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EDITORS' FOREWORD

The Editorial Team of the journal WISDOM is delighted to present to the scientific community the 28th - the last issue of the journal in 2023. The present issue comprises valuable scholarly insights within the domains of social philosophy, philosophy of education, philosophy of culture and language, and philosophy of law. Within the section PHILOSOPHY OF LAW, a new subsection titled METHODOLOGICAL ASPECTS OF DIGITALIZATION OF LAW has been created based on the content orientation of the articles received. The sub-section includes three articles.

The section BOOK REVIEW presents the monograph of the talented young scientist I. V. Kolosov "The History of Legal Consequentialism: The Effectiveness of Law" (author of the review of the monograph - PhD in Law, Associate Professor Igor MUKIENKO).

In addition to the main scientific articles, the issue contains a congratulatory article dedicated to the 70th anniversary of the Editorial Board member, Doctor of Philosophical Sciences, Professor Kadzhik M. Oganyan.

The geography of the authors is rather broad - Armenia, Belarus, China, Indonesia, Malaysia, Ukraine, United Kingdom and Russia.

The increasing number of citations, references, and mentions of the published materials in various publications assume even more responsibility, inspire more positive motivation among the Editorial Staff and the authors, and testify their value.

The Editorial Board extends its sincerest gratitude to all the authors, reviewers, professional critics, and assessors of the papers involved.

Given the significance of the underlying principle of pluralism over scientific issues and freedom of speech, we should remind that the authors carry primary responsibility for the viewpoints introduced in their papers, which may not necessarily coincide with those of the Editorial Board.

Editorial Board

SOCIAL PHILOSOPHY

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THE PHILOSOPHICAL AND LEGAL ASPECT OF THE UNIFIED INFORMATION AND DIGITAL AREA IN THE EURASIAN ECONOMIC UNION: THE FIFTH FREEDOM OF THE SINGLE MARKET

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Abstract: The article deals with the philosophical and legal foundations of the formation of single information and digital area as one of the contemporary objectives in the Eurasian Economic Union. It is pointed out, that the concept of information society spreads over the integration processes and makes to go beyond traditional approaches to the common market and its four freedoms of movement of goods, services, capital, labor. Freedom of information is the fifth freedom of the common market, and digital agenda is included currently in strategies of many integration associations. However, economic issues are not the only that should be referred to, while implementing the latter. The following elements should shape any information and digital strategy of an integration such as security and data protection, trade and competitiveness, management transparency and accessibility, dispute resolution. To regulate the processes of implementing the digital agenda in the EAEU by 2025, member states have chosen the method of coordination. It is justified to harmonize national policies for the digitalization of the economy and governance, while it is necessary to ensure the digital sovereignty of EAEU states as well as to create a market for their own digital solutions in the region.

Keywords: common market, digitalization, Eurasian Economic Union, freedom of movement, information, regional integration, single economic area.

Introduction

Digitalization and regionalization can be referred to the main trends of the modern world order. The failed globalization has been confidently replaced by the trend of regional integration blocks and organizations (Mikhaliova, 2016; Dadush & Prost, 2023). The economic integration sector, being evidently exposed by the exponential increase in regional trade agreements

(RTAs), proves the tendency for *jus inter regiones*.

The increasing role of the information component in the life of a modern man (*homo informaticus*) has made the concept of *information society* relevant. The importance of information has grown so much that it has become one of the key elements of the noo-environment; while cyber security is one of the key trends in the evolution of the information society. Digital technologies are being introduced widely into different spheres of life. The concept of the digital economy continues to evolve as the transformative power of digital technology grows. It extends beyond e-commerce to include business, communications and services across all industries, including transportation, financial services, manufacturing, education, health care, agriculture, retail, media, entertainment and even culture and the arts. Information and digital era becomes the new civilization challenge.

The information and digital agenda is relevant not only for states, but also for regional integration associations. ASEAN enacted the Digital Masterplan-2025 for both digital competitive economy and digitally inclusive society in 2021. In 2014, the EU launched its Digital Single Market Strategy, seven years after Europe entered the economic and monetary union phase of the Lisbon Treaty.

The Eurasian Economic Union (hereinafter – EAEU, Union) regards the transition to a digital economy as a key driver of economic growth. The prospects and relevance of the digital development of the economies of the EAEU member states are reflected in the main directions of the EAEU Digital Agenda 2025 (EAEU DA), where the digital transformation acts as a key development factor. It presupposed further development not only of the strategic but also of the legal foundations of the sectoral digital transformation under consideration, which should correspond to the EAEU integration model and be aimed at increasing its competitiveness (Shugurov, 2020).

There are mandatory legal acts envisaging the scope of digitalization in the short-term perspective in the EAEU. The Strategic directions for the development of economic integration until 2025 (hereinafter – Strategy-2025) were approved by the Decision of the Supreme Eurasian Economic Council of 11 December 2020. The firth direction of the Strategy-2025 is dedicated to the formation of the Union's digital space, digital infrastructures and ecosystems and includes nine main segments of digital transformation: traceability of goods in the EAEU; cross-border trust space and electronic document circulation; integrated information system of the Union; digital ecosystems (including data turnover, personal data protection); digital transformation in the field of intellectual property, electronic trade; external digital agenda, increasing technical support of digitalization (unimpeded Internet traffic) and improving mechanisms for the development of initiatives and project implementation.

As Mikhail Myasnikovich, the Chairman of the Eurasian Economic Commission pointed out at the V Eurasian Digital Forum EADF-2023, the current year is crucial for digital agenda in the EAEU: the Commission and the member states must solve the serious task of circumscribing the proper functioning of more than 50 business processes, and by the end of 2023, the Commission will create a technical possibility of information exchange between the countries of the Union for 70 of the 78 required common processes, it will enhance the platform solutions for common processes. However, is digitalization still a technology, though primary and innovative, for a common market development, or does freedom of movement for information, data and digital assets become the fifth freedom of the market along with goods, services, capital and labor? Moreover, does informatization and digitalization become a common value for integrated society and, therefore, a common concern for supranational regulation?

Methodology

The methodological basis of the study is the dialectic approach. Digitalization changes not only the territorial boundaries of interaction and cooperation, but also the models of socio-economic relations, making it necessary to form a new architecture of "inter-penetration" of objectified reality and cyberspace. As any phenomenon, digitalization has two sides regarding the development and absorption of technology, which need to be balanced. The doctrinal understanding of how the productivity and competitiveness of factors of production, economic actors in any form depend on the ability to generate, process, safely

and promptly use knowledge-based information, began in the end of the twentieth century (Castells, 1985, 2009).

Today, digital technologies, moving business processes online, the Internet of Things, E-government, and even artificial intelligence – these and many other advances in digitalization are becoming commonplace. New challenges of a derivative order are also emerging – access to digital public goods, the distribution of responsibility for managing Internet use, ethics, cybersecurity (see, e.g., UN General Assembly Resolution A/C.3/74/L.11 "Countering the Use of Information and Communication Technologies for Criminal Purposes"). Therefore, the dualistic approach is applied: to assess the economic benefits through legal norms, as well as to evaluate the scope of informatization and digitalization of regional common markets and societies within them via potential objects of digital agenda.

Comparative-legal and technical-legal methods were used as special research methods to consider and conclude on legal peculiarities of the named processes.

Main Study

The construction of new relationships leads to the most important change in legal reality. The digital component transforms from being a factor, which mediates and influences relations, to one defining them. Digital reality as a qualitatively new type of social relations (Khabriyeva & Chernoghor, 2018). Building a single market in today's world would not only be incomplete without the inclusion of the digital agenda in the legal and organizational matter of integration associations, but also ineffective. Today we speak of a "digital development imperative" (Ovchinnikov & Fatkhi, 2018; Khabriyeva & Chernogor, 2018). The main problem associated with the penetration of digital technology into virtually all areas of society and possible legal difficulties is that technology integrates faster than laws are passed (Rusakova & Frolova, 2022).

As Pankratov notes, there is no sample or unique model of digital transformation of integration associations, but several common patterns can be identified:

- digitalization is a key factor of competitiveness, which can provide cross-border flow of data, speed of response to technological and economic changes, which, in our opinion, reflects only one side of the cross-cutting nature of digital technology,
- qualitatively new processes are created for the activities of the member state bodies, the digital exchange of data online is facilitated, which, in our opinion, belongs to the general characteristics of the digitalization of the state,
- the creation of the digital space of the integration association (single digital market) goes in separate directions - the digitalization of industry, the transformation of national and regional bodies, etc., which are separate fragments, often unrelated and difficult to administer, due to which there are problems of decomposing strategies into separate activities and programs, as well as the problem of the general level of management in the systems,
- digitalization of integration processes is focused primarily on supporting the provision and expanding the use of cross-border digital services and services with online feedback for all participants (citizens, businesses, government agencies) (Pankratov & Givargizova, 2021).

The EAEU DA was launched in 2016, less than two years after the signing of the Treaty on the Eurasian Economic Union. The main directions of implementation of the EAEU DA until 2025 are approved by the decision of the Supreme Eurasian Economic Council of 11.10.2017 № 12. They are implemented taking into consideration the national interests of each of the member states, the level of their economic development, the level of development of national markets, technological features and the state of the digital infrastructure, peculiarities of the regulation of sectors and industries within the digital agenda. It is also noted in the document that the digital transformation of the goods and services market will lead to a significant simplification of trade procedures by going digital, the active use of e-commerce, and the effective implementation and use of "single window" mechanisms in the economy. It requires further harmonization of cross-border e-commerce rules, promotion of digital business, coordination of actions in the field of protection of intellectual property rights and rights of digital market consumers, as well as inclusion of the regulation of

cooperation in the digital economy on the agenda of trade negotiations of the Union with third countries.

Normatively, the EAEU DA is based on the founding Treaty of the EAEU: art. 23 and the Protocol on Information and communication technologies (Annex No 3 to the Treaty of the EAEU, hereinafter – the ICT Protocol). The founding act of the Union sets forth the readiness for the digital transformation of the economy and social relations, based on a number of general and special norms of the Treaty, despite the fact that the text literally uses categories related primarily to "information support" of integration processes and "information interaction".

However, the theory and practice go beyond the concept of mere support. In December 2020, the Prime Minister of the Russian Federation proposed at the First Eurasian Congress that to the four market freedoms should be added one more – the *fifth freedom of movement of information*. The four freedoms are indicated in art.4, art. 28, some other provisions of the Treaty and encounter goods, services, capital and work force (labor) – traditional economic basis for cooperation within a single market.

In 2021, a comprehensive approach on information and digitalization was chosen in the Strategy-2025: from technical equipment issues to unified information systems. The trade and economic nature of the tasks is clearly expressed in the document. The digital component focuses on the economic issues, proving the thesis on the combined and complex nature of the fifth freedom of the common market.

However, it is not the same as the traditional goods or services movement. As well, it is recognized, there is a shift from the work's and workers' flows to the knowledge flows (Manyika et al., 2016). So, digitalization transforms traditional economic background or cooperation and it goes further. The information, data and digital images need to be treated differently, not only as a technology or a means of cooperation, but as a digital transformation of socioeconomic relations in the integration community and, therefore, *a Single Information and Digital Space* should be availed.

1. Analyzing the text of the Treaty of the EAEU, one can conclude that the Union's founding act already uses, including at the level of terms and definitions, the elements of *building a digital society* (Mikhaliova, 2022). The ICT Protocol regulates many issues of electronic document circulation, the use of electronic digital signature. It is necessary to note the already existing experience in the implementation of joint projects in the field of digital economy of the member-states, which are related to industry. These examples include equipping vehicles with the ERA-GLONASS system, introducing an electronic vehicle passport, creating information databases in the field of drug circulation, introducing a mechanism for monitoring the traceability of goods, introducing identification and labeling of certain types of goods, etc.

Generally, these aspects are integral to the construction of cyber-social accounting systems at any level (Domrachyov et al., 2016). The introduction of cybersocial systems represents a new stage in the development of Industry 4.0 and *is critical to innovation and competitive advantage* (Karlik et al., 2019). We agree, that the formation of the "digital" Union and its entry into the era of Industry 4.0 depends largely on the degree of digital transformation of scientific and technological integration (Shugurov, 2020).

2. The Treaty, in addition, lays down another important notion for building a digital society within the framework of the integration association, namely "cross-border trust space". Formation of the trust space is intended for free exchange of data and electronic documents, security of information and telecommunication networks, information security. It is considered as one of the progressive projects in the region (Stupakov, 2019). Functioning of the transboundary trust space is ensured in accordance with the Concept of Using Services and Legally Valid Electronic Documents in Cross-border Information Interaction, approved by Decision of the Eurasian Economic Commission Council of 18.09.2014 No. 73, the Strategy for Development of Cross-border Trust Space, approved by Decision of the Eurasian Economic Commission Board of 27.09.2016 No. 105, the Regulation on Exchange of Electronic Documents in Cross-border Interaction of State Bodies of No. 96 "On Requirements for Creation, Development and Functioning of the Cross-border Confidence Space". An analysis of these documents shows a high level of legal elaboration of the architecture of building and functioning of the transboundary trust space at the supranational level, though with

the assistance of interstate method of cooperation. An important part of success in the implementation of this direction of information interaction will be proper implementation of requirements, contained in these acts, in national segments of an integrated information system, especially in part of *data protection and security*.

The conclusion of an international treaty within the Union on data circulation (planned for 2023) seems to be a positive step in this direction. There is a need for uniform and ultimately unified regulation of data circulation in the EAEU. It is necessary to define clear approaches to the division of data, which information is expedient to exchange within the integration processes, and which information should be stored exclusively in a member state, as well as to develop mechanisms for data security (such as depersonalization), which can help expand the list of information types to be exchanged.

Worth to note the broad and comprehensive nature of a number of definitions in the ICT Protocol. For example, "information protection" is formulated as "adoption and implementation of a set of legal, organizational and technical measures to determine, achieve and maintain confidentiality, integrity and availability of information and means of its processing in order to exclude or minimize unacceptable risks for subjects of information interaction". This definition contains both the principles of data circulation and the basics of information security, and the unity of categories of social (information) and physical (means of its processing) contexts.

At the same time, the formation, for example, of common security protocols for the use of ICTs and the protection of personal data can and must take place promptly and in a *unified manner*, which requires an active legislative position of the Commission and supranational legislative methods. Currently, the Commission is proactive in the introduction of electronic accompanying documents and their recognition in the member states, an integrated system of foreign and mutual trade, a single digital catalog of goods and an ecosystem of digital industrial cooperation; the system of identification and traceability, digital transport corridors, etc.

3. The digitalization of various sectors of the economy on the scale of the integration project should be accompanied by the maintenance of *transparency and accessibility* of integration resources, the creation of unified information and telecommunications networks and the ability to use them by citizens and residents of member states, individuals and legal entities. It is advisable to assign common digital rights and obligations to citizens. The development and consolidation of digital rights and obligations (we emphasize, only in this inseparable connection, because great opportunities of digitalization give rise to great threats) can begin now at the level of the Commission at least in the form of recommendations.

When designing the Single Information and Digital Space, it is necessary to lay the possibility of providing electronic services to individuals and legal entities by the integration bodies. According to Shinkaretskaya and Berman (2019), the governing structures of the future must be digitalized implicitly; it means that public institutions must provide their services electronically whenever possible. By analogy with the processes of G2B and G2Px (elements of e-government), it is advisable to create digital communications in procedures between integration association bodies and businesses, as well as citizens. This will significantly "bring" multilevel actors of integration closer to each other, and make the integration processes more transparent. These and any other issues of digitalization of EAEU bodies' activities require careful planning and legal support, starting from the inclusion of relevant provisions in the acts of primary law of the Union and ending with technical legal acts.

In this regard, it seems necessary to ensure the full implementation of the "prerequisites" of any digital transformation, including the technical equipment of broadband Internet and independent of external operators of databases, information platforms, electronic trading platforms, exchange resources. The involvement of the states and their readiness, technological, organizational and technical, managerial, to implement a common digital agenda is different, though comparatively middle and higher than middle. The EAEU countries are ranked as follows in the Digital Economy Index: Armenia - 75th, Belarus - 32nd, Kazakhstan - 52nd, Kyrgyzstan - 109th, Russia - 45th, Armenia - 70, Kazakhstan - 59, Kyrgyzstan - 97, Russia - 43. Russia - 15 and Kazakhstan - 25 are mentioned in the Global Digital Competitiveness Index.

4. It is similarly important to develop ele-

ments of the EAEU digital strategy and relevant acts aimed, firstly, at the possibility of using digital technologies in the current *dispute resolution mechanism* in the EAEU, and secondly, at qualitatively new procedural regulation in the field of digital circulation, elements of which should include clear legal guarantees of their protection. As part of the first direction, the procedures for applicants to the Court of the EAEU should gradually be brought to a digital standard (e.g., sending any procedural documents by electronic means of communication, using electronic digital signatures) with a step-by-step approach to more complex elements of electronic justice (e.g., creating electronic offices and administering court proceedings using technology, implementing telecommunications technology at various stages of justice administration).

Finally, to implement the digital agenda, an *institutional mechanism should be modified* accordingly. However, we do not support the idea to create the Eurasian Digital Transformation Center with the following functions: design and promotion of a single EAEU architecture and digital sectoral transformation models, design of integration digital processes, coordination of cross-country breakthrough projects of digital transformation of the economy, development of integration digital infrastructure, monitoring of digital development indicators, information law center (Pankratov & Givargizova, 2021). It seems to us that in this form the center may become a bureaucratic layer, which will not contribute to the rapid digitalization of the Eurasian space and the transition to qualitatively new technologies of production and interaction of all actors, but will "distance" the subjects of decision-making and implementation. All these functions should be solved at the level of mobile interstate and inter-branch commissions, integrated business communities with a clear plan of action, activities (such a plan is available, it is necessary to competently decompose it into subtasks in the sectors and at their levels) and strict powers of the Commission in case of non-fulfillment. The latter needs to be elaborated.

Currently, to regulate the processes of implementing the digital agenda, member states have chosen the *method of coordination*. According to the Eurasian Intergovernmental Council Decision No. 1 of February 1, 2019, the mechanism for implementing projects within the digital agenda includes the powers of the Commission Council (action plan, composition of the coordination group, etc.), the Commission Board (terms of reference, etc.), member states (determined by commissioners at the national level), the coordination group (project methodology, coordination, monitoring, reports) and has a project nature (consortium as an association of member state organizations to implement a specific project). This project approach and the coordinating role of the Commission certainly reflect the dynamics of legal relations.

At the same time, not only an organizational and legal mechanism, but also *a regulatory framework for coordinated digitalization and harmonization in information and digital sphere is needed*.

The Treaty differentiates three types of policy and therefore measures which can be applicable for regulation. "Unified policy" means an application of uniform legal regulation by the member states, including on the basis of decisions of the bodies of the Union within their authority; "harmonized policy" refers to the harmonization of legal regulation, including on the basis of decisions of the organs of the Union, to the extent necessary to achieve the objectives of the Union provided for in this Treaty; and "coordinated policy" involves cooperation by the Member States based on common approaches approved within the organs of the Union, necessary to achieve the objectives of the Union provided for in this Treaty (art. 2 of the Treaty).

The lack of a coordinated policy in the digital sphere may be an obstacle to achieving synergies in the development of the digital economies of the member states and the digital Union (Inshakova & Goncharov, 2023). It is necessary to take into account the spill-over effects of digitalization in all areas of integration - not only information support, but also the forecast impact of "digitization" of entire sectors of the economy. So, according to economists' calculations, based also on the comparative experience of other countries and integration associations, "as a result of the implementation of the "Digital Agenda" of the EAEU states, the achievement of targets of up to 3% of employment in the ICT sector for the EAEU member states may ensure an increase in the employment rate to 2.4% by 2025" (Yeryomenko, 2021). These trends and forecasts should be kept in mind for the devel-

opment of a common labor market in the EAEU, estimates of migration flows within the Union, domestic investment, etc.

In this connection, we believe that there is no need to unify the digital agenda within the member states in all aspects, as it is proposed (Yeryomenko, 2021), it is outlined in all states in its own way. However, coordinated policy is not enough for a current objectives of development, it is certainly necessary to synchronize national efforts in digitalization of economy and go beyond coordination. In this respect, the proposals to *harmonize national policies on the digitalization* of the economy and governance sound more justified (Dyatlov & Nuyanzin, 2019). In the same time, it is necessary to ensure the digital sovereignty of EAEU states and create a large market for their own electronic solutions in the region, especially in the areas of information security, big data and artificial intelligence. A number of areas should be left within national regulation to localize cyber threats (Kondratyeva, 2019). Therefore, a combination of policies and regulatory methods seems appropriate for the sphere of information and digitalization.

Conclusion

Digital component is not only a means of technological development of the traditional freedoms of the common market, but also an independent object of regulation in the framework of integration association. With the penetration of digital and information technology in various spheres, one of the central tasks is the formation of a Single Information and Digital Space. We point out four main elements in forming the Single Information and Digital Space in an integration organization, the EAEU particularly: security and data protection; trade and competitiveness; management transparency and accessibility; dispute resolution. There should be different approaches and methods in achieving results in each of them. However, the method of coordinated policy is not enough to achieve the objectives of the digitalized economy in the EAEU. A combination of policies and regulatory methods are efficient to digital matters within the Union: harmonization is necessary for data protection, a unified approach with regard to trade matters, coordination is relevant in information security sphere with the aim to strengthen the information and digital sovereignty of the member-states. Institutional and regulatory digitalized modifications should enhance accessibility and efficient decision-making.

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THE LOSS OF INDIVIDUALITY IN WAR: EXISTENTIALIST APPROACH

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Abstract: The article explores the issue of loss of individuality in the war according to theoretical perceptions of existentialist philosophers. The problem is observed and discussed, focusing mainly on the cases of two world wars that emerged in the 20th century. These wars had a huge global impact not only on social and political life worldwide but also on the philosophical perceptions of human life valorization and existence.

Based on the comparative analysis of the philosophical views of different thinkers, the article reveals the loss of human individuality both in social conditions and on the ontological level.

