citizens, encourage the participation of public associations, volunteer groups, inform and educate the public about the use of information and communication technologies to influence public management processes [2, pp. 3-10].

The experience of the Baltic countries is extremely important for research by Ukrainian scientists, compared to other states of the world, because they are close to Ukraine not only territorially, but also historically. Like Ukraine, these countries used to be under the influence or part of the USSR. And today, these states are still in the process of transforming their political systems, because it was the democratic transformations and European integration processes that became the catalyst for changes and caused the need to develop their model of public administration.

The experience of Lithuania

The basic regulatory legal act in the field of public administration in Lithuania is the Law on Public Administration of 1999 with the following amendments, which establishes the list of subjects of administration, the principles and spheres of their activity, contains the initial provisions on the administrative and legal regulation of public administration in the state. In addition, concepts, programs, manuals on the development of the public administration system, including action plans for a specific period of time, are accepted.

In Lithuania, as well as in Ukraine, digitalization of public administration is currently extremely relevant, which began in 2014 with the adoption of the "Digital Agenda of the Republic of Lithuania" (practically simultaneously with the beginning of the process of digitalization of the management sphere in Ukraine). Today, the "Electronic Gate of Government" web portal operates in Lithuania, which provides citizens with access to public information and the provision of some administrative services online based on the "single window" principle.

Comparing the level of involvement of information and communication technologies in the processes of public administration in Lithuania and Ukraine, we can even say about a much wider use of the possibilities of the Internet, digital services and tools for the interaction of public administration bodies with the public in Ukraine (web portal and mobile application "Diya", websites of all public administration bodies, electronic petitions, online appeals, online polls, dialogue in social networks, etc.), but statistical indicators testify to Lithuania's greater success in ensuring effective participation of citizens in the management of public affairs. In particular, in the 2022 UN e-governance rating, Lithuania took 24th place, and therefore, it can be concluded that the country has implemented digital tools in governance quite effectively. The process of optimizing the field of electronic public services in Lithuania continues, and from 2014 to today, there has already been a significant increase in the level of trust of citizens in state institutions [3, pp. 87-88].

The experience of Latvia

This country has a successful experience of ensuring the effective functioning of the electronic petition institute. It is worth noting that in today's conditions for Ukraine, as well as for other countries of the world, which strive for the comprehensive development of participatory democracy, the issue of establishing a mechanism for submitting, considering and essentially resolving electronic petitions is extremely relevant, because electronic petitions are the tool that citizens used most often, compared to other available opportunities to participate in public administration and contribute to the elimination of problems [4, pp. 88-108]. The question of properly ensuring the functioning of the mechanism for submitting and considering electronic appeals of citizens in the conditions of martial law in Ukraine, declared in connection with the full-scale invasion of the Russian Federation on the territory of independent Ukraine [5, pp. 37-38].

A comparison of the realities of the functioning of the electronic initiative institute in Latvia and Ukraine clearly demonstrates the gaps in the Ukrainian approach to regulatory and legal regulation and technical

support for the functioning of this mechanism. Those problems, which were repeatedly voiced and described by domestic researchers and in international recommendations for Ukraine, found their solution in Latvia, which contributed to a significant increase in the effectiveness of the electronic petition as a form of citizen participation in state management. Thus, among the differences in ensuring the functioning of e-initiatives, characteristic of Latvia: 1) absence of time limits for collecting signatures in support of the e-initiative; 2) a smaller required number of votes (10,000) (although here it is also worth considering the smaller population of Latvia compared to Ukraine); 3) the process of supporting the electronic initiative is not taken care of by the state, but by a public association, whose activities are supported not by the state budget, but by citizens in the form of micro-contributions; 4) strict selection of electronic initiatives to be made public, preliminary monitoring of the content and form of the electronic initiative, etc. [6, pp. 130-132]. In the opinion of the author, the above developments can be successfully applied in Ukraine, which will contribute to increasing not only the effectiveness of electronic petitions as a form of citizen participation in public administration, but also the level of trust in national authorities, because the public, which became active in wartime, is waiting for appropriate steps by the state to support its initiatives and pay attention to each urgent issue.

The experience of Estonia

In this country, the issue of digitalization of public administration and introduction of effective mechanisms of electronic public participation was included in the agenda as early as the 1990s, Estonia gradually created a culture of electronic governance and opportunities for its citizens to be involved in the process of making administrative decisions.

Despite numerous attempts by the Estonian government to develop online interaction with the public and non-governmental organizations, public activism did not emerge immediately. Thus, in 2001, a quasi-governmental organization was created – the Estonian Legal Center, which piloted the Internet forum "Themis". Texts of draft laws were placed on the form and opportunities were provided for commenting and discussing their provisions. In addition to Themis, the "Today I Decide" portal was also introduced, which allowed citizens to publicize their ideas in the fields of politics and lawmaking, vote for the ideas of others and comment on draft laws posted by the government. Initially, both portals gained considerable popularity, but after three years of their existence they were closed. However, the government and interested non-governmental organizations have not abandoned their desire to develop e-governance and online participation of citizens in the management of public affairs. The analysis

of the work done and the identification of the shortcomings of the previous projects made it possible to create several successful portals and initiatives in Estonia that are working effectively today.

The main means of online participation in public administration for Estonian citizens is the Estonian citizens' initiative portal (ECIP). Through the portal, citizens can submit petitions to the government under the 2014 Collective Petitions Act, which stipulates that a citizens' proposal supported by at least 1,000 signatures must be formally considered by parliament. At the same time, signatures can be collected both online and offline. Any citizen can create an initiative, and Estonian citizens who have reached the age of 16 can sign it.

The electronic petition is published to collect signatures in support of it not immediately, but goes through an "incubation period" for three days, during which it is open to forced co-editing by citizens, that is, its content can be adjusted. The deadline for collecting signatures is determined by the author of the initiative, and in the event that she does not collect the required number of signatures within the specified period, it can be extended.

As already mentioned, the addressee of the public initiative is the parliament. He is obliged within 30 days to check the initiative for compliance with the formal criteria and to determine the committee that will consider it. The committees work in sessions, and the legislation provides for the mandatory participation of the author of the initiative in at least one of the sessions on the topic.

Based on the results of consideration of each petition, the parliament can make one of the following decisions: 1) the parliamentary committee initiates the development of a draft law or a draft resolution on the outlined issue; 2) the parliamentary committee convenes a public meeting, which can be attended by all who wish (mostly, this concerns initiatives whose content is of significant public interest); 3) the committee submits the initiative for consideration by the competent body; 4) the committee passes the initiative to the government for the development of proposals; 5) the initiative is rejected with a mandatory legal justification of the reason. The meetings of the committee and the decisions made as a result of consideration of each collective initiative are open and public.

In addition to the official Estonian portal of public initiatives, several add-ons also operate in this country. For example, the Osale.ee platform allows citizens to propose ideas to the government regarding its draft regulations, the Eelnåde Infosüsteem (EIS) portal, which is a system of official documents of public authorities that are made public and available for comment, and the Pettsioon.ee e-petition site operates, which moderated

by the non-governmental organization Estonian Homeowners' Association [7, pp. 107-109].

The experience of Finland

Since the 1990s, in Finland, along with the traditional constant attention to the development of forms and means of representative democracy, opportunities for direct direct participation of citizens in public administration have been added. Researchers of the mechanisms of public participation in Finland point to the high efficiency of involving the public in the process of making administrative decisions, which contributes to the transparency and openness of public administration in the state, increasing the general level of trust in the government and individual political figures.

In addition to the basic provisions of the Constitution of Finland, which guarantee citizens and foreigners permanently residing in Finland the right to participate in the administration of the state, vote in elections and referenda, Finland also has the Public Initiative Act of 2012, which regulates the procedure for submitting and considering citizens' appeals to the parliament

It is worth noting that compared to other analyzed legal acts of various states (including Ukraine) in the field of public initiatives (appeals), the Public Initiative Act of Finland is quite strict in terms of requirements for the initiative itself, as well as the procedure for its submission and gathering of votes and consideration by the parliament. Yes, the initiative can be submitted to the parliament if it is signed by at least 50,000 voters (approximately 1.2 % of the total number of voters), and its content should consist of proposals for a new law, repeal of the law or amendments to the current law. A six-month deadline has been set for the collection of signatures, and based on the results of its consideration, in the case of obtaining the required number of votes, the relevant committee of the parliament considers it and makes a decision to support the initiative or reject it. If the initiative is supported by the parliament, it takes measures to finalize the proposals and, accordingly, amend the current law, repeal the law or adopt a new law.

In addition to public initiatives, public administration in Finland is also characterized by significant decentralization of power and a large list of opportunities for citizens to influence the activities of municipalities. Thus, the Law on Local Self-Government of 2015 stipulates the duty of local authorities to provide opportunities for residents to have a real influence on the process of making administrative decisions at the local level. At local councils in Finland, youth councils, councils for the elderly, disability councils have been established to resolve special issues. In addition, at

the local level, citizens (residents, as well as legal entities, foundations operating in municipalities) can submit initiatives to the local council. The initiative must come from a group of citizens, which is at least 2 % of local residents, and the issue raised in the appeal must be considered and decided on the merits within six months of its initiation. All residents over the age of 15 have the right to submit an initiative to the local council, and at least 4 % of residents can support it. In addition to the Act on Local Self-Government, Finland has the Youth Act of 2017, which obliges local authorities to involve young people in making management decisions that affect them in terms of content.

As for online tools for citizen participation in public administration, there are several websites in Finland that allow the public to influence the formation and implementation of national or local policies in various ways. For example, there is a "express your opinion" portal, which allows the state to monitor public opinion on certain management issues, a "democracy platform" which is a tool for discussion and consultation with the public, portals for electronic signature collection in support of citizens' initiatives, "opinion service" – a website representing a channel of interaction between public administration bodies and representatives of various fields of knowledge and specialties during the formulation of changes to current legislation or the development of new ones, the portal of the State Treasury, which contains information on the budgets and personnel of the central government and municipalities, website of "youth ideas", the capabilities of which are aimed at establishing effective communication with the youth of the state, a portal containing open information about public procurement and an experimental website that exists as a platform for citizens to publicize their own experiments (innovation projects), provides opportunities for finding partners and submitting an application for state financing of projects [8, pp. 131-141].

The experience of Germany

According to German law, citizens can participate in public administration by voting in elections and referenda, and also have opportunities to discuss and formulate proposals regarding the activities of government bodies. At the same time, unlike other countries, Germany does not have developed legislation on the participation of citizens in the management of state affairs. Thus, the issues of elections and referenda as mandatory forms of direct democracy, as well as some aspects of public participation in the management of the social sphere, are regulated by normative legal acts.

Participation in public administration is voluntary, there are practically no types of public participation initiated and promoted by the government. Along with this, the institution of deliberative (deliberative) democracy is

developed in Germany. State management bodies are not obliged to take into account any proposals developed as a result of conducting activities with consultative public participation, but the government takes care of monitoring public opinion and listens to the needs of citizens. Forms of deliberative democracy in Germany are round tables, town hall meetings, public dialogues, public consultations, exhibitions, open spaces and workshops.

Despite the restrained attitude of public administration bodies in Germany to mandatory public participation, the government nevertheless applies certain methods of building a culture of participation. Thus, when federal or local authorities wish to launch a process of consultative public participation, they, as a rule, announce a tender for impartial organizations to implement a certain project of public involvement in management. So, as we can see, the state does not directly undertake the organization of the process of citizens' participation in public administration, delegating it to independent non-state entities under certain conditions. The latter are obliged to ensure compliance with the goal and standards of high-quality and effective public participation.

Today in Germany, the issue of using information technologies for the development of online participation of citizens in public administration is also acute. Currently, the "Democracy 4.0" project has been launched, which allows establishing digital interaction of state authorities with the public, but so far the sources do not contain information about the effectiveness of its work.

A comparison of the state of ensuring online participation in Germany and Ukraine shows that our state has taken significantly more steps in the development of digital tools for the interaction of public administration bodies with the public and digital transformation in general. German researchers indicate the need to find a balance between the forms of direct and deliberative democracy and the state's warning against the polarization of citizens' opinions, which leads to careful and balanced use of the possibilities of deliberative democracy [9, pp. 1-5].

The experience of Italy

In this state, considerable attention is focused on establishing effective communication between local authorities and citizens-residents of certain territories. An illustrative example is the Bologna Regulation of 2014, which provided for the procedure for interaction between the administration and citizens on matters of local importance. Its regulation is designed to ensure cooperation between the public and the municipality, giving priority to autonomous initiatives of citizens at the local level.

Researchers of public participation in public administration in Italy point to the uniqueness of Bologna's experience in this direction, because this Regulation became the first document in the state that was fully devoted to the communication of the authorities with the public and at one time laid the foundations for the development of such relations at the national level. The Bologna Regulation enabled the real participation of citizens in solving issues of local importance and brought local authorities closer to the inhabitants of the territory. The public received opportunities to monitor, evaluate and control the activities of local government bodies, as well as the right to formulate and promote their own proposals [10, pp. 2-9].

Without ignoring Italy's successes in establishing communications between local authorities and the public, we should refer to the assessment of the level of development of public administration in this country, published by the European Commission in 2020. According to the body, Italy is included in the list of European Union states that have problems with the efficiency of management and citizens' trust in the government, as well as a high level of corruption. For example, in recent years, Italy, like other democratic states, has put the issue of digitization of public administration on the agenda, relevant legislation has been adopted, a number of electronic resources for the interaction of authorities with citizens have been created, but the indicators of public participation and approval by citizens of the innovative tools that are being implemented by management bodies, remain low enough. It is impressive that according to the results of the survey, even in general, slightly more than 70 % of Italians regularly use the Internet [11, pp. 2-3].

Despite the many attempts by the Italian government to advance the digital transformation agenda of public administration, there has been mostly no progress. In 2016, on the initiative of the Prime Minister of Italy, a digitization team was created in the country, which included talented business representatives in the field of information technologies, and was headed by a top manager of Amazon. The team set the goal of building an operational, flexible and with convenient compatibility of all its elements of the communication system of Italian public administration bodies. The team pays considerable attention to the social factor, i.e. the accessibility and convenience of the created products for the average citizen. For Italy, which recently made all management decisions "behind closed doors" and suffered from bureaucracy, the task of maximizing the transparency and openness of the government became a great challenge [12, pp. 6-15].

It should be noted that involvement in reforming the system and forms of public administration, as well as the development of mechanisms for solving existing management problems of private entities, representatives of the IT business, is indicative. In today's conditions of rapid development

of information technologies and their penetration into all spheres of human life, the state as a subject is not capable of covering such a large array of innovations on its own and must make the right decision to cooperate with the private sector for the common goal of increasing the transparency and openness of the management process, bringing closer with citizens, better understanding of residents' needs and prompt and effective response to society's requests.

The experience of France. French participatory democracy is based on three main inviolable principles: 1) guaranteed right to information; 2) the participation of everyone (and not the "majority") and a harmonious combination of offline and online forms of public participation in state management; 3) effectiveness of participation: citizens must be heard, and the state must give a reasoned response to each appeal.

Back in 1995, the National Commission for Public Debate (CNDP) was established in France, which became one of the pillars of participatory democracy in this country and thanks to whose activities today we can talk about the ecological and high-quality French model of public participation in public administration. Scientists point out that it is the approach of France in the aspect of public debates (discussions) on important management issues that can contribute to overcoming the crisis of public trust in state authorities, provided it is comprehensively applied, i.e. expanding the range of industries in which public discussions will be an effective tool for building effective communication between authorities and citizens [13].

In 2019, the "Great Debate" was introduced in France, as a result of which a number of important decisions were made in terms of public participation in solving public administration tasks. Thus, 2,000 new local centers of public services were created, as well as the Public Council, which consists of 150 randomly selected citizens, who develop proposals for changes to legislation. For the most part, public activism is observed in environmental and social issues.

In recent years, significant steps have been taken in France to strengthen the transparency and accountability of public officials. In 2016, the law on ethics, rights and duties of officials, the law on transparency, the fight against corruption and the modernization of economic life, the law on the powers of the ombudsman and the protection of whistleblowers were adopted. In 2017, a law on trust in political life was also adopted, aimed at avoiding conflicts of interest. Also, in accordance with the legislation of 2016, a new Anti-Corruption Agency was created in France, the activities of which allowed the European Commission to reach a favorable conclusion about the state of fighting corruption in this country.

France adopted the Public Action 2022 Program, which aimed at digital transformation and simplification of procedures for providing administrative services to citizens. The FranceConnect Platform technical infrastructure was created for the provision of online services, as well as a portal where users can leave their own feedback on the procedures for the provision of administrative services requested, in order to identify the weak points of the system and eliminate the shortcomings of its operation [14, pp. 3-5].

At one time, the considerable interest and concern of French citizens in issues of ecology and climate forced the state to look for new models of building public communication. The public did not agree to participate in the management process exclusively through the tools of deliberative democracy, and this is how the model of joint construction (co-creation) emerged, which involves the involvement of citizens together with representatives of state bodies in the development of policies in order to increase the democratic level of the provision of public services and public trust in public institutions. At the same time the responsibility of all parties involved in the joint creation of policy and development of draft legislation is emphasized [15, pp. 4-6].

Conclusions

The study of participatory democracy as a phenomenon, its principles and forms and mechanisms of public participation in public administration in various foreign countries makes it possible to single out such, in the opinion of the author, positive features of the analyzed countries' approaches to involving citizens in the process of making administrative decisions.

First of all, it is necessary to emphasize the rationality of the opinion that in the period of state, political, economic, or any other crisis, the decision to exclude the public from the process of state management is wrong. The country's population is the first to respond to changes. Citizens are at the same time an indicator by which the situation within the state can be assessed, and a source of expression of will, whose opinion should be decisive. In the event of a crisis or other imbalance of public administration, the public should be empowered to respond to them, as well as have the right to propose solutions to problematic issues. It is impossible to limit the public's participation even in difficult political conditions, because in every democratic country, public opinion is a priority for representatives of state power, it directs and evaluates politics. In addition, citizens who elected their representatives in public administration bodies should always feel their own responsibility for the development or stagnation of the system of this administration.