It is concluded that if the philosophy of World War I observed death as a unifying factor, including an equalization that excludes the individual, then existentialism, as a condition of the reality of widespread death, considers it as a phenomenon that opens the spiritual eye of a person to the reality of death. As the development of technology and wars are closely related, world wars represent a direct threat by primitive nations that assimilate and use technology to absorb nations endowed with a peace-loving and creative spirit. This is a big threat to humanity in terms of its dehumanization and destruction.

Keywords: individuality, existentialism, war, dehumanization, social equalization, a spirit of abstraction, anthropocentrism.

In the reflection of intellectuals, World War I followed the logic of previous centuries' wars until the scale of the wars in the new era and the tragedy brought by the newest military equipment were not fully realized. For this reason, in the philosophy of World War I, "the concepts of state, nation, and national dignity were still fetishized (Fromm, 1973, p. 211). On the one hand, the war was perceived by many intellectuals as a condition for national consolidation, unity, and an awakening of the national spirit, and on the other hand, as a condition for showing heroism. In fact, World War I was still a pan-European war during which "the connection between tech-

nology and destructiveness was not yet fully expressed. For example, airplanes were bombed moderately, and tanks were still the continuation of traditional weapons. However, the Second World War brought about a decisive change: the airplane became a means of mass destruction (Fromm, 1973, pp. 403-404). In this respect, World War II showed that two important factors, the unprecedented geographical coverage of war and the use of weapons of mass destruction, demand not only a re-interpretation of the ideal of national unity and heroism but also of new phenomena "unknown" to philosophy, caused by wars, in general, and modern wars, in particular. Moreover, this is how the nature of collectivity and heroism change and how both deny the individual. At the beginning of World War I, the demand to subordinate the individual spirit to the national one during the war was common in the understanding of "public" philosophy. Characteristically, Erich von Ludendorff (1919), the author of the concept of total war, points out that "Every German has to act like a man and selflessly obey the national order as well as forget his individuality" (p. 620). The condition for the expression of national spirit is the suppression of individuality. However, how in times of total war or under conditions of militarized reality, the consolidation negates the individual, and how does the character of heroism, which seemingly enables the expression of the individual, change? To this extent, we have to turn to the polemic of 20th-century German and French existentialism and philosophical perception of war, which, as a conglomerate of somewhat intertwined philosophical and literary motifs, was nothing more than a philosophical reaction to the world war and what the world war brought to life and revealed (the World War II made more obvious all the accumulated problems and phenomena of the industry and technology development) new framework of phenomena and questions to be investigated. German and French philosophy of the World War II tried to comprehend the war in terms of ontology or phenomenological ontology, recognizing the shortcomings of the historical (Henri Bergson) and metaphysical (Max Scheler, Paul Natorp) methods used to explain the war during the World War I: a factual analysis, on the one hand, and metaphysical abstraction, on the other hand.

From the beginning to the end of the World War I, in the first series of reports presented to the French Academy in 1914, Henri Bergson, examining the historical and political reasons of the war origins, tried to explain the militarization of Germany under the influence of Prussian militarism and the demonic image of Bismarck. This report of Bergson, as it is showcased in CaterinaZanfi's"Bergson and German Philosophy:[1] 1907-1932", has found a great response among German intellectuals. Many philosophers and sociologists such as Gerhart Hauptmann, Thomas Mann, Fritz Mauthner, Georg Simmel, Max Scheler, and others reacted to it. Mann, for example, in his article "Thoughts during the War" accused French intellectuals of interpreting the war as a struggle of civilization against "barbarism" (Bergson used this very word), and in another article, "Apolitical Reflections" (1918), contrasted the moral and ethical aspects of German civilization to the humanist spirit of French democratic politics, mocking the French view of any success of the Entente during the war as a triumph of spirit over matter. M. Scheler's position about Bergson was moderate. According to Scheler, Bergson unwittingly paid tribute to the anti-German "military psychosis". The reaction of Simmel, representative of the "philosophy of life", was also relatively moderate. In Bergson's personality, he saw with regret the Frenchman's "hopeless inability to understand the German spirit" (Zanfi, 2020, p. 237), and only another great representative of the "philosophy of life,"Keyserling, welcomed the great French philosopher's stance and his will to keep"the intellectual honesty" (Zanfi, 2020, p. 238).

It is interesting that during World War I andWorld War II, the "philosophy of life" and existentialism were influenced by the former (in some sense, existentialism can be considered as "philosophical impressionism" (Rickert, 1920, pp. 3-4) were reconciled in the context of German and French philosophical confrontation on the issue of war, a circumstance that substantiates the truth of these two methods of philosophical approaches of understanding war.

In this context, S. Luft points out that Bergson's approach was historical, while even the most thorough examination of the historical sources and causes of war cannot claim to make

[1] See more in detail in the following work: Zanfi, 2020.

sense of the phenomenon of war. That's why Scheler and Natorp were right that historians, social scientists, and sociologists cannot explain war apart from examining the causes of specific wars, which by its nature is a "metaphysical event" and can only have a metaphysical justification (Luft, 2007, p. 4).

Scheler, who considered the war as just and necessary event, in the treatise "The Metaphysics of War," emphasized it from the viewpoint of national spirit rise. According to him, "During the war, the reality of the nation becomes actually visible and tangible to the spiritual eye, and in terms of peace, it is the individual's turn to justify his reality as a condition emerged to justify his own existence". In this regard, Scheler highlights that everyone feels that the existence of the nation becomes more essential and obvious than the existence of his own person. And everyone feels that he/she has to practically justify and win his existence in front of the nation as a merit and not like it was before when the nation had to justify itself in front of the individual. The significance of war's metaphysical cognition lies precisely in this context (Scheler, 1917, pp. 120-121).

After Germany's defeat in World War I, however, Scheler's worldview underwent a significant change. According to him, although the war unites the representatives of the same nation around the national spirit, this unification is destined to be short-lived.

In general, the transformations in the worldview of the great theorist of the World War I German philosophy express the tendency of extinguishing the common enthusiasm of the philosophy, art and literature of the beginning of the World War I (let's remember the futurist symbols praising war, in which it was even considered the health care of the world. "Long live war, only it can cleanse the world, glory to arms, love for the motherland, the destructive power of anarchism, the highest Ideal of destroying everything," wrote Marinetti (1986, p. 160) in the first of futurism manifesto // expressing the militant spirit of the time) and the rooting and widespread of the existentialist worldview. Scheler himself, in his later work "Philosophical Worldview," even refuses the idea of considering the nation as the basis of true identification. If in the "Metaphysics of War," the ideal is the nation, the rise of national spirit, and the collective person (geistige Gesamtperson), then in the "Philosophical worldview" the "realm of the absolute" and what replaces God, including the nation, should be considered as an idol. "A human being can fill that sphere of absolute essence and perfect goodness without noticing the finite things and goods with which he deals in his life, as if they were absolute; so one can do with money, or with a nation, or with every person. And that is fetishism and idolatry. If a human being has to get out of that mental state, then he must learn two things: first, thanks to self-analysis, he must realize his own idol that has occupied the place of the absolute being and the perfect good. Then, he has to smash and destroy it, that is, return the extremely adored object to its relative place in a finite world. At that time, the realm of the absolute appears again. And only in this case the human being is able to independently philosophize about the absolute" (Scheler, 1968, p. 5).

With this observation, Scheler already comes closer to the spirit of Christian existentialism, even if both his metaphysical interpretation of war and this observation about the "realm of the absolute" ignore the individual spirit, which is extremely valuable in Christian existentialism and particularly, for Gabriel Marcel - a prominent philosopher close to Catholic personalism. Like Jean-Paul Sartre, Marcel tried to personify, as individual destinies, what cannot be expressed through philosophy. The humanism of existentialism lies in this anthropocentrism and valorization of the individual (it is not in vain that Sartre tries to prove this in his essay "Existentialism is a Humanism")[2]. German and French existentialism differ significantly from each other, and this difference lies in the permanent difference between German and French philosophy in general, which Germaine de Staël has analyzed. According to him, the worldview of moral and social orientation is rooted in French philosophy, according to which the person and society are the core of the universe. The scope of interests of French philosophy is related to the problems of practical reason, while German philosophy is characterized by a theoretical approach to the world and the coordination of ideas aimed at the cosmic totality and the understanding of the hidden beginning of existence. French philosophic thought is social, nay more personalistic, it ema-

[2] See more in detail in the following work: Sartre, 1996.

nates from human and is addressed to human (Staël de, 1856). "In Germany they study books, in France they study human" (Staël de, 1856, p. 81). The same applies to the German and French branches of existentialism. German existentialism tries to create a system or make theoretical generalizations; French existentialism tries to observe a person from the inside and is characterized by the tendency of individual reliving of war and empirical meaning. The two great religious and atheistic existentialists, Gabriel Marcel and Jean-Paul Sartre, were deeply humanistic thinkers. Karl Jaspers's philosophy is also humanistic, while Martin Heidegger's entire philosophy, as Emmanuel Faye tried to substantiate it in his detailed and comprehensive work "Heidegger: The Introduction of Nazism into Philosophy"[3], is adapted to the Nazi ideology.

Referring to Heidegger's main work "Being and Time" (Heidegger is widely regarded as the greatest philosopher of the twentieth century who has collaborated with the Nazis), Emmanuel Faye (2021) draws attention first to his tendency to abandon "any philosophy of individual existence" and observes that it is not difficult to understand why Descartes' philosophy became the main target of that country (p. 71). The main category of existentialism that is noted as "existence" is quite vague in Heidegger's who rejects any certainty that can be based on the acceptance of foreign cultures or a universal understanding of existence.

Heidegger rejects any philosophy of self and human individuality, contrasting the self reduced to the level of "formal specification" with the concept of identity (Selbst), which contains nothing individual and which is given to man as destiny (Schicksal), which in its turn, can only be imaginable "in the temporality and historicity of existence". That destiny itself is the "happening" (Geschehen), a "state" (Geschick), which "in no way consists of individual destinies, just as being-with-others cannot be understood as the co-presence of several subjects". According to him, in true existence there is no individual existence. It is a "general state" (Geschick) included in "the coexistence and the realization of the nation" (das Geschehen der Gemeinschaft, des Volkes) (Faye, 2021, pp. 70-72). Faye insists that the hidden and real project of Heidegger's major work was the elimination of individual thinking to make room for a "radical individuation" (radikalste individuation), realized not in the individual but in the organic inseparability of the nation's coexistence (Faye, 2021, p. 73).

It is clear that the group spirit liberated from the individual is controllable. And this was achieved by fascism through its ideology, which was also supported by philosophy, including Heidegger. Quoting Heraclitus in one of his lectures propagating Nazism, he directly declares the imperative to win the lost war in a spiritual struggle. "We are obliged to "win this war with spirit, that is, the *struggle* is the *most precious law* of our existence". The struggle is "the greatest test of existence". Faye showcases that Heidegger's philosophy constantly uses the plural for the head of state and that the concepts of struggle (Kampf) and war (Krieg) are identical in his understanding (Faye, 2021, pp. 198-199). Accordingly, the ultimate goal of that existential struggle is not the unification of the German higher national spirit or the national spirit forging in the struggle, as for Scheler (whose influence on Heidegger is undeniable), but decided once and for all the outcome of the dilemma of becoming a ruler or a slave.

For Scheler, the war performed an existentially important function in addition to uniting the nation, and from this perspective, Scheler's philosophical anthropology is closer to human being and personality than Heidegger's existentialism. Scheler (1917) points out that "After overcoming the first horror of sharpening bullets, the genius of war brings our spiritual eye closer to death. It reconciles the innate thirst for life that hides death from us with the terrible reality of death" (pp. 124-125). Indeed, as Fritz Mauthner (1914) observed in his essay "War and Philosophy", "the philosophy of war teaches us to discover the meaning of death"(p. 10). Death is a key issue in the philosophy of existentialism. In this regard, Emmanuel Mounier (1948) states that death cannot be forgotten, taking into account that it is the sad concern of existentialism (p. 38). In the ontological sense, "war does not change anything in the loneliness of a person against death" (Hermans, 2018, p. 128), but in the conditions of the ubiquity of war and death, the meaning of death is revealed. Death is even perceived as a gift of war and the whole range of existentialist motifs revolves around the relationship with death, the

[3] See more in detail in the following work: Faye, 2021.

axis of death (often abstracted from the historical context). In a certain sense, death itself, as a rebellion against the ultimate truth of human life, can also become the hidden impetus for the manifestation of human personality and heroism during war, whether we consider it from the perspective of religious or atheistic existentialism. For religious existentialism, it is a spiritual triumph; a condition of immortality, and for atheistic existentialism, which accepts the absurdity of existence, heroism is an adventure. If existence is meaningless and absurd, then what difference does it make when, from what, how and where a person will die? For AndreMalraux's adventurous heroes and for Malraux (1928, 1930, 1937) himself, who voluntarily participated in the resistance movement with his own airplane, the life was a bet, and it didn't matter where that bet would take place: going to the front voluntarily, robbing the Khmer templeor participating in the Canton People's Revolution[4]. The complete lack of belief in the afterlife in the conditions of the ubiquity of death and the worthlessness of life can make the struggle and its heroic outcome truly hopeless.

Existentialism tries to understand the person facing death, in a "borderline situation" and motivated by self-knowledge. The war is a large-scale "borderline situation". For person, the war creates such situations, in which he can no longer avoid self-knowledge as in peacetime. And in this sense, in contrast to the existentialism of metaphysics, which emphasizes the factor of consolidation around the national spirit, war is perceived as a gift, that is, not a nation, but a person, which needs to be observed from the inside. Meanwhile, the metaphysical interpretation of war is abstracted from human being and his personality. Unlike the approaches of German metaphysics, French existentialism starts from the ideal of human inimitability, individuality and uniqueness. Jerzy Kosak, a Polish researcher of the philosophy and literature of existentialism, presents Gabriel Marcel's existentialism with these general lines. He rightly states that according to Marcel, the human as a person is one of many. Partly, he is an element to be observed and measured from the outside. He is a part of society, but as an individual, he is unique, a unique spiritual existence that is absolute to any objective and social reality, as well as compared to any other human personality. As an individual, person is always unique and it is impossible to observe him only from the outside, considering him as an element of the general or whole: family, class, state, nation or humanity (Kossak, 1980, pp. 132-133). Marcel opposes the very metaphysical abstraction and encroachment on individuality in war. In his article "The Spirit of Abstraction as a Factor in War" directly opposing Scheler and describing some of the manifestations of the spirit of abstraction in wartime, he writes: "Once the emotional basis of the spirit of abstraction is recognized, it becomes clear that it must be placed at the basis of the horrors of any war and the understandings associated with them. The most important of them is the following: when I am required (by a state, a party, a faction, or a religious sect) to take part in military operations against the people that I have to demolish, I immediately lose the consciousness of the individual reality regarding the creature I am compelled to kill (Marcel, 2018, pp. 120-121).

The spirit of abstraction radically changes the perception of heroism. In heroism, combining the strength of body and spirit, Scheler (1917) saw not paganism aimed at earthly glory, but a combination of Christian suffering and chivalry, united by self-sacrifice and rapprochement with God (p. 125). Marcel, answering the question "is heroism itself a value?" writes: "What do they want to say when they attribute value to heroism itself?" It seems obvious to me that value and significance are associated with a certain excitement which is a completely subjective feeling that can be extracted by the one who seeks it. The hierarchy would be justified here only if understandings of a different order were taken as a basis, which had nothing to do with either heroism or passion; for example, the understanding of public benefit. While, according to Marcel, the public benefit belongs to the class of inferior idols and the heroism is heroification only when it is the heroism of a martyr. Under the concept of martyr he understands "witness" (Marcel, 2007, p. 278).

But in this sense, both Scheler and Marcel still follow the logic of previous centuries' wars nature. Heroism, whatever perception is put under this concept, could be understood as a way of showing individuality during war, but total war

[4] See more in detail in Marlaux's following books: Malraux, 1928, 1930, 1937.

changes the nature of heroism, and therefore its reliving, which is, in fact, the result of technical wars.

How the "spirit of abstraction" manifests itself in the age of weapons of mass destruction is well illustrated in an example cited by Karl Jaspers, in the following words of an interview given at the awarding of a young American lieutenant for heroism after the World War II: "I feel like a cogwheel in a huge infernal machine," admitted the lieutenant, whose name Jaspers probably deliberately does not mention. The more I think about it, the more I imagine that since the day I was born I have always been a cogwheel in one mechanism or another. Every time I tried to do what I wanted, something incomparably bigger than me appeared in front of me which took me to another place predetermined for me" (Jaspers, 2017, p. 109). This means that in the conditions of war, the possibility of the manifestation of human personality comes to the fore, intensifying the reliving of powerlessness to manifest that personality. A person realizes that "heroism" is only a matter of instruction and mechanized execution, in which the most important component of the feat of self-sacrifice is missing, that is, there is no personal sacrifice in heroism. And we will not be mistaken if we say that the sacrifice of the personal is the way to gain the individual. A person realizes the deep inconsistency between the state awards and public opinion that glorify him and his reliving of "heroism". And that is the reason why Claude Robert Eatherly, who dropped an atomic bomb on Hiroshima in 1945, could not consider himself a hero despite the attempts to glorify himself and, even realizing the real consequences of his action, considered himself a criminal, demanding to be sentenced to prison instead of being made a hero. Both the case of the lieutenant mentioned by Jaspers and Eatherly's case vividly showcase that the de-heroization of "heroism" in modern wars is the equivalent to subjective reliving of objective realities.

Indeed, there can be no feat and heroism in such an act, and awarding the title of hero for such an act not only testifies to the terrible nature of the "spirit of abstraction" in wars, but also to the transformation of public perceptions. In this regard, Marcel writes "Whatever attempts have been made to justify war or to see even a certain spiritual value in it, it is necessary to state that war in its current form is a sin. And at the same time we have to admit that modern warfare is the work of technicians; on the one hand it is characterized by the possibility of exterminating an entire population of people without discrimination of age and sex, on the other hand by the fact that it is carried out by a small circle of people with formidable weapons and directing operations from the bunkers or their laboratories. One way or another, the destinies of war and technology are now inextricably linked, so it can be argued that in the current era, what contributes to the build-up of technical capabilities is aimed at making war even more destructive, at the same time forcing it to become a means of suicide for mankind (Marcel, 2018, p. 74).

Erich Fromm rightly gives a psychological description of this phenomenon in his book "The Sane Society". "In modern war, one individual can cause the destruction of hundreds of thousands of men, women and children. He could do so by pushing a button; he may not feel the emotional impact of what he is doing, since he does not see, does not know the people whom he kills; it is almost as if his act of pushing the button and their death had no real connection. The same man would probably be incapable of even slapping, not to speak of killing, a helpless person. In the latter case, the concrete situation arouses in him a conscience reaction common to all normal men; in the former, there is no such reaction, because the act and his object are alienated from the doer, his act is not his anymore, but has, so to speak, a life and a responsibility of its own" (Fromm, 2001, p. 116).

In "The Anatomy of Human Destructiveness", this phenomenon is described in more detail and explained using the category of alienation common to Marxism and existentialism: "The pilots who dropped the bombs hardly thought that thousands of people were killed in a matter of minutes... They hardly realized that they were dealing with the enemy, that they were killing living people. Their task was to precisely maintain the complex machine according to the flight plan. At the intellectual level, of course, it was clear to them that as a result of their action, thousands, maybe hundreds of thousands of people perished in the fire or ruins, but at the emotional level, they hardly understood it and, as paradoxical as it may seem, they did not even care. And that's why many of them did not feel

responsible for their actions, which were actually the greatest cruelty in history towards humanity. Modern air warfare follows the logic of modern mechanized production, in which both engineers and workers are completely alienated from the results of their work. According to the general plan of production and management, they carry out a technical assignment without seeing the final product, and even if they see it, it does not concern them directly, they do not feel responsible for it, it is beyond their scope of responsibility" (Fromm, 1973, p. 404).

This is how the "spirit of abstraction" observed by Marcel, works in modern wars. The victims only become a number. Dead from the bombing, each of them was a bearer of an individual existence, and they are added up and turned into a *digital abstraction* that shows the true value of human life and individuality in a modern world where self-determination, equality, state sovereignty and other concepts are still in circulation. "One can find such principles," writes Jaspers, "which as such are comprehensible to human (such as Kant's principle of Perpetual Peace). The concepts of self-determination, equality, and state sovereignty become relative by losing their absolute meaning. It is possible to prove that the total state and total war contradict natural law because in them the means and prerequisites of human existence become an ultimate goal, or because the absolutization of the means leads to the destruction of the meaning of the whole and to the destruction of human rights (Jaspers, 2017, p. 186). Of course, these phenomena are more profound and not caused only by the war. Wars are simply an occasion for the manifestation of symptoms of human, public, national and civilizational diseases. In this sense, the mechanization of human, his anonymity, dehumanization, deprivation of rights, suppression of human dignity and individuality, described objectively and in detail in Sartre's "War Diaries: Notebooks from a Phony War"[5] are not a consequence of war, but phenomena revealed during war. And world wars revealed these universal problems. Humanity is becoming more and more subject to one common fate. In addition to the ontological dimension, the equalization and the rejection of the individual brought by the war is also expressed in the symbolism of social life, whether it is a military uniform or a monument to an unknown soldier that became popular after the First World War. Referring to B. Alexander, Lunkov rightly noticed that death unites and equalizes people. War makes the equality of humans even more evident in the face of death and in a large sense; it eliminates the individual difference in their destinies (Lunkov, 2019, p. 36). According to Sartre (2002) the war is collectivization (p. 18). In a certain sense, he enters into polemics with Heidegger. If for the latter, the meaning of war is the national consolidation, then for Sartre, collectivization has a negative meaning. In case of ethnic war, it may be fair to claim that the "masses" turn into a nation in a positive sense, but in a total war, and as Jaspers observes, since the World War II humanity has entered the globalization stage of history when both the national and the individual factors decrease (Jaspers, 2017, p. 122).

In any case, war is a struggle for the imposition of one's culture to others or a preservation of national identity. The deriving of the naturalness of war from the law of nature is not a new problem in philosophy. Total war is an existential struggle and it becomes an occasion for the more aggressive species to gain the privilege of challenging the right to exist of the creative and peace-loving species. In this regard, it has to be emphasized that Heidegger's identification of struggle and war is dangerous not in itself but as propaganda. Jaspers makes an important warning: primitive nations easily adopt and use technology and "present a formidable threat to nations with a creative spirit" (Jaspers, 2017, p. 195).

Total war can also be compared to faceless evil, a major natural disaster, or an epidemic Sartre in his "War Diaries" talks about reliving war as plague and Albert Camus in "The Plague"[6] defines the epidemic as a metaphor for total war against which human is already powerless, although he brought the technique to life himself (Jaspers observes that inventors are "simply functionaries in the chain of an anonymous creative process (Jaspers, 2017, p. 96)) with the power of his spirit that has replaced the nature or become "second nature". It has gone out of control,

[5] See more in detail in Sartre's following work: Sartre, 2002.

[6] See more in detail in following books: Sartre, 2002; Camus, 1947.

and the collective consciousness of humanity has not yet come to the awareness of the danger of this unstoppability. "There is a danger," Jaspers writes, "that humans will suffocate in his *second nature* (emphasis is ours) that he creates with technology. However, in his relation with invincible nature, he constantly tries to maintain his existence through hard work and introduces himself as incomparably free" (Jaspers, 2017, p. 97). Indeed, the development of technology, ruling over nature, does not lead to the liberation of humans from the power of nature but to the destruction of nature and of the human himself.

Quoting some of Jacob Burckhardt's observations on the prediction of the loss of individuality, Jaspers cites a letter from him written in 1872 which states that in the future, "the ideal of life will become the military order" (Jaspers, 2017, p. 137). And how the individuality is suppressed in a military order is best described by Sartre in "War Diaries: Notebooks from a Phony War", when he reveals in detail all the phenomena associated with collectivization in militarized reality, the meaning of joint performance of various actions and outlines how soldiers take care of their needs in a group by generalizing, "We are in a constant state of nakedness towards each other, and it is not the nakedness of an athlete, but of a snail: a nudity-weakness, slimy and unattractive" (Sartre, 2002, p. 24). Sartre shows how a person is deprived of opportunities in a militarized reality. Opportunities turn into a "reflection of opportunities" for a soldier who has "lost his individual human temperament", for example, a captain who has only an anonymous function to instruct, transport and command. In these conditions, the individual is totally lost (Sartre, 2002, p. 28). He compares the soldier to a patient who has been deprived of his own opportunities and is dependent on the will of others. Sartre (2002) describes in detail this *objectification* and *dehumanization* of a person accompanied by inner silence (pp. 26-27). According to him, the person turns into an object, he is treated as a material (when loading and moving like sheets of tin or barrels (Sartre, 2002, p. 23). At best, he is "treated as a machine" that works like a laborer, but that work is completely unproductive" (Sartre, 2002, pp. 22-23). It is empty and does not bring any joy to the person because its deepest meaning is "in nothingness and death. The soldier is not exploited, but more than a worker, he is kept as a machine that must be provided with the most necessary things: clothes, food, and a place to sleep. All these things are not provided to him to be pleased but exclusively to maintain his existence and ensure his operation. Thus, the person becomes his own anonymous function.

Consequently, it can be argued that the war itself is not the cause of individuality deprivation, turning a person into a faceless mass, or his *social equalization*, but the forms of collectivization, be it fascism, world war, or socialism. "War is socialism," writes Sartre (2002), "it equalizes individual human property to zero and replaces it with collective property" (p. 17). War is a concentration camp (any "ism" or ideology implies the subordination of the individual spirit to the group spirit). Essentially, the emergence and collision of these two collectivizations (fascism and socialism), these two poles, the most massive in human history (turned into brilliant metaphors in Eugene Ionesco's "Rhinoceros" and George Orwell's "Animal Farm")[7] is not accidental. In the book "The Origins and Goal of History", Jaspers also describes the process of transformation of humanity into a mass, the process of deprivation and the illusion of the acquisition of individual will. "The mass is becoming more and more homogeneous," he writes and adds. "The mass is becoming a determining factor." The individual is now more defenseless than ever, but as an individual member of the crowd, he seems to gain a will. Meanwhile, the will cannot be manifested in a faceless mass. It is awakened and guided by propaganda. The masses need ideas and slogans" (Jaspers, 2017, p. 123). In this respect, Mauthner (1914) asks in his essay "War and Philosophy" that how is it possible to philosophize about death when slogans and manifestos falsify reality? (p. 10). As for Jaspers (2017), he asks in the same spirit: how is it possible to philosophize about individuality when "reality forces man to be a mass" (p. 124). The problem becomes more complicated in the case of rejection of societal resistance and intellectual revolt. And if, at the beginning of the World War I, a German philosopher, HellmuthFalkenfeld, in a letter sent from the front, could write that Kant's third antinomy is more important than the entire world war and

[7] See more in detail in following books: Ionesco, 1976; Orwell, 2004.

"war is related to philosophy in the same way that sensibility is related to reason" (Safranski, 2005, p. 92), then in the World War II, any thinker couldn't allow himself such an expression of cynicism. "Do not even hope that in the reality of war you will be able to flee to noble and spiritual realms", Sartre warns us and ironically remarks that "the world of the spirit is carefully prepared for you. This is a world, a sacred world of strict discipline and protocol, respect and obedience to orders to stand guard" (Sartre, 2002, p. 25).

In this book, we see the tragedy of an intellectual seeking the manifestation of his individuality in a militarized reality. First of all, the author is consoled by a friend's observation that "during the 1914 war, most people were only concerned about how to present themselves as men" (Sartre, 2002, pp. 20-21). Apparently, realizing that "man" is a general concept and a gender classification. Therefore, masculinity is not a form of expression of individuality. Sartre (2002) writes that "at least this formulation replaces the collective slogans with an obligation to respect one's individuality (p. 21). The war is considered for him a source of a certain experience and a reality of individual biography (Sartre, 2002, p. 21), which is truly individual for a philosopher or a writer.

Conclusion

During World War I, the philosophy of war mostly fetishized the ideas of the rise and awakening of a nation, national spirit, and unity. The philosophy preceding World War II valued the duty of an individual to justify himself before the nation, considering heroism as a way of demonstrating individuality (theism: Max Scheler) and in some cases, affirming the ideal of the collective person, even denying the individual spirit (atheism: Martin Heidegger).

Contrasted with the metaphysical meaning of war that ignores the individual in German philosophy, existentialism, particularly its French branch, strives for anthropocentrism and valorization of the individual. In this respect, according to the religious existentialist Gabriel Marcel, man as a social person is an element to be observed and measured from the outside, but as an individual he is a remarkable and unique spiritual existence. And this spiritual existence is absolute in any material and social reality and compared to any other human personality.

Instead of the metaphysics of war that idealizes national unity, the existentialism of World War II observes war as a social phenomenon, as a collectivization that becomes a condition for suppression and loss of human individuality. From a homogeneous mass in a peaceful situation, in which he seemingly only showed will, in a militarized reality, a person turns into an entity that is subject to military order and is lacking opportunities, whose individual spirit is subordinated to the collective spirit. As a result of this collectivization, he experiences himself as a selfless substance or object, an anonymous function or a working machine, whose work is unproductive and aimed at destruction and annihilation. In order to destroy others, he needs labels: fascist, anti-fascist, communist, etc., which lead to the abstraction of others from the individual reality, which Marcel calls "the spirit of abstraction".

A soldier who uses a weapon of mass destruction is alienated not only from the emotional experience of his action, but also from his victims, who are transformed and perceived as a digital abstraction. He is alienated from the final result of his activities or actions. This means that World War II simply brought up even more clearly the universal problems already observed in philosophy: the connection between the transformation of humans into a mass and the loss of individuality, the development of technology, and the alienation of a person. And since World War II marks a turning point for the globalization of history, and the development of technology and wars are closely related, world wars represent a direct threat by primitive nations that easily assimilate and use technology to absorb nations endowed with a peace-loving and creative spirit. This is also a big threat to humanity in terms of dehumanization and destruction.

By assuming the existentialists' general assessment and their position on the discussed problem, it is argued that the wide spread of the existentialist worldview in 20th century, the attempt of an existential-humanistic understanding of war, and the warnings about the danger and consequences of a possible world war were not able to create a viable and functional value system which would be based on the anti-war ideal of individual (and national) identity. Even in the

1st quarter of 21st century this trend still persists because the conflicting nature and interests of the mankind prevail on universal humanistic values.

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THE POTENTIAL OF DIASPORA SYSTEM-BUILDING INVESTMENTS IN HOMELAND

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Abstract: The problem of Diaspora investments is of great importance in research and policy development circles, but this demand does not strengthen by comprehensive research on the problems that have arisen. In these spheres, we need to emphasize attention to the problems of targeted investments in the home state and its system-building potential.

This paper discusses the opportunities and limitations that form the framework for investments from the Diaspora to Armenia. The work aims to understand whether the investments from Diaspora could have system-building potential and how it impacts the homeland. In this connection, such questions are asked as to what motivates these investments to be made, within the framework of what policy, where, and how are the investments incorporated and what future effects they have.

Keywords: diaspora, homeland, investments, economy, network, ethnicity, capital.

Introduction

Armenia has a large diaspora compared to the population of the country. This is an important feature for Armenia and can become the basis for a new momentum of development. Having a great potential for active and entrepreneurial compatriots with high working skills and abilities outside the borders of Armenia, the Armenian diaspora becomes a unique potential for the development of Armenia.

Especially in the post-war period, in the context of economic systemic problems, the foregoing is one of the main factors in strengthening the socio-economic relationship between Armenia and the Diaspora and one of the conditions for the development of entrepreneurship in Armenia.

The involvement of Diaspora Armenian entrepreneurs in the economy of Armenia can be manifested not only through direct investment, but also through the formation of links with foreign financial institutions, trade relations (especially exports) and the promotion of foreign investment in the Armenian economy.

Diaspora participation in the economic life of Armenia is characterized mainly by charitable activities, such as large infrastructure projects in the field of road construction, etc. However, Diaspora capital in the non-financial dimension, such as knowledge, skills, business connections,

etc., has been poorly used to build a new entrepreneurial culture in Armenia and to transfer international experience to Armenia.

There have been individual cases of direct investment by individuals from the diaspora, mainly in the service sector, or small projects are implemented with relatives in their places of origin (Avetisyan, 2023).

Cases of the institutional nature of entrepreneurship from Diaspora to Armenia are a special subject for study and indicate the need to develop new projects.

With every crisis, the demand for improvement of the investment policy, in particular, the investment policy from the Diaspora is activated in Armenia. In such conditions, the systemic and institutional gaps in the country, as well as the gaps in Armenia-Diaspora relations, become obvious.

Thus, taking into account the current crisis for Armenians in both Armenia and the Diaspora, the analysis of investments from the Diaspora, the study of the international experience, as well as the investment impact of the Armenian Diaspora, becomes relevant.

There is a consensus among Diaspora investment researchers that the Diaspora can make a unique contribution to the development of their home countries - especially toward building physical capital, helping to boost job creation, living standards, and higher growth.

In a recent study, my colleagues and I suppose that investments from the Diaspora can go beyond what is listed, multiplying the effectiveness of influence on social and institutional directions not only in the short term but also in the long term cut. With the right policy, home countries can make wider use of their Diaspora - which involves emigrants and their descendants - to support the economy. So the investments from Diaspora can bring about economic, social, etc. changes and effects not only in the home country but in the per se Diaspora as well. In addition, the Diaspora in this investment context acts as a bridge for inclusion in the international economy. For instance, Globalscot, a Diaspora network created and managed by the Scottish government, is highly valued for its ability to elevate the quantity and quality of global knowledge circulation in Scotland (MacRae & Wright, 2006). It was initiated in 2001, targeting highly educated and motivated parts of the Diaspora as a developmental resource.

Focused on openness and international cooperation, within a few years, Globalscot has got great success.

It is now a powerful network of more than 800 influential business professionals. Members offer their time, experience, contacts, knowledge, and skills to businesses and other domestic beneficiaries (Mitra et al., 2016).

This is a successful example that shows the great potential that the Diaspora can have from an investment point of view.

In this paper, investments from the Diaspora to the homeland and its potential were studied according to the interdisciplinary approach in the nexus of investments, ethno-sociology, and Diaspora studies. The choice of this research topic is conditioned by the need to study the peculiarities of investments from the Diaspora and its effects on Armenia.

The paper is based on the findings of the study, the paper is based on the study, which was conducted through three methods: expert interviews, case studies, and document analysis. The scarcity of additional required information has been supplemented by processing secondary data in the research field.

The methodology used ensures the reliability of the results obtained, which are theoretical and practical preconditions for the application of a number of methods. This paper also involves the results of sociological surveys conducted by various organizations, as well as other secondary data.

Diaspora as a Source of Investment: Study Overview

There are many researches devoted to the study of investments from the Diaspora to the homeland, Based on those studies we can extract the main issues pointed out by the authors. Summarizing the existing approaches, we can say that there are three main questions the authors try to answer

1. Why do the Diaspora representatives invest in their homeland or their country of origin?
2. In what ways and how are these investments implemented?

3. What do Diaspora representatives invest in, in which areas, etc.

In the context of these three groups of questions, a group of authors tries to explain why Diaspora representatives invest in the homeland, or why investment intensities from various Diaspora communities differ. Here, the authors focus on the 3 main components of investment activity in the homeland: financial, social (connections, networks, etc.), and emotional or psychological (Nielsen & Riddle, 1966).

A seminal work in this context is Aharon's study of Jewish investment in Israel, which notes that American Jews invest heavily in independent high-risk ventures in Israel. Aharoni suggests that the investment process of the Jewish Diaspora is greatly influenced by the deep psychological ties they have with Israel, rather than purely financial gain (Aharoni, 1966).

Thus it is important to know the motivation of the contributor. International economic literature traditionally states that investment decisions are made based on financial expectations of "return". Empirical research, especially in the field of economic psychology, proves that people often contribute to social funds where the main goal is not maximum profit (Nielsen & Riddle, 2009).

Investments from the diaspora to the country of origin or home country have different directions. However, whichever direction these investments are taking, it is important to understand the motivation of the investor. There are many studies in the academic literature in this regard. Studying the investment attempts of different diasporas, researchers have come to the conclusion that investment decisions can be motivated in different ways. Based on these motivational differences, investors are grouped into several categories.

- The first group is interested in investing exclusively on the basis of financial gain and profitability. The primary motivation here is profit, and the other factors are derived from it.
- For another group of investors, achieving social recognition in a given community becomes an important motivation. Moreover, it may entice investments in the home country, in the country of origin and other communities, and even in the community of a given country.
- The third group of investors invests in the homeland with motivation based on emotions. In other words, keeping the ancestral homeland in the first instance, or the thought of being attached to the homeland, etc.

These three directions of motivation descriptions can operate either separately or simultaneously, only one of them can be dominant. The latter depends on a number of objective situational reasons. For example, a person who is part of the Diaspora community may be interested in contributing to the development of the homeland, as this may contribute to their social integration into the community and be considered an honorable activity.

When discussing the motivations behind investments from Diaspora to the homeland, it is also necessary to discuss a theory based on the possession of information about the business environment of the homeland. In this sense, there are two contradictory approaches to diaspora investment opportunities.

1. On the one hand diaspora investors take advantage of having information about the investment environment in their homeland. A diaspora member who has links to his or her homeland understands the local conditions and the mechanisms for addressing them better and therefore wants to invest.
2. Another point of view, is that diaspora investors consciously accept the low market interest rates available in their homeland because of their patriotic inclinations.

But the belief that they have a broad range of information that allows them to invest with less risk (especially for post-war and resource-poor countries) is constantly questioned here.

The study by Gillespie, Riddle, Sayre, and Sturges examines four diasporas living in the United States who were considered diaspora investors in their home countries in 1990. Armenia, Cuba, Iran, and Palestine were considered homelands in the study, and Armenian, Cuban, Persian, and Palestinian diasporas were studied respectively. There are many issues in the study, the main question is what are the indicators of interest in investments in the homeland and can they be generalized? The study is an investigation of diaspora investment dynamics to show the motivations of 4 different diaspora investors. The study identifies two main psychological indicators of investment interest: altruism and perceived ethnic advantage. By focusing on these

two separate levels, this study ignores the fact that diasporas differ primarily in their resources and opportunities, as well as in the influence that diaspora organizations can have on investors' interests (Gillespie et al., 1999).

In addition to identifying the motivation, it is an important task to study what kind of changes Diaspora investments can lead to in the homeland. If we generalize the existing ideas, investments in the neighborhood can have different outcomes and forms. The most discussed ones in this research are: opening of factories for domestic or foreign markets, starting foreign business branches, service and service sector organizations- consulting, tourism, etc. The limited research on Diaspora entrepreneurship in the homeland indicates that Diaspora investors in the homeland have great potential to promote development in the below-mentioned main ways.

- Diaspora entrepreneurship promotes business development, job creation and innovation
- Diaspora investments build economic, social and political capital through global networks
- Diaspora entrepreneurship is transformed into social capital through cultural and linguistic understanding (Nielsen & Riddle, 2013).

Investments in the Diaspora in the motherland are certainly very effective, at the same time they show new challenges to the government of the given country (Riddle & Marano, 2008). Foreign investors usually have less information about how to start a business in a given country. They have no prior information about local market relations, regulations and business environment. At the same time, they do not have social ties with the given country. In contrast, Diaspora investors, especially those who have recently left the country, may have extensive social connections in the home country, familiarity with the business environment, local market needs, business laws, etc. Some of them have a deep psychological connection, a vision, or a myth about their homeland.

According to the analysis of the results of the research, which is the basis for this paper, the investments made by the Diaspora in the homeland, particularly on the example of Armenia and the Armenian Diaspora, however, considered "national", "motivated by nationality", nevertheless have an interesting cultural content. From the management point of view, such investments for the homeland can be considered alongside other cultural contributions. This has a clear and obvious manifestation in the internal economic environment of Armenia, which is mostly a social phenomenon. However, it is able to introduce a new culture and diversify the cultural and economic cultural environment in a broad sense. As a result, we are dealing with a multicultural economic environment in our homeland, which has its own characteristics.

This is comparable with a phenomenon that in theory can be explained as multinational direct investment.

Multinational direct investment, especially in the form of vertically integrated production chains or transnational distribution networks, stimulates the modernization of production methods through a variety of paths:

- Multinational investers improve local suppliers' product quality. In order to maintain certain standards for their own products, they have strong incentives to raise the quality of local suppliers' products through technical assistance and training (Giroud & Scott-Kennel, 2009). As local firms become technologically more sophisticated, they adopt new technologies more readily, and find strong evidence of productivity gains, greater competition, and lower prices among local firms in markets that supply foreign entrants. The technology transfer also benefits downstream buyers in other sectors using the same supply source (Blalock & Gertler, 2007).
- International buyers of multinational goods share production techniques and foster competition. Firms in Korea and Taiwan gained considerable knowledge of production engineering, new production processes, and quality control from foreign companies that purchased their goods (Blalock & Gertler, 2007). Knowledge about changing product demand enabled Asian companies to shift more quickly to new products in the early part of the growth cycle (Pack, 2008).
- Multinational workers facilitate knowledge spillovers into domestic industries (Todo et al., 2009). Highly qualified technical workers employed by multinationals share their knowledge when they interact with local workers (such as through collaborative projects and when they take jobs with local firms). These spillovers are amplified when local workers themselves have received high

quality technical education (Pack, 2008).

Diaspora Investment Policy of the Republic of Armenia

In Armenia's statistical data, it is almost impossible to distinguish foreign direct investments from Diaspora investments. This is certainly a matter of discussion as to how far such a division is justified from an economic point of view. It creates more problems for our researchers to be able to come up with more precise and predictable analyses, also is in much importance for Diaspora policymaking issues and investment forecasting.

However, bringing up the issue of this division is not only a simple reference, but also a part of a bigger picture. It very vividly reflects Armenia's policy regarding investments from the Diaspora, which is also difficult to distinguish from FDI. Essentially, the only differences are grouped into the emotional-patriotic distinction, which over the years converges with the national characteristic. It turns out that instead of an inclusive and expanding activity, we have a filtering and expelling effect.

Fortunately, this situation is gradually being changed as the overall strategy of the Diaspora changes and new policies are put forward.

The policy of investment stimulation from the Diaspora is based on the traditional "follow-up" or reactive economic investment policy of Armenia and aims to:

- create conditions for mixed financing;
- attract private investments into the economy;
- form new organizational structures that provide state guarantees for private investment;
- provide tax incentives to investors in order to enhance their activities.

The Diaspora policy of the first stage, which was also based on the traditional approach, is of key importance here. It claims that Armenia has a central position in Armenia-Diaspora relations, therefore the investment policy from the Diaspora was derived from this approach and acquired a one-sided and passive nature.

We can date this approach from the independence of RA /1991/ to 2018. This basically coincides with the phase of inheritance of investment policies of the Soviet period and its inertial continuation.

Conventionally, we can outline the second phase, starting from 2018 (Iskandaryan, 2018). At this point, the approach to Diaspora policies is also outlined against the background of the general policy. It is formulated as follows "strong Armenia, strong Diaspora!" Here, a sign of equality is placed between Armenia and the Diaspora as entities, therefore the policy of investments from the Diaspora began to transform, pointing the arrows in both directions.

However, the state investment policy of Armenia still does not have a proactive and participatory nature, which does not achieve much due to the adopted Diaspora policy ideology.

The Investment Situation in Armenia. Influencing Factors

The influx of investments in Armenia largely depends on the representatives of the Diaspora, who invest in sectors with growth prospects. In general, the main sectors attracting FDI for the past two decades have been mining, energy, banking, ICT, and real estate[1].

The table below shows the main factors-indicators of the economy of Armenia.