Secondly, the experience of implementing mechanisms of citizens' participation in the management of state affairs of the Baltic countries is extremely close and useful for Ukraine. The affinity of the legal systems, as well as more or less the same rate of development of the institution of public participation in management in Latvia, Lithuania, Estonia and Ukraine, create a basis for the exchange of experience. An analysis of the approaches of the Baltic countries to the legal and practical provision of citizen participation in the management of state affairs, in particular the practice of the functioning of electronic initiatives in Latvia, measures to digitize public administration in Lithuania, online opportunities for citizens of Estonia, allows us to single out promising directions for the development of public participation in Ukraine: improvement of normative – legal regulation of electronic petitions (adopting the Law of Ukraine "On Electronic Petitions"), as well as mechanisms for the implementation of norms that determine the content, form, procedure for submitting and considering an electronic petition, expanding the number of online tools for public interaction with public administration bodies.

Thirdly, the approaches of Western European countries (France, Germany) to defining the essence and tasks of citizens' participation in the management of state affairs are interesting for Ukraine. Considerable attention is paid to deliberative (deliberative) mechanisms, and participatory democracy is not opposed to deliberative, their means complement each other.

Thus, in France, public debates play an important role as a tool for spreading public opinion, discussing socially significant issues, and influencing representative power. Although the debates held among citizens, their organizations, and businesses are not a form of direct participation in management, because, as a rule, they do not have an obligatory consequence in the form of an official reaction of public administration bodies, nevertheless, the opinions expressed at public debates are repeatedly became a prerequisite for making changes to social and environmental legislation in France.

Germany's governing bodies rely on the support of impartial non-governmental organizations in matters where they feel the need to monitor and take into account public opinion, providing technical support for the process of citizens' participation in the management of state affairs in one form or another. Establishing cooperation between the state and such organizations in the implementation of public participation is a promising direction for the development of participatory democracy, because it allows you to entrust the provision of participation to specialists whose activities specialize in this. When the functioning of mechanisms for

the implementation of citizens' participation in the management of state affairs is exclusively entrusted to representatives of public authorities, who have a wide range of tasks, we can only talk about superficial, limited provision of public participation. Therefore, the study of the experience of Germany and other countries in the aspect of involving non-state impartial organizations to ensure the implementation of citizens' participation in public administration is a promising solution for Ukraine.

The experience of Italy also shows the effectiveness of cooperation between the state and business in matters of digitization of public administration. The Italian government is actively involving IT specialists in the reform of the management system taking into account modern requirements, the use of the latest technologies in public administration.

Finnish researchers emphasize the significant influence of the public on public administration due to the decentralization of power and the assignment of local authorities to the responsibilities of providing opportunities for citizens to participate in the decision-making of management tasks. Undoubtedly, it is correct to think that participatory democracy begins at the local level, because society must feel not only the real presence of ways to influence management, but also get used to this feeling, but also the responsibility for its participation on an equal basis with state representatives.

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E-justice in Administrative Process: European Standards and Foreign Experience

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Abstract
One of the key aspects of the development of electronic administrative justice in Ukraine is its compliance with European standards, which define important principles, methods, and recommendations aimed at ensuring the efficiency, accessibility, and quality of judicial activities in a digital environment. That is why the purpose of this article is to analyze European standards and foreign experience in the field of electronic administrative justice and the possibility of their implementation in national legislation. The conduct of this research is extremely important and relevant, as it will help to adapt the Ukrainian judicial system to international standards and norms. The methodological basis of the research is a set of general scientific and special methods of cognition, namely the methods of dialectics, comparative law, system-structural, formal-logical, etc. As a result of the analysis, it was concluded that significant attention should be paid to the protection of personal data, confidentiality, information security, as well as ensuring access to justice, impartiality, independence of judges, and justice. The article also highlights the experience of implementing information and telecommunications technologies in the system of administrative justice in such European Union member states as Estonia, Lithuania, and Austria, as well as Korea and China. It is noted that in these countries, electronic justice has become an important part of justice, and in view of this, the key aspects of their experience that can be useful for Ukraine are revealed. In addition, a comparative analysis of foreign and domestic experience in the functioning of electronic justice was carried out and the main reasons that slow down its development in Ukraine were identified. It has been proven that the involvement of advanced experience and best practices of foreign countries will significantly contribute to the successful implementation of electronic administrative justice in Ukraine. At the same time, it is important to take into account the unique context, capabilities, and needs of the national judicial system.

Keywords: *e-justice; electronic administrative justice; information and telecommunication technologies; foreign experience; European standards.*

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Електронне правосуддя в адміністративному процесі: європейські стандарти та зарубіжний досвід

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Анотація
Одним із ключових аспектів розвитку електронного адміністративного судочинства в Україні є відповідність його європейським стандартам, які визначають важливі принципи, методи та рекомендації, спрямовані на забезпечення ефективності, доступності та якості судової діяльності в цифровому середовищі. Саме тому метою статті є аналіз європейських стандартів та зарубіжного досвіду у сфері електронного адміністративного судочинства та можливості їх імплементації у національне законодавство. Проведення цього дослідження є надзвичайно важливим та актуальним, оскільки допоможе адаптувати українську судову систему до міжнародних стандартів та норм. Методику дослідження становить сукупність загальнонаукових та спеціальних методів пізнання, а саме: методи діалектики, порівняльно-правовий, системно-структурний, формально-логічний та ін. Насамперед у статті детально проаналізовано європейські стандарти функціонування електронного судочинства та можливість їх імплементації в національне законодавство. Зроблено висновок, що значна увага повинна приділятися захисту персональних даних, конфіденційності, безпеці інформації, а також забезпеченню доступності до правосуддя, неупередженості, незалежності суддів та справедливості. Проаналізовано досвід впровадження інформаційно-телекомунікаційних технологій у систему адміністративного судочинства таких країн-членів Європейського Союзу, як Естонія, Литва та Австрія, а також таких передових держав, як Корея та Китай. У цих державах електронне судочинства стало важливою складовою правосуддя, а тому висвітлюються ключові аспекти їхнього досвіду, які можуть бути корисними для України. Проведено порівняльний аналіз зарубіжного досвіду функціонування електронного судочинства з українським та визначено ключові аспекти, які сповільнюють цей розвиток. За результатами нашого дослідження зроблено висновок, що залучення передового досвіду та найкращих практик з інших країн може значною мірою сприяти успішному впровадженню електронного адміністративного судочинства в Україні. При цьому важливо враховувати унікальний контекст, можливості та потреби національної судової системи.

Ключові слова: *електронний суд; електронне адміністративне судочинство; інформаційно-телекомунікаційні технології; зарубіжний досвід; європейські стандарти.*

Introduction

E-justice is a modern and innovative paradigm of judicial activity that is gaining more and more realization and significance in the modern legal space. One of the key aspects of the development of electronic administrative justice in Ukraine is its compliance with European standards, which define important principles, methods and recommendations aimed at ensuring the efficiency, accessibility and quality of judicial activities in the digital environment. The normalization carried out by legal standards to make judicial procedures predictable and homogeneous and grant equal treatment is supplemented by the digital working environment [1].

The adaptation of Ukrainian legislation to the EU legislation is aimed at harmonizing national rules and regulations with the standards and provisions defined in the European legal space. The legislative framework for such adaptation is set out in the Concept of the National Program for the Adaptation of Ukrainian Legislation to the Legislation of the European Union, which was approved by Law of Ukraine No. 228-IV of November 21, 2002. In accordance with the provisions of this Concept, its main tasks are to create a legal framework for Ukraine's integration into the European Union, to develop Ukrainian legislation in the direction of its approximation to the legislation of the European Union, to ensure compliance of Ukrainian legislation with the obligations arising from international treaties concerning Ukraine's cooperation with the European Union, etc. [2].

The Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023, approved by the Decree of the President of Ukraine of June 11, 2021 No. 231/2021, stipulates that the main task of improving the justice system is to ensure the coordination and balance of the improvement process, taking into account the further harmonization of national legislation with the legislation of the European Union [3].

Thus, the process of adaptation of national legislation to European norms and implementation of European standards in the field of electronic administrative justice is a necessary step in building a modern and efficient justice system, and also contributes to strengthening democracy and the rule of law in Ukraine. The use of electronic technologies can improve the accessibility of judicial services for citizens and increase their efficiency, and foreign experience can provide important guidance for the development of the administrative justice system in Ukraine.

The purpose of this article is to analyze European standards and foreign experience in the field of electronic administrative justice and the possibility of their implementation into national legislation. It is worth noting that an in-depth analysis of European standards and foreign

experience is an integral part of the development of the modern judicial system. However, it is important to take into account that each country has its own cultural, economic, social and legal peculiarities, and therefore the implementation of foreign experience requires careful adaptation to national realities and consideration of the specifics of Ukraine. In particular, the most important aspect is not just copying other people's decisions, but their adequate and effective integration into national legislation and court practice.

At the scientific level, the problem of implementation and functioning of electronic administrative justice is relatively new. Such scholars as N. Loginova, O. Bryntsev, N. Holubeva, N. Kushakova-Kostytska, I. Kaminska, L. Serdiuk, O. Bernaziuk and some others have analyzed certain aspects of electronic justice in Ukraine. However, there is currently a limited number of scientific studies that would thoroughly consider European standards and foreign experience in the implementation and operation of the electronic administrative justice system. For example, the only comprehensive scientific work in this area is the monograph by N. Golubeva "Electronic Justice: International Experience" [4]. In this regard, there is a need for additional research and analysis of European standards and foreign experience in electronic administrative justice.

In particular, the relevance of such a study lies in the fact that Ukraine is striving to improve the quality and accessibility of judicial services, as well as to create an efficient and transparent justice system. E-administrative proceedings can significantly improve these indicators, but it is necessary to understand how it works in other countries that already have extensive experience in this area. A study of European standards and foreign experience will allow Ukraine to avoid possible mistakes and achieve its goals in reforming administrative justice faster. This analysis will be an important source of information for legislators, judges, and others.

Materials and Methods

Researching the European standards for the functioning of e-justice was analyzed a set of regulations of international organizations in the European space, such as the Council of Europe and the Advisory Council of European Judges. In particular, the Council of Europe is actively working on the development of standards in the field of e-justice. Its recommendations relate to e-justice, electronic identification, and human rights in this context. The analysis of these regulations and practices helps to understand what standards and approaches exist in the European space regarding e-justice and how these standards can be useful for Ukraine in the process of reforming its judicial system.

Researching the foreign experience in the implementation and functioning of e-justice were used the official sources of foreign countries – the official websites of the judicial authorities of countries that actively implement e-justice and contain texts of legislation, resolutions, reports and other materials. The author also researched and analyzed information on the level of implementation of electronic technologies in the judicial system of different European countries, which is available on the European e-Justice Portal.

The research methodology was formed by a set of general scientific and special methods of cognition, the use of which ensured the reliability and validity of the results of the scientific research. The use of these methods is mostly complex, due to the specifics of the topic of the scientific article.

The methodological basis of the study is the *dialectical method* used to determine the specific features of European standards and foreign experience of electronic administrative proceedings. The dialectical method helps to consider not only the current state, but also the prospects for the development of electronic court procedure in the context of European standards and foreign experience. For example, what opportunities does the European experience offer for further improvement of the national judicial system.

The comparative legal method is used to analyze foreign experience in the implementation and functioning of e-justice and European standards in this area. *The methods of analysis and synthesis* made it possible to analyze and systematize the main European standards used in the field of information and telecommunication technologies in the justice system.

The system-structural method allows us to consider the e-Justice system as a complex structure consisting of various components. The system-structural approach helps to determine how effectively the system functions in the context of European standards and how it can be improved.

The formal logical method was used to formulate conclusions and further directions for improving electronic administrative justice in Ukraine, taking into account the experience and practices of foreign countries.

Sociological methods, including observation, document analysis, and generalization, were used to address other research objectives. In addition, throughout the study, the methods of categorical and terminological generalization, deduction, induction, analogy, etc. were used. In particular, thanks to the methods of synthesis and generalization, the author identifies the main shortcomings and prospects for the development of electronic administrative justice in Ukraine.

Results and Discussion

European standards of functioning of the E-justice in administrative process

In the context of globalization and rapid technological change, the exchange of experience and analysis of best practices are becoming key factors in the successful development of any sector, including the judiciary. Considering European standards and foreign experience in implementing information and telecommunication technologies in administrative justice, Ukraine has the opportunity to make its own choice on the way to reform and improve administrative justice.

The European standards for the functioning of electronic administrative proceedings are determined by a number of regulatory acts, including the following:

1. Recommendation Rec (2001) 2 of the Committee of Ministers of the Council of Europe to member states on the construction and restructuring of judicial systems and legal information in an economical manner, adopted by the Committee of Ministers on February 28, 2001 at the 743rd meeting of deputy ministers.
2. Recommendation Rec (2001) 3 of the Committee of Ministers of the Council of Europe to member states on the provision of judicial and other legal services to citizens using the latest technologies, adopted by the Committee of Ministers on February 28, 2001 at the 743rd meeting of deputy ministers.
3. Recommendation Rec (2003) 15 of the Committee of Ministers of the Council of Europe to member states on the archiving of electronic documents in the legal sector, adopted by the Committee of Ministers on September 9, 2003 at the 851st meeting of deputy ministers.
4. Recommendation Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, effectiveness and duties, adopted by the Committee of Ministers of the Council of Europe on November 17, 2010 at the 1098th meeting of the Ministers' Deputies.
5. Opinion No. 14 (2011) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the Information Technology Justice, adopted by the CCJE at its 12th plenary session (Strasbourg, November 7-9, 2011).
6. Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
7. Strategy for e-Justice for 2019-2023 2019/C96/04, approved on March 13, 2019.

This is not an exhaustive list of legal acts in the field of electronic administrative proceedings, but these documents define the basic standards and principles of its functioning in Europe.

For example, Recommendation Rec (2001) 3 of the Committee of Ministers of the Council of Europe to member states on the provision of judicial and other legal services to citizens using the latest technologies, adopted by the Committee of Ministers on February 28, 2001 at the 743rd meeting of deputy ministers, contains the following provisions:

– the means of communication with courts and other legal institutions (departments of registration of acts, etc.) should be simplified as much as possible, using the latest technologies;
– it is necessary to use the latest technologies under the condition of compliance with the requirements of security and confidentiality of private information, namely to ensure the possibility of: opening proceedings using electronic means; implementation of further procedural actions within the framework of proceedings in the environment of electronic document circulation; to receive information about the progress of the case by accessing the court information system; receiving information about the results of proceedings in electronic form; obtaining access to any information relevant to effective proceedings;
– information in electronic form about legal proceedings must be publicly available;
– information should be disseminated using the most widely used technologies (currently the Internet);
– the state should, as far as possible, ensure the reliability and completeness of the information it provides to individuals and the private sector [5].

In Opinion No. 14 (2011) of the Advisory Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on Justice and information technologies, adopted by the CJEU at its 12th plenary session (Strasbourg, November 7-9, 2011), defined general principles regarding the use of modern information and telecommunication technologies in courts, including:

– the introduction of information and telecommunication technologies in European courts should not harm the "human face" and symbolic meaning of justice. This principle suggests that justice should remain a humane and not a purely technical process, as it relates directly to people and disputes between them;
– information and telecommunication technologies should not limit the procedural rights of the parties, and therefore judges should be aware of the possibility of such a threat and clearly distinguish both the advantages and disadvantages of modern technologies;

– when using electronic means in record keeping or in court proceedings, judges must assess the impact of information and telecommunication technologies, and in no case such technologies cannot be an obstacle to the independent and impartial application of laws by judges;
– there is no need to abandon traditional means of access to information, as not all individuals have access to information and telecommunication technologies. This approach is a manifestation of concern for the socially unprotected and vulnerable sections of the population;
– the use of information technologies should not undermine the procedural guarantees of persons who do not have access to modern technologies. States should ensure that the necessary support is provided to those parties to the case who cannot benefit from such access;
– it becomes especially important to provide guarantees that technical failures that may occur when using information technologies in court proceedings will not slow down the court process;
– in the event that the information and telecommunications system is in the process of technical maintenance or experiences technical problems, there should be the possibility of applying alternative solutions to ensure the implementation of the legal process;
– it is necessary to pay special attention to the assessment of draft laws related to the introduction of information technologies into the judicial system. The Advisory Council of European Judges recommends that new legislation in this area enter into force only after the establishment of information systems that meet the requirements and after appropriate training of court personnel;
– for the sake of international and European judicial cooperation, states should consider the possibility of providing mutual access to national judicial information and telecommunication systems and create such systems so that they are compatible with each other (for electronic exchange of necessary information, sending requests and messages to foreign courts, for cross-border research of evidence, etc.);
– the access of individual employees to data and information contained in registration logs, case materials, preparatory documents and draft decisions, court decisions, statistics regarding the assessment of the performance of judges and court management should be limited, this information should be protected by an appropriate level of security;
– courts should ensure proper protection of databases of court decisions, which should be established at the legislative level, since online access to certain court decisions may violate the personal rights of individuals and pose a threat to the interests of legal entities;
– standard forms of documents can be developed to support the writing of a court decision or resolution;

– the use of information technologies should not exclude the mandatory trial of the case and the fulfillment of all other procedural formalities required by law. Regardless of the circumstances, the judge must retain the authority to summon the party to the court session, demand the presentation of documents in their original form and conduct the interrogation of witnesses, etc. [6].

Another important document that establishes the principles of the functioning of electronic justice in Europe is the Strategy of electronic justice for 2019-2023, which was approved on March 13, 2019. This Strategy states that European e-Justice aims to improve access to justice in a pan-European context and develops and integrates information and communication technologies for access to legal information and the operation of judicial systems.