[1] The source discusses research data on investments in Armenia, investment policy issues, development ways and strategies. UNCTAD. Investment Policy Review: Armenia, p. 2. Retrieved March 05, 2020, from https://unctad.org/en/PublicationsLibrary/diaepcb2019d3_en.pdf

Main Factors-Indicators of the Economy of Armenia
(The table compiled by the authors based on the secondary data available)

Population (2019)	2 957 731
Urbanization rate (2018)	63.1%
Annual population growth (2018)	0.2%
Surface area	29 740 km^2
GDP (USD, current price, 2019)	13 673 million
GDP per capita (USD, current price, 2019)	4 732
Real GDP growth (year-on-year change, 2019)	4.8%, -4.5%
Inflation (average consumer price, year-on-year change, 2017)	1.4%
Exports of goods and services (% of GDP, 2018)	37.8%
Imports of goods and services (% of GDP, 2018)	53.5%
FDI, net inflows (% of GDP, 2018)	2.0%
General government net lending/borrowing (% of GDP, 2019, 2020)	-1%, -5.1%
Unemployment (% of total labor force, 2019)	17.7%
Market size, GDP PPP, million USD[2]	30 530,74
Political stability and absence of violence/terrorism[3]	30,48
Index of economic freedom[4]	70.6 (34rd place in the rank)

[2] This source presented by International Comparison Program, World Bank | World Development Indicators database, World Bank | Eurostat-OECD PPP Programme. Retrieved March 05, 2020, from https://data.worldbank.org/indicator/-NY.GDP.MKTP.PP.CD?most_recent_value_desc=true

[3] The source is "Worldwide Governance Indicators (WGI)" project reports aggregate and individual governance indicators". In the project are over 200 countries and territories over the period 1996–2021, for six dimensions of governance. Retrieved March 05, 2020, from https://info.worldbank.org/governance/wgi/

[4] This source described the aggregated index of economic freedom of Armenia by The Heritage Foundation. 2020 Index of Economic Freedom. Retrieved March 05, 2020, from https://www.heritage.org/index/ranking

High trade costs caused in part by transport infrastructure hinder Armenia's continued development. This is also an important factor that limits investment opportunities and curbs potential. However, this is part of a wider problem related to security and geopolitical issues.

Among the factors hindering FDI inflows, also UNCTAD (United Nations Conference on Trade and Development) analysts highlight corruption, the inefficiency of the judiciary, impunity for anti-competitive practices, and a number of other institutional shortcomings, which, however, tend to change for the better.

The Situation of Investments from the Diaspora to Armenia

Observing the dynamics of investments from the Diaspora in Armenia since independence, we can notice that one of the primary forms of involvement of the Diaspora in the homeland is the investment of material and financial resources. These funds can be of the most diverse nature, from monetary allocations to charitable clothing and food. In addition, the goals and motives of allocations can be different. Diaspora Armenians can provide support to their families living in the homeland, and public organizations, or show their support to programs implemented at the national or state level. Each of these goals defines homeland-Diaspora relations in its own way.

However, it is also necessary to take into account that various forms of support can serve as a political leverage aimed at increasing the influence of the Diaspora and/or the development of the homeland.

The historical contribution of diasporas to international relations and their current potential make it possible to define the modern diaspora not only as a form of community but also as a significant foreign political and economic resource, an instrument of influence at the national and international levels.

This is a question that is in the context of constant interaction between Homeland and Diaspora. It can have a great impact on the home state, including in a systemic sense, but the experience of Armenia and the Armenian Diaspora in this regard is manifested only in partial, eventful, and more often, latent ways.

Example of System-Building Investments in Armenia

Speaking about the investments made from the diaspora to the homeland, it is necessary to clarify what we mean by the notion of investment, and what types and forms of investment are discussed within the framework of this work.

According to the economic approach, investments can be of the most diverse forms and types, starting from the usual investment transaction and ending with project financing or specialized investment activity. These types involve basic, real investments, including direct investments, tangible and intangible, professional and human capital, and many others.

Here, investment is the active redirection of resources from consumption today to benefit in the future, using property to earn income or profit (Sullivan & Sheffrin, 2003).

In essence, this definition is satisfactory even when considering the phenomenon from the socio-cultural point of view. Why is the socio-cultural context important and why should investments be discussed in this aspect?

When we study the phenomenon of investments, we mean a process with clear rules, which are usually defined by two entities: states and organizations/institutions, etc. Those rules are fixed and maximally universalized, thanks to which it is possible to create a system of trust and guarantees in the investment field.

An example of such a process is the investments made from the diaspora to the motherland, where the two interacting entities "homeland" and "diaspora" have mostly socio-cultural meanings. Their boundaries can be vague and different for everyone. Therefore, it is not possible to explain the investment process from diaspora to homeland without taking into account the socio-cultural layer.

In this case, it is important to understand what is considered potential in the case of diaspora, and what factors affect the investment process towards the homeland or nation-state.

Investment impact both in the homeland and in the diaspora depends on the form of investment: individual, group and systemic, long-term or short-term, material or non-material, etc. The effectiveness of each type of investment is determined by compliance with the initially predetermined goals, which in this case may have a

large share of social beliefs and irrationality of positions. This emotional approach very often explains ignoring profitability or market rules when investing in the homeland and allows making irrational and unjustified scale or systematic investments.

Commonly, not all investments are able to continuously follow the original idea or goal. as there are a lot of risks and obstacles, which are also related to the objective economic situation in the home state. In Armenia, for instance, unstable conditions can make to change and reformulate the goals along with the process.

In the case of Armenia, there are few successful cases and it is necessary to study their examples in detail, as each successive investment story increases the impact and the resulting changes. The changes at the institutional level imply wider involvement and investment of complex resources: financial, ideological, cultural, etc. They are able to influence the system (either positively or negatively) and create new systems.

A typical case is TUMO, which best reflects the successful course of investment from the diaspora and system-building development.

TUMO - is a center, established with a millions endowment from Sam and Sylva Simonian - a prominent Armenian Diaspora couple based in the United States in 2011. Its flagship center TUMO contains 750 workstations and accommodates 15,000 students per week. There's a waiting list of close to 4,000, with the typical wait lasting three months.

Apart from the Founders of the center, the Chief Executive Officer, Foundation Board of Directors, and Advisory Board are also Diaspora Armenians.

About: "TUMO - a tuition-free after-school education program focusing on technology and design. Here, students develop their own learning plans and take responsibility for their own education; mentors only do supervisory work and collaboratively guide the chosen program of the students.

The main role in the design and assessment of the program is given to the preferences of the learners and the objectives set for them. Therefore, the outcome of the "Tumo" education is individualized and there is no equality of knowledge and assessment.

Since 2011, more than 60,000 young people from Armenia and Artsakh have participated in Tumo's educational programs. The organization is constantly expanding and diversifying educational programs by creating new educational environments to make Tumo education as accessible as possible to young people through Tumo boxes, Tumo centers, and its network.

TUMO has hubs in Yerevan, Dilijan, Gyumri, and Stepanakert, with 6 TUMO Boxes operating in neighboring towns. Outside of Armenia, there are centers in Paris, Beirut, Moscow, Tirana, Berlin, Kyiv, and Lyon".[5]

Financial Sustainability

Having Armenian foundations, however, Tumo's educational program tends to be internationalized and seeks to expand its international network. This follows from the requirement to ensure the financial self-sustainability of the organization. The income from the international network helps to augment the organizational operating budget in order to provide free education to more Armenian students in Armenia and Artsakh.

Donations are also important for the financial stability of TUMO, which provides the necessary capital to build the network in Armenia. The international income flow financed by each TUMO center opened abroad ensures the growth and continuation of the centers in Armenia. Here we see how in 12 years the alternative additional education program has turned into a product that has been networked not only in Armenia but also in many developed countries of the world.

Main Features of TUMO Investment Activity

For this case, it is important to discuss several circumstances:

- TUMO acts as an open investment platform.

Since the beginning of its formation, TUMO has been carrying out charitable activities and has a wide range of sympathizers. Of course, the authority of the founders, and the loyalty of the management team to the ideas and principles of

[5] More detailed information about the further activity can be found in the official website of TUMO center https://tumo.org/tumo-armenia-2/

the founders play a big role in this matter. However, apart from that, the center has an accountable and transparent approach and gained trust during such activities. Such social capital contributes to the transition from charity to the form of open investment activity.

- TUMO was initially positioned in Armenia as a continuous educational program whose mission is to provide innovative educational services.

This means that the center did not aim to fit into the educational system of Armenia, but on the contrary, tried to create a new educational platform from scratch. Also, it stands out with providing a competitive educational service of an international level (in terms of programs, content and technical equipment).

- TUMO provides a free educational service.

It is necessary to take into account that basic education of the target age (teenagers) in RA is mandatory and free. Therefore, the center has positioned itself in the segment of providing free educational services, thereby becoming accessible to all teenagers who want to receive innovative education. Also, with this approach, the center avoids the status of a "prestige" unique service provider, and is able to open a wider field for development.

- TUMO provides a wide variety of educational programs.

In its program, TUMO has included an educational package in such directions that are absent in the public and private educational systems of RA. This creates the perception and possibility of alternative parallel education among the public.

- TUMO gives every young person complete freedom to form their "own educational path".

This approach, in fact, leaves the responsibility of creating an educational program on the young person, assuming only the role of a guide. Often, graduates can take on the role of teacher or mentor at the center, providing a transferable learning process.

- TUMO is becoming more and more accessible logistically.

The goal of being locally available has brought some changes to TUMO's local brand logic over time. Thanks to the new solutions, it got a wider geography, at the same time laying the foundation for the idea of a new product, TUMO boxes.

- TUMO expands the age range of the target group by including educational programs for adults.

The launch of this approach is a step towards providing universal education in Armenia. It goes beyond the intended target and expands the scope of influence.

By studying TUMO's operations, we can identify several further benefits arising from the "Going Global" approach. In addition to the financial contribution, this approach also has an impact on diversifying, improving, and developing new directions in the educational program. This also has an influence on improving the staff training capacity. The mentioned approach, on the one hand, strengthens local TUMO educational traditions and exports it overseas, on the other hand, the Armenian youth get an international advanced experience.

TUMO's influence is not limited to the production of an educational product. It is gradually reaching out to new spheres, going beyond cultural and social boundaries, and its proof is the recent adoption of the idea of the so-called "TUMO diplomacy", which goes beyond the main goals and represents a new kind of challenge for the organization itself … TUMO's presence abroad, to the extent that it is noticed by foreign governments, business people, and organizations, can evoke Armenia's contribution to a global society and that when foreign dignitaries and delegations visit a TUMO center as part of their itinerary in Armenia... showcasing Armenian excellence and making a positive impact beyond our borders can influence how we are perceived internationally, and ultimately contribute to our strategic objectives abroad.[6]

This brief overview shows one investment activity case - starting with charity and motivated by the "national" and "innovative" ideas of a group of Diaspora Armenians and becoming a good example of a full network circulation product.

As a result of consistent efforts and constant directed financial support, it was able to occupy its place in the Armenian market, and also to expand the market, turning into an internationally competitive product.

[6] More detailed information about the further activity can be found in the official website of TUMO center https://tumo.org/tumo-armenia-2/

TUMO's example shows that by operating beyond the formal educational system, it is possible to maintain links with the state education system and in parallel develop its own approach. Thus, we find that network-type systems can coexist quite well with vertical-type systems, enhancing each other's effectiveness.

This situation implies cooperative work with state systems, and as a result of such activity, TUMO flexibly develops in accordance with its principles and mission to create a competitive educational brand. At the same time, TUMO fills the gaps in the system, strengthening the education system as a whole.

Conclusion

Investments from the diaspora to Armenia are permanent, though sometimes change their directions, forms, and scales. Their ratio depends on a number of situations and events in Armenia and the Diaspora. Influential events dictate the course of investment change and update Armenia-Diaspora relations, forming new mechanisms of trust and guarantees.

A major crisis could lead to a decline in investment sentiment, a fall, or, on the contrary, a jump in growth. Armenia, in turn, should be able to meet new developments and be ready to capitalize/realize the investment potential. This fits into the logic of the Armenia-Diaspora complex policy, therefore, Armenia as a state should be able to respond to the investment flow from the Diaspora with appropriate proactive program packages, also consider the diaspora as Armenia's development partner, opening the field for high-level institutional investments.

The full potential of diaspora system-building investments is still not sufficiently explored and is not visible for Armenia.

Investments from the diaspora can strengthen systems and fill their gaps in Armenia, gaining a multiplier effect in terms of influencing the diaspora as well.

The system-building investments from the Diaspora to Armenia require coordination with state policies and projects.

In addition, it is important to coordinate the investment programs mutually with the Diaspora. This makes it possible to avoid repetition of actions, diversion of efforts, and of unnecessary wastage of resources.

Nevertheless, the system-building investments from the Diaspora to Armenia are only partially aligned with state policies and management circles. The leading vision of such investments is "an oasis in the desert". This phenomenon itself is very labor-intensive and requires a large intention to invest in an "empty place" and to go down the path of institutionalization. However, it is doomed to "dry up" because it is not connected to the infrastructure and does not fit into the local system and social culture.

Concluding from the discussed cases, we can argue that the development of parallel linkages is one of the key features of successful institutionalized, system-building investment activities in Armenia. We see that this approach allows us to develop investment activities synchronously - developing through institutionalization, stabilizing in a flexible way in terms of financing, fitting into local systems, and creating a social environment around project ideas. It is a justified form of investment, leading to changes in Armenia, and has proved its viability. Of course, it is difficult to expect such an approach from all investors, but the cooperative mutual support of Armenia and the Diaspora opens up great opportunities in this matter.

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THE PHILOSOPHICAL INTERPRETATION OF RISK ASSESSMENT IN MUNICIPAL PROJECT MANAGEMENT

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Abstract: Project management emphasizes the process of risk assessments, because any project is attended not only by the risks of failure due to lack of funding, but also by the design of the required quality and quantity of final results. Consequently, there is a need to show a new philosophical approach to the identification, evaluation and decision-making of the risks in programs, implemented in municipal structures, because the range of beneficiaries related to this field is not only wide, but also more multi-layered (government, municipal authorities, investors, middle-level and top managers, population, etc.).

The article proposes a model of risk management of projects, implemented in municipal facilities, which enables not only to form a management information feedback between all beneficiaries, but also to include them in participatory risk prevention processes. A ranking process of risk factors related to the management of municipal projects is also proposed, which increases the effectiveness of managerial decisions, aimed at risk prevention and the justification of philosophical interpretations related to it.

Keywords: project management risks, philosophy of risk recognition, philosophical approach of risk management, philosophical interpretation of risk management reporting.

Introduction

Project management is one of most important and most used branches of management during recent decades. With growing, complication and sensitivity of projects, also specialists of project management always were seeking to find better and more effective tools and solutions for projects management. For this reason, very varied tools and techniques were created for projects management until present time that every had assisted to facilitate and accelerate levels of project management process in a manner (Vahedi, 2006, pp. 14-25). Many project managers, senior managers of companies and clients are interested to know what will happen to project in future and how long will it take and how much will it cost. Earned value management system provides such essential and important information and alerts the project

manager to take necessary corrective actions (Akbari & Salehipour, 2012).

One of most important indexes of projects success is conformity of cost performance and project schedule to what is planned. Obviously, utilizing an efficient and integrated technique with futuristic and continuous control approach has important role in a project success. Most practical management new technique in cost-time management, considering that cost and time are very important in creation of focus on project progress in order to maximize probability to attain project goal, is earned value management that is a systematic technique to integrate, measure and compare process of cost, time and limit progress in a project (Larkhaba et al., 2013).

For the EPC system, compared to the standard technique of project implementation, we can point out certain advantages that made employers welcome this system. Decrease of execution time, costs finality and financial support from non-governmental resources are some of main advantages of design and construction that were cause of employers' welcome to this system. One of tools that creates this advantage for engineering-purchasing-construction (EPC) project, is increase of compatibility and using earned value management. However, the use of these privileges requires compliance with the requirements and the existence of preconditions in the executive organization and the project structure, the absence of such a requirement causes the inefficiency of the system implementation (Khazaeini & Ahmadi, 2008).

The present study is a systematic search of data and information centered on the analysis, identifying and evaluating challenges of project cost and time control in EPC contracts using multi-criteria decision-making in Tehran municipal infrastructure projects. In terms of the nature and method of the research, it is a descriptive survey type. Since this research addresses how to identify and evaluate challenges of project cost and time control in EPC contracts using multi-criteria decision making in urban infrastructure projects of Tehran municipality, it is descriptive (non-experimental) in terms of nature and research methodology. This research is a non-experimental study in which the research variables are not manipulated.

In the field, implementation and operational steps, a questionnaire was created, designed and distributed to collect the required data. In other words, the present study is classified by descriptive (non-experimental) based on the purpose of the study and the nature and method of data collection and in the survey type is classified as a cross-sectional method, because the data has been collected on one or more attributes over time. 2021 was done through community sampling.

The Philosophical Framework of Project Management Risk Assessment

The results of the research in relation to its questions are discussed in philosophical framework.

Question 1) What are the challenges of controlling projects with EPC contract model in terms of time and cost of projects in Tehran Municipality?

In order to answer the research questions, by reviewing the literature and research background, and analyzing the data obtained from interviews with experts, the most important risks and challenges were identified and determined. These risks include:

- Financial burden imposed on the organization in case of implementation of standard project control
- Inaccurate initial estimation and lack of complete identification of beneficiaries needs at the beginning of the project, which leads to project changes
- Intra-organizational and soft processes and organizational culture
- Insufficient attention to scheduling and more accurate estimates in projects
- Failure to apply risk management in project control areas in the organization
- Lack of easy access to lessons learned and useful information in previous projects
- Lack of cooperation of senior managers due to unwillingness to make changes in the organization
- Lack of information integrity and interactions between the employer and the contractor
- Shortage of expert personnel
- Financial problems in the organization in funding projects

Question 2) What are the criteria for evaluat-

ing the control challenges of projects with EPC contract model in terms of time and cost?

To identify the criteria for evaluating the challenges of controlling projects with the EPC contract model in terms of time and cost, the literature and research background were used and the desired criteria were identified and determined as follows:

1. Project duration
2. Implementation risk
3. Project budget
4. Flexibility
5. Access to technology

Question 3) How is the weight and importance of challenges of the projects control with EPC contract model in terms of time and cost?

With the help of experts' opinions, the degree of importance of each of these criteria has been determined. This factor has been used as a basis for comparing the importance of options in order to determine the weight of effective criteria in the importance of challenges of projects control with the EPC contract model in terms of time and cost. In other words, the weight and position of each option (project control challenge) was determined based on the desired criteria, and finally, with the help of the governing relations in the Fuzzy Vikor method, the share of each criterion in the importance of the project control challenge was determined. After the considered calculation, it was observed that prioritizing the importance of 12 project control challenges in Tehran municipality projects in order of weight is as follows:

Table 1.

Weights of Importance of Each Project Control Challenge

Project control challenges	*Q(V=0.5)*	*Ranking based on Q*
Familiarity of employees with project control methods based on PMBOK standard	0.133	1
Financial burden imposed on the organization in case of implementation of standard project control	0.597	10
Inaccurate initial estimation and lack of complete identification of beneficiaries needs at the beginning of the project, which leads to project changes	0.663	12
Intra-organizational and soft processes and organizational culture	0.134	2
Perception of inefficiency of project control and earned value indices and PMBOK standard among the effective factors	0.299	5
Insufficient attention to scheduling and more accurate estimates in projects	0.439	7
Failure to apply risk management in project control areas in the organization	0.161	4
Lack of easy access to lessons learned and useful information in previous projects	0.552	9
Lack of cooperation of senior managers due to unwillingness to make changes in the organization	0.445	8
Lack of information integrity and interactions between the employer and the contractor	0.398	6
Shortage of expert personnel	0.154	3
Financial problems in the organization in funding projects	0.639	11

Question 4) What solutions can be provided to improve control and management of cost and time of projects in EPC contracts of Tehran Municipality?

Considering the importance of each of the challenges, the solutions suggested by library studies, consultation, obtaining expert opinions and recommendations are as follows.

According to the opinions of experts and the application of pairwise comparisons, the most important challenge of implementing standard and effective project control are the financial problems of the organization in funding projects. Unfortunately, the organization has been facing

funding problems in recent years, which is the main source of projects. Solutions to get out of the organization's financial problems are beyond the scope of this study. At present, measures have been taken in the organization to attract capital and financing, and the financial situation of the projects is expected to be improved. However, shortage of resources has a great impact on all aspects of the project, and the proper allocation of the organization's scarce resources must be on the agenda. As a solution to implement standard project control in this situation, it is possible to initially implement the items that create less financial burden for the organization and have more short-term effects. Also, due to lack of financial resources and manpower, it is possible to start the project control process from smaller parts of the organization and a few selected executors. After obtaining the results and gathering the knowledge learned, in the next phases, it spread to other departments of the organization. Also, due to shortage of financial resources, project control can be very useful in controlling portfolios, plans and programs.

Another challenge of creating project control based on the PMBOK standard has been understanding the ineffectiveness of project control and earned value indicators, which have been examined and compared in the studies conducted in this research with time earned indicators, and the reasons for the inefficiency of using the physical progress index of the project or earned value in the project that is currently being used have been discussed and investigated. The results of the present research can have a significant impact in removing the misconceptions created about indicators. Also, this misconception will be corrected if the project control unit starts to provide the time indicators introduced in the same research as a pilot, and the results are visible to project managers and agents.

As stated, the challenge of the financial burden imposed on the organization can be effective with measures such as starting project control from selected factors, starting project control items that have less financial burden, as well as documenting the improvement of project control in the organization and enumerating the positive financial results and improvement of projects for managers. The financial burden of its implementation after limited implementation is a very economical process of the organization in terms of return on investment and capital.

By presenting the implementation results as well as the results of this research, which have been obtained with the opinions and suggestions of the experts of the organization involved in the projects, it is possible to plan to attract the opinion and cooperation of senior managers of the organization.

Utilizing the lessons learned from previous projects is very effective in project management and control and making key decisions in the project. In a large organization such as Tehran Municipality which is known as one of the main components of the country's economic production, efforts should be made to establish and apply project knowledge management. Establishing project knowledge management, in addition to having a great impact on increasing the efficiency of project management and control, is also a great resource for employees to use the experiences of other projects by will increase the efficiency of the entire organization in project management processes. Also, holding practical training courses for personnel in the field of project control and making it mandatory for project agents, will play an important role in increasing the knowledge of personnel in the field of effective and standard project control.

Another challenge is the lack of accurate initial estimation which leads to inefficient planning and due to many changes in the project, the initial schedule has undergone many changes and the project control in this case will not have the desired function. Also, failure to consider risks in planning is another factor in the inefficiency of initial planning. Therefore, the following items are suggested to improve the status of projects and ultimately the optimal function of project control in projects (Terrell & Richards, 2018):

- Specify more precisely the scope of the project with more attention to the needs of beneficiaries
- Improve the structure of work failure in projects by following the existing standards in this field
- More accurate planning according to the existing risks and using the information of previous projects
- Integrate earned value management with risk management

- Take into account risk mitigation programs in the project schedule (pp 59-67).

The present study has been used in terms of applied purpose and in terms of hybrid approach method. In this way, first, in order to design the model and identify the components, dimensions and variables of the model, a qualitative approach has been used in the research, and after designing the model and identifying the components of the model, a quantitative approach has been used to finalize the model (see Figure 1).

Decision Making - Data Collection

After the content analysis method of identifying and evaluating risks and challenges in terms of cost and timing of EPC projects and providing appropriate implementation solutions were evaluated. In the next step using the Delphi method to identify the relevant dimensions and components According to the experts. At the end, these variables and related components were monitored and used in the form of a questionnaire in a special method developed in the Delphi method. The main research data collection tools are interview, questionnaire, case study and document review. A researcher-made questionnaire was used to explain the model.

The statistical population of the study consists of managers and experts of urban infrastructure projects in Tehran Municipality. They are about 68 people. The target population to select a sample from among experts and university professors who had the necessary criteria, 10 people were selected as a statistical sample in the qualitative section. Also in the quantitative part of the research, After surveying the target population in the statistical population and systematic screening, 40 statistical samples (who have 10 years of management experience in the municipal infrastructure projects, have a Master's Degree or higher and have project cost and time control issues knowledge) were selected as the sample size.

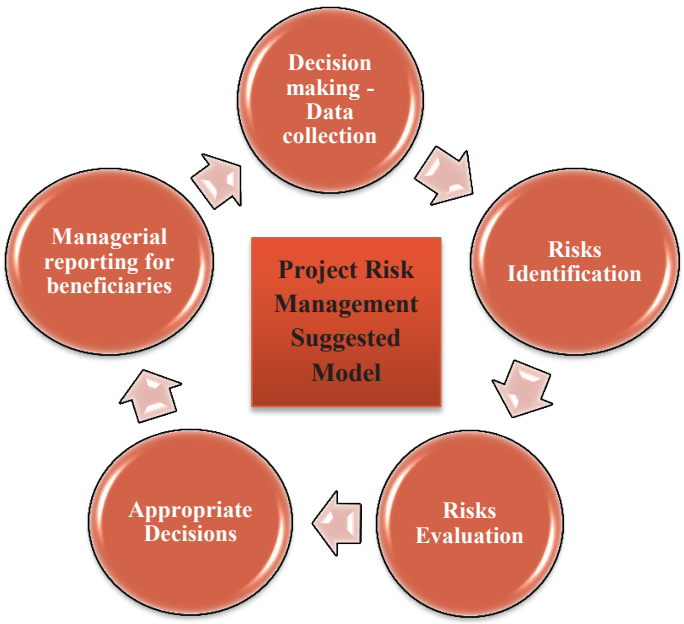

Figure 1. Project Risk Management Suggested Model[1]

[1] Composed by Authors.

Risks Identification

In this research, risks and challenges were identified through the qualitative section and modeled through MAXQDA software.

Qualitative analysis methods can be divided into two categories: one is methods that are mainly derived from a particular theoretical or epistemological position, and interpretive phenomenology analysis, such as conversational analysis, using of which has a relatively limited diversity; some of these methods, such as data theory, use a large theoretical foundation.

The second category is methods that are fundamentally independent of a particular theoretical or epistemological position and can be used in a wide range of theoretical and epistemological methods. Thematic analysis is placed in this category; hence, they are a flexible and useful research tools that can be used to analyze large volumes of complex and detailed data (Braun & Clark, 2006).

Qualitative methods are very diverse and complex and have very partial and concise differences. Thematic analysis can be considered as one of the basic methods of qualitative analysis that differs from other methods of analysis that seek to describe the patterns of qualitative data - such as interpretive phenomenological analysis, grounded theory, discourse analysis and thematic analysis.

The method of interpretive phenomenological analysis seeks to identify patterns in the data that are placed in a theoretical framework. In phenomenological epistemology related to the above method, experience is given importance. This method seeks to identify the phenomenon by understanding the real experience of people in everyday life.

Grounded theory also uses a set of methods similar to thematic analysis to encode data; but thematic analysis does not adhere to the principles of grounded theory (which requires analysis to arrive at theory). In opinion of Braun and Clark (2006) in thematic analysis, if case researcher does not want to arrive at a complete theory, she/he does not need to adhere to the principles of grounded theory. While in grounded theory, analysis starts from the data source and continues until theoretical saturation; but in thematic analysis, all data sources are analyzed and the contents of the whole data are analyzed and interpreted.

Discourse analysis also refers to a wide range of pattern-based analyzes that are introduced in constructivism epistemology, based on which the patterns of society are known. Thematic analytical analysis also recognizes patterns in which language is used to understand social structure. These different methods, instead of a specific data, look for specific themes or patterns in the whole data (such as personal interviews or various interviews with a person about case study and biography). Therefore, such methods also overlap to some extent with thematic analysis. Since thematic analysis does not require specific theoretical and technical methods (such as founded theory and discourse analysis), it can be used like an easier analytical method at the beginning of qualitative researches.

Content analysis is one of other methods that can be used to identify qualitative data patterns and is somewhat similar to content analysis. However, content analysis focuses more on the smaller levels and often shows the abundance of data and allows quantitative analysis of qualitative data. One of the problems of content analysis is that either the context of the data is usually ignored or very little attention is paid, which greatly reduces the richness of the data. But in thematic analysis, the unit of analysis is more than a word or phrase, and more attention is paid to the context of the data and their nuances. Also, thematic analysis goes beyond counting obvious words and phrases and focuses on recognizing and explaining explicit and implicit ideas. Then, the main theme codes are used for deeper data analysis. In thematic analysis, the relative abundance of themes can be used to compare them and prepare a matrix of themes and draw a network of themes (Anderson, 1998).

Thematic content analysis is one of the methods of content analysis that is similar to thematic analysis in identifying common themes of data. But the researcher uses it based on objectivist epistemology. In thematic content analysis, unlike thematic analysis, interpretation is used as little as possible and is only used to name and group the themes. In thematic content analysis, the researcher's feelings and thoughts about the themes are not taken into account. For this reason, the researcher avoids any interpretation and explanation of the meanings of the themes, and only explains the themes very briefly in the dis-

cussion of the conclusion. In general, thematic content analysis is more descriptive analysis, while thematic analysis is interpretive analysis (Anderson, 2007).

Therefore, content analysis, unlike the above qualitative methods, does not depend on a pre-existing theoretical framework, and it can be used in different theoretical frameworks and for different affairs. Also, thematic analysis is a method that is used both to express reality and to explain it. Of course, due to the interpretive nature of thematic analysis, more attention should be paid to its validity and reliability; this requires the use of independent coders and makes thematic analysis more accurate and time consuming than other qualitative methods.

Considering the system related to qualitative interviews that is accompanied by deep questions and is conducted in a semi-structured manner, an attempt was made to ask other questions according to the direction in which the interview takes place, which we referred to as sub-questions. According to the coding in 10 interviews conducted with experts of infrastructure projects of Tehran Municipality, 269 initial codes were formed. After the initial classification of the obtained data, the concepts of open coding based on orientations, appropriateness and nature of semantic load were divided into 12 categories.

Risks Evaluation

The data collected are meaningless numbers and figures that can be used to value them in order to achieve research goals. Information analysis as part of the process of scientific research method is one of the main foundations of any study and research whereby all research activities are controlled and guided until a conclusion is reached. In other words, in this research, the researcher uses various methods of analysis to answer the question or to decide whether to reject or confirm the hypothesis or assumptions intended for the research. Therefore, it is important to note that the analysis of the data obtained alone is not sufficient to find the answer to the research questions. First, the data should be analyzed and then the results of this analysis interpreted.

The present study is performed using Fuzzy Vikor analysis method. In this way, we first determine and identify the weight of each method of project cost and time control in EPC contracts using the Fuzzy Vikor method. Then, the cost and time control methods in EPC contracts are ranked using the weight calculated in the previous step. In other words, the weight and position of each option (project control challenge) was determined based on the desired criteria, and finally, with the help of the governing relations in the "Fuzzy Vikor" method, the contribution of each criterion to the importance of the project control challenge was determined.

Reasons for applying the Fuzzy VIKOR method:

- This method introduces a multi-criteria ranking list based on the near-ideal specific size and a set of agreed-upon solutions that are acceptable to the decision-maker, which provides the relative satisfaction of most criteria close to ideal and provides the least amount of discomfort to each criterion of non-ideal choice or proximity to multiple ideals.
- The highest-ranked option in this method is the closest to the ideal. While in the TOPSIS method the highest-ranking option is not always the closest to the ideal.

In order to simulate, we examine the proposed algorithm on a problem, which can be generalized. In this study, 12 components as project control challenges and five evaluation criteria in Tehran Municipality projects were selected and determined. By using quantitative and qualitative indices on the most important challenges of project control with the EPS contract model and their importance and also according to the opinion of experts, the matrix of pairwise comparisons of indices with respect to the target was determined. According to this issue, a researcher-made questionnaire has been used to compare the group decisions based on Fuzzy Vikor method, main indices and options in pairs. A number of questionnaires are prepared and by referring to the statistical population and using the techniques of distributing the questionnaire and conducting interviews, the judgments of the selected individuals about the importance of the indices and their pairwise comparisons are made. In this section, using the obtained data, the pairwise comparison matrixes of the main indicators against the target, the pairwise comparison matrixes of the project control challenges, the final weight of the main indices with respect to the target and the relative weight of the financing

challenges are calculated.

The validity (justifiability) and reliability of the variables measuring tool is an essential step in the measurement. In other words, the measurement of the validity and reliability of the measuring instruments are two important criteria to be sure about them. Validity is intended to be a useful tool for the purpose of measuring the research variable. Reliability also means the ability to trust, consistency, homogeneity, predictability, and accuracy. The validity of the questionnaire was assessed and confirmed by "Discriminant Validity". In order to make the questionnaire reliable, it was measured by calculating the "Incompatibility Rate".

Appropriate Decisions

Considering the importance of each of the challenges, the solutions suggested by library studies (*Practice standard for earned value management*, 2011, pp. 166-174; *A guide to the project management body of knowledge,* 2013, pp. 68-75), consultation, obtaining expert opinions and recommendations are as follows:

- Implementing items of the standard with less financial burden and more short-term effects
- Starting standard implementation from several chosen executors in the organization
- Presenting results of this research to identify the weaknesses of earned value management for projects factors and the benefits of using the time gained
- Starting a pilot of using gained time by the project control unit of the organization and examining and presenting its results
- Documenting project control improvement factors to present to senior managers
- Establishing project knowledge management
- Holding project control standards training courses for personnel
- Hiring consultant to do some standard requirements
- Determining more precisely the scope of the project with more attention to the needs of beneficiaries
- Taking action to improve the structure of work failure and scheduling in projects by following the existing standards in this field
- More accurate planning according to the existing risks and using information of previous projects
- Integrating earned value management with risk management
- Taking into consideration risk mitigation programs in project schedule
- Designing and implementing PMIS in organizations
- Using new methods to improve the workflow based on information technology
- Submitting system deployment performance reports and improvements and successes to managers.

Managerial Reporting for Beneficiaries

The executive suggestions for establishing earned value management system and effective project control in the organization and the recommendations of experts are as follows:

- Implementation of earned value system should be seen as a project itself, so it should be managed with a regular approach, an approach that is consistent with the principles of project management.
- Implementing earned value at the beginning of the project.
- Integrating earned value system documentation with existing organizational processes.
- Using the process of change management in implementation of methods along with the maturity of the system and its continuous improvement.
- Seeking help from a consultant to establish systems.
- Draft of the system design should be prepared by thought groups in order to obtain opinions and recommendations.
- Justification document for the establishment of project control should be prepared and adjusted based on the PMBOK standard in the organization.
- The system should be customized according to the needs of the organization.
- Improvements must be documented, identified and quantified, and the success of the system must be demonstrated to management during deployment.

- Finally, it is the culture of the organization that must accept the use of the system at all levels of management with open arms, so attracting the opinion and cooperation of senior managers is very important and necessary.

Conclusion

The risk management process related to the projects implemented in municipal structures has certain peculiarities (Kolesnichenko, 2019). First of all, these programs are aimed at meeting the needs of the public and are mainly implemented under the supervision of the city authorities. In this case, the philosophical approaches to program risk management change, especially in the "Engineering-Purchasing-Construction" sector, because municipal projects cannot have both financial risks of failure and risks of incomplete final results. The range of beneficiaries of this sector is not only broad (from the government to the population), but also multi-layered (municipal authorities, investors, mid-level and top managers).

There is a problem of identifying the risk loops of the programs implemented in the municipal structures at different levels and taking measures to prevent their formation (Yakimova & Krasilnikov, 2015). In this regard, it is important to show such a philosophical approach to risk management that will enable a participatory approach to risk prevention for all stakeholders (city authorities, project managers, investors, end-result consumers, urban population, etc.). And for this, new philosophical approaches will be implemented not only in the directions of implementation of managerial decisions in municipal programs, but also in the aspects of reviewing reporting formats aimed at beneficiaries. Consequently, there is a need to introduce a new culture of risk management in the municipal program management system, in which case the concerns of all the beneficiaries of the implemented programs are taken into account and thus management decisions aimed at risk prevention become more effective (Arabzad, 2012).

Recommendations for Future Research

In the end, practical recommendations are provided for those who are interested:

- In future research, other methods such as DIMTEL can be used to rank risk factors and challenges. The fuzzy map method can also be used as a model.
- It is also possible to compare the results of this research with another country adaptively in the next research and publish the result as a separate research.
- Examining modern methods of project control system in other organizations.
- Analyzing strengths and weaknesses of the project control system.
- Examining the present research model among other countries that implement project control system with EPC contract model.
- Comparative study of project control methods and strategies with the EPC contract model.
- Examining the subject of the present study in a comparative manner in two other industries or organizations.

Research Limitations

Undoubtedly, conducting any study is associated with a series of limitations that make research work difficult. These limitations are as follows:

1. Shortage of time and cost to conduct this study caused us to not be able to include all the risks and challenges in the conceptual model.
2. If we could have more access to higher number of experts, Finally the validity of the results of this study will be increased.
3. Lack of familiarity of personnel with the pairwise comparison questionnaire and errors in completing the questionnaire.
4. The applicant's impatience in answering the questionnaire and paying no attention and spending enough time.
5. Difficulty in accessing information and documents due to confidential classification.

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PHILOSOPHY OF EDUCATION

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THE LEGAL EDUCATION CULTURE OF YOUNG PEOPLE: A PROJECTION OF THE FUTURE

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Abstract: The article presents the basic patterns of development of future generations' education, which now belong to the age category of children and young people. The goals of the future educational paradigm, which is to overcome the deformations of the youth's legal consciousness, to raise its spiritual development, to acquire legal knowledge, to develop its legal consciousness and legal culture, are determined. It substantiates the main direction and at the same time the global goal of education of the future, to which there is a culture of peace, which is possible only in the legal continuum of international interaction of states and people that now belong to the age category of children and youth. Factors of influence on the education of legal culture of youth, among which the level of development of the economy, quality of life of the population, and its relation to social transformations are generalized. This article highlights the role of the activity of all authorities, mass media, and their influence on the consciousness, will, behavior, and beliefs of citizens. The authors of the article also take into account such factors as the experience of the population, its attitude to culture, traditions, habits, way of life, social relations.

Keywords: education of legal culture, culture of interaction, legal coexistence, legal consciousness of young people, deformities and norms of justice.

Introduction

The legal education culture of adult people is a category that reflects the level of implementation of the "idea of law" in the specific conditions of life of the middle-aged generation, in which law is a concentrated expression of politics, and politics is a concentrated expression of the economy, including the basis of the future well-being of current young generations. Education, as any other field, is changing very rapidly, regardless of certain conservativeness of this system (Lamanauskas, 2017).

The results of an empirical study outlined in

the journal of 'Problems of Education in the 21st Century' showed that Czech schools had gaps in culture mainly in the subjects of teacher motivation and shared goals. School leaders should also pay attention to the managerial approach - control, innovation of teaching, learning and communication processes, both internal and external. Czech researchers have identified positive and significant relationships between the leadership and management sub-categories and important sub-categories that focus on the innovation process in schools and the expected results of the teaching and learning process (Eger & Prášilová, 2020). This finding is consistent with the findings of the research conducted by (Louis et al., 2010) for variables of shared leadership and trust. The School culture sub-category of the performance-oriented cultural inventory also contains a teacher-oriented course (Eger et al., 2017).

The mainstreaming and, at the same time, the global goal of educating the future is a culture of peace, only possible in the legal continuum of international interaction between states and people who now belong to the age category of children and youth. Education for the Legal Culture as a Culture of Peace is thoroughly represented in the study of Agnaldo Arroio under the title "Fostering peace culture by intercultural dialogue in education" (2019). Agnaldo Arroio points out in this work that considering as a movement, the Culture of Peace was officially started by UNESCO (United Nations Educational, Scientific and Cultural Organization) in 1999. The author underlines that the Culture of Peace "strives to prevent situations that may threaten peace and security - such as disrespect for human rights, discrimination and intolerance, social exclusion, extreme poverty and environmental degradation - using awareness, education and prevention as key tools" (Arroio, 2019, p. 568). The content of the future education of children and young people is based on the principles of legal coexistence and high culture of interaction, which is able to prevent the current disharmony of social development. Just this is the way that leads, according to A. Arroio, to a significant reduction of all forms of violence and related death rates everywhere, ending abuse, exploitation, trafficking and torture of children. Arroio (2019) emphasizes that "fair, egalitarian society only occurs with the elimination of gender disparities in education and ensuring equal access to all levels of education and vocational training for the most vulnerable, including people with disabilities, indigenous people and children in situations of vulnerability" (p. 314).

Aim

The purpose of the article is to analyze the legal education culture of young people, show its importance in the development of the legal society and reveal the effective means of managing the legal culture. The article is aimed at identifying the methodological multidisciplinary approaches to the education of legal culture, formulation theoretical and conceptual bases of research into the processes of forming the legal culture of young people, proving the feasibility of implementation and defining the main tasks of legal education culture of young people.

Methodology of Research

The legal education culture of young people involves the development of both special methodology of research and methodological foundations of education of legal culture of young people. On this basis, the humanistic nature of the legal culture of youth education is the embodiment of social self-movement, which requires research using the general scientific structure and typology of cognition methods and the transformation of reality in their development and interconnections. The main methodology of education of legal culture as a phenomenon and process is the idea of development, which is based on the subjective introduction of young people in the dimensions of social reflection of their own projections.

The assigned research tasks were embodied by means of application of general scientific and special methods of cognition. The most significant role in the study was played by the method of comparative legal analysis, since its application made it possible to compare legal norms in different fields of law. The system-functional method was used to consider the process of legal culture management, and the

logical-semantic method contributed to the generalization and classification of epistemological units to make sound proposals for improving the regulation of the legal culture management process. The combination of methods of individualization, analogies, actualization, synchronization with comparative, cognitive-procedural (interpretative), instrumental and relativily new in legal science, in the system of education, and therefore in social-humanitarian research method of determining the legal form, which is a specific system of legal meand (principles of development, conditions and psychological mechanisms - allowed to consider the education of legal culture of young people as a topical research problem.

Results of Research

The principles of a regenerative economy have been set forth in Club of Rome member John Fullerton's white paper, Regenerative Capitalism. Like biomimicry, it draws from nature's principles but applies them to running an economy in service to life. Fullerton points out that there are patterns and principles that nature uses to build stable, healthy, and sustainable systems throughout the world. These eight principles can guide us in creating an economy that operates in accordance with the rest of the world, creating conditions conducive to life (Von Weizsäcker & Wijkman, 2018). The interaction and mutual effects of these principles of youth-friendly living conditions are reflected in Fig. 1:

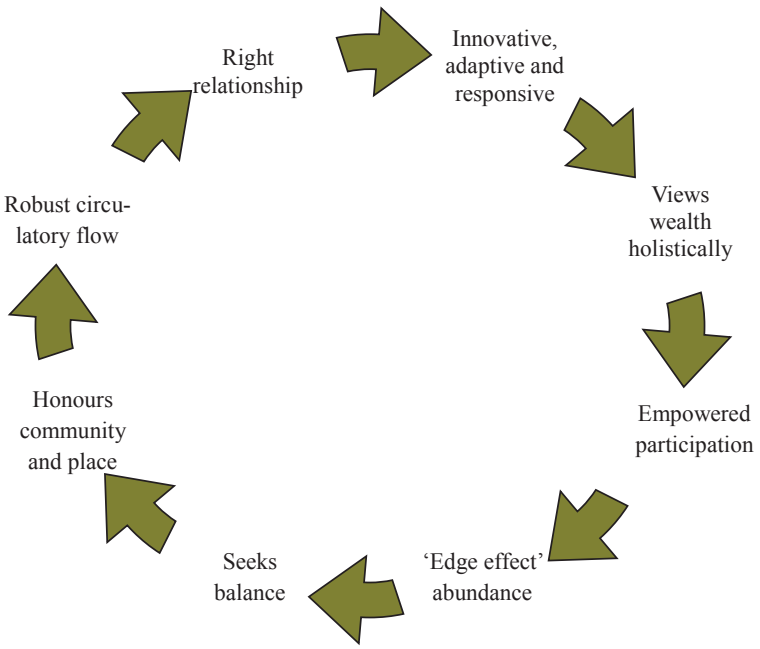

Figure. 1. Principles of Youth-Friendly Living Conditions

As can be seen from the above Figure. 1, youth-friendly living conditions consistently define the principles of the Right relationship; Innovative, adaptive and responsive; Views wealth holistically; Empowered participation; 'Edge effect' abundance; Seeks balance; Honors community and places; Robust circulatory flow.

These eight principles reflect the patterns that nature uses to build stable, healthy and resilient systems around the world, creating a conducive living environment that must first be embodied in educational self-expression of young people. Education of legal culture of young people is intended to restore the construction of these systems. In today's youth, the transition to more conservative ideals is slower than in all previous generations. Thus, in today's world, the legal culture of young people is particularly relevant.