According to this Strategy, European e-Justice shall:

– support the digital default approach, in particular by committing to provide citizens and businesses with the possibility of digital interaction with the authorities, as well as the integration of the digital default approach into national and European Union legislation and thus guarantee legal certainty and continuity interactions in the national and cross-border context;
– operate according to the principle of one-time use, that is, avoid redundant procedures and, in accordance with data protection rules, reuse information entered into the system once for subsequent procedures, if it is not outdated;
– be user-oriented, i.e. have applications, websites, tools and systems designed with ease of use and empowerment in mind [7].

The legislative steps and technology developments followed by the EU legislator concentrate on five main lines: (1) making digital communication means compulsory between courts and competent authorities in cross-border litigation; (2) requesting courts and competent authorities to accept electronic communication from natural and legal persons when these have chosen to make use of such means; (3) widening the legal basis for the use of videoconferencing and other distance communication technology for oral hearings and taking of evidence; (4) broadening the use of identity recognition and trust services; and (5) creating the legal framework and institutionalising the management of the e-CODEX cross-border communication system [8].

In general, all international normative legal acts consider information and telecommunication technologies as a tool that improves the justice system, facilitates users' access to the court and facilitates efficient

and fast consideration of court cases. At the same time, considerable attention should be paid to the protection of personal data, confidentiality, information security, as well as the provision of such guarantees as: access to justice, impartiality, independence of the judge, fairness and reasonable terms of consideration of the case.

Thus, analyzing the national and European legislation in the sphere of the functioning of electronic administrative proceedings, it is important to note that in the integration of information and telecommunication technologies into the justice system, Ukraine has come quite close to the relevant European standards. Achieving compliance with the specified European regulatory legal acts is important for our state, as they determine not only the standards for the functioning of electronic justice, but also provide important recommendations for ensuring the efficiency, security and availability of judicial services in the context of modern technological realities. Therefore, the European experience of introducing modern information technologies in justice can be useful for Ukraine and help avoid possible mistakes in the future.

Foreign experience of the E-justice in administrative process

Regarding the level of implementation of electronic administrative proceedings in individual European countries, it should be noted that it is quite different. This is due to the political, economic, cultural and technological features of each country.

For example, on the European e-Justice Portal (the European e-Justice Portal) you can find information about the level of implementation of electronic technologies in the judicial system of various European countries.

Thus, Estonia is the European leader in the field of e-governance and implementation of the concept of an electronic state. Estonia is also one of the first countries in the world to successfully integrate electronic technologies into the justice system.

Back in 2006, Estonia first developed a complex electronic information system, and already 15 years later, this state has one of the fastest electronic court proceedings in Europe.

The Estonian electronic court system consists of three components – the central information system "e-File system", the court information system "KIS2" and a public portal for citizens. The electronic file system (e-File system) is the main information system that ensures the functioning of e-justice in Estonia and allows you to submit administrative claims to the court online, monitor the progress of cases, receive electronic documents, submit appeals, etc. This electronic system transmits data to the court

information system "KIS2", which is used for case management, namely, it performs registration and automated distribution of cases, assigns court dates, sends court summons, and automatically publishes court decisions.

In order to enter the electronic file system (e-File system), the user must be authorized using an ID card or Mobile-ID. When logged into the electronic system, users only have access to the legal proceedings and data in which they are involved. Persons not involved in the process do not have access to other people's legal processes.

Procedural documents are submitted through the electronic system in electronic format using a digital signature. In order to file an electronic administrative lawsuit, you need to enter the text and all the necessary data in a special form. The forms of the documents differ, but all have a similar format: general information about the case, detailed information about the parties, attached documents and payment of state duty must be provided. The court renders a decision in electronic form, protecting it with a digital signature of the judge or another similar technically secure method. It should be noted that along with the electronic form of judicial proceedings in Estonia, the traditional paper format of court proceedings is preserved [9].

Another European country that has achieved significant success in the process of integrating information technologies into administrative justice is Lithuania.

The possibility of submitting administrative claims electronically was implemented in Lithuania as early as July 1, 2013. The electronic exchange of documents is carried out through the Lithuanian Judicial Information System (LITEKO), which can be accessed through the Public Electronic Services (PES) subsystem at https://www.teismai.lt/en and http://www.epaslaugos.lt/.

LITEKO is an electronic platform that stores complete information about every case pending in Lithuanian courts. This electronic system works around the clock, and therefore all participants in the case can use its functionality without hindrance. Procedural documents in administrative cases can be submitted to the court of Lithuania by filling in the templates available in the LITEKO PES subsystem, or by downloading ready-made documents in the following formats: doc, docx, odt, rtf, txt. You can enter the portal of electronic services using such tools as electronic banking, an identification card or an electronic signature. Also, since 2013, lawyers and attorney assistants can receive procedural court documents and familiarize themselves with administrative case materials using electronic means of communication.

The functionality of e-judicial proceedings in Lithuania provides for the possibility of drawing up and sending procedural documents, reviewing case materials, monitoring case progress, and downloading case materials. It is quite interesting in Lithuania's e-judiciary that in the case of submission of documents in the administrative process electronically through the LITEKO system, users are given a 25% discount on the payment of the court fee.

At the same time, taking into account that in Lithuania, electronic administrative proceedings began to be used in 2013, the traditional paper format of document exchange has been preserved in this country, and therefore, the user can independently choose a convenient way of communicating with the court [10].

Thus, Lithuania's electronic system is an example of the successful integration of information technologies into the administrative justice system and how such technologies can improve the accessibility and quality of justice.

The experience of the functioning of electronic justice in Austria is interesting. In this European country, legal proceedings can be initiated using the Electronic Judicial Movement (ERV) electronic information system. Through this system, users can submit initial applications in the administrative process, complaints, responses, appeals, etc. in electronic format. There are two ways to use the ERV system: 1) through document centers; 2) through the download service ("ERV fur alle").

Thus, two-way exchange of electronic documents with a court in Austria can be carried out through special document centers. This service can be used by any person, but for this it is necessary to register with the document center and pay it a fixed monthly fee for the provision of services, as well as a fee for each individual transfer of documents. The basic monthly fee charged to the user is about 20 euros per month, and the document transfer fee is about 30 cents. The use of this method of document exchange is generally not mandatory, but lawyers, notaries, banks, insurance companies, state social security institutions, financial prosecutor's offices and bar associations are obliged to use document centers exclusively when applying to court.

At the same time, there is an alternative free way for Austrian citizens to electronically transfer documents to the court through the download service ("ERV fur alle"). You can use this service with a citizen card (ID Austria). However, unlike document centers, the document upload service ("ERV fur alle") works only in one direction - for submitting electronic documents. That is, return documents are not received through this service [11].

Analyzing the foreign experience of implementing electronic administrative proceedings, it is important to take into account the practice of such advanced countries as Korea, China, the USA, Singapore, Japan, Canada and Australia.

The electronic justice system in the Republic of Korea is one of the most developed in the world. This state pioneered the use of electronic features to streamline court processes, launching electronic case management back in the 1980s.

Thus, in 1986, a civil case management system was launched, with the help of which the civil case proceedings were partially computerized. In 2002, work was completed on the development of the Case Management System, which was used by all judges for the computerization of all types of cases, including administrative ones, namely for receiving cases, distributing cases, managing official documents, maintaining documents, saving documents, etc. In 2007, JUSTICE was implemented – a system for supporting the work of judges, which provides for the planning of court hearings, conducting cases, writing decisions in electronic form.

The Electronic Document Filing System (ECFS) was first launched on 26 April 2010 for patent cases. This new system was introduced as a new generation Case Management System model to support a paperless court process. In January 2013, the ECFS was expanded to handle administrative cases.

The Electronic Case Filing System (ECFS, http://ecfs.scourt.go.kr) is Korea's electronic judicial system. It is a comprehensive system that allows litigants and their attorneys to file and conduct cases and access court information and proceedings electronically. They can submit all court documents, documentary and digital evidence online without physically visiting the courts. After filing a case through ECFS, plaintiffs receive email and text notifications when other parties file lawsuits. If the defendants consent to e-mail submissions, they may also receive e-mail notices of other parties' submissions. Such notification, together with access to case materials and procedures in electronic form, allows all parties using the ECFS to quickly check the current status of the proceedings [12].

It is worth noting that Korea did not immediately abandon the paper-based judicial system. In order to allow users to adapt, in Korea they left the paper processing of the case on demand, and only then gradually this country moved to a paperless system. Also, to convince users to switch to electronic submission of documents to court in Korea, they reduced the court fee by 10 % for lawyers who use electronic submission and created online help centers with frequently asked questions to inform users.

After the introduction of the electronic document exchange system, in 2016 about 60 % of the documents submitted to the court were presented in electronic format.

Also, it is very interesting and effective enough for the development of electronic justice that electronic courtrooms have been created in Korea. Electronic courtrooms are well equipped with electronic technology and devices including computers, DVD players, etc. Both parties and witnesses can use these devices during the trial. In addition, electronic courtrooms improve the transparency and accessibility of court proceedings. Judges and other participants in the court proceedings, such as parties, lawyers, can view the stenographic notes typed by the court reporter in real time on their computer screens.

Evaluating the experience of implementing electronic justice in different countries in the context of the possible application of their approaches, China also deserves special attention.

In China, since 2016, an electronic court system known as the "Smart Court SoS (System of Systems)" has been used. This system is aimed at introducing modern technologies and information systems into the judicial system to improve the quality and efficiency of the judiciary. "Smart Court SoS (System of Systems)" is based on the use of artificial intelligence as a key element of the system.

"Smart Court SoS (System of Systems)" is a multi-level system that covers all stages of the dispute resolution process, from online mediation, court hearings, adjudication and enforcement. Most interestingly, however, it has the ability to automatically scan court cases for citations, as well as recommend laws and regulations to judges, draft legal documents, and correct what it considers "human errors" in court decisions. In other words, "Smart Court SoS (System of Systems)" represents a revolutionary step in the direction of combining justice with advanced technologies and introduces the possibility of solving cases with artificial intelligence in the future.

In particular, in China today, virtually every judge consults with artificial intelligence in every case. If the judges disagree with the machine's recommendation, they must provide a written explanation. According to statistics, the introduction of artificial intelligence in China's judicial system reduced the average workload of judges by more than a third and saved 1.7 billion working hours for Chinese citizens from 2019 to 2021. In addition, over 300 billion yuan (US$45 billion) was saved through the use of smart court during the same period, which definitely indicates the effectiveness of using this system [13].

In the United States, the electronic court system with free access – PACER, which allows obtaining information about the court document, reading the register of applications, studying the progress of the case and the history of decisions, as well as viewing the calendar of scheduled hearings. The CM/ECF application in the form of a personal account is used to submit documents to the courts, access to which is provided by a state-issued password, and all documents must be sent in pdf format. The formed "Electronic archive of cases" allows a person to get information related to litigation almost instantly for acquaintance [14].

So, summarizing the experience of implementing electronic administrative proceedings in different countries of the world, it is worth noting that the trend of using advanced technologies to transform the judicial system is currently quite popular and is actively implemented in other countries to modernize and improve the justice system. Technological progress makes it possible to automate court processes, ensure the availability of court services, and make judicial proceedings more efficient and transparent through the use of artificial intelligence, electronic document storage systems, and online platforms. Also the most effective e-justice operates in those countries where there is no "paper" mediation during the transfer of electronic documents at the stages of the trial, that is, there is the possibility of the existence of all judicial information in the case in digital form (at least in parallel with the possibility of using the traditional, paper form) [15].

Countries that have already successfully implemented e-administrative justice demonstrate that it contributes to speeding up the judicial process, reducing costs and improving the quality of decision-making.

Carrying out a comparative analysis of the level of integration of information and telecommunication technologies in the administrative justice system of Ukraine with other advanced countries in this field, it is worth noting that even if our state is still at the initial stage of this process, certain positive changes and prospects can already be noted. In particular, Ukraine has already introduced an electronic court platform. The e-court provides the parties with opportunities such as payment of court fees online, obtaining information on the stages of the judicial proceeding, sending procedural documents to the parties to a trial by electronic means, sending a court summons in the form of SMS-messages, electronic acquaintance with court case materials and generation of powers of attorney, online participation in court hearings, electronic commencement of an action and submission of documents, and electronic communication about the consideration of the case through the "DIIA" application [16].

The concept, taken as the basis of electronic justice in Ukraine, meets modern requirements and trends in the field of information technologies, and has significant prospects for further development.

At the same time, there are several key aspects that slow down the development of e-judiciary in Ukraine compared to other advanced countries in this field, namely:

Advanced countries already have a developed infrastructure and wide access to the Internet, which is the basis for the effective introduction of technology into the judicial system. Ukraine is also taking steps to improve its infrastructure, but it may take a lot of time and money to reach a similar level.

Some advanced countries are already introducing artificial intelligence into the judicial system to help judges make decisions and analyze evidence. The Smart Court SoS (System of Systems) project in China is one impressive example of such an initiative. The implementation of such a system in Ukraine can have several advantages: artificial intelligence can help automate the process of evidence analysis and ensure faster decision-making, which will contribute to more efficient consideration of administrative cases; artificial intelligence is based on algorithms and data analysis, which helps to provide more objective decisions, not depending on emotions or side factors; automation of evidence analysis and decision-making support can reduce the burden on judges, allowing them to perform their duties more efficiently; artificial intelligence can perform accurate and in-depth analysis of evidence, revealing connections and patterns that may be difficult to detect manually; the use of artificial intelligence can help avoid "human errors" and increase the level of justice. Also, with the help of artificial intelligence, in the future, it will be possible to introduce automated consideration of typical administrative cases, which will significantly reduce the burden on judges and speed up court proceedings.

Advanced countries pay great attention to cyber security and data protection in judicial systems. Ukraine must also ensure a high level of data protection and information security.

Advanced countries and their populations are already actively using electronic platforms for electronic exchange of documents with the court, gradually replacing the paper form of judicial proceedings. In order to encourage the population to switch to the electronic format of judicial proceedings, some countries have taken additional measures, for example, reducing the size of the court fee in case of filing an electronic administrative claim. This approach can be a good example for popularizing electronic

administrative proceedings in Ukraine and encouraging citizens to switch to the electronic format of justice.

Conclusions

The world practice is actively implementing and focusing on information technologies in judicial proceedings, reducing the orality and immediacy of court procedures. One of the most important initiatives of the European community is the creation of standards and recommendations for the implementation of electronic justice in member countries, as well as ensuring the possibility of mutual access to national judicial information and telecommunication systems in the middle of the European Union countries. Studying the foreign experience of implementing electronic justice, it is worth noting that such countries as Korea, China, Lithuania, Estonia, Austria and some others have achieved considerable success in this field. For example, in China Project "Smart Court SoS (System of Systems)" Project "Smart Court SoS (System of Systems)" artificial intelligence has been introduced into the judicial system, which helps judges in making decisions and analyzing evidence. In Korea, electronic courtrooms have been established, which are equipped with electronic technologies and devices for consideration of cases in an electronic format. In Lithuania, in the case of submitting documents in an administrative process electronically through the LITEKO electronic system, users are given a 25 % discount on the payment of the court fee.

Regarding the application of similar practices in Ukraine, it is worth noting that potentially, in the future, a stage may come when artificial intelligence will help solve issues related to the consideration of cases or the writing of court decisions. However, the consideration of cases on their merits and the resolution of complex legal issues require the participation not of a computer and artificial intelligence, but of qualified judges who are able to take into account all aspects of the case and make fair decisions. In our opinion, this applies even to minor cases, as each case is individual. That is, in this case, the subjective factor is important, which artificial intelligence will never be able to replace. E-justice can provide tools to support judges in their work, but not replace them. That is why electronic justice is an effective mechanism precisely for the automation of bureaucratic judicial processes (document circulation, etc.) or, for example, to consider typical procedural issues (opening of proceedings, leaving motionless, etc.). We believe that the use of electronic court hearings, which has been successfully implemented in Korea, is an effective example for Ukraine. This experience can be useful, especially given the active use of court hearings in the video conference mode in Ukraine due to the situation with COVID-19 and the war throughout the country. Also taking into account

the difficulties with the technical support of judges, the implementation of such a practice could be a positive step for the judicial system of Ukraine.

Therefore, the study of European standards and the experience of foreign countries in the field of the functioning of electronic administrative proceedings reveals important aspects that have a high potential for improving the judicial system of Ukraine. Foreign experience shows that the introduction of electronic justice can significantly increase the efficiency of court processes and ensure greater accessibility for citizens. This makes it possible to speed up the consideration of cases, reduce administrative costs and ensure greater transparency in court decisions.

However, it is important to consider that the introduction of e-judiciary should take into account national characteristics and context. Each country has its own unique requirements and challenges that require an individual approach. At the same time, foreign experience can serve as a valuable source of information for improving electronic justice in Ukraine.

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Problematic Issues of Competition in the Outdoor Advertising Market

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Abstract
The article analyzes problematic issues related to competition and the legal regulation of the outdoor advertising market. This form of advertising remains effective in promoting goods and services, despite the rapid development of new technologies and the widespread popularity of the Internet. Outdoor advertising is one of the most heavily regulated types of advertising, with the current laws outlining several requirements and the necessity of obtaining a placement permit. However, the legislation governing the placement of outdoor advertising is not perfect. Some issues are controversial, and others are not addressed by the legislation at all. Since many matters concerning outdoor advertising placement are left to the discretion of local self-government bodies, there is a risk of creating additional barriers to market entry and negatively impacting competition in the market. Therefore, there is a need to analyze the problematic issues in the outdoor advertising market and find solutions. Based on the conducted research, the author proposes amendments to the current legislation to enhance competition in the placement of outdoor advertising.