A distinctive feature of the legal culture of young people is its transience. It is conditioned by: their psycho-physiological age characteristics (the verge of adolescence and moral and psychological maturity, the onset of social maturity), their inherent periods of legal maturity, when adolescence is already coming to an end, and socio-psychological "adulthood" is not yet fully reached; their socio-professional status (when they have not yet become established professsionals); stay in a specific micro- and mesoscale environment, mainly in educational institutions.

The study of the level of legal culture covered such age groups (14-19; 20-24; 25-29; 30-34; 35-40; 41-50; 51 and more years) and all regions of Ukraine.

The young people legal awareness is defined by us as a kind of group consciousness, which has a three-member structure that includes knowledge of law, attitude to law, behavioral component, and expresses the cognitive, evaluation, and behavioral orientation of young people on the legal phenomena of public life.

Youth consciousness has an ambivalent (dual) nature since it has the features of child and adult justice. Moreover, different features of child and adult justice are not simply mechanically co-existing, but also interact and cooperation resulting in a qualitatively new phenomenon - youth consciousness.

Youth justice is a historically changing phenomenon: every new generation of youth has its own, different from the historical-cultural experience and basic value orientations, social and cognitive preferences of previous generations content. There have never been equal generations in social development, that is, generations that share the same living conditions, goals, and ideals. These conditions explain the difference in the fairness of youth and older generations, which is often difficult to understand.

The legal consciousness of young people as an element of legal culture is characterized by a number of features, determined by the age criterion, socio-economic and socio-political status of this population. Within their age categories, young people differ in psychophysical characteristics, level of education, degree of civic maturity, economic independence, etc. (Bolshakova, 2015).

The tools for assessing the level of the legal culture of youth are components of the mechanism (or algorithm) of the process of education of the legal culture of youth, which is carried out in the form of questioning, data analysis, observation of the inclusion of youth in society, taking into account all factors of development of the legal culture of society and its effects on youth. Methods for assessing the level of legal culture of young people are a systematic set of actions aimed at assessing the level of legal culture of young people, a holistic algorithm of the evaluation process and a set of data obtained as a result.

Analysis of the tools and methods of assessing the level of formation of legal culture of young people allows to distinguish among them social, economic and other tools and methods, to classify them by their essential characteristics depending on the subjects of education: family education, parental education and professional education. The level of development of the legal culture of youth is determined by the totality of social relations, the level of their dynamism.

Two types of factors influence the management of youth awareness - external and internal (See Fig. 2).

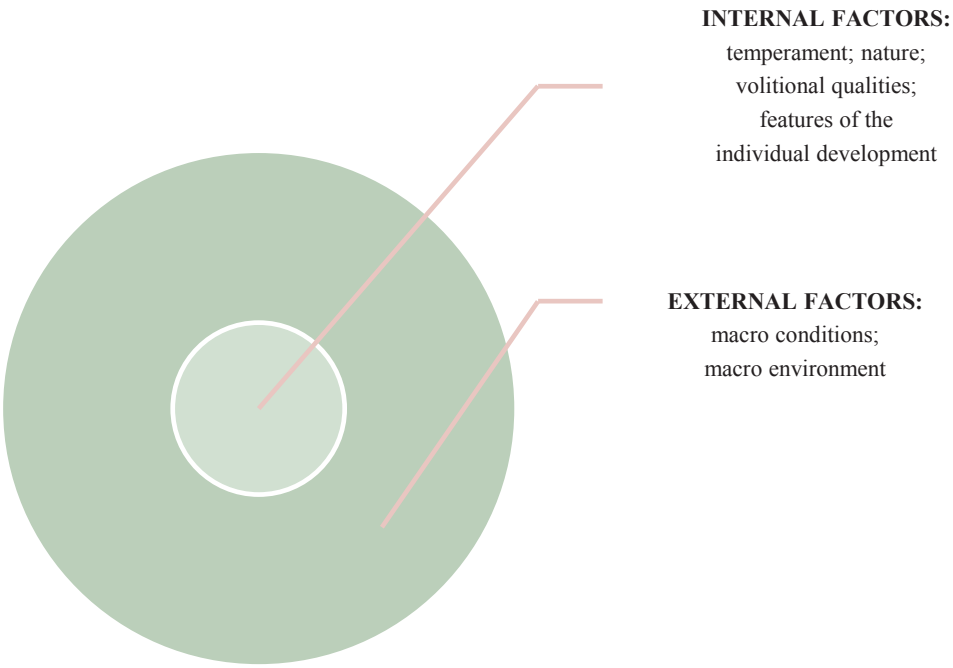

Figure. 2. Description of Factors of the Legal Education Culture of Young People

External factors include macroconditions (macroenvironment) and microcoditions (microenvironment). Macro environment is the socio-economic and cultural conditions of society that indirectly influence the development of young people's consciousness and act as a determining factor in its formation. A microenvironment is a set of material, spiritual and socio-psychological factors that directly relate to a young person's life, including his or her immediate environment (family, acquaintances, peers, community organizations, etc.).

Internal factors include the influence on the formation of young man's consciousness of his individual-typical psychological characteristics. Each young person is different from others in their personal characteristics (temperament, volitional qualities, character, etc.), so many characteristics of consciousness are connected with the psychological characteristics of the person.

As can be seen from Figure 3, the education of the legal culture of youth includes political, economic, socio-cultural, objective, subjective, historical, linguistic, spiritual, educational and educational, ideological, personality-psychological and other criteria:

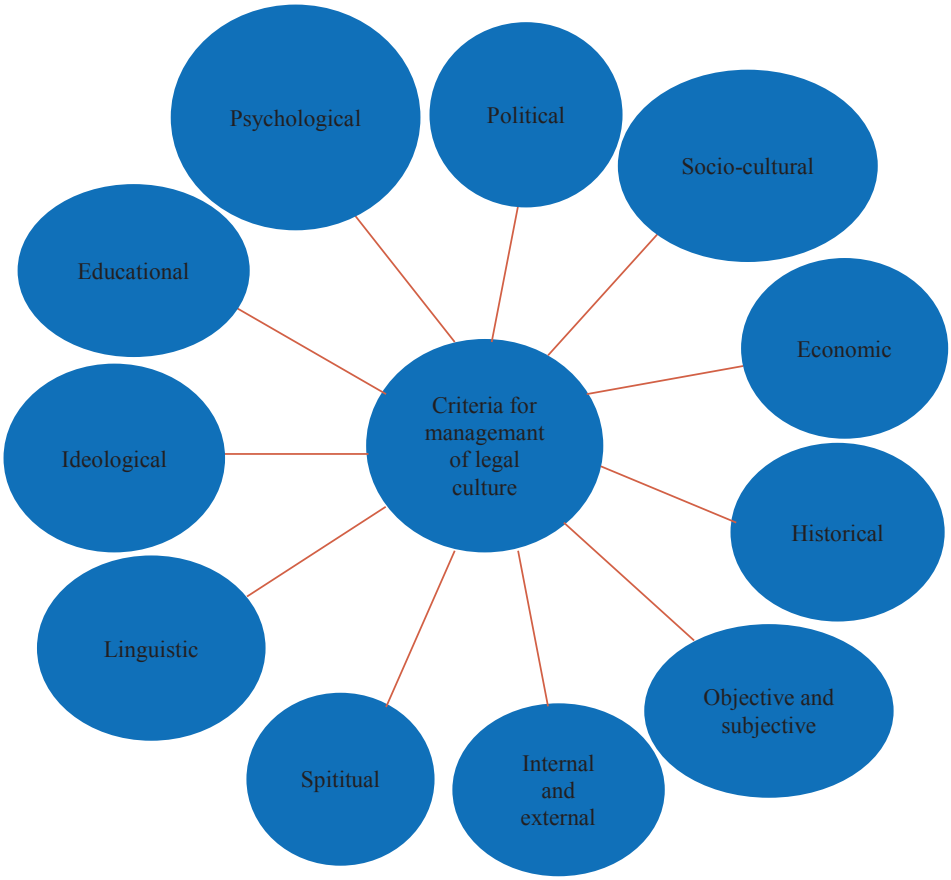

Figure. 3. Criteria of the Legal Education Culture of Young People

Political criteria. Political criteria for assessing the level of legal culture of young people include political pluralism and political impartiality. In addition, the relationship between legal awareness and legal behavior of young people must be considered in the context of youth participation in society and the direct political activities of policy makers.

Economic criteria. Economic factors have a significant impact on the level of legal culture of young people. These are material conditions and material opportunities that affect the standard of living of youth and society as a whole, forming at the level of their justice a certain attitude to legal norms and to the authorities.

Socio-cultural criteria. The socio-cultural factors of assessing the level of legal culture of young people that influence the development of legal culture include the social orientation of state policy, ensuring social rights and freedoms of young people, creating the conditions for realizing the social potential of a young person.

Internal and external criteria. The internal factors of the formation of the legal culture of young people are determined by the fact that they are an expression of their inner world, inherent in the young person's consciousness, his needs, interests, goals and values. External factors reflect the impact on the process of shaping the legal culture by public institutions, phenomena and relationships, including those directly influenced by families, friends, leaders, educators, etc.

Objective and subjective criteria. Objectives are considered to be those whose nature is conditioned by reality, the common being of society, the individual, the law. Subjective factors include a set of influences that reflect the qualitative state of the structural elements of individual (group) social justice, the young person's mentality.

Historical criterion. The influence of historical factors - the general conditions for the formation of Ukrainian statehood, the system of foreign and domestic political phenomena, the development of the system of national legislation

and the formation of the legal culture of Ukrainian society - are unconditional.

Language criterion. Language is a particular component of the legal culture of young people, defining the personality, their mind and feelings, ideas about the moral behavior of a young person, which requires the formation of appropriate tools and methods of assessing their level of formation. It should be noted that language is of fundamental importance for determining and instrumentally measuring the level of legal culture of every modern young person, since there is no understanding of legal concepts and legal norms outside the language.

Spiritual criterion. The spiritual sphere of social life, which is an important determinant of the formation of legal values, has a special influence on the development of the legal culture of modern Ukrainian youth. Of utmost importance in the spiritual life of society as a factor in the development of legal culture is the system of value orientations, which plays the role of ideological foundations of social and legal progress. Its decisive importance is that, first and foremost, the legal worldview must proceed from a human-centric concept of legal worldview and legal activity.

Educational criterion. Educational factors of the formation of the legal culture of young people are first and foremost civic education and upbringing, legal education and upbringing, which determine the orientation of the educational process; use in the process of learning the personality-activity approach; dialogue of the learning process; use of an individual creative approach; enriching the content of teaching with concepts, ideas, theories; inclusion of young people in various forms of legal research; systematic use of the educational potential of art.

Ideological criterion. The ideological factors of the formation of the legal culture of youth reflect the state of ideological development of society and presuppose the existence of a national idea, a state strategy for the development of foreign and domestic policies, universally recognized values in society.

Psychological criteria. Personality-psychological factors are a set of characteristics of an individual or society as a whole that determine their relation to law. The formation of legal culture in the youth environment depends on the psychophysiological age characteristics of its individual groups. That is, a person's transition from adolescence to adulthood influences his or her legal choice and is formed directly in further education in higher education. Higher education is becoming a tool for youth education.

Scientific generalization of influences on education of legal culture of youth is carried out by the following factors: level of development and functioning of economy, quality of life of population and its attitude to social transformations; activity of all authorities, mass media and their influence on the consciousness, will, behavior and beliefs of citizens; the experience of the population in its attitude to culture, traditions, habits, everyday life, social relations, etc.; professsionalism of the teaching staff, the level of his pedagogical skill and pedagogical culture, the possibility of exercising a regulatory influence on the process of education of the legal culture of youth (See Fig. 5).

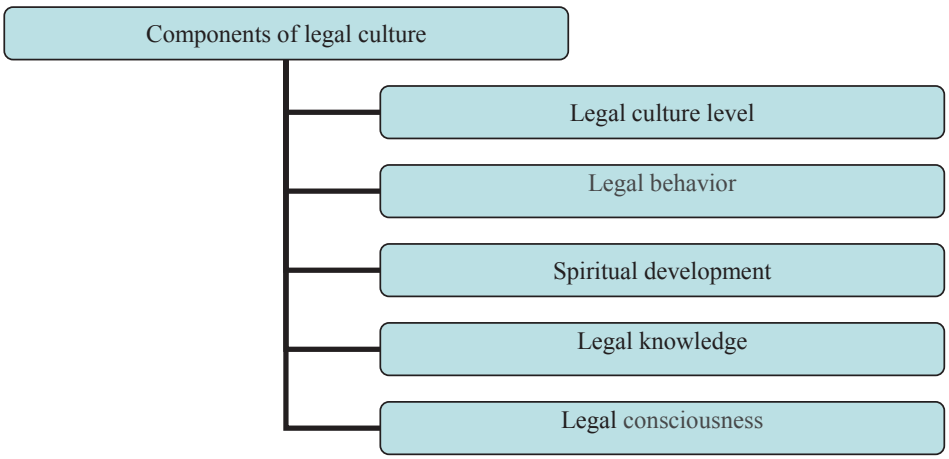

Figure. 5. Components of the Legal Education Culture of Young People.

Content of the main components of the legal culture of young people is a hierarchy of the following dimensions of its educational and behavioral expression:

Legal culture. The level of legal culture, the main feature of which is the unconditional legal behavior of young people, which is a set of socially significant actions or actions that are regulated in one way or another by the norms of law and cause socially approved legal consequences.

Legal consciousness. Legal consciousness is a special form of reflection of legal reality, which is an element of social, group, and individual consciousness. It constitutes a system of interconnected components that, in expressing knowledge, appreciation, views, and perceptions of existing and desired law, is the driving force in the legal field through the formation of motives and attitudes to certain patterns of behavior.

Legal knowledge. Legal knowledge is formed not only by way of individual acquisition, it is assimilated in the process of becoming effective by the public legal consciousness, and on this basis, it replenishes the life experience of a young person. First of all, this is knowledge about the political system of society: ideology, political and legal norms, and nature of political activity. It includes knowledge of the legal system of society - laws and regulations, legal norms and institutions, law enforcement; knowledge about state institutions - institutes and bodies of state power, power-social relations, and administrative procedures.

Spiritual development. Spiritual development takes place in modern society together with the acquisition of the experience of senior generations and is complemented by the assets of high moral spiritual centers, to which democratic values, ideals of freedom, and equality belong.

Deformation of the legal consciousness of young people is a change in their content under the influence of external and internal factors on individual carriers, social groups, or the majority of the population, which causes a deviation from the social norm of legal reality, values, ideas, infusions and motives of behavior that can lead to negative social consequences.

The content of justice is formed as a result of the cooperation of a number of factors, both institutional and socio-cultural. Socio-cultural factors are actualized through the influences of social institutions such as the family, the education system, political, economic and legal institutions.

The distinction between the norm and the deformation of legal consciousness is realized in the form of the following two approaches - normative and statistical-sociological: a) normative approach consists in constructing a socially established norm of justice, carried out by theorists-jurists, scientists, lawyers, legislators; b) statistically-sociological approach generalizes the features of norms in society that have thereby confirmed their viability, as well as specific perceptions of adults about legal practices that dominate society.

The most characteristic is the differentiation of rejected youth behavior by distinguishing its types according to the indicators of social and psychological characteristics of behavior: violations of behavior in public places, delinquent type of youth behavior - acts of a young person violate the rights of others, self-aggressive behavior, the fight against the existing injustice in the form of criminal acts of various kinds of gravity (Kovalerov, 2004).

As can be seen from Figure 6, the types of deformations of the legal consciousness of youth are legal idealism, legal formalism, legal infantilism and amateurism, rebirth of justice, legal nihilism, legal demagogy, social and legal cynicism.

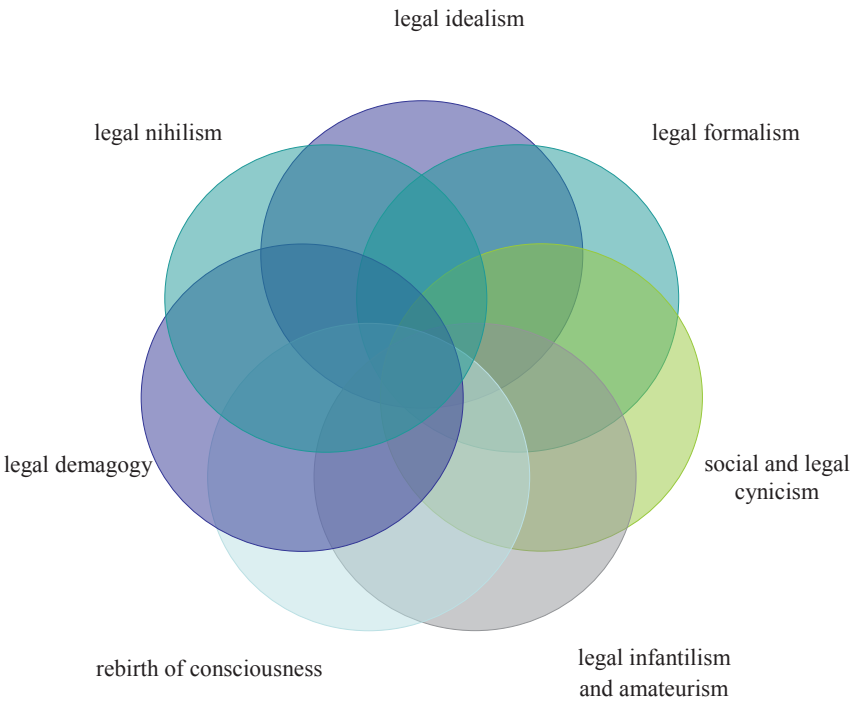

Figure 6. Types of Deformation of Legal Consciousness of Young People

The manifestations of the deformation of the legal consciousness of contemporary Ukrainian youth in the intra-Ukrainian and pan-European context can be traced through the analysis of international integral indices - corruption perception index, global peace index, international property rights index (Marusyak, 2013).

The concept of literacy includes both subject knowledge, i.e. understanding and processual action-competence. Regarding the interpretation of quality culture, misleading understanding and directly involved quality literacy heterogeneity is demonstrated by the differing understanding among the stakeholders of higher education. The most common conviction among academic and often administrative staff is the belief that they are responsive executioners rather than masters of quality standards. There still exists the opinion that topdown is an adequate direction of quality assessment, which is communicated as an internal regulation or must-do. Almost all stakeholder groups – academics, administrative staff, management, students, and quality control managers often demonstrate the belief that quality criteria and standards are an administrative bureaucracy, which has little effect on daily work and is distant to the performers. Opinion polarity can be observed also on the question of purpose and necessity of quality assessment. Some of the stakeholders believe that the aim of quality of political system is its existence, because it is required by external normative regulations on European and national level (Koķe et al., 2017).

Discussion

The results of the study of the education of the legal culture of youth showed that the legal culture of young people is an established culture, which is the result of its formation by many public institutions. The level of legal readiness of young people includes knowledge of their rights and obligations, awareness of the law as a value and a regulator of public life. On the other hand, the conditions for forming the legal culture of youth imply the need for the formation of regulatory frameworks, legal and political institutions, the absence of legal conflicts, the lack of corruption and transparency of the judicial and law

enforcement system, the high level of regulation of all legal spheres in society, the flexibility and stability of the legal system.

To a certain extent, the Ukrainian youth are characterized by legal infantilism, which is characterized by a lack of legal knowledge with a firm confidence of the person in the proper level of their assimilation. Legal amateurism borders on it, that is, on the whole, a frivolous attitude to the law in the presence of superficial, unsystematic legal knowledge. The most dangerous form of deformation of the legal consciousness of young people is legal nihilism, which is indifferent, disrespectful, or negatively contradictory the law and the legal order. In young people, the manifestation of legal nihilism is primarily due to such negative socio-psychological states and properties as inexperience, social apathy, conformism, aggression, rejection of traditional moral and cultural values, etc. Legal nihilism of young people can take dangerous forms: first, anti-legal guidelines and stereotypes are produced, and a sense of permissiveness emerges, which, under appropriate conditions, is the basis for committing offenses. Deformations of legal consciousness, characterized by the presence in his carriers of the intention to commit offenses, indicate the unlawful orientation of the transformation of justice. Analysis of current trends in youth crime shows that young people are increasingly committing crimes that were committed only by adults, youth crime is becoming increasingly organized, group-based, and more recently, there are tendencies, which make youth crime easy as a result of seeking an independent lifestyle.

An important role in counteracting various types of deformation of youth consciousness is traditionally given to the enhancement of the legal culture of young people, the formation of a positive attitude toward them, and the trust in the law. It is necessary to take into account the positive importance of such remedies as the adaptation of legal prescriptions to existing values in the youth environment and the promotion of initiatives and activities of youth in all spheres of society, including the legal.

An important part of the process of forming the legal culture of a young person and its relationship with legal consciousness and legal behavior is the developed "Structural model of management of the legal culture of young employees", which allows us to determine the level of psychological, scientific, theoretical, professional and legal readiness of young people professional, public, social and legal conduct in general.

Let us introduce the author's structural model of tools and methods for assessing the level of formation of the legal culture of youth, which contains two blocks:

- the target unit provides for the assessment of the tools and methods of forming the legal culture of youth, the assessment of the level of effectiveness of the principles of legal education and upbringing, the assessment of typical models of youth behavior in protecting their rights;
- the organizational and content block provides for the assessment of the level of effectiveness of approaches to the formation of the legal culture of young people (activity, system, competence, personally oriented approaches) and the assessment of the level of conditions for the formation of legal culture of young people: use of the potential of educational disciplines; optimal combination of theoretical and practical training, educational and methodological support and introduction of author's special courses; activities of initiative groups and circles; assessment of the integrated legal culture structure; gaining experience in applying legal rules; evaluation of the main components of the formation of the legal culture of youth (target, content, operational activity, stimulation-motivational, moral and legal education, control and regulation), which is presented in Fig. 7.).