Keywords: *outdoor advertising; economic competition; unfair competition; market regulation; legal regulation of outdoor advertising.*

Проблемні питання конкуренції на ринку зовнішньої реклами

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Анотація
У статті аналізуються проблемні питання конкуренції та правового регулювання ринку розміщення зовнішньої реклами. Така реклама є ефективним засобом просування товарів та послуг. Незважаючи на швидкий

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розвиток новітніх технологій та широку популярність мережі Інтернет, зовнішня реклама не втрачає своєї популярності та ефективності. Зовнішня реклама є одним із найбільш юридично врегульованих видів реклами, до якого законодавством закріплено низку вимог, зокрема необхідність отримання дозволу на розміщення такої реклами. Проте законодавство в сфері розміщення зовнішньої реклами не є досконалим. Деякі питання є суперечливими, а деякі взагалі не врегульовані законодавством. Зважаючи на той факт, що багато питань щодо розміщення зовнішньої реклами залишені законодавцем у компетенції органів місцевого самоврядування, існує небезпека створення додаткових бар'єрів для входу на ринок і, як наслідок, негативного впливу на конкуренцію на ринку. Зазначене свідчить про необхідність аналізу наявних на ринку зовнішньої реклами проблемних питань та пошуку шляхів їх вирішення. На основі проведеного дослідження авторка пропонує внести зміни до чинного законодавства для посилення конкуренції на ринку розміщення зовнішньої реклами.

Ключові слова: *зовнішня реклама; економічна конкуренція; недобросовісна конкуренція; регулювання ринку; правове регулювання зовнішньої реклами.*

Introduction

Outdoor advertising emerged throughout North American and European urban areas in the late 1700s as a commercialization of exterior surfaces on highly-visible buildings [1]. Outdoor advertising is an integral part of modern society; it surrounds us everywhere and influences the formation of social consciousness. The outdoor advertising market is immensely popular among manufacturers, as it helps attract the attention of a wide range of consumers to goods and services.

Outdoor advertising reaches customers outside their homes – on the street, in public places and when traveling [2]. Evidence shows that advertising can open doors for an industrial salesperson, in addition, several studies found that advertising generates awareness and favourable attitudes thereby supporting sales rather than directly causing them [3]:

– can open doors for an industrial sales person (Ray, 1982) and several studies;
– can open doors for an industrial sales person (Ray, 1982) and several studies;
– can open doors for an industrial sales person (Ray, 1982) and several studies.

Considering this, the legal regulation of the outdoor advertising market, including the placement of such advertising and competition in the market, is an important issue that requires detailed study. The current legal framework governing the outdoor advertising market is not perfect, and this imperfection can also have a negative impact on competition in the market.

The purpose of this article is to analyze the main issues concerning competition in the outdoor advertising market and to develop proposals for overcoming these problems and enhancing competition in the market.

The advertising market and its state in any country with a market economy serve as indicators of the country's economic, political, cultural, social, and innovative development. Competition is an inherent feature of market relations, and there exists an objective need for advertising in conditions of high market competition. At the same time, advertising itself is a factor that influences the level of competition.

The population's demand for goods and services plays a significant role in shaping the landscape of competition. Advertising serves to stimulate this demand, yet it also grows in response to favorable economic and financial conditions among the population. As such, the evolution of the advertising market undoubtedly reflects positive trends within both macro- and microeconomic realms. Conversely, a decline in this market serves as an indicator of adverse shifts in the economy and politics [4].

Competition is a fundamental concept that reflects the essence of market relations. Understanding the nature of competition, its various forms, manifestations, methods of competitive struggle, and the factors influencing the readiness of economic entities to engage in competition is crucial for enhancing the efficiency of these entities [5].

Competition entails a struggle between enterprises, representing an economic process of interaction between them. The objective of this interaction is to secure optimal sales conditions for products, meet the diverse needs of buyers, and consequently, yield higher profits.

Distinctive features of the outdoor advertising market, in comparison to other advertising markets such as transportation advertising, television advertising, radio advertising, and print media advertising, include specialized regulations for its governance, distribution methods, and the composition of market participants.

Currently, outdoor advertising stands as an indispensable form of advertising. It boasts qualities of high efficiency, subtlety, and accessibility across varying budgets. The popularity and significance of this advertising form stem from its ability to employ a diverse array of formats and combinations. Despite the advancements in advertising technologies like the Internet and digital media, outdoor advertising maintains its stability and even holds substantial developmental potential [6]. Many studies have proved that consumers are becoming accustomed to accessing product information online when they encounter offline advertisements [7].

Literature review

Numerous Ukrainian and international scholars have studied a broad range of advertising-related topics, including the legal aspects of advertising placement, encompassing: L.M. Zhukovska, Yu.I. Zorina, O.H. Kurchyn, L.V. Mamchur, M. Chepeliuk.

Nevertheless, the current economic legal scholarship lacks an all-encompassing examination of how the legal framework governing outdoor advertising placement influences competition within this market. This gap underscores the need for conducting the research reflected in the present article.

Outdoor advertising serves as an effective tool for influencing the consumer goods sector, tailored to capture the attention of wide segments of the consumers. In the present day, advertising ranks among the most important factors shaping individuals' perception of the world, shaping their value systems, and potentially even reshaping their lifestyles [8].

Materials and Methods

Considering the research subject outlined by the author, she chose to employ a comprehensive approach in applying research methods during her study. Specifically, through the use of theoretical analysis method, the author of the article successfully examined numerous existing theoretical studies in the field of economic law.

The methods of synthesis and critical analysis enabled the author to consolidate various theoretical sources and derive conclusions and generalizations. Additionally, the author employed the dialectical method, which facilitated a comprehensive investigation into and revelation of the nature of competition in the outdoor advertising market. To analyze the present legal framework and the content of legal norms, the author of the study utilized the formal legal method.

The formal-logical method enabled the identification of existing shortcomings in the current legal regulation of the outdoor advertising market and its competition, as well as the formulation of potential solutions for these challenges.

Through the intricate utilization of the abovementioned methods, the author successfully conducted a comprehensive study of the nature of competition in the outdoor advertising market, addressing its associated challenges. Our analysis encompassed an evaluation of how the degree of competition influences both the growth of the outdoor advertising sector and the overall state economy. We identified deficiencies within the existing legal framework concerning outdoor advertising placement, recognizing

their detrimental effects on the level and progression of competition in the examined market.

The comprehensive approach to selecting research methods was instrumental in unveiling the study's subject matter and formulating practical recommendations. The implementation and practical application of these recommendations are poised to yield a positive impact on competition in the outdoor advertising market.

Results and Discussion

Outdoor advertising captivates with its diversity, rendering it a universally effective medium to engage a vast spectrum of consumers. Based on their functional purposes, the subsequent categories of advertising can be discerned: posters and billboards (both mobile and stationary); printed promotional materials; advertisements affixed to corporate or public transportation, among others [9].

Advertising has long been an essential tool used by firms [10]. Advertising serves as a form of information for consumers, aiding them in discovering specific products and services, including their attributes, design, quality, and available alternatives. It's important to note that the information presented in advertising doesn't always precisely reflects the reality; rather, it often exaggerates the qualities of the product.

D.A. Kiveliuk underscores that the impact of advertising on consumers possesses a distinct nature with dual significance: firstly, to convey informative messages about product attributes, and secondly, to engage the consumer as a participant in the transaction [11].

Legal framework governing advertising activities

The existing legal framework for advertising activities comprises both laws and regulations. The legal norms governing activities in the field of advertising are primarily focused on preventing unfair competition in the advertising placement market and safeguarding consumer interests [12].

The current legislation that governs various aspects of advertising placement is complex in its nature, encompassing both private and public legal norms. This complexity arises from the necessity to harmonize both public and private interests within advertising relationships [13].

In accordance with para. 7 of Art. 1 of the Law of Ukraine "On Advertising" outdoor advertising means advertisement placed on special temporary and stationary constructions located in open areas as well as on exteriors of houses, buildings, on elements of street equipment, above street roads and traffic ways [14].

Advertising exclusively pertains to information regarding products or services with the intent of shaping or sustaining awareness among consumers, fostering their interest in said goods and services. As such, advertising should include calls to purchase a product or service, exaggerate its qualities, or highlight its notable qualities. Without these elements, information about a product or service wouldn't be classified as advertising [15].

Certain requirements for the placement of outdoor advertising are also laid down in the following legal acts: Laws of Ukraine "On Advertising", "On Improvement of Settlements", "On Local Self-Government in Ukraine", "On Protection of Cultural Heritage", "On the Permit System in the Field of Economic Activities", "On Administrative Services"; "Standard Rules for Outdoor Advertising Placement", Approved by Resolution of the Ukrainian Government dated December 29, 2003 No. 2067; Standard Rules for Outdoor Advertising Placement Outside the Boundaries of Settlements, Approved by Resolution of the Ukrainian Government dated December 5, 2012 No. 1135.

Recognizing the inadequacy of the current legal framework for outdoor advertising, the legislator introduced for consideration Draft Law No. 5094 "On Amendments to Certain Laws of Ukraine to Improve Legislation in the Field of Outdoor Advertising". This Draft Law, aimed at amending certain Ukrainian laws to enhance the legislation governing outdoor advertising, was passed in its first reading. Subsequently, on February 18, 2023, the draft law was added to the agenda of the Verkhovna Rada of Ukraine [16].

Presently, the draft law has not yet been enacted. Nonetheless, we deem its adoption imperative in the near future, as the law seeks to align and standardize the legal framework governing outdoor advertising.

Beyond the various requirements stipulated in the Law of Ukraine "On Advertising", the primary distinctive aspect of outdoor advertising placement is the necessity to obtain a permit for its placement.

According to para. 3 of the Standard Rules for outdoor advertising placement, the placement of outdoor advertising requires permits and must adhere to the process outlined by the executive bodies of village, settlement, and city councils [17].

A permit is a document of a specified format, granted to an outdoor advertising distributor based on a resolution by the executive body of a village, settlement, or city council. This document confers the privilege to display outdoor advertising within a defined timeframe and location. The permit serves as the legal basis linking the initiation of contractual relationships in the outdoor advertising market, effectively legitimizing the placement of advertisements.

The variety of outdoor advertising means is indeed impressive, making it challenging to discern consistent patterns in how advertisers present their intended messages to the target audience. These messages can take on various forms. Furthermore, as cutting-edge technologies continue to advance, novel advertising mediums continually emerge.

Existing problems of the outdoor advertising market

The Antimonopoly Committee of Ukraine, in the Report based on the results of their research of the outdoor advertising market, pinpointed the most common problems, including [6]:

1) Demands for the submission of supplementary documents beyond those outlined in the Standard Rules for outdoor advertising placement, as prerequisites for obtaining an advertising placement permit;
2) Additional barriers to market access include the involvement of additional bodies in market admission procedures;
3) Different (discriminatory) fees for the temporary use of advertising media locations without objective reasons result in the creation of unequal conditions to market access for conducting business activities;
4) An existing moratorium on issuing permits for the placement of outdoor advertising.
5) An advantage of communal enterprises is their ability to combine administrative functions and economic activities in the market. This positioning gives them a favorable edge over private ownership competitors;
6) The lack of legislative regulation regarding the dismantling procedure of advertising media results, among other things, in the arbitrary and illegal placement of advertising structures. This distortion of competition in the market is also a consequence;
7) Unauthorized placement of outdoor advertising without obtaining the required permit.

A thorough analysis of the outlined issues in the outdoor advertising placement market leads to the conclusion that these problems collectively exert a negative influence on market competition, causing varying degrees of distortion. Furthermore, each of these issues can be traced back to the imperfect legal regulations governing the outdoor advertising market.

An additional distinctive characteristic of these problems is their interconnected nature. For instance, the presence of supplementary market entry barriers or discriminatory conditions can give rise to issues such as unauthorized outdoor advertising placement. Similarly, unregulated dismantling of advertising infrastructure can contribute to a scenario conducive to arbitrary and illegal placement of advertising structures.

Author's proposal

Considering the adverse outcomes stemming from issues in the outdoor advertising market, the author in the present article proposes implementing the following modifications to the existing legislation:

1. It is recommended to develop and approve a comprehensive Procedure for dismantling advertising media. This procedure should intricately outline the conditions and steps involved in dismantling advertising infrastructure. By doing so, it would effectively curtail arbitrary and unauthorized placement of advertising structures. This, in turn, would mitigate the potential for market competition distortion in the outdoor advertising sector.
2. Integrate into the existing legislation provisions aimed at strengthening oversight over the illegal placement of outdoor advertising. The current supervision of compliance with legal prerequisites for permit acquisition proves insufficient, leading to frequent cases of outdoor advertising being displayed without proper authorization.
3. Propose the prohibition of enacting moratoriums on outdoor advertising placement. However, it is advisable to mandate local self-government bodies to seek consultation with the Antimonopoly Committee of Ukraine in cases of potential need for such a moratorium under exceptional circumstances. In such instances, the local self-government entity should substantiate the justification and necessity for introducing an advertising moratorium or permit ban. The Antimonopoly Committee of Ukraine, in turn, would evaluate the moratorium's potential impact on market competition, granting approval only if significant negative consequences are not anticipated.
4. Enact a prohibition on granting temporary use of advertising media locations to communal enterprises that combine administrative functions and economic activities in the outdoor advertising placement market. Implementing these measures will effectively uphold a robust level of competition in the market.
5. Enhance monitoring of any additional barriers and discriminatory conditions in the market entry, aiming to prevent discrepancies in fees for temporary usage of advertising media locations without valid justifications. Specifically, it is essential to establish an exhaustive catalog of exceptional circumstances at the legislative level where varying fees for temporary advertising location use are not considered to be discriminatory.

These described recommendations have the potential to enhance competition in the outdoor advertising market, while also enhancing transparency and clarity of market conditions for business entities. Consequently, this will encourage enterprises to engage in outdoor advertising activities more frequently, contributing to the promotion of

goods and services. Ultimately, this could lead to an improvement in the economic well-being of the state.

Conclusions

Competition serves as a vital indicator of a country's development and state of economics in a country with a market economy. It is through competition that superior products, whether goods or services, are nurtured. Advertising plays a pivotal role in fostering this competitive environment, yet it simultaneously raises the significant issue of competition within the advertising market itself.

In the article, the author arrives at the conclusion that the legal regulations governing the outdoor advertising placement market are not perfect. The author analyzes contemporary issues within the outdoor advertising market and proposes recommendations for amending the existing legislation. These suggestions aim to foster competition in the outdoor advertising placement market, ultimately leading to the growth and enhancement of the market itself.

Specifically, the author suggests the following measures: developing and implementing a Procedure for dismantling advertising media; enhancing oversight against unauthorized outdoor advertising placement; imposing a prohibition on introducing moratoriums for outdoor advertising placement without approval from the Antimonopoly Committee of Ukraine; restricting the granting of temporary usage of advertising media locations to communal enterprises merging administrative functions and economic activities in the outdoor advertising market; strengthening control over potential additional barriers or discriminatory access conditions to the market, thereby preventing disparate fees for temporary advertising location use without valid and objective justifications.

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Regulatory Recognition of Commercial Space Flights

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Abstract
The author of the research article raises current legal issues regarding the regulatory challenges associated with the commercialization of outer space, with a particular focus on space tourism. The study aims to solve the legal dilemma of the lack of a legal framework that would define commercial spaceflight because this problem creates ambiguity in the understanding of the phenomenon of space tourism and raises concerns about the regulatory way of space exploration by private companies. The methods of analysis consist of the benefit of theoretical aspects of international space law for the designation of a mutual understanding between commercial interests and the principles of space exploration. The obtained results of the study lead to the conclusion that the main factor that inhibits the implementation of proper legal regulation of commercial space activity is uncertainty in the application of one or another law to regulate flights with space tourists, which, in the opinion of the author, should be eliminated employing regulatory direction on the proper legal regime, a clear definition of the boundary between outer space and air space, the weight of the norms of international law as opposed to the applications of states regarding the expediency of the norms of national law. The author's solution is the initiative for the governance of the unsettling areas through contractual arrangements. This idea is due to the results of the study about the predictability of the potential loss of relevance of international space law for the regulation of commercial space flights, therefore the auxiliary role of contract law is delivered. For its implementation, the author emphasizes the prospect of maintaining a regulatory course on (i) management of property rights, (ii) management of space resources in the direction of prohibition of appropriation and commercial colonization of celestial bodies; (iii) provisions for liability in the event of flight anomalies, safe rescue accidents, and the return of space tourists.

Keywords: *space tourism, non-astronauts; principles of outer space exploration; state claim of jurisdiction; United Nations Treaties on Outer Space; contractual partners.*

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Нормативне визнання комерційних космічних польотів

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Анотація
У статті розглянуто актуальні питання правового регулювання проблем, пов'язаних з комерціалізацією космічного простору та феноменом космічного туризму. Метою дослідження є вирішення правової дилеми відсутності законодавчої бази, яка б визначала комерційні космічні польоти, що породжує неоднозначність у міжнародному праві щодо розуміння космічного туризму та викликає занепокоєння щодо дослідження космосу приватними компаніями. Методи аналізу полягають у використанні теоретичних аспектів міжнародного космічного права шляхом зіставлення комерційних інтересів і принципів освоєння космосу. Зроблено висновок, що основним фактором, який гальмує реалізацію належного правового регулювання комерційної космічної діяльності, є невизначеність у застосуванні того чи іншого права для регулювання польотів з космічними туристами, яка має бути усунена шляхом належного регулювання правового режиму, чіткого визначення межі між космічним і повітряним простором, використання саме норм міжнародного права на противагу заявок держав щодо доцільності слідування нормам національного права. Перспективою подальшого дослідження є ініціатива врегулювати проблематику через конткратні відносини між сторонами-учасниками комерційних космічних польотів, яка пов'язана з прогнозованістю за результатми дослідження потенційної втрати релевантності міжнародного космічного права для врегулювання комерційних космічних польотів, тому передбачена допоміжна роль контрактного права. Для її реалізації пропонується спрямувати регуляторний курс на: (і) управління правами власності, (іі) управління космічними ресурсами з метою заборони привласнення та комерційної колонізації небесних тіл; (ііі) положення щодо відповідальності у разі аномалій польоту, аварій з визначенням безпечного порятунку та повернення космічних туристів.