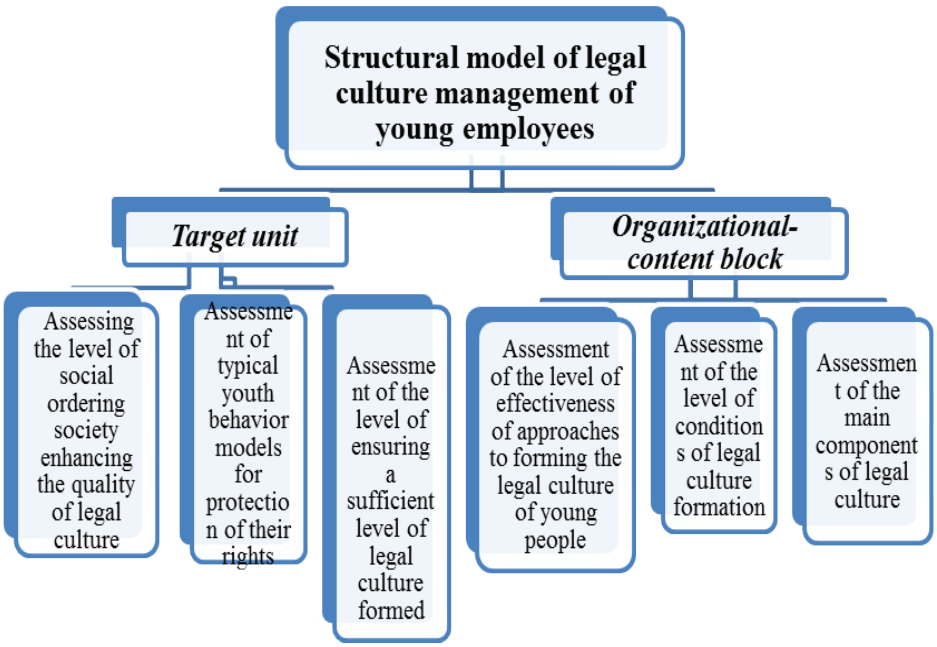

Figure 7. Structural Model of the Legal Education Culture of Young People

Conclusion

Thus, according to the analysis of education by the legal culture of youth as a way of interconnecting legal consciousness and legal behavior, it is established that the legal culture of a young person is interconnected with the legal culture of a society where, by means of state-created legislation, a young person exercises his or her own free will.

A peculiar feature of the legal culture of youth is its transitional character, due to the psychophysiological features and microsocial conditions of age development.

The processes of formation and development of youth's justice and legal culture reflect the crisis of societies with its increased social and moral, psychological tensions, and economic contradictions.

Analysis of the tools and methods of assessing the level of legal culture of young people allows us to classify them by belonging to the subjects of upbringing: family education, parenting, and vocational education. In general, the level of development of the legal culture of youth is determined by the totality of social relations and the level of their dynamism.

Factors related to the functioning of the economy, daily life of the population, and the expressiveness of its system of attitudes towards social transformation have a direct impact on the processes of managing the legal culture; historical, spiritual, linguistic, personal, socio-psychological influences; the activities of the authorities, the media and their relevance to the consciousness, will, behavior and beliefs of young citizens; experience of the population and its relation to culture, traditions, habits, way of life, social relations, etc.

The main components of assessing the level of legal culture of young people are legal knowledge, legal consciousness, spiritual wealth of a young person, his legal behavior, including actions that lead to legal consequences.

The structural model of tools and methods for assessing the level of formation of the legal culture of youth includes determining the effectiveness of the principles of legal education and training, approaches to the formation of the legal culture of young people, the formation of the legal culture of young people by using the potential of educational disciplines, the optimal combination of theoretical and practical training, development and application of educational and practical training methodological support.

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RETROSPECTIVE REVIEW OF HIGHER EDUCATION QUALITY: SOME PARALLELS BETWEEN PAST AND PRESENT

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Abstract: Studies of education quality are currently a matter of particular relevance and importance. It would seem that the quality of education should interest the scientific community in different periods (historical periods) of time, however, as practice shows, these studies have been carried out mainly in recent times. The article describes some arguments on the quality of education based on the available historical data on the development of education in Russia. Given that it is not possible to consider in detail all historical periods in different countries within the framework of one article, a summary of the key points influencing the development of education in Russia before the revolutionary events (during a certain period of the reign of the Imperial House of Romanov) was made in a small comparison with the modern perception of the quality of education. Some factors influencing the quality of education in the period from the late 19th to early 20th centuries have been identified. The conclusion is made on changing/unchanging factors affecting the quality of education in modern reality in comparison with past experience in the development of the education system.

Keywords: quality, education, education system, education quality, pre-revolutionary years, factors affecting the education quality, current stage of education development.

Introduction

The history of the development of education clearly shows "what, how and why" brought our education system to its current state. Often, the modern quality of education is a kind of return to the past experience (education system, organization of training, etc.).

At the same time, a large number of historical materials/sources are devoted to statistical data coverage (for example, how many universities were opened, how many teachers were trained, how literacy developed in our country, etc.), and practically no works are devoted to studying the quality of education and factors affecting it in the pre-revolutionary period. The only thing that is given attention in modern studies is the quality of education of Russian Emperors and the differences between modern education and education in pre-revolutionary Russia. Therefore, in this

study, we will reveal historical aspects of the formation and genesis of the concept of "quality" and the development of education. Accordingly, we will make an attempt to determine the factors affecting the quality of education in Tsarist Russia, and draw some parallels with the present time (what is used now from the experience of the past, and still has not lost its relevance).

Research Methods

The following sources have been used: historical writings, encyclopedias, monographs, scientific articles, historical reports on the development of education and education system in the pre-revolutionary and modern periods.

In order to identify various features of education and factors affecting the quality of education in different historical periods, an analysis of various surveys performed by Russian researchers has been carried out.

The main research methods are the general methods of scientific knowledge, such as theoretical analysis of different approaches (opinions) on the development of education, as well as their synthesis and comparison. The use of analysis and synthesis methods in this article made it possible to identify some features of the formation and development of national education.

The method of structured problem analysis helped to identify some determining (causal) relations that reveal the influence of past experience on the formation and development of the Russian education system in modern conditions.

The main sources of information were the materials (data) published in reports, research results and regulatory documents on education issues. The article also contains the author's interpretation of the content of some aspects of the education quality of the past period in view of present-day realities.

The use of systematic and comparative historical methods contributed to studying the problem with due regard to statistical data and certain historical facts.

Thus, the study is mainly based on general methods of scientific knowledge (analysis, generalization, comparison, etc.), but some specific methods were also used (analysis of documents, insight knowledge and interpretation).

Results

It is important to note that we have practically no materials devoted to the study of the quality of education (this means exactly the quality) in the pre-revolutionary period in our country. The article mainly discusses the reforms carried out in the field of education, provides statistical data on the development of literacy in Russia, and describes actions to develop education. It is indisputable that for a detailed consideration of all historical features, facts, events, of course, a specialized (and possibly more than one) monographic study is required. Thus, considering the scope of this article, the key points (main milestones) of pre-revolutionary Russian science in the field of studying the development of national education and the formation of its quality have been defined.

To begin with, let us speak about the "Manifesto on the establishment of the Ministries", which was the first step of the ministerial reform during the reign of Emperor Alexander I. The powers of the Minister of Public Education were described in the manifesto as follows (*Collection of Decrees for the Ministry of Education*, 1864, p. 4): "The Minister of Public Education, Education of Youth and Proliferation of Sciences has under his direct jurisdiction the Main School Board with all parts belonging to it, the Academy of Sciences, the Russian Academy and all other schools, except for those given to the special care of Our Most Beloved Parent Empress Maria Feodorovna, and administered by Our special command by other persons, or institutions, Private and state printing houses, excluding from these the latter, that are also under someone's direct control, the Censorship, the publication of statements and all kinds of periodic papers, public libraries, collections of fortresses, natural studies, museums and all kinds of institutions, that henceforth can be established for the dissemination of sciences".

The Collection of Decrees, issued in 1964, contains various documents regulating educational activities at that time (Ukases, Decrees of the Emperor): "On the duties of Schools Committees", "On the planning of books issued by the University of Dorpat", "Decree of the resolution for the Imperial University in Dorpat", "On Arrangement of Schools", etc. (*Collection of De-*

crees for the Ministry of Education, 1864).

In the "Decree of the resolution for the Imperial University in Dorpat" the following goals of the creation of the University are indicated: "This institution is primarily aimed at disseminating human knowledge in Our State, and at the same time educating young people for the service in the interests of homeland" (*Collection of Decrees for the Ministry of Education*, 1864, p. 6). Nowadays, it is only possible to modernize the wording of the goal, but its meaning remains the same.

The said act also describes seventeen rules ("advantages") relating to the activities of the University: provided possessions, money provision for its maintenance, management features and powers granted (censorship, "internal violence", etc.), compensation for teacher/professors (including foreign specialists), rules for the admission of students (*Collection of Decrees for the Ministry of Education*, 1864).

The rules relating to schools ("On Arrangement of Schools") are described in more detail - "Preliminary rules for public education", created in order to promote the science in the Russian Empire, consisting of three chapters (48 rules) (*Collection of Decrees for the Ministry of Education*, 1864).

Further, the education reform of 1864, better known as the education reform of Alexander II, is of particular interest to us. The low educational level of the population is indicated as one of the reasons of this reform. Along with other statutes ("Regulations on Public Schools" and "Charter of Gymnasiums and Progymnasiums"), the statute of the "University Charter" was signed (June 18, 1863). All three levels of education were reformed at once - elementary, secondary and higher. In accordance with the adoption of the University Charter, the universities were granted the right to autonomy and a new charter: they independently decided on the curriculum, staffing and finances. At the same time, women got an opportunity to receive higher education. One of the positive results of the reform is the accessibility of education for all strata of society (Educational reform).

In the "General Charter of the Imperial Russian Universities" of 1863, the first paragraph in the chapter "General" is the paragraph on the organization structure of the university "Each university consists of faculties, as integral parts of one whole" (*University Charter*, 1863, p. 3). In general, the following can be said about this charter: the expansion of university autonomy, in particular, in the field of determining/adopting the budget, increasing the salaries of professors, the composition and distribution of knowledge by faculties is described in detail, indicating the necessary disciplines (*University Charter*, 1863).

Dissatisfaction with the Charter of 1863 (or rather, its excessive liberalism) leads to the development and adoption of the General Charter of 1884 (the General Charter of the Imperial Russian Universities), approved by the emperor Alexander III. The general provisions of the Charter state that "the Universities are under the special patronage of His Imperial Majesty and shall be called Imperial" (*Collection of Decrees for the Ministry of Education*, 1893, p. 985).

In general, the Charter of 1884 describes the structure of the Universities, management features, powers and responsibilities of the rector (the rector was elected by the Minister of Public Education), organization structure and powers of the faculties, the University Council, describes the order of record keeping, organization of the educational unit, educational and auxiliary units, the rules of university tests and others (*Collection of Decrees for the Ministry of Education*, 1893). The rules for the admission and behavior of students are specified, in particular: "Students are admitted once a year, before August 20, and each student is obliged to enroll in one of the existing faculties of the University" (*Collection of Decrees for the Ministry of Education*, 1893, p. 1017) and "The studies of students receiving grants are under special supervision and control according to the rules approved by the Minister of Public Education" (*Collection of Decrees for the Ministry of Education*, 1893, p. 1019).

During the reign of Alexander III, it has been noted that new laws were adopted that strictly limited the university life, such as: wearing a uniform, mandatory attendance at lectures, etc. (Oldenburg, 2016).

Now these questions also remain relevant: is there a need for a uniform (however, this is not currently the question at the level of higher educational institutions) and mandatory attendance of classes for full-time students. After all, the quality of education is not only the quality of teaching, qualified teachers, etc., but also the quality of students' learning activities.

Great interest in the education of the people was shown by Catherine the Great (Catherine II), she made attempts to create a school system (*Primary public education*, 1916). At that time, "the complete absence of any trained teachers and textbooks for schools" was revealed (*Primary public education*, 1916, p. 124), and therefore attention was paid to the training of teachers and the publication of books and various manuals.

The New Encyclopedic Dictionary also notes that the legislative work of the State Duma in the field of general education and public education begins in 1908: this is the time of the publication of a number of laws on the regulation of elementary education and school management (*Primary public education*, 1916).

It's interesting, that statistics are constantly collected and published regarding the cost of education, the number of students, the duration of pedagogical activity, the distance of the residence of students from the school, etc., based on the information obtained, diagrams are built, for example the "Diagram of the percentage of students to the number of children from 8 to 11 years old (as of January 1, 1915)" (*Primary public education*, 1916).

If we draw an analogy with the current situation in the field of education, then at the present time we are still achieving the goal (solving the problem) of access to education, continuity of education, and now the right to autonomy of educational institutions of higher education is recognized.

At the end of the 18th century, home education prevailed among the nobility in Russia, and it was often supplemented by education abroad. At the beginning of the 19th century, the role of home education began to decline noticeably. For comparison: at the beginning of the 19th century, the number of people studying in Russian higher educational institutions did not exceed several hundred people, and by 1917 there were 124 higher educational institutions in Russia, which more than 120 thousand students studied in (as of 1913). During the period from 1898 to 1917, about 160 thousand people completed a full course of study in national higher educational institutions. The first women's educational institutions in Russia are considered to be the institutes of Noble Maidens, these were closed privileged educational institutions (1764, St. Petersburg: the Educational Society for Noble Maidens (Smolny Institute) was opened). It is also noted that by the end of the 19th century, all state and private women's educational institutions provided only secondary education. Only from the 1870s the higher courses for women began to open (as private educational institutions) (*Russian authors. 1800 – 1917: Biographical Dictionary*, 1999).

Now the national education is often continued with the education abroad.

As for Russian higher education, its history begins with the opening the Academy of Sciences by Catherine I (Peter I had the idea of opening the Academy of Sciences, but his heiress was able to realize it) (Ferlyudin, 1894).

Describing the goal of creating universities, P. Ferlyudin quotes J. S. Mill's speech (here we give only a small part of the quote): "their goal [creating universities – author's note] is not to train skillful lawyers, physicians or engineers, but the talented and educated humans" (Mill, 1867, p. 6) and sums it up: "The university, according to J. S. Mill, is primarily shall give its students a comprehensive improvement, it shall give them the improvement of not only mental, but also moral forces, it shall create not teachers, not lawyers, not prosecutors, not judges, not county or zemsky doctors, but create a man, in the best and most sublime sense of the word. This is the task of universities as higher educational institutions" (Ferlyudin, 1894, p. 26). And at the present time, one of the goals of education is the formation of a comprehensively and harmoniously developed personality.

To achieve this goal, university charters are developed, that describe the internal structure of universities, working and studying conditions, etc. (Ferlyudin, 1894).

In general, P. Ferlyudin (1894) distinguishes five periods of the formation of Russian universities from the establishment of the first university to the writing of his historical review on higher education in Russia:

1. 1755 - 1804 – creation and opening of the Moscow University, publication of the University Charter;
2. 1804 - 1835 – opening of new universities, publication of Charters;
3. 1835 - 1863 – publication of a General Charter for Universities;
4. 1863 - 1884 – publication of a new University Charter, opening new universities;

5. 1884 - 1893 – publication of a new University Charter, opening new universities.

When receiving secondary education at the beginning of the 19th century, the obligatory study of the Law of God is noted (Yermoshin, 2009), while according to the Charter of 1884, such disciplines as: "History of the Church", "Church Law" were studied only at the spesialized faculties of the University (Ferlyudin, 1894).

How did Russian education develop in the further period of time? The different authors give different data. According to some reports, between 1906 and 1914 there was a growth of the national system of higher education. By 1914, the Russian system of higher education caught up with the leading European educational systems. This fact is also proved by the scale of the Russian higher education system in comparison with the total population of the country at the turn of the century (in relation to the population size): 1899 - 1903 - 3.5 students per 10,000 inhabitants, and in 1911 - 1914 this figure was 8. According to D. L. Saprykin in 1914, 145.1 thousand students studied in Russia (Saprykin, 2009).

As can be seen from different studies, the figures vary: more than 120 thousand (123.5) and 145.1 thousand students. As the authors explain, this is because of the different sources: available reports, different approaches to counting students, etc. It is clear that these criteria do not reflect the quality of education (as claimed by the authors of the studies themselves), but they are quite indicative for that period.

If we turn to the statistics, the following results on the development of literacy in Russia are given: from 1847 to 1917, the literacy of the urban estates mostly increased - from 30 to 64% (by 34%), in second place is the increase in the literacy of the clergy - from 68 to 95% (by 27%), then the rural population - from 10 to 36% (by 16%) and the nobility - from 76 to 90% (by 14%). These data show quite significant progress in the development of literacy in Russia in comparison with Europe during the 19th - early 20th centuries: the average annual growth rate of literacy for the rural population was approximately 1.8%, the total population - 1.6% (Mironov, 1991).

In general, it is said that during the reign of Nicholas II, Russia was among the five most developed countries (along with the United States, Germany, etc.) in terms of the level of development of science and scientific and technical education (Saprykin, 2009).

Obviously, all the ongoing reforms in tsarist Russia in the period under review from 1864 to 1916 in the field of education were aimed at raising the level of education, as well as the level of education quality.

For example, one of the steps of the reform carried out under Nicholas II in 1915-1916 (Ministry of P.N. Ignatiev) was the decentralization of education management in order to debureaucratize it and "make it closer to realities", for those tasks the use of a really functioning state-public management of an educational institution was justified, involving the active participation of teachers and parents (Saprykin, 2009).

The attitude of Nicholas II to the issues of education, the recognition of the priority of education, as well as the creation of a comprehensive structure of education management confirm the conclusions on great importance of the quality of education. So, by the early twentieth century, a diverse network of higher educational institutions had developed.

By 1917, the state higher educational institutions in Russia were following: universities (11); special legal higher education institutions (4); oriental higher education institutions (3); special medical higher education institutions (2); academical higher educational institutions (4); educational institution of fine arts (1); military and naval educational institutions (8); religious higher educational institutions (7); industrial engineering schools (15) and agricultural higher education institutions (10). In total there were sixty-five government agencies. Along with the government ones, there were also public and private (fifty-nine) educational institutions (*Russian authors. 1800 – 1917: Biographical Dictionary*, 1999).

Nowadays, there are also public and private educational organizations that are focused on the quality of education in the present conditions of the country's development.

The Report of the Minister of Public Education for 1913 highlights the need to eliminate the most acute problems that impede the normal development of the "scientific and educational life" of universities, so, the following measures were proposed and justified: improving the financial

situation of teachers, increasing financial support for the educational units of universities and their internal improvement (*Russia. Ministry of Public Education. Report of the Minister of Public Education*, 1916).

Now it is the development of the infrastructure of universities (educational institutions of higher education), including the improvement of working and learning conditions, in order to improve the quality of education and the creation of various bonus systems as part of the motivating system for teachers (that also contributes to improving the quality of education).

Questions to Be Discussed

Education has expectedly been recognized as a significant aspect of the qualitative assessment of human life and the development of society. That is why great attention has always been paid to the issues of the quality of education, but such term as "quality" has not always been used together with the concept of "education". So, according to the results of the study, it is obvious that for education in the period of reign of the Imperial House of Romanov without using the word "quality" (so to speak, by default), everything was done so to provide the high level of education and constantly develop/improve it.

The study also revealed that the category of quality, that dates back to the time of Aristotle, who first considered this category from a philosophical point of view (Ilyin, 2007), is not mentioned in the documentary sources of the period from 1755 to 1917, related to the field of education.

Thus, to define the concept in the period considered in the article, let's turn to the dictionaries of that time - the Dictionary of the Russian Academy and the Explanatory Dictionary of V. Dahl.

In the Dictionary of the Russian Academy (1792) there is an interpretation of the words "shake" and "roll", but not the word "quality", and the following definition is given in the dictionary by V. Dahl (1881): "Quality is a property or belonging, everything that makes up the essence of a person or thing" (p. 100). Quantity means count, weight and measure, to the question "how much": quality, to the question "what", explains the kindness, color and other properties of an object. People understand the quality of a person in a negative sense. Behind him, it seems, there are no qualities. Qualitative, related to quality.

Let us turn to the interpretation of the word "education". In the Dictionary of the Russian Academy, it is interpreted as follows: "education is the external appearance of anybody" (*Dictionary of the Russian Academy*, 1793, p. 595), in the explanatory dictionary (the quote is given in accordance with the spelling from the dictionary): "education is also the degree or state of someone in this matter, education, the state of an educated person, enlightenment" (Dahl, 1881, p. 633).

What factors determines the high level of education in the period from 1755 to 1917, i.e. "education quality" in the modern sense?

A review of the main sources of information made it possible to identify the following factors affecting the quality of education in prerevolutionary Russia:

- global factors;
- government factors;
- legal factors;
- economic factors;
- social factors.

Let us consider the identified groups of factors in more detail.

The global factors (globalization can include the influence of international processes in the field of higher education, the demand for higher education in the world community) include the orientation of Russian higher education at that time to the leading European educational systems (Saprykin, 2009).

The issues of organizational and legal support, regulation, control and management of education in a particular state, issues of state policy in the social sphere, etc. are considered as the government factors. In this respect, the number of adopted resolutions and orders by the highest Government Institutions on education of Russia (see table) in the period from 1802 to 1905 (Russian legislation on education of the 19th – early 20th centuries, 2017) can be an informative indicator.

Table 1.

The Number of Adopted Resolutions and Orders by the Highest Government Institutions on Education of Russia (*Russian legislation on education of the 19th – early 20th centuries*, 2017, p. 29)

The issue under review	*1802 – 1855*	*1856 – 1864*	*1865 – 1881*	*1882 – 1894*	*1895 – 1899*	*1900 – 1905*
General issues of public education	77	27	106	49	21	23
Public education administration	63	20	83	33	37	48
Elementary education	230	54	172	242	184	112
Secondary education	319	43	350	222	98	122
Pre-vocational and vocational education	90	17	98	210	180	187
Higher education	318	54	183	153	74	69

Economic factors, including financial ones, contribute to the availability, implementation of the educational process, and financing. Virtually all documents contain the evidences of financial support for universities, teachers and students (*Collection of Decrees for the Ministry of Education*, 1864; *Collection of Decrees for the Ministry of Education*, 1893, etc.). It is believed that the structure of financing in the pre-revolutionary period was rather complicated:

the educational program was financed from several sources at different levels (Saprykin, 2009).