Ключові слова: *космічний туризм; неастронавти; принципи дослідження космічного простору; претензії держав на юрисдикцію; договори ООН з космосу; контрактне партнерство.*

Introduction

Merely states that documented space companies trustworthy for offering private space flights are accountable for the space activities of non-astronauts. United Nations (UN) treaties are obligatory for the signatory

states. This does not imply that commercial companies are excused from relenting with the regulatory procedure since when the legal framework for space flights was founded, these activities were exclusively viewed as state one, and the idea of proffering every citizen the opportunity to travel to space was inconceivable. Due to the scarcity of defining a commercial space flight in international law commonly known as space tourism, throughout the research, the author of this research refers to those flights that encompass a range of stirs with non-astronauts on board, likewise, orbital and suborbital space flights, human space flights, space flights to the International Space Station (ISS), Moon, and Mars, round trip space flights, flights into outer space, private and commercial space flights, space tourism, and other human-manned space activities with non-astronauts. This reference is submitted to find out the theoretical approaches to the notion.

Marietta Benkö et al. [1] plead back the definition of space tourism and assert that the notion can singularly be used informally since it lacks legal backing. They propose that suborbital regular human flights to the ISS, Moon, and Mars be evaluated under the launch projects that offer to transport people to outer space destinations and have already been partway executed. Regardless, the absence of international legal constraints and liability standards for such service providers is a noteworthy matter. The authors express crises about the contemporary launch projects wording those as akin to a children's playground remarking that the exploitation of outer space by private companies goes against the fundamental principles of space exploration. They argue that just because something is technically feasible does not necessarily mean it is legally justifiable. The authors, therefore, suggest reconsidering these agendas radically and eliminating any gaps in their law. Furthermore, Frans G. von der Dunk [2] scours the concept of flights with non-astronauts and analogizes it to space tourism from the standpoint of private assignments. The author places three key facets – the purpose of the flight, financing, and ownership – to clarify private space flights. The examination reveals that there is no reliable tourist terminus because the spacecraft is funded and owned by private entities such as Virgin Galactic, RocketPlane, and XCOR [3]. Accordingly, the author appropriates that private space flights could be defined appropriately as human flights to enter space, financed by private individuals or entities, and conducted by specific private companies without government expenses.

On the other hand, Lits et al. [4] do not express criticism of the growing endeavor and do not classify it as either private space flights or any other related commercialism. Instead, the authors refer to the picture of any human space flights that are not explicitly declared in the legal records and give

them a broad element as "any possible". This expansive meaning is because SRLM (The Outer Space Treaty (OST) (1967), Rescue Agreement (1968), The Liability Convention (1972), The Registration Convention (1975), and The Moon Treaty (1979)) do not disown "other space activities", which indicates that any form of space flight that is not explicitly banned by international law acceptable to be. Notably, the study does not uncover a meaningful contrast between the conceptions of human space flight and layouts of "other space activities". Regardless, the authors do imply that the terminological shape of space tourism causes logic to be the "other space activities".

In Francot-Timmerman's work [5], the idea of commercial space flights is portrayed by three features: legal basis, risk, and the relevancy of other branches of law. The author proposes that the notion should be accurately depicted using the global space ruling. It is accentuated that the regulatory direction for space tourism will motionless be international space law (ISL) conforming as an essential factor. The second element of the concept is the risks entangled. According to the writer, by counting on the class of risks that lead to unavoidable adverse consequences, it is feasible to articulate roughly the relevance of a distinctly legal framework besides space law. Hence, annexes of law will also devote challenging flights as well and the notion itself may entail additional practices relevant to international law.

Finally, in the publication by Kuluyev & Khalilov [6], a reasonable intro to human-manned commercial space flights is exemplified. The authors interrogate the relationship between modern space getaways and space tourism drawing on the vision of transnational tourism to discern findings. Relatively, they propose to define space tourism as a type of tourism that involves passengers traversing on a spacecraft to observe outer space operating technology, and eventually accessing space. According to the authors, such breakouts cannot be compartmentalized as a self-sustaining constituent, but rather should be governed by the system of ISL. Nonetheless, their discoveries are not exceptionally advantageous as there is ambiguity about the application of the legal conditions of international travel law relevant to the space tourism phenomenon since travel law does not guide ISL. Furthermore, the sources of international space law do not enclose the ruling of international travel law. These resolves will indeed be subject to further scrutiny.

Literature review

Reconcilements of a commercial segment with the space exploration principles

Although the international community has not yet exhaustively discoursed human experience in outer space, the space drive has been gradually

privatized by companies such as Virgin Galactic and RocketPlane deeming all-out control and sponsorship of space vehicles. National legislation in the US and Luxembourg authorizes commercial enterprises with the right to perform shiftings in outer space, and despite such companies do not possess complementary rights or obligations under ISL. Virgin Galactic has enlisted the service of legal professionals to enhance liability laws and address legal issues relating to commercial human space flights in the name of safeguarding commercial interests. Hence, space tourism is forcefully tied to its commercialization.

Hereinafter, the dispute centers around the tension between commercial interests and the principle of open access to space as designated particularly in the OST. Article 1 of the Treaty states that outer space, including celestial bodies, is open for exploration and use by all states, without discrimination, and under international law. Although scientific quests are encouraged, the Treaty does not explicitly cite space flights with a commercial segment. A scholar Jonckheere [7] agrees that the Treaty foremost allows states to run activities in space and commercial entities are not coated under the principle of freedom to access. At the same time, the author explains that commercial space activities can be viewed as a subset of private technological progress, therefore, it is not explicitly discoursed in the Treaty. Consequently, the lack of vivid words about commercial space activities in the Treaty institutes ambiguity and raises questions about the relevance of international law to such activities.

The examined concept of human spaceflight is based on two mutually important elements: the launching state and the commercial segment. This has led to back-and-forths between public and private affirmations of power. And, as an effect, the launching subject means that the spaceship is cast from a certain land of a launching state but with the involvement of a private attribute. The study advises that legally reasoned terminology, such as non-governmental space operation, could be used to pilot the conception of the state that undertakes the breakout with non-astronauts. Although such activities are overseen by private companies and not by the government regime itself, they have still thought of space activities in phrases of OST.

Also, the research bears watch to the study of R.H. Henry et al. [8]. Scholars provide a thorough analysis of the principles established by the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) and spotlight that these covenants primarily focus on the exploration and use of space, rather than on elongation itself. Though, they emphasize the extent of responsible behavior and the absence of a site for the private sector, unless it is united to non-governmental conditioning and supervised

by the state. Afterward, the authors advocate human-manned flights as non-governmental activities that align with the principle of common use and exploration. They note the representation "commons" is not explicitly mentioned in any space treaty, and is solely employed as an adjective in preambles, such as the "common interest" in the OST and Liability and Registration Conventions, and "common heritage" in the Moon Agreement. The authors acknowledge that this language is broad, but it is frequently exploited in serials such as those by the US Department of Defense and NATO workshops. The authors further ascribe that the word should not be misconstrued as a way to avoid control by a superpower, but relatively as a mechanism to elevate non-state products under state supervision. Prevalent, the authors endorse commercialization in space as it is distinct from superpower control and aligned with the canons of UNCOPUOS.

In the scholar's study of Sarah M. Mountin [9] concentrates on the commercial use of satellite signals and its implications for human space flights, especially regarding location tags. She argues that in accumulation to ISL, the powers of international humanitarian law are also relevant when civilians are on board, predominantly in the circumstance of armed conflicts. The researcher cites the Geneva Conventions and the Additional Protocols (1977) as substantial documents for restraining risky scenarios of warfare affecting spacecraft. And, she contends that the principles enshrined in the ISL on commercial use of satellite signals are insufficient for comprehensive regulation. Those views manage the subject by implicating not only the rudimentary principles of space use but also the raw principles of international humanitarian law together with the customary international law, such as the principles of non-intervention and proportionality as well as the specific dogma of the satellite signal is correspondingly critical for the security spacecraft monitoring that voyage civilians. Although her work is mostly focused on conflicts stemming from the commercialization of outer space, it is meaningful to comment that the part of human-manned flights shall not be biased toward warfare.

Implication of legal regimes

In 2012, Wheeler [10] surveyed the UN Space treaties and their impact on the commercialization of human manned space flight. The author stressed the problems faced by businesses due to the uncertainty of space treaties and criticized the legal regime standing reforms that are necessary to pre-empt prospective regulatory courses. The writer urges that international law should adhere to the outer space treaties with a concentration on the call for revision and adoption of national strategies. One of the contentious topics is the business side of the quarrel for the "traveler" standing credit which is the concession of humanity. However, due to the shortage of

an evident commercialization regime for human space activities, there is a need for boundary locks to avoid martial ambitions, and, therefore, scholar proposes a definite regime under a peaceful agenda. In 2013 E. Bohenc [11] tackled the question of whether there is a demand to specify the international law that will apply to the human manned space environment and indicated the dependability of space law to the relevance of commercialization. Bohenc extrapolated that private companies, operating under the auspices of ISL, are exclusively reasoned to the public domain. Furthermore, the space law regime is headed under the model of SRLM encompassing, among other things, the five most distinctive and absolute acts. The author acknowledges that any space activity must adhere to these acts. However, due to the evolving nature of space exploration, SRLM is not adequate to hold the subjects of human-manned space flights. Therefore, Bohenc means to modify the UN Treaties based on the modern commercial course on space questioning, either by devising guidelines or embracing a mint act to preach the respect of related space tourism matters.

Philip Morris [12] supports the opinion about the SRLRM sample of lodestar the international legal regime of commercial flights. The author also provides a critical analysis of the legislation of the US and the Netherlands, whose laws are the most progressive in restraining the regime of centered flights at the nationwide grade. However, Morris criticizes these directions from the standpoint that both the US and Dutch laws consolidate the appropriation and monopolization of space intimately. They strive to originate private businesses for the advantage of the domestic economy and space governance while bypassing the bars of international law with the public aspect of the space quest. The research investigation sheds light on the potential conflicts between national and international laws due to the commercialization of space and emphasizes the starvation for international cooperation and adherence to the old-hand principles of ISL to guarantee the amicable and equitable maturation of space shifting. Similarly, Santos & Rapp [13] refer to the US measure of a non-appropriation constraint that sets restrictions for the commercial sector. Accordingly, private space companies before practice shall obtain permission from the Ministry of Commerce. In this way, the Ministry is competent to monitor activities and procedures, and in the affair of noncompliance has the capacity to impose restrictions, for example, on the collection of certain data. Nevertheless, as one of the ways to solve the abuse of the commercialization segment, it is beneficial to have a contract with the government, thereby representing the goods willingly to offer space tours to civilians.

At the same time, in 2010, Meyer [14] steered a direct review of the set of legislation for all space activities, arguing that there is no necessity to

abandon the already established ISL regime. Instead, Meyer submitted a solution about the relevance of the extant non-specific laws. Through a method of historical composition check, Meyer halted that the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (TPGASEUOS) and the Moon Agreement drive it apparent that space can merely be explored by nations, rather by private holds. Hence, human-manned space flights should not stand under the auspices of screened companies citing distinguishing pictures of 'all mankind' and 'common heritage of mankind' means the international regime should take pre-eminence. Yet, differently, Alexander Simmonds [15] finds it difficult to determine the lawful regime due to the increased legal ramifications and pluralism. They counsel that it is attainable to find legal implications to govern the possession privilege aspect through the categorization of space tourism according to key players: (i) private companies and non-government organizations, (ii) special assignments by entrusted power that are not covered by the territorial jurisdiction of states, and (iii) a party with jurisdiction management wherever States have the right under international law to influence space exploration through commercialization. To this extent, Claudia Pastorius [16] raised a significant question about the sense of lawful power implication with affection to the ownership approach to find answers through a comparative analysis of the Roman spatium doctrine of liberum, nullius, communis. According to the author, the authority of commercial space flights should correspond to the foremost one of the ensuing classes where: (i) complete freedom (in both private and public space activity) cannot be restricted by anyone; (ii) the outer of space should not be subjected to any private or public activities for any purpose, however, at the same time, this does not mean that it cannot be occupied; (iii) there should be no private or public getaways; only flights of society for the nation's enjoyment without further appropriation are appropriate. The idea preferably instructs the principles of freedom, occupation, and enjoyment, - since the private privilege with the ownership stakes is not the right way to forward. This course would confirm an unbiased evolution of space activities with anticipation to profit all nations including separate individuals.

Confrontation of boundaries between space and air laws

The issue of whether to apply air law or space law to commercial space flights continually remains controversial and unresolved. A scholar Fitzgerald [17] discusses the difficulties in involving a type of legislation appropriate to space planes used for private and commercial intentions. The author notes that the air sphere creases under the regulation of the

International Civil Aviation Organization (ICAO), while outer space weaves under the purview of the Office for Outer Space Affairs (OOSA), believing that only these two UN bodies are qualified to regulate technology beyond Earth within their respective domains. However, the author does not delve deeply into this matter delivering an incomparable all-around synopsis of the relevancy of regulatory policies. The results of the study insinuate that it is ambiguous when air law or space law should be applied, though it is evident that both directions can be practical to spacecraft. Furthermore, the primary criterion for determining relevance is not the commercial or private nature of activities, but rather whether the spacecraft is factually entering outer space. At this point, the work of Masson-Zwaan & Steven Freeland [18] infers that space law should be the appropriate regulation because the vehicle is designed solely for outer space travel, including orbital and suborbital flights. The authors, paired with Fitzgerald, advise that the resolution of the air and space law dilemma should be solved through the designation of the transportation pursuit. In other words, the determination about the rightful law to devote should be founded concerning the technology functionality intention in the atmosphere. Since aircraft do not typically have space missions and are designed solely for airspace carriers, on the other hand, spacecraft are designed specifically to approach space lift and a subject to space law. Consequently, the primary criterion for demarcating relevancy is whether the spacecraft is prepared for outer space or airspace ride.

Dempsey [19] has a similar perspective on the issue and suggests that a vehicle with both air and space characteristics should be regarded under the jurisdiction of ICAO since it starts its journey from the air. The main legal end, therefore, is not its functionality or purpose but the start-up landscape of the technology. This finale is based on two basic legal criteria: (1) rationale logic, which defines the transport point to answer whether it is in outer space or air, and (2) rationale materiale, which looks at the nature of the vehicle. And, since the spacecraft conceives in the airspace, the rules of air law choice apply. On the other side, if the spacecraft is directed to return to Earth from outer space, then space law prevails on its way back. In other words, the double relevance reached as follows: when the destination is outer space, air law applies, and when the destination is Earth, space law applies.

Alexandr Simmonds [15] also highlights the gap regardless of the air zone ending and the commencement of outer space. As soon as this designation is defined, the commercial space flight regulation shall be forced from that fact. The research has shown, according to the Center of Science Education (UCAR) [20], the end of the stratosphere is 50 km/30 miles above the

Earth's surface. However, the author urges that a customary international law rule should define the zone of space as starting at 95-110 km. The contentious matter is the determination of horizontal take-off and vertical take-off launch spaceport facilities for space flights. It is potential to resolve the problem by obeying the German Aviation Code, which covers space vehicles, rockets, and similar flight objects as aircraft as long as they are in the air zone.

Louis de Gouvon Matignon's article [21] also presents relevant discussions on the legal boundary between air space and outer space. Unlike the previously mentioned researchers, the author suggests resolving the issue through international negotiations between states and the UN. However, the main retard in negotiations is the disagreement about sovereignty over the demarcation due to the argument of recognition of sovereignty in the air citing civil aviation law. For example, the Convention on International Civil Aviation, or known as the Chicago Convention, admits exclusive dominion over the airspace up to a governmental territory as per Art. 1. In contrast, international space law provisions allow for the liberty of state motions and acknowledge no sovereignty over celestial bodies. Matignon also highlights discrepancies in national laws that directly prescribe the territorial effect. For instance, an Australian law, the Space Activities Act of 1998 defines the legal determinant line of outer space starting at an altitude of 100 km. In the US, the Space Flight Liability and Immunity Act defines suborbital flights above 62.5 miles from Earth's mean sea level, while the state of New Mexico defines space as "any location beyond altitudes of sixty thousand feet above the Earth is sea level". Furthermore, X-Prize announced that participants of commercial space flights must reach a minimum of 100 km above Earth to qualify at the necessary space level.

Consequently, the research calls for an international hand to resolve these discrepancies and come to a consensus on the demarcation between airspace and outer space due to explored conflicts between state laws and companies' visions.

National vs international

The scholar Weeks [22] in 2012 did a study on the commercialization of space flights and the influence of private companies on international regulation. The author argues that private companies' policies have become a priority over legislation resulting in an expansion of outer space commercialization. This has put pressure on the US legislative course to develop specific regulations for human-manned spaceflight. The author believes that proliferation foreknew brings benefits to progress, but also underscores the need for structured codes of conduct towards

commercialization and the development of international law. While the author does not criticize national laws but acknowledges that international regulation apart from the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, has not been well enforced. Therefore, a country administration regime with a boost of business paradoxically might rule over international acts. In 2018, Goehring [23] supported this view and argued that the US should hold outer space legislation not only for international respect but also for national legislative interest and joint policy safety inquisitiveness. At the same time, the author notes that Congress should avoid broad interpretations of the scope of activities for oversight, and also mentions that overly narrow interpretations could be equally illegitimate. Thus, Goehring believes that the broad and narrow nature of international legislation, aside from initiatives, could negatively impact commercial space flight welfare. The US course might be a relevant model overall to guide but without overburdening it with red tape.

In 2019 a study by Isabel Feichtner [24] examined the national legislation of Luxembourg, which, like the United States, has specific regulations on human spaceflight. Feichtner stresses that while the US covers more issues related to space resources, in Luxembourg the interpretation of international law allows it to use its jurisdiction to elevate commercial space and attract entrepreneurs. The author argues that national regulations of those in Luxembourg, are exemplary, as the private sector is not denied. Feichtner notes that the Moon Agreement only constitutes a moratorium for its parties and does not stop private companies from exploiting space resources. Luxembourg, which is not a party to the Moon Agreement, prompts personal resource exploitation and asserts that such actions are not in violation of Art. 1 of the Outer Space Treaty. Thus, the author provides examples of how Luxembourg legislation directly references international space law and confirms compliance with outer space resource rights by giving priority to progress commercialism rather than the interest of national law. On the other needle, Paul B. Larsen [25] raises a debatable question of whether international UN Treaties give States the right to authorize national flight operator providers to rule of conduct in outer space and argues that the UN Space Treaties provide a directory of human-manned spaceflight where States are bound to concatenate the terms of these treaties to all domestic non-governmental commercial operators. The author also cites the example of Luxembourg legislation, which grants power to conduct operator flights and provide overall space resources, and highlights the need to comply with international law, even if US law restricts such activities. Using the example of traffic congestion in moving objects, the author suggests that the UN Treaties are customary international law.

On the other side, there is a risk of devoting international agreements as "the Supreme Law of the Land".

The emergence of space tourism has created a need for the reasonable regulation of human space flights, and the Antarctic Treaty system provides valuable insight into the jurisdictional issues that may arise in cases of violations of territory. Specifically, Art. 8 of the Antarctic Treaty establishes that individuals are subject to national law rather than international law and recognizes concerns related to tourism in contrast to OST. As such, the Antarctic law system as an example for regulating space tourism violations is proposed by several authors. A scholar Hardenstein [26] examining the Antarctic Treaty System found similarities between the regulation of the Antarctic and outer space, particularly in terms of jurisdictional issues. Both regulations are aimed at promoting the peaceful use and freedom of exploitation, as stated in Antarctic Treaty Art. 1 and Outer Space Treaty Art. 1. Similarly, human activities in both areas are intended for scientific investigation, as stated in Antarctic Treaty Art. 2 and Outer Space Treaty Art. 1, and both allow for free access to resources, as outlined in Antarctic Treaty Art. 7 and Outer Space Treaty Art. 7. Moreover, both regulations do not establish the territorial sovereignty of states or allow for the appropriation of territory. At the same time, Rosario Avveduto [27] compares the Outer Space Treaty and Antarctic Treaty when both regulate human activity in areas without a native population. The author notes that while both Antarctica and space are being exploited for profit, the difference lies in the fact that Antarctica has not been colonized, commercialized, or used for asteroid mining. Therefore, while these conventions may share similar principles of application, they differ in their actual implementation.

Materials and Methods

1. The lack of a clear definition and legal framework for commercial space flights poses significant challenges. The concept of space tourism lacks a legal basis, and there are concerns about the exploitation of outer space by private companies. While there are different interpretations of what constitutes commercial space flights, there is a consensus that they should be defined by international space law. However, there is also relevancy that other branches of law may apply, depending on the category of risks involved in the flights. Overall, the research material is needed to clarify the legal and regulatory framework for commercial space flights, taking into account the evolving nature of the industry.
2. The privatization of the space industry and the increasing investment in space tourism have led to struggles in reconciling commercial interests with the principles of Outer Space exploration. The lack of explicit recognition of commercial space activities in the Outer Space Treaty has created

ambiguity and raised questions about the applicability of relevant law to such activities. The vise versa method is applied to highlight, for instance, when some scholars argue that commercialization in space aligns with the principles of UNCOPUOS and promotes non-state development under state supervision, others lead to responsible behavior and state supervision in non-governmental activities.

3. The legal regime for human-manned commercial space flight is still a topic of discussion among scholars and experts. The current legal framework is based on the UN Space treaties and the Space Law Regime Model aiming to regulate space activities and ensure peaceful and equitable development of space exploration. However, there is a lack of clarity on the commercialization segment, ownership consideration, and potential conflicts between national and international laws. Some scholars suggest modifying the existing treaties or concocting guidelines to address these concerns, while others propose alternative approaches based on the principles of freedom, occupation, and enjoyment.

4. The delineation of boundaries between space law and air law remains a complex and unresolved issue, and the research proposes chaotic approaches to resolve the dilemma. While some suggest that the primary criterion for relevance determination should be the transportation environmental purpose, others argue about the geographical launch of the technology. Additionally, there are discrepancies in national laws that prescribe the territorial effect. Hence, the boundary demarcation between space and air laws requires further exploration and international negotiation to find out relevant regulations for space flights with a commercial segment.

5. The commercialization of outer space has led to a need for specific regulations of space tourism. The current national laws, for example in the US, in some scholars' work have been prioritized over international laws, leading to the need for structured codes of conduct towards commercialization aspects in the international agenda. While the US has specific regulations on human-manned spaceflight, the relevance of other branches of law varies among nations, as seen in the ownership matter of Luxembourg legislation toward rights to space resources even though the States are obligated to follow the terms of UN Space Treaties to all domestic non-governmental commercial operators.

Results and Discussion

The governance of commercial space activities

Art. VI of the Outer Space Treaty addresses state responsibility, indicating the need to license private commercial space operators and establish a robust regulatory framework for their activities. This broad burden illustrates the weight of the responsibility that State Parties expect each

other to shoulder in space activities [28, p. 22]. If a State Party merely permits its territory to be used for launch, it is culpable for the object launched [Ibid]. However, the practical implications of this provision may differ. Likewise, the US obligation under the OST to authorize and supervise its commercial space activities has been questioned. A scholar Goehring [23, pp. 102-103] cites the Laura Montgomery Testimony of March 2017, former counsel for the Federal Aviation Administration. She testified before the House Committee on Science, Space, and Technology. She recommended that Congress not regulate new commercial space activities based on the perceived legal obligation under Art. VI of the OST. Montgomery argued that Art. VI gives the U.S. the discretion to choose which activities to authorize and supervise, and it has no domestic effect since it is a non-self-executing treaty provision. Furthermore, she stated that most obligations in the treaty apply to states, not private enterprises. Montgomery's main point is that Art. VI does not require the U.S. to regulate its commercial space activities. However, Goehring [Ibid.] is a rejoinder to the message that Congress should have a true understanding of the U.S. international obligations under the Outer Space Treaty before setting a course for regulating near-future commercial space activities or not regulating them, as the case may be. Once established, the real question for Congress ought to be how the obligations of Art. VI can be satisfied for commercial space activities, not whether such obligations even exist. Montgomery attempts to argue the latter. Upon closer examination, however, none of her arguments withstand scrutiny. Congress is not well-served by advice that is not only unsound but also serves to undermine the U.S. long-term national security interest in encouraging responsible behavior in space. Consequently, the commitment under OST Art. VI does not directly apply to private entities. Instead, it lies indirectly to private entities through States. Article VI guarantees that the parties cannot evade their international obligations by running space activities through non-governmental entities. This contains the application of the harmful contamination provision under Article IX, despite that, the U.S. did not acquiesce this provision to commercial operators as relevant.

The research goes further and demonstrates for the model the new Space Law introduced in Sweden [29] where both state and private space activities are subject to permits. Potential exemptions from the permit requirement for space activities conducted by the Swedish state would be given by the government appropriately. At the same time, the Swedish National Space Board shall investigate issues connecting to permits. Afterward, the authority shall consult with the Swedish Armed Forces, the Swedish Security Service, and the Swedish Inspectorate for Strategic Products on matters involving Swedish security or other foreign, defense policy interests in each permit matter. Importantly, the Swedish National Space

Agency shall maintain a national register of space objects. Additionally, an environmental provision willpower to guarantee that space activities are accomplished in sustainable ways and the use of space in the long term. The research especially stresses the provisions regardless of individual permit matters to conduct space activities as per the report Betänkande av Rymdlagsutredningen [Ibid., 43]. According to that, the supervisory authority must check that this law, regulations which have been announced in connection with the law, and the permit decision are obeyed. To accomplish its mission according to § 3, the supervisory authority has the right to, on request, receive the information and documents needed for supervision and gaining access to areas, premises, and other spaces, however, not housing, where space activities are conducted. Notably, a decision on an injunction may be combined with a fine. Hence, a permit to conduct space activities may be revoked or permit conditions changed, if (1) the permit holder has violated conditions in the permit decision, (2) the licensee has provided incorrect or misleading information, (3) the licensee conducts space activities that are inappropriate about Swedish security or defense policy interests, or (4) the permit holder has been assigned a warning without the conditions which caused the warning has been corrected. It means for the research, that modern Swedish space law offers the next steps forward for those interested in leading commercial space flights:

1. Get permits for both state and private space activities.
2. Confer on matters conveyed to Swedish security and defense policy.
3. Register space object.
4. Provide proof that space activity is in name of sustainable and attractive for long-term space exploration.
5. Need to comply with the Swedish space law, permit conditions, and regulations, as supervised by the relevant authority. Otherwise, non-compliance may be directed to fines, injunctions, permit revocation, or changes in permit prerequisites.

Furthermore, international space law does not provide specific guidance for the establishment of a system of authorization for space tourism activities [30, p. 268]. However, States typically incorporate minimum requirements to address basic legal issues such as the provision of relevant information, consent requirements, training, and security measures [Ibid.]. For instance, the 2018 UK Space Industry Act (s. 17) governing private space flight contains a condition of informed consent. At the same time, with relevance to the Member States of the European Union (EU), it is believed that the EU has the authority to utilize its legislative and regulatory powers to establish harmonization among the space regulations in the Member States.

This regulatory intervention would offer the advantage of strengthening Europe's global position about space partners and competitors demonstrating independent capabilities in all significant areas of space to be on par with other space-faring states or regions with relevance to harmonization proposed by Linden [31]. According to scholars, the space sector can be affected through regulations in the context of other policies that have a relation with the space sector, as has been done in the past (e.g. through the Trans-European Networks competence); and, the use of these connected policy domains may enable the EU to harmonize regulations that impact space, despite Art. 189 (2) Treaty on the Functioning of the EU. The negative side of this is that it may lead to a confusing and decentralized regulatory regime for space. Significantly, Member States may opt to use the enhanced cooperation mechanism, creating a European institutional framework with competence in space, much like was done with the Schengen Area and the Economic and Monetary Union.

On the other hand, the research offers the results of Hertzfeld et al. [8, p. 22] that space is undefined, and nongovernment, nor any combination of selected governments or non-governmental organizations has the power or ability to set rules and regulations to establish and maintain a commons. This statement is endowed by the next points of thought. First, is important to note that the most significant problems facing the drafters of the treaties were establishing state responsibility, liability for terrestrial damage, and keeping the use of outer space peaceful and free of weapons of mass destruction. Governments (at first only the United States and the Soviet Union) were the only entities that had the technology to access space, and therefore the key provisions of the treaties focused primarily on launches and orbital locations. Today's new issues of private sector investment and activities in space, as well as activities requiring maneuvering ability in orbit, were all hypothetical issues and largely ignored by the treaty regime. Second, space is considered to be territory without national sovereignty and specific borders. It is to be used for scientific discovery and the benefit of all nations. Some have translated this into simple terms such as space as a global commons. However, space itself does not fit the criteria of being a commons. It does not have a specifically defined border where outer space begins. It is many things, ranging from orbits to planets to asteroids to stars and even being just an undefined very large area with little or no gravity. Some of them do have borders and definitions while others do not. Third, the existence and viability of terrestrial commons depend on the oversight and regulatory power of a sovereign. Most common arrangements on Earth have not survived throughout history due to economic pressures and/or governmental changes. This leads to the conclusion that a terrestrial model of a commons is not a model that can easily be applied to outer space.

While it is factual that space is an undefined area and lacks specific borders or a governing body to establish and maintain a commons, however, as the private sector and activities in space have emerged, the study assumes the commercial space flights phenomenon is those activities hosted by the appropriate state where the space object launched (with relevant state registration) and headed by respective commercial and/or private formation, and therefore, regard space a shared area governed by international fundamental space law rules with further commercial and/or private sector commitment to minimizing the risk of overexploitation or environmental damage.

Additionally, the analysis also offers to govern commercial space flight through a contract. Hence, to address the relationship between space operators and potential tourists, it is suggested to apply the principles of contract law. Besides, because prospective participants of space flight might be of different citizenship, the research suggests having extra clauses, for example, to address flight anomalies and accidents due to the need to ensure the safe rescue and return of space tourists to Earth in the event of incidents. While the Moon Treaty regulates the rescue and return of employed astronauts, it does not apply to participants who pay (but not to those who have been paid) for their space experience. Therefore, it is necessary to specifically outline these provisions in the contract to safeguard the rights of space tourists. At the same time, the research idea overlooks situations where a potential space passenger and the space flight operator belong to different countries' jurisdictions. For instance, under the European legal framework, it is appropriate to grant customers the right to choose the applicable law for contract performance. Nevertheless, a dilemma arises when, for instance, most flight operators would be under the jurisdiction of the US, making it impractical to conform to the legal systems of each customer's citizenship.

Furthermore, the research deems a contract between government agencies and private commercial space flight contractors. Likewise, SpaceX in 2012 and then Orbital Sciences in 2013 signed a contract with NASA to become a private launch service provider. SpaceX and Boeing in 2018 concluded contracts about an obligation to supply crew to the ISS under the CCDev project.

Liability is something that will have to be heavily regulated because of the intense nature of commercial space flights. The point of view differs in when vehicle operators should establish contracts with satellite owners to address all potential risks and maintain communication during the government licensing and supervisory processes. At the same time, the regime only provides for a comparatively weak compliance component in terms of

transparency, monitoring, and enforcement [32, p. 253]. Considering the zero-sum nature of (monetary) benefit-sharing, weak compliance components may be insufficient for correcting behavioral misincentives on the side of operators [Ibid.]. Through its sponsorship system, matters of operator compliance and liability are partially delegated to contracting parties, which are accordingly required to provide under their domestic legal and regulatory frameworks for compliance measures that apply to their sponsored operators [Ibid.]. Moreover, as a rule, states are responsible if a spacecraft is launched from their territory. According to Freeland and Martin [30, pp. 274-275], concerning damages connected with a space object(s), the Liability Convention may not necessarily devote to passenger liability, depending on the specific circumstances. Liability for damage to passengers may, however, be established by contract. Although the Liability Convention applies to damages to third parties, it only directly applies on an inter-State basis. However, States may still have recourse against their nationals under the relevant national law, in terms of the conditions that might have been applied to the relevant license approval. It will also be necessary to place the case of exclusion of liability (for example, in a case of negligence) and the characteristics for a cross-waiver of responsibility between the participants. In short, the regime of liability under international space law does not appear to apply adequately to space tourism activities, including the circumstances as to when a launching State will be liable in case of damage.

Ownership is more than the investment of the damaged space satellite and it should also include the liability of human life beyond Earth's atmosphere. Hence, the liability from injury by a service provider of flight wherever point in Space shall be cracked since even states aren't able to provide liability protection for non-astronauts. That is because most service travel space providers are American companies, and therefore the gap between international law, state, and federal laws might be solved under contractual terms and conditions. A relative study of the demand for the enactment of a special accomplishment about safety during human manned space flights could be carried out, similar to an extreme type of tourist activity, such as regulation of parachute jumps, high-altitude ascents to a mountain, etc.

The governance of private interests

The research delves into the discussion of property rights in space and argues that international space law is inadequate for the emergence of human-manned space flights necessitating a comprehensive overhaul. The research stresses that private companies are progressing faster than the existing legal framework and allows for requiring a governance foundation of ownership through revised laws before advancing human extra-terrestrial

space exploration. Thus, the expansion of existing legislation by presenting special rules for property rights in space is necessary. The proposal further suggests that any nation, company, or individual should only be allowed to claim a portion of a celestial body that they can effectively control. Hence, there is a proposal to adopt a law on property rights in space with respect to three matters: (i) the first bloc discusses the concept of ownership in space, and (ii) the second bloc focuses on the relevant governance measures to celestial bodies.

The ownership approach

A substantial sight of Wrench [33, p. 460] for space law of how it approaches land ownership based on the prior appropriation doctrine: underlying land is available for use not because it is unowned but because it is owned by a community who has the right to make productive use of it. Because the community owns the land, claimants should use the land properly and the government is responsible for stewardship. This framing fits neatly with proponents of the idea that outer space is collectively owned by the international community. Regardless, stewardship and government ownership do not necessarily displace the potential for productive use. Parties do not violate the non-appropriation principle simply by extracting – or as here, diverting – resources from the land. At no point does extraction equate to a sovereign claim over the land. In instances where non-productive use or the like violates those principles, property rights disappear. Furthermore, the OST encourages the idea that outer space is to be used to benefit the broader international community. The prior appropriation doctrine illustrates that parties can establish and transfer robust property rights in resources independent from landownership while promoting beneficial use. At the same time, a less recognized challenge with the economic and legal management of a defined area is the concept of the anticommons [19, p. 19]. When there are too many owners holding rights of exclusion, the resource is prone to underuse—a tragedy of the anticommons [Ibid., 20]. We cannot characterize all of outer space and its various activities and usages as a single type of economic good that requires a single type of management structure [Ibid., 23].

The ambiguity in property space regulation creates challenges for future commercialization. The OST Art. VI opens the door for private companies, as it mentions international responsibility applying to non-governmental entities. The ownership operations during human-manned commercial space flights could potentially be attributed to commercial and private companies, including non-governmental ones.

Also, according to the OST Article II, outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of

sovereignty, through use or occupation, or by any other means. Yet, the guide is the creation of unified rules for all formed activities involved in space resource extraction, allowing for future claims of ownership. The research is conditioning a rule about granting protection from interference with a claimed object to anyone who arrives on a space planet (with commercial interest) and/or resides there for a specific period (a year let's say). After this period, the person can return to Earth while retaining exclusive rights to appropriate resources and the ability to sell real property. This approach expects to encourage private space exploration. Accordingly, responsible ownership would mean the preservation of the accountability of states and commercial space flight activities would be limited by the responsibility of their sovereign entities.

According to the OST Art. VIII, ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data before their return. Hence, in the event of claim ownership concerning commercial space flights, there shall be in mind these stages:

1. Register the object with the State Party to the Treaty on whose registry it is accepted.
2. Land the object in outer space or on a celestial body through a commercial spaceflight provider or by obtaining the necessary permits and licenses for private space exploration from the State.
3. Verify evidence of ownership by providing records with descriptions that show your privilege to the thing of a claim.
4. Employ legal backing to compass the complexities involved in claiming ownership in outer space.

Also, the Moon Treaty in Art. 11 heightens the principle of non-appropriation by delivering that the moon shall not be subject to claims of sovereignty or occupation; and the structure of facilities or modules does not create any property right whatsoever in the adjacent area. Unlike the Outer Space Treaty, the prohibition to establish property rights on the surface or subsurface of the moon extends to non-governmental entities as well as natural persons [27, p. 219]. Notably, the Moon Agreement has only been signed by a few countries and fails to address the ownership rights of non-signatory nations. This situation enables companies from non-member countries to make claims of full ownership over lunar resources. Accordingly, tangible and intangible space ownership is crucial

in formulating space law. The proposal suggests classifying spacecraft and satellites as movable property, while lunar bases or sections of celestial real estate would be considered immovable property. However, categorizing celestial bodies such as planets, asteroids, and comets is more challenging due to their inherent movement. Regardless, von der Dunk [34, pp. 90-91] noted about interesting condition that the Moon Agreement itself already excludes from its scope extraterrestrial materials that reach the surface of the earth by natural means. While resources extracted by mining companies do not reach the surface of the Earth by natural means, the distinction already made here between celestial bodies and extraterrestrial materials is noteworthy. The asteroids targeted by the space mining companies would likely be magnitudes smaller in size than the celestial bodies usually addressed under that heading, such as the Moon and planets. Landing on a celestial body would constitute a rather different mission than landing on an asteroid, which may come much closer to capturing extraterrestrial materials. The distinction made in the Moon Agreement may provide further justification for the argument that the prohibition of celestial bodies under Art. II of the Outer Space Treaty does not extend to extraterrestrial materials, the latter also referring to something magnitudes smaller than the classic celestial bodies.

The research goes further and points out an influential relationship between the state from which the spacecraft was launched and the state procuring the launch. This assembles a dual crisis when companies drive a domain territory to transmit people to space, as the state can be held liable for losses even if it does not have ownership or rights to the object. This lets companies exploit the territory and evade the greatest responsibility. And, the outcome is a situation where the vehicle owner and satellite operator are from different states. In such models, a contract between the parties may not play a significant role in claims against the state by third parties. This raises the option of a design where an operator provider from State A offers a satellite owned by an organization from State B, which is registered in State C. If impairment materializes on the territory of State C, both States A and B are jointly answerable. However, if damage happens to State C spacecraft in orbit, liability is determined by fault.

The state orientation of international space law as a juncture of departure for the international legal regime for private spaceflight is also reacted by the concept of state liability, as per Art. VII of the Outer Space Treaty and the Liability Convention. The former law already provided for state liability for damage caused by space objects attaching to a state fundamentally involved in the launch of the space object in question. To assume, the registered space object is the main link for the onset of liability and the

choice of the correct settlement. This is also important since this mode depends on the type of vehicle itself, which is applicable either for suborbital human-manned commercial flights with non-astronauts or for space flights in general. Another instance, this one of speculative nature, can be offered to better exemplify the issue of obtaining exclusionary rights on an orbital route [Ibid., p. 239]. The AMC-14 Satellite case showed that orbital patents may be leveraged to restrain competitor activities and that their powers may extend beyond the realm of the patent law [Ibid., p. 241]. Therefore, antitrust might be another device to avoid or rectify the consequences of de facto orbital appropriation through patents [Ibid.].

Asteroid mining claims

Diagnosing the activities of commercial space companies from a legal perspective and categorizing it as a non-governmental activity and permissible under UN Treaties, – it is crucial not to solely concentrate on this specific type of activity, but also look at the interest in asteroid mining. Commercial asteroid mining is private, profit-driven in character, and arguably distinguishable from the more wholly scientific objectives of sovereign space agencies like NASA [35, pp. 203-204]. For instance, the policies of Planetary Resources and Deep Space Industries align with the prospecting, processing, harvesting, and manufacturing course. In this regard, the critical questions are: If manned space resources are obtained, does this mean that all the resources acquired by a company should be shared on the world market? Or should commercial companies be required to share the profits derived from these resources?

There is the essence of the private sector in the ownership of asteroid resources and, accordingly, there is a proposal about fixed percentage division. Asteroid mining is perhaps a more fleeting occupation than a permanent colony, but if the asteroid mining industry becomes a fully mobilized component of the new space economy, the degree of extraction and use would far exceed the scattered lunar samples in terms of volume, making those a tenuous precedent upon which to rely [Ibid., 193]. The viability of asteroid mining depends on a space economy to which asteroid mining companies can sell fuel and metals: the lack of a current market in asteroid resources should resolve itself when the space population hits critical mass, demanding infrastructure [Ibid.]. Accordingly, several authors have extensively discussed the sale of space resources to other space actors by companies such as Planetary Resources, Deep Space Industries, Shackleton Energy, iSpace, and Kepler Energy and Space Engineering LLC [36, p. 10]. These companies are intending to explore and exploit asteroid resources primarily driven by the commercial harvesting of valuable materials such as iron, nickel, platinum, and water, which can be sold on

Earth. These resources, which have no Earthly analogy possess potential value in electronic and life support systems in outer space, and attract significant interest from companies. For example, Planetary Resources have created 3 different types of satellites i.e. the Arkyd Space Telescope Series, with each satellite contributing at a different stage in the process [37, p. 89]. Yet, as claims reduce the number of available near-Earth asteroids, and asteroids in the asteroid belt remain too costly to reach, competition will increase as investors remove their rose-tinted glasses and see that it will not be easy to make a phenomenal profit [38, p. 16]. As vessel payload capacities will be known, the volume of resources that are transferred back to Earth, as well as their approximate market values, could likely be estimated with reasonable accuracy [32, p. 254]. There is thus only limited scope for operators to shirk their obligation to share parts of their realized commercial profits without being found to be in noncompliance [Ibid.].

The point put forth is that while the Outer Space Treaty explicitly prohibits countries from appropriating these resources, it does not extend the same rule to private entities. It is because the law regarding the extraction of space resources is largely seen as analogous to the law of the high seas, which allows international waters to be fished and its seabed to be mined [Ibid., p. 11]. However, the potential illegality of asteroid mining according to international space law discourages participation in this new venture due to supplemented risk and uncertainty. Regardless, Heins [38, p. 17] provides insights that asteroid mining, like traditional mining, would allow for claim jumping to occur, just a slightly different version. In the context of asteroid mining, claim jumpers could still use force to either destroy or knock off mining operations from asteroids. Likewise, one could begin mining an asteroid that had a rival mining operation on it already, thus decreasing the available resources for the original party that laid the claim. While this action could be seen as simply economic competition, it might also qualify as claim jumping. Claim jumping has been illegal since at least the California Gold Rush and the practice should be no less illegal in outer space. Assuming an organization had legally claimed the asteroid, a conflict would occur if another party also began mining the same asteroid. The newcomer would be illegally violating the founding party's claim and decreasing the available resources for the founding party. This would diminish the economic incentive to mine asteroids if the legal claim to an area could be usurped by any other party's arrival. As even scattered reports of claim jumping would spread, organizations would likely feel the need to protect their investments.

Hereinafter, it is visible the model to adjust the utilization of natural space resources during commercial space flights by enforcing the US

General Mining Law of 1872. This law grants property rights not only to the extracted subsurface resources but also to adjacent property. Consequently, the successful claimant must:

1. For mining claims, demonstrate a physical exposure of a valuable (commercial) mineral deposit (the discovery) as defined by meeting the Department Prudent Man Rule and Marketability Test.
2. For mill sites, show proper use or occupancy for uses to support a mining operation and be located on non-mineral land.
3. Have a clear title to the mining claim (lode or placer) or mill site.
4. Have assessment work and/or maintenance fees current and performed at least $500 worth of improvements (not labor) for each claim (not required for mill sites).
5. Meet the requirements of the Department's regulations for mineral patenting as shown in the Code of Federal Regulations at 43 CFR 3861, 3862, 3863, and 3864.
6. Pay the required processing fees and purchase price for the land applied for.

It is important to recognize that the Mining Law would not cover each unique feature of an asteroid mining law [39, p. 165]. Two of the more obvious additional considerations are a provision codifying the common-law doctrine of possession and a more detailed definition of the scope of minerals covered by the asteroid mining law [Ibid., p. 166]. On the other side, international law relies on cooperation among states, for treaties do not even become law unless countries choose to bind themselves to it [40, p. 668]. When one nation acts unilaterally, absent any sort of agreement, it could lead to conflict [Ibid.].

According to the first block, the posed idea is to incorporate the principle of first possession into legislation granting ownership and associated rights to those who first explore and claim a territory, yet, there shall be an indication to redefine the legal concept of asteroids from celestial organs to movable property (chattel) to prevent private companies from smoothly commandeering sovereignty over land plots. This would help prevent conflicts arising from disputes among companies from different countries fighting for resource supremacy. In the context, for instance, the US national regulation, the Commercial Space Launch Competitiveness Act, specifically Title IV, is dedicated to Space Resource Exploration and Utilization. By comparing this act with the Outer Space Treaty, the research has identified key aspects regarding the value of asteroids in the ruling of human-manned space flights. Firstly, there is a prohibition on the appropriation and commercial colonization of celestial bodies. Secondly, it is ambiguous wording 'benefit of mankind' and its potential variation due to

commercial operations. Thirdly, the issue of liability materializes. To whom will these companies be held accountable? Is it reasonable to adhere to national legislation when space resources should be seen as the collective business of all humanity? The concern is that if further nationalization occurs, international space law may lose its relevance in governing space activities, potentially leading to international conflicts and political disputes over territories. Hence, it is urgent to make changes to international space law that would affect the legality of such governance and provide the necessary safeguards.

Finally, the study forecasts various approaches to private property management that may prevail in outer space, including the right of first possession, tradable development rights, and asteroid mining systems. Competing interests, coupled with the lack of uniform regulation, would likely prompt private entities to develop defense strategies – because of the heightened need to deter interference from other actors – and cause other entities to do the same [38, p. 19]. As a result, private companies might discourage potential attackers by building up their offensive and defensive capabilities and possibly going so far as to retaliate against others if interference ultimately occurred [Ibid.]. Hence, the research underlines the need for strong management supervision to prevent the exploitation of space resources, misappropriation, and conflicts arising from contentious actions by participants of commercial space flights, thereby ensuring fairness and justice. The defined course would involve allocating specific sites, resources, and production schedules to each country, promoting fairness in resource exploitation by both states and private entities while imposing limitations.

Conclusions

While outer space is not a lawless frontier, activities in space are not strictly supervised or policed [28, p. 53]. Hence, the emergence of commercial space flights has created a need for reasonable regulation for peaceful sharing. While the three rights (free access, exploration, and service of outer space) give States a wide ambit for activities in space, they are not unlimited [37, p. 94]. Therefore, there is a demand to balance the different approaches to appropriate regulation by the relevancy of norms to regulate commercial space flights effectively and shall be regarded by analogy to contractual relationships. There are several key aspects that regulatory courses on contractual solutions should address to restrain commercial space flights. Firstly, it is crucial to safeguard the legitimate interests of parties and define property rights affirmations. Secondly, it is important to take a long-term contract view and consider the development of terms and conditions relevant to the conditions of commercial space flights and rights posed and

demark commercial interests throughout the entire partnership process and place liability weights. The benefits of cooperation can be maximized by guaranteeing an efficient resource portion. Also, the full utilization of the space domain, including asteroids, natural space resources, and the moon, should be pursued with the well-being interests of all nations in mind. While some states may not directly benefit from the partnership, in the long run, such teamwork can be advantageous for all partakers involved.

The study underscores the matter of contractual collaboration to govern the increasing wave of space commercialization and privatization due to the weakness of international space law shielding the exclusive settlement of commercial space flight and the risk of relevancy loss. Thus, the author shows expectations that, for instance, the contract between the commercial space flight operator and carrier service, commercial space flight service provider and participants, etc., would move on consent annex, rights, liability, compensation, insurance, disciplinary policies, and else relevant assessments. However, it is worth noting that many non-space countries face limitations in penetrating areas of interest due to technological and regulatory impediments. This might interfere with the headway of sustainable regulation. Accordingly, an uncoerced and comparable international alliance is critical to stimulate the all-around participation of the representatives from the international community and the development of encyclopedic state-of-the-art for an inclusive ruling of space tourism. Here, it is essential to prioritize a contractual model that protects rights, documents the way out from predictable and nonpredictable risks, effectively assigns resources, and lets the participation of all citizens in the domain of space evolution under the sameness approach.

The contractual regulatory course posed by the author has foreknew a relevant key since it specifies the perimeter of governance for contractors, subcontractors, and clients, trusting the track of commercial space flights activity and aids the transparent understanding about from whom to ask for the liability (with further clauses, for example, a waiver of liability as a prerequisite of its consensus with the space tourist) as well as the respective rights and obligations under the designations of the contractual conditioning would theoretically unravel specific circumstances that international space law worthless to fix but strong enough to drag fundamentalism for a mutual pact in developing distinctive contacts. In addition, given the private contractual nature – between the operator and the tourist – by which most space tourism activities will take place, it is highly likely that carefully crafted exclusion of liability clauses for death and injury will be included in the space tourism services agreement, although the domestic law principles in each State will dictate the extent to

which such provisions might be enforceable [30, p. 280]. Hence, as with all space activities, a careful balancing of interests is required in determining whether, and if so, to what extent the space tourism operator should be required to pay for the privilege of conducting that commercial business, recognizing also that any such costs will inevitably flow down and be passed onto the customer in the contract price [Ibid., 282].

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Basic Conditions for Application of Necessity as a Circumstance that Precludes Bringing to International Legal Responsibility

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Abstract
The article examines a situation of necessity as a circumstance that precludes bringing to international legal responsibility. The relevance of the article is due, on the one hand, to the growing crises in modern international relations, and on the other hand, the lack of comprehensive studies of necessity in the Ukrainian science of international law. The purpose of the article is to determine the specifics of the international legal grounds for states and international intergovernmental organizations to apply to the state of necessity, as circumstance that precludes bringing to international legal responsibility. The article uses general philosophical, general scientific, special scientific and legal methods of research, in particular: dialectical, formal-logical, analysis and synthesis, comparative-legal, and logical-legal. The article analyzes Art. 25 of the draft articles on the responsibility of states for internationally wrongful acts prepared by the UN International Law Commission and submitted to the UN General Assembly in 2001 (UNGA resolution 56/83 (A/RES/56/83) of December 12, 2001). The relevant practice of a number of international courts and arbitrations was analyzed, in particular: the International Court of Justice, the International Center for the Settlement of Investment Disputes, the International Tribunal for the Law of the Sea. The main conditions for the lawful use of necessity are identified, and a forecast of the areas of its further application is given.

Keywords*: necessity; international legal responsibility; an essential interest, circumstance precluding wrongfulness.*

Основні умови звернення до стану необхідності як обставини, що виключає притягнення до міжнародно-правової відповідальності

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Анотація

У статті досліджується стан необхідності як обставина, що виключає притягнення до міжнародно-правової відповідальності держав, міжнародних міжурядових організацій та інших суб'єктів міжнародного публічного права. Актуальність статті обумовлена, з одного боку, численними кризами, що посилюються в сучасних міжнародних відносинах, а з іншого – відсутністю комплексних досліджень стану необхідності в українській науці міжнародного права. Відтак, мета статті полягає у визначенні особливостей міжнародно-правових підстав звернення держав і міжнародних міжурядових організацій до стану необхідності як обставини, що звільняє від міжнародно-правової відповідальності. У ході дослідження використано загально-філософські, загальнонаукові, спеціально-наукові та правові методи, а саме: діалектичний, формально-логічний, аналізу та синтезу, порівняльно-правовий і логіко-юридичний. У статті наведено аналіз ст. 25 Проєкту статей про відповідальність держав за міжнародно-протиправні діяння, підготовленого Комісією міжнародного права ООН та поданого на розгляд Генеральній Асамблеї ООН у 2001 р. (резолюція ГА ООН 56/83 (A/RES/56/83) від 12 грудня 2001 р.). Проаналізовано відповідну практику низки міжнародних судів та арбітражів, зокрема: Міжнародного суду ООН, Міжнародного центру з врегулювання інвестиційних спорів, Міжнародного трибуналу з морського права. Виділено основні умови правомірного використання стану необхідності, надано прогноз сфер його подальшого застосування.

Ключові слова: *стан необхідності; міжнародно-правова відповідальність; істотний інтерес; обставина, яка виключає притягнення до міжнародно-правової відповідальності.*

Introduction

Modern ideas about a state of necessity as a circumstance that allows avoiding international legal responsibility for committing an internationally illegal act were formed only by the end of the 20th century. First of all, this circumstance, from a content point of view, was separated from force majeure and distress. Thus, in the disputes settlement practice of the 19th and the first half of the 20th centuries, it was qualified as force majeure (for example, the statement of the Ottoman Empire about the existence of force majeure in the form of complex internal and external events (rebellions and wars), which caused significant financial costs for it, which prevent the timely repayment of its debts to the Russian Empire for the payment of contributions as a result of the Russo-Turkish War of 1877–1876 [1]; in the case of the Belgian company – *Société commerciale de Belgique* (Belgium v. Greece, 1939), Greece qualified as force majeure its difficult economic situation, which prevents it from paying the Belgian company the financial debt previously established by the arbitration court [2]). But similar legal relations were considered nothing but the state of necessity in the second

half of the 20th – at the beginning of the 21st centuries. In this sense, the decision in the case of *Rainbow Warrior* (1990), in which the Court of Arbitration assessed France's assertion that its actions were forced by force majeure, distress and necessity, is considered to be a turning point in this sense. To top it off, the appeal to necessity for military purposes – as a military necessity [3] – to justify the violation of the laws and customs of war was excluded, which was also enshrined in Art. 25 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts of 2001 [4] (hereinafter – Draft 2001), and were duplicated in Art. 25 of the Draft Articles on the Responsibility of International Organizations of 2011 [5] (hereinafter – Draft 2011), prepared by the UN International Law Commission (hereinafter – ILC).

Unfortunately, the domestic doctrine of international law did not pay due attention to the study of the peculiarities of international legal grounds for the appeal of states and international intergovernmental organizations (hereinafter – IGOs) to necessity. As a rule, this type of circumstances, which exempts from international legal responsibility, is presented only in the most general terms in the educational literature, which, of course, is clearly not enough. It is necessary to systematize the international legal practice, which not only preceded the adoption of the relevant provisions of the 2001 and 2011 Drafts, but also after their transfer of the ILC for consideration to the UN General Assembly.

The purpose of this article is to reveal the specifics of the international legal grounds for states to refer to necessity as a circumstance that exempts them from international legal responsibility.

Literature review

As noted above, the state of necessity as a circumstance that allows one to avoid international legal responsibility has not almost been studied in the Ukrainian doctrine of international law. Moreover, there have not even been any reviews of existing international judicial practice on this issue. While in the foreign doctrine of international law, necessity is studied comprehensively, since it is often the subject of consideration by international judicial and arbitration bodies. In particular, I would like to highlight the works of such scholars as N. Hayashi [3], A. Reinisch [6], R.D. Sloan [7], M.Ch.H. Thjoernelund [8], M. Vasiljević and M. Jovanović [9].

Materials and Methods

The research was carried out using a complex of general philosophical, general scientific and legal methods, such as: dialectical, formal-logical, analysis and synthesis, comparative legal and logical-legal.

The *dialectical method* was used to analyze the behavior of participants of international disputes and conflicts, in which they are forced to justify their behavior by appealing to necessity.

The *formal-logical method* was used to analyze Article 25 of the Draft 2001 and Article 25 of the Draft 2011, as well as the corresponding legal positions of the International Court of Justice, the International Center for Settlement of Investment Disputes and the International Tribunal for the Law of the Sea.

The *method of analysis and synthesis* made it possible to study the positions of the conflicting legal relations subjects, in which they turned to justifying their illegal behavior by a state of necessity.

The *comparative legal method* was necessary to compare the wordings of Articles 25 of the 2001 and 2011 Drafts.

The *logical-legal method* was used to formulate the conclusions to this article.

Results and Discussion

Necessity as a customary norm of general international law

Before the final version of the norm of Art. 25 of the Draft 2001, concerning the state of necessity, the conditions for reference to it were outlined by the International Court of Justice in the judgment on the case of *Gabčikovo-Nagymaros Project* (Hungary v. Slovakia, 1997):

"In the present case, the following basic conditions set forth in Draft Article 33 are relevant: it must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations; that interest must have been threatened by a "grave and imminent peril"; the act being challenged must have been the "only means" of safeguarding that interest; that act must not have "seriously impair[ed] an essential interest" of the State towards which the obligation existed; and the State which is the author of that act must not have "contributed to the occurrence of the state of necessity". Those conditions reflect customary international law" [10, para. 52, pp. 40-41].

Article 25 of the Draft 2001 established the following conditions for addressing the state of necessity:

"1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

(a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
(b) does not seriously impair an essential interest of the State or
States towards which the obligation exists, or of the international community as a whole.
2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:
(a) the international obligation in question excludes the possibility of invoking necessity; or
(b) the State has contributed to the situation of necessity".

According to the ILC, appeal to the state of necessity is a generally recognized customary norm of general international law. This statement is based on the position of the International Court of Justice, formulated by it in the judgment on the abovementioned case of *Gabčikovo-Nagymaros Project* (1997) [11, p. 82]. Other international and arbitration bodies generally support it.

However, in the doctrine of international law it is sometimes criticized. For example, R. S. Sloane considers this international custom to be invalid. He substantiates his opinion by the fact that neither the International Court of Justice nor the ILC carried out a comprehensive assessment of the evidence of the existence of general state practice and *opinio juris* in the use of necessity as a circumstance exonerating from international legal responsibility. In particular, the scientist draws attention to the fact that initially the International Court in the *Gabcikovo-Nagymaros* case referred to the unsubstantiated position of the ILC expressed during the preparation of the Draft 2001, and then the Commission itself in 2001 referred to this judgment of the Court without analyzing any other evidence. Later, the Court referred to the opinion of the ILC in an advisory opinion regarding *the construction of a wall on Palestinian territory* (2004) again [7, pp. 452-453].

On the one hand, one cannot help but note the scientist's attentiveness when studying materials related to establishing the existence of international legal customs. On the other hand, one can point to other judgments of the International Court of Justice, in which it "without evidence" established the existence of customary rules of general international law (for example, in the judgment on the *Barcelona Traction* case (Belgium v. Spain) of 1970 – the illegality of acts of aggression and genocide, obligations to protect fundamental human rights, including protection from slavery and racial discrimination [12, para. 33, p. 32]; in the judgment on the case of *US diplomatic and consular staff in Tehran* (US v. Iran) 1980 – the immunity of diplomatic agents and diplomatic premises [13, para. 62, p. 31]; in the judgment on the case of *the arrest warrant of April 11, 2000* (Congo v.

Belgium) 2002 – the immunity of senior officials of states [14, para. 53, p. 21]).

Other international judicial bodies are doing the same. For example, the prohibition of torture was also, almost "without evidence", recognized as a norm of general international law in the practice of the International Tribunal for the Former Yugoslavia (*Anto Furunzija* case, 1998 [15, para. 139]) and the European Court of Human Rights (*Al-Adsani* case, 2001 [16, para 59]).

In such cases, international courts usually do not conduct an in-depth and comprehensive examination of the evidence. They rather proclaim the existence of such norms, because according to their opinion they are fully consistent with the dominant at a certain moment professional legal and moral views, the dominant international legal consciousness. In contrast, bilateral international customs, which do not have any comparable wide application, are established solely on the basis of an analysis of varied practice and numerous examples of *opinio juris* [See: 17; 18, pp. 191-236].

Necessity, to my opinion, fully applies to those norms that have been hard-earned by both domestic and international practice, and therefore are firmly entrenched in international legal consciousness as international customs.

Appeal to necessity for exemption from international responsibility for an internationally wrongful act is allowed only in exceptional cases, when there are no other options for behavior other than those that violate international obligations. As stated in Art. 25 is "the only means to protect a substantial interest". This approach is due to the fear of misuse of the reference to the state of necessity. In this regard, the Tribunal of the International Center for Settlement of Investment Disputes (ICSID) in § 317 of the decision in the case of *CMS Gas Transmission Company v. Republic of Argentina* (2005), commenting on Art. 25 of the Draft 2001, noted:

"<…> there is also consensus to the effect that this ground is an exceptional one and has to be addressed in a prudent manner to avoid abuse. The very opening of the Article to the effect that necessity "may not be invoked" unless strict conditions are met, is indicative of this restrictive approach of international law. Case law, state practice and scholarly writings amply support this restrictive approach to the operation of necessity. The reason is not difficult to understand. If strict and demanding conditions are not required or are loosely applied, and State could invoke necessity to elude its international obligations. This would certainly be contrary to the stability and predictability of the law" [19].

From a practical point of view, the "exclusivity" and "uniqueness" of the state of necessity entails a number of consequences. Firstly, this is the

recognition of the criteria of necessity as objective and not subjective, which implies their assessment not so much by the parties to the dispute/conflict, but by third parties, as far as possible, not interested subjects. For example, in the theory and practice of international law, there is a general position that the appeal to necessity within the framework of the case in connection with the sinking of the Liberian supertanker "Torrey Canyon" off the coast of Great Britain in 1967 did not cause protests, no matter how from one of the interested parties, and from other governments not involved in this incident (to avoid pollution of its coast, Great Britain burned an oil slick in the sea by bombing). The UK's actions were assessed as being forced out of dire necessity and received widespread international political support [11, p. 97].

Secondly, a search is carried out for other possible options for the behavior of the offending state in the emergency situation that has taken place. Only if this search turns out to be negative can it be argued that the line of behavior chosen by this state in a situation of necessity was the only possible one.

Thus, the International Court of Justice, in its advisory opinion on *the legal consequences of the construction of a wall in the occupied Palestinian territory* (2004), based on the materials presented to it, did not agree that "the construction of a wall along the chosen route was the only way to protect Israel's interests from the danger which he cited as a justification for its construction" [20, para. 140, pp. 194-195]. In fact, Israel itself stated that "the only purpose of the wall is to enable it to effectively combat terrorist attacks from the West Bank" (Jordan River – Yu. Shchokin) [20, para. 116, p. 182]. The International Court did not indicate exactly what other options Israel could have used to protect its essential interest. However, in the course of studying the materials of the case, the Court also drew attention to the fact that the construction route of the wall runs through territories illegally occupied by Israel; and that this construction was originally intended to change the demographic composition of these territories in favor of the Jews; and to significant restrictions on the rights and freedoms of Palestinians in connection with this construction, and to a number of other factors.

In the aforementioned ICSID Tribunal case *of CMS Gas Transmission Company v. Republic of Argentina* (2005), the defendant's plea of necessity was also rejected. The focus was on the Argentine State of Emergency Law, designed to bring under control the extremely difficult economic and social situation in the country. The Tribunal did not deny the "catastrophic proportions" of the economic crisis, but noted: "As is often the case in international affairs and international law, situations of this kind do not

exist in black and white, but in many shades of gray". The Tribunal did not agree that the measures taken by the Argentine government were the only way to protect its essential interests:

"323. <...> The views of the parties and distinguished economists are wide apart on this matter, ranging from the support of those measures to the discussion of a variety of alternatives, including dollarization of the economy, granting of direct subsidies to the affected population or industries and many others. Which of these policy alternatives would have been better is a decision beyond the scope of the Tribunal's task, which is to establish whether there was only one way or various ways and thus whether the requirements for the preclusion of wrongfulness have or have not been met.

324. The International Law Commission's comment to the effect that the plea of necessity is "excluded if there are other (otherwise lawful) means available, even if they may be more costly or less convenient", is persuasive in assisting this Tribunal in concluding that the measures adopted were not the only steps available" [19].

It should be noted that in the decision in the case of *LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Republic of Argentina* (2006) The ICSID Tribunal, on the issue of the legality of Argentina's appeal to necessity in relation to the same socio-economic crisis, came to a diametrically opposite conclusion [21].

Substantial interest

The next key concept is "substantial interest". The state of necessity protects only the essential interest of the state that committed the international offense. This concept is also used in the context of subparagraph "b" of paragraph 1 of Art. 25 of the Draft 2001, as applied to States that have suffered damage as a result of this offense, or to "the international community as a whole".

Of course, the concept of "substantial interest" is evaluative. Its content depends on specific factual circumstances – the material and non-material interests of the interested states. The position of the Commission on this matter is as follows:

"<...> The extent to which a given interest is "essential" depends on all the circumstances, and cannot be prejudged. It extends to particular interests of the State and its people, as well as of the international community as a whole. Whatever the interest may be, however, it is only when it is threatened by a grave and imminent peril that this condition is satisfied. The peril has to be objectively established and not merely apprehended as

possible. In addition to being grave, the peril has to be imminent in the sense of proximate" [11, p. 83].

According to M. Vasiljević and M. Jovanović, this position of the ILC made it possible to objectify the concept of significant interest. Since the existence of a significant interest must be established taking into account all the circumstances of each specific case, its initial assessment may be revised. On this basis, as scientists note, the importance of a subjective assessment of the appeal to necessity on the part of the interested state is reduced [9, p. 10]. To finish the thought of scientists – as a result, the importance of assessment on the part of other subjects of international law increases, including those who did not directly participate in controversial (conflict) international legal relations.

To illustrate this approach, in addition to the examples above, reference may be made to the 1998 *fisheries jurisdiction case* (Spain v. Canada). Canada argued that "the arrest of [the] Estai was necessary to put an end to the overfishing of halibut Spanish sailors" [22, para. 20, p. 15]. This catch was permissible under the Northwest Atlantic Fisheries Organization (NAFO) Convention (the Convention on Future Multilateral Fisheries Cooperation in the Northwest Atlantic Ocean), but was contrary to Canada's domestic 1994 Act on the Protection of Coastal Fish Stocks. The norms of the Act were stricter than the norms of the Convention. Canada insisted on their compliance, since, in its opinion, the standards of the Convention did not sufficiently take into account the difficult situation with the conservation of its coastal fish stocks.

In the *Gabčikovo-Nagymaros Project* case (Hungary v. Slovakia, 1997), Hungary justified the suspension of certain works under the 1977 Treaty by citing a threat to the environment, which it qualified as a "state of environmental necessity". In particular, based on numerous studies, it stated that in the Gabcikovo/Dunakiliti area, additional water releases would lead to a decrease in the groundwater level and siltation of the Dunakiliti branches, which would lead to a deterioration in water quality. In surface waters, "risks of eutrophication would have arisen, particularly in the reservoir; instead of the old Danube there would have been a river choked with sand, where only a relative trickle of water would have flowed. The network of arms would have been for the most part cut off from the principal bed. The fluvial fauna and flora, like those in the alluvial plains, would have been condemned to extinction" [6, para. 40, p. 35]. The consequences of the construction and operation of the Nagymaros Dam would be similarly catastrophic – erosion of the river bed downstream, a drop in water levels and, as a result, a significant reduction in the production of bank filtration wells, which provide two-thirds of the water supply to the city of Budapest [10, para. 40, p. 36].

In the *Saiga* case (1999), Guinea, citing necessity, defended its right to apply its customs legislation in the maritime exclusive economic zone in order to protect against "the considerable fiscal losses a developing country like Guinea is suffering from illegal off-shore bunkering in its exclusive economic zone" [23, para. 130, p. 55].

The use of the concept of "substantial interest" in relation to the victim of an international offense or the international community as a whole (clause "b" clause 1 of Article 25 of the Draft 2001) is intended to reasonably assess the interests of other subjects of these legal relations of responsibility: what they consisted of and to what extent they were affected their "substantial interests" as a result of the offender protecting his "substantial interest". According to the ILC, "the interest relied on must outweigh all other considerations, not merely from the point of view of the acting State but on a reasonable assessment of the competing interests, whether these are individual or collective" [11, p. 84].

In a number of cases, reference to necessity is excluded (clause 2 of Article 25 of the Draft 2001). Firstly, this may be due to the nature of the content of the violated international legal obligation (subsection "a", para. 2 of Article 25). For example, necessity cannot be invoked to justify violations of international humanitarian law conventions. Secondly, reference to necessity is excluded if the offending state itself contributed to its emergence (subsection "b", paragraph 2 of Article 25). Thus, the International Court of Justice rejected such a reference of Hungary due to the fact that its behavior contributed to the emergence of an alleged "situation of environmental necessity" [10, para. 57, pp. 45-46].

IGO's appeal to necessity

The right to refer to necessity belongs not only to states, but also to international intergovernmental organizations. In the Draft 2011 it is also enshrined in Art. 25, which almost completely repeats the above-mentioned norm of Art. 25 of the Draft 2001. It should be emphasized that the very possibility of appealing to IGOs to such a state caused controversy even at the stage of work on the Draft 2011 [6]. It was clear from the outset that IGOs could not claim to protect an "essential interest" analogous to the "essential interest" of sovereign states, much less the international community. Any interests of international organizations, as secondary subjects of international law, depend on the interests of their member states. As A. Reinisch correctly notes: "It is hard to maintain that international organizations should have a vested right to prolong their existence should their members no longer consider them useful" [6, p.181].

Nevertheless, this right was assigned to IGO in the Draft 2011. The ILC, commenting on its Art. 25, emphasized the extreme paucity of practice on it, and its forcedness to meet a number of organizations that insisted on its consolidation (EU, IMF, WIPO, World Bank, UN Secretariat). At the same time, the Commission modeled a situation in which the IGO's reference to necessity could be completely acceptable:

"Thus, when an international organization has been given powers over certain matters, it may, in the use of these powers, invoke the need to safeguard an essential interest of the international community or of its member States, provided that this is consistent with the principle of speciality. On the other hand, an international organization may invoke one of its own essential interests only if it coincides with an essential interest of the international community or of its member States" [24, p. 75].

Thus, the content of the norm of Art. 25 of the Draft 2011 is largely a result of the progressive development of the law of international responsibility. While the norm of Art. 25 of the Draft 2001 is its codification.

Conclusions

The 2001 and 2011 Drafts consider necessity as exceptional circumstances in which the state seeks to protect its essential interest from a serious and unavoidable event only through failure to fulfill the relevant international legal obligation, which does not seriously damage the essential interest of the state or states in respect of which the said obligation existed, or the international community as a whole.

The interpretation of the concept of "substantial interest" reveals the content of exceptional circumstances in connection with which the interested party declares the necessity. Although it is evaluative, the ILC has pointed out the importance of examining all circumstances of each individual case. This, according to a number of scientists, allows us to talk about the objectification of the concept of essential interest, in which a revision of its initial assessment is allowed due to the positions of other states, including those that are not directly related to a particular international conflict.

Appealing to the state of necessity by interested wrongdoing subjects (states or international organizations) to avoid international legal responsibility is a generally recognized customary norm of general international law. This is confirmed, among other things, by the practice of international courts, in which they directly state this. Although, as a rule, they do not analyze the relevant evidence of custom, this approach is generally consistent with their own practice of establishing other customs of general international law.

Article 25 of the Draft 2011, which establishes the conditions for appealing to the necessity for IGOs, despite the complete identity of Art. 25 of the Draft 2001, is the result of the progressive development of international law. At the time of the adoption of the Draft 2011 there was not enough practice to take into account the numerous nuances of the behavior of international intergovernmental organizations in the international arena when using necessity. The doctrine indicated possible problems in the application of Art. 25 due to the characteristics of international intergovernmental organizations as secondary subjects of international law. First of all, we are talking about their complete dependence from the wills and interests of their member states.

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