Legal factors provide the legal support of the educational activity: legal regulation of relations in the field of education, legal guarantees of the quality of education, one of the factors is a thoughtful/effective organizational structure and the charter of an educational institution (*University Charter*, 1863).

Social factors basically assume the satisfaction of social needs in education, the demand for education, attitudes to the necessity of higher education, etc. All this is reflected in the adopted Charters of the Universities and is clearly demonstrated by foundation of the State Higher Educational Institutions in Russia (*University Charter*, 1863; *Collection of Decrees for the Ministry of Education*, 1864; *Collection of Decrees for the Ministry of Education*, 1893; *Russian authors. 1800 – 1917: Biographical Dictionary*, 1999).

Cultural factors can also be added to the group of social factors, that determine the need for higher education, the relationship between the culture and the level of education in the country. The professors of that time put a lot of efforts to strengthen the connection between science and practice, science and culture: they open museums and were actively engaged in community education activities (*History of the Moscow University*, 2023).

On the whole, as we can see, all these factors influencing the quality of education in pre-revolutionary Russia are still relevant.

Conclusion

The data collected in course of the study confirm that at different times (different historical periods) the quality of education means a lot of different things, however, the main factors affecting the quality of education remain unchanged, only the definition (content) changes.

Both in the pre-revolutionary years of the Russian Empire and now, the priority of education is recognized. The experience has proven that, when reforming the education system (as they like to say now "during transformation"), one has to turn to positive experience of various historical periods, including experience in the development of education in the period from the creation of the first university in Russia to the start of revolutionary events. Here we can note another factor that affects the quality of education, that is the historical factor.

As a result, if we consider the quality of education and the factors affecting it during the tsarist period, then, based on the available documen-

tation of that time, we can say that this is a quite extensive and diverse field for conducting various kinds of research.

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FLORAL SYMBOLISM IN UKRAINIAN TEMPLE ART

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Abstract: The origins of the formation of plant symbolism in Christian temple art have been investigated, particularly on the example of the texts of the Holy Bible. The primary connotations of the garden's symbolism in Christian sacral art are analyzed as an expression of the idea of a lost paradise, contemplation of the images of which is possible in the space of temples. Plant symbolism is revealed in the holistic art systems of the Sophia of Kyiv and St. Cyril's Church in Kyiv. The fundamental values of plant symbolism in St. Sophia's Cathedral and St. Cyril's Church are highlighted by the idea of the continuity of Christian semiotics with the Old Testament Judaism and the combination of local pre-Christian traditions.

Keywords: plant symbolism, temple arts, Christian architecture, St. Sophia's Cathedral, St. Cyril's Church in Kyiv.

Introduction

A unique communication code is symbolic systems, an essential component of the language of philosophy. A symbol is one of cultural communication's most essential means of encoding and transmitting information. A *symbol* is a tool by which the content of a thought is expressed through the acquisition of appropriate forms (pictorial, action) so that the content becomes a universal dimension. Symbolic communication is a cognitive-semantic, ideal-semantic, and moral-axiological exchange of information. The symbolic dimension of language represents of the metaphysics of the presence of the transcendent, as well as of mentally internalized cultural texts, the pragmatic load of which has a multifaceted semantic potential for unfolding in the process of cognition. For symbolism filled with philosophical meanings, not only is its transcendent feature important, indicating the absoluteness of the ideal sphere, but also direct evidence of its existence, which determines the culture by its level of development. Symbols express in a laconic form the semantic depth of philosophical and religious concepts and the versatility of artistic images. In the individual process of cognition, a symbol has the potential to act as a conventional means of combining the conscious and the unconscious, the rational and the mystical, the scientific and the artistic.

Symbolism is one of the main cultural identity factors, which has absorbed a centuries-old heritage of traditional connotations and is being

reinterpreted in modern socio-cultural circumstances. Symbols represent ideas of higher abstraction that are difficult to describe verbally, contain philosophical ideas or religious doctrines in a concentrated form, manifest of the eternal in the temporal, and have a multidimensional pragmatic potential for shaping the current cultural discourse.

Religious art is a special discourse of symbolism; functioning, which combines the concepts of certain religions and the form of their figurative embodiment. A separate type of symbol is sacred, whose main characteristic is the designation of the supernatural in the respective religious system. Initially, the subject of a symbolic narrative is a certain religious object (abstract concept, object, person, action, etc.), which is later transformed into a symbolic figurative and sensual form with a plurality of connotative meanings in a communicative situation. In complex symbolic structures, in particular, in religious art, their individual segments act as autonomous semantic objects and artistic and figurative phenomena. Sacred symbolism plays an important role in the formation of not only the consciousness of a religious person but also in the cognition of cultural and religious traditions that have been formed over the centuries.

In the language of religious art, the symbol distinguishes and marks the conceptual beginnings of the religious worldview in a figurative, sensual, and aesthetically artistic way, giving it a systematic unity. The language of architecture is special, as it represents in monumental forms the concepts of the human vision of the universe of a certain historical epoch. Temple architecture,

starting from the most ancient civilizations, symbolically expressed a religious vision of the world, in which the structuring was based on the example of the division of the world into earthly and heavenly, profane and sacred. The concept of the temple as an imago mundi (Latin for ‘ image of the world’), the postulate that the sanctuary reproduces the essence of the universe, was also accepted by Christian sacred architecture, which symbolically reproduces the Heavenly Jerusalem as it is presented in the texts of the Bible and theological tradition.

Symbols in the language of religious architecture not only convey certain meanings and values but also help a believer to psychologically enter a religious cult, emotionally experience the ritual actions performed, and create an atmosphere of the importance of the event performed. Temple architecture establishes a correspondence between different planes of existence and building forms.

By following certain symbolic imagery and structured space, the temple is considered to be filled with a special sacred power. In ancient temples, we see a direct comparison between architectural proportions and cosmic models, emphasizing the idea of the spiritual descent of divine grace into the earthly world. The geometric symbolism of the temple is based on a vertical vector, similar to a sacred tree or a sacred mountain that unites the world of gods and people. The temple is a symbol of spiritual aspirations and achievements; it contains cosmic symbolism, which represents a model of understanding the universe of a particular civilization. For example, in the language of sacred architecture, all-round shapes express the idea of heaven, the square is the earth, and the triangle symbolizes the interaction between earth and sky. In the symbolic language of architecture, a temple is a form of reflection on the theme of the universe as a whole. Symbols combine a wide variety of objects into one text, while natural language only partially and consistently expresses what symbols represent in a single moment through a specific form. The structure of symbols in the language of architecture is a model of space through immersion in which a person can reach the knowledge of the transcendent world.

The originality of the symbolic worldview can also be traced in Ukrainian sacred church architecture, particularly through floral symbolism in the decoration of churches.

Floral Symbolism in Ecclesiastical Art, originating from the advanced civilizations of the Near East, occupies an essential position by associatively and symbolically expressing the abundance and beauty of the paradise garden. The aspiration to recreate on Earth the state of heavenly existence as the abode of God and saints led to the embellishment of church interiors with floral imagery and symbols. Christian art, during its process of formation and development, creatively borrowed from Jewish and Near Eastern traditions in understanding floral symbolism as the concept of recreating the paradisia-

cal existence that the faithful sought in their earthly pilgrimage.

The article aims to investigate the primary meanings of floral symbolism in ecclesiastical art by analyzing comprehensive texts within the interior space of Kyiv Sophia and Kyrylivska Churches in Kyiv.

In the Temple of Solomon in Jerusalem, flower carvings were ordered to be made on the walls, as stated: "And he carved all the walls of the house round about with carved figures of cherubims and palm trees and open flowers, within and without" (English Standard Version Bible, 2001, 1 Kings 6:29*)*. Furthermore, the doors were crafted with two-winged doors made of olive wood, featuring carvings of cherubim, palm trees, and hanging flowers, all covered in gold: "And he made two doors of olive wood; and he carved on them figures of cherubim, palm trees, and open flowers, and overlaid them with gold, and spread gold on the cherubim and on the palm trees" (English Standard Version Bible, 2001, 1 Kings 6:32). The bronze pillars at the entrance to the Holy of Holies, which only the high priest had the right to enter once a year (on the Day of Atonement) to offer sacrifices for the entire Israelite nation, were decorated with lilies and pomegranates: "And he made chains like a necklace and put them on the tops of the pillars; and he made one hundred pomegranates and put them on the chains. Then he set up the pillars before the temple, one on the right hand and the other on the left; he called the name of the one on the right hand Jachin, and the name of the one on the left Boaz.Moreover, there were network pillars in front of them. Each with wreaths on the capitals, on the top of each of them, and the work of the pillars was finished with lilies" (English Standard Version Bible, 2001, 1 Kings 7:18-22). The so-called "Sea," a significant molded vessel located in the Temple courtyard, served the purpose of purification for the priests and symbolized the tumultuous world ocean that God subdued. It was additionally adorned with lily flowers as decorative elements (English Standard Version Bible, 2001, 1 Kings 7:26).

The golden temple menorah, with its lamps continuously burning before the presence of the Lord in the Holy of Holies, had seven branches resembling stalks with flowers. "Six branches shall go out from its sides: three branches of the menorah from one side and three branches of the menorah from the other side. Three cups shaped like almond blossoms, with buds and flowers, shall be on one branch, and three cups shaped like almond blossoms, with buds and flowers, on the other branch – thus for the six branches going out from the menorah. On the menorah itself, there shall be four cups shaped like almond blossoms, with their buds and flowers. There shall be a bud under the two branches going out from it, a bud under the next two branches going out from it, and a bud under the last two branches going out from it – thus for the six branches going out from the menorah" (English Standard Version Bible, 2001, Ex. 25:32-35).

Therefore, when the ancient Hebrews entered their grand Temple, they primarily saw plant images associated with heavenly-paradisiacal existence, an immutable and beautiful abode of God, which all believers aspired to enter after their earthly pilgrimage.

Christian sacred architecture borrowed numerous structural elements from temple architecture of the Ancient East, specifically, it drew from the Old Testament directives regarding the embellishment of holy places, the symbolic significance of which pertained to the intention of portraying transient earthly replicas of the eternal heavenly reality.

During the construction and decoration of the St. Sophia Cathedral in Kyiv and other sanctuaries of Kyivan Rus, a conceptual model of the Christian church had already been established, which underwent a long evolution, starting from the ancient sacred structures of the Ancient Near East and the Jewish-Old Testament understanding of the place of worship to the One God, as expressed in the narratives of the Old Testament and represented in the Tabernacle and the magnificent Jerusalem Temple, which was constantly rebuilt or restored from the time of King Solomon to Herod the Great. It was natural that the ancient Kyivans embraced the idea of a Christian church from Byzantium, which, in theological treatises, architectural forms, and various aspects of interior decoration, had a cohesive organic paradigm of sacred architecture as a model of the Heavenly Jerusalem, to which the faithful aspired in their earthly pilgrimage.

The idea of the temple as a paradise garden is one of the fundamental concepts in Christian sacred architecture. To embody this idea, a series of artistic, ornamental, and ritual-cultural factors

were carefully considered, each endowed with profound symbolic meaning. The semantics of these factors can be traced throughout the extensive history of the development of the temple concept as a dwelling place of the gods, a realm of heavenly bliss, and an image of eschatological perspective that emerges as a source of hope and solace during the earthly lives of the faithful. They are granted the opportunity to contemplate the Edenic realm within the semiotic framework of the temple space.

The vegetal imagery found in the ancient mythological narratives of the Near East, depicting an idyllic and blissful existence, was undoubtedly derived from observations of nature. The coolness of gardens, the majesty of trees, and the vibrant colors of plants became associated in human perception with the abode of gods and the hope of attaining such a realm after the toils and trials of earthly life. A garden with lush vegetation represented not only a place of physical and psychological relaxation and aesthetic pleasure but also served as an ancient symbol of paradise within architectural temple structures.

In the earliest civilizations, templegardens served as the focal points of cities, where the main paths converged and the prayers of inhabitants and pilgrims were directed, with the intention of attaining a glimpse of paradise and the hope of eternal existence in Eden after death. This concept of the garden as an image of paradise has been inherited by Christian sacred architecture. Trees offer humans shelter and coolness, bear fruits, and provide solace, they reach towards heavenly heights, indicating the direction to the celestial realm. They are deeply rooted, symbolizing the steadfast wisdom of humanity, which honors the earth and turns to God. Flowers fill the human heart with beauty and inspiration, often lacking in earthly life.

In the biblical books, we can find rich symbolic imagery of trees and flowers. Let's provide just a few quotes from the Holy Scripture. In the Book of the Prophet Jeremiah, we read: "Blessed is the man who trusts in the Lord, whose trust is the Lord. He is like a tree planted by water that sends out its roots by the stream and does not fear when heat comes, for its leaves remain green, and is not anxious in the year of drought, for it does not cease to bear fruit!" (English Standard Version Bible, 2001, Jeremiah 17:7-8). In the Book of Sirach, "the godly children" are compared to "a rose planted by flowing waters" (English Standard Version Bible, 2001, Sirach 39:13). The poetic Psalm 92 compares: "The righteous shall flourish like the palm tree, and grow like a cedar in Lebanon. Those who are planted in the house of the Lord shall flourish in the courts of our God. They shall still bear fruit in old age; they shall be fresh and flourishing, to declare that the Lord is upright; He is my rock, and there is no unrighteousness in Him" (English Standard Version Bible, 2001, Ps. 92:12-16).

It can be said that nature, trees, and flowers, including cultivated garden complexes, brought humanity closer to the world of divine paradise existence.

Particular attention should be paid to the plant ornaments in the interiors of the Saint Sophia Cathedral in Kyiv, the main church of Kyivan Rus, which stands as an enduring spiritual archetype and a meaningful image that permeates all spheres of our culture throughout the centuries.

Nadia Nikitenko (2003) rightly emphasizes the significance of the ornaments in Saint Sophia Cathedral not only on a purely aesthetic level but also in a profound conceptual theological dimension, which was intended to instill hope for eternal bliss in the faithful who contemplated the imagery and ornamental language conveying Christian doctrine. "The elevated atmosphere of triumph and festivity is created by luxurious ornaments reminiscent of precious fabrics used to adorn royal chambers. The ornaments generously cover the vaults, walls, and columns of the entire cathedral. Emphasizing its architectural forms and framing the narratives, they enhance the visual and symbolic impact of their perception. As symbols of a blossoming paradise garden, they depict the image of the heavenly world and evoke a joyful sense of the miracle of salvation received" (Nikitenko, 2003, p. 53). In the exploration of the history of art research, regarding the frescoes of Saint Sophia Cathedral, particularly in the works of D. Ainalov and Ye. Redin, the scholars make the following observation: "Regarding the rich ornamentation of the vaults and towers of the cathedral, Ainalov and Redin limit themselves to a brief comment: ...in the vegetal ornamentation that generously adorns the entire cathedral, they see a 'mixture of ornamental forms from classical and Eastern art, such as Persian art". According to their conviction, the motifs of the vegetal ornamentation were bor-

rowed from Byzantine art, influenced by Eastern art, and known in the ornaments of Serbian and Bulgarian art, which derive from classical ornamentation." In our opinion, the conclusions of these early researchers, despite the importance of their work, somewhat overlook the theological and symbolic aspects of the cathedral's interior, which are more significant than purely formal comparisons and the influence of local cultural and artistic traditions.

Nadiia Nikitenko (2018) analyzes the semantics of ornaments in the decor of the main altar, tracing allusions to biblical and liturgical-poetic images that create a coherent text representing heavenly reality: "The conch of the apse is an image of the celestial vault, in which the Oranta is depicted, framed by a bright floral-leafy ornament. This rich ornament on a golden background obviously corresponds to the inscription above the Oranta, which refers to the Heavenly Jerusalem. Not without reason, the ornament contains 25 medallions, which are associated with the 25 stanzas of the Akathist Hymn, in which the Virgin Mary is glorified as the Unshakeable Wall of the Kingdom" (p. 30).

It is also worth noting that the author of the Book of Revelation had in mind the actual appearance of the Mount of Olives, which is well known from the texts of the Old and New Testaments and is particularly significant in the history of the Jewish people and Christian narratives. This oronym is first mentioned by the prophet Zechariah: "And his feet shall stand in that day upon the mount of Olives, which is before Jerusalem on the east, and the mount of Olives shall cleave in the midst thereof toward the east and toward the west, and there shall be a very great valley; and half of the mountain shall remove toward the north, and half of it toward the south" (English Standard Version Bible, 2001, Zech. 14:3-4). Ezekiel assigns special significance to the summit of the Mount of Olives in his eschatological prophecies: "And the glory of the Lord went up from the midst of the city, and stood upon the mountain which is on the east side of the city" (English Standard Version Bible, 2001, Ezek. 11:23). From the height of the range of the Mount of Olives, which extends from north to south opposite the wall of the Old City on the other side of the Kidron Valley, a magnificent panorama of the Temple Mount is revealed (in blue , mainly when there were no high-rise buildings in the new districts of Jerusalem), and in golden (today represented by the Dome of the Rock shrine, and in the time of Christ - the gilded decoration of the Second Temple, which was beautifully built and adorned by Herod the Great), colors, we see the main altar of St. Sophia's Cathedral in Kyiv, which are in harmony with the biblical semantics of the Heavenly Jerusalem, the symbolic representation of which was taken from the actual appearance of the ancient holy city.

The inscription (the 6th verse of Psalm 45 in synagogue tradition, which is Psalm 46 in Christian tradition) - "God is in the midst of it, it shall not be moved; God shall help it when the morning dawns" (translated by Ivan Ohiyenko), holds a special significance. It is positioned above the central apse's conch in the cathedral. Its deep analysis was conducted by Sergei Averintsev (2004), who referred to the continuous heritage of Christian semiotics from ancient and Jewish traditions. He states, "The entire psalm is constructed on the contrast between two images: the worldly chaos and the unshakable God-protected city. Around this city, elemental cataclysms and war storms rage... But for the city and the house of God, all these cosmic forces become a source of consolation, as they are securely protected by the presence of God... The inscription is placed above the head of the mosaic figure of the Virgin Orans in the conch of the apse and is clearly connected in meaning with this figure" (Averintsev, 2004, p. 35). Furthermore, the scholar concludes based on the symbolism of St. Sophia and a deep textual analysis: "The 'Mother of God' is a 'city' because her virtue is symbolically associated with the integrity, invulnerability, and orderliness of a city. We recall that in the Byzantine hymnography, attributed to Roman the Melodist, and possibly even earlier, the Mother of God is referred to as the 'twelve-gated city' of the Apocalypse" (Averintsev, 2004, p. 37). Therefore, the inscription above the head of the Orans signifies "Mother of God, but to the extent that she is the Guardian of the City, or rather, to the extent that she is the City, an image of spiritualized matter, an image of human community embodying the cosmic meaning; a church community, but to the extent that it is directed towards the union of the heavenly and the earthly; a temple building, but to the extent that it is, as an 'icon,' the cosmic House of Wisdom, sim-

ultaneously turned towards the city, providing it with meaningful support and a hopeful expectation of victory over visible and invisible enemies" (Averintsev, 2004, p. 38). Although the 46th Psalm was called "the song of Zion" and it was assumed that the mentioned city refers to Jerusalem, it can be understood in a broader sense as the celestial city, the Heavenly Jerusalem.

The fragment of the "Zion" psalm in the central cathedral of Kyivan Rus signifies the special status of the capital city as an authentic sacred center of Slavic culture, following the pattern and analogy of ancient cities in the Near East, where the focal point was the sacred precinct representing and symbolizing the heavenly abode of gods, often through the presence of plants and water. Therefore, in Kyiv's Saint Sophia Cathedral, the ornamental plant motifs serve the same idea - the concept of the church as an earthly replica of the Heavenly Jerusalem (in the Christian interpretation of sacred architecture). In verses 4-5 of the same 46th psalm, there is an analogy to a celestial river, which says, "The waters thereof roar and be troubled, the mountains shake with the swelling thereof. There is a river, the streams whereof shall make glad the city of God, the holy place of the tabernacles of the Most High" (English Standard Version Bible, 2001, Psalm 46:4-5). Here, we see a gentle river that fills the city of God with life, contrasting the chaotic waters that pose a threat to humanity, as often encountered in Near Eastern myths and biblical narratives. At the beginning of the Book of Genesis, we also read about a peaceful river: "And a river went out of Eden to water the garden, and from thence it was parted, and became into four heads" (English Standard Version Bible, 2001, Gen. 2:10). In the final chapter of the Book of Revelation, the concluding book of the Bible, the imagery of a life-giving river emerges again: "And he showed me a pure river of water of life, clear as crystal, proceeding out of the throne of God and of the Lamb. In the midst of the street of it, and on either side of the river, was there the tree of life, which bare twelve manners of fruits, and yielded her fruit every month: and the leaves of the tree were for the healing of the nations" (English Standard Version Bible, 2001, Rev. 22:1-2). As we can see, the image of the heavenly river is mentioned in the first and last books of the Holy Scriptures, which recount the loss of paradise by the first humans and the promise of the Heavenly Jerusalem in the afterlife following the end of the world and the Final Judgment. Therefore, the verse about the highest protection of the city by the Almighty God follows the mention of the river, whose waters, along with the vegetation, are associated with paradise - a place of refreshment and joy, where the Lord and the righteous dwell.

The concept of life-giving rivers mentioned in biblical texts received a new interpretation in Christian churches through the construction of baptisteries. Baptisteries, derived from the Greek word "βαπτιστήριον" (baptisterion) and the Latin word "baptisterium," refer to structures or rooms designated for the sacrament of baptism. In ancient Rome, the term was originally used in a secular context to denote a pool for bathing and swimming or a plunge bath in Roman frigidariums (cooling rooms in thermal baths). From the 3rd to the 4th century, the term started to be used to designate places or cultic spaces for the reception of the sacrament of baptism. Another name that can be encountered is "fotisterion" (the "house of enlightenment"), as baptism was understood as the enlightenment of an individual for a new life (English Standard Version Bible, 2001, Jus. Mart. "Apology," I, 65).

Most likely, during the 1st to the 4th century, baptisms were performed either in open bodies of water or in thermal baths. It was only at the beginning of the Constantinian era when the number of individuals eager to become Christians increased significantly that separate structures for this sacrament began to be constructed. Historians note that there were at least six baptisteries in Chersonesos during the 8th to 10th centuries. The most famous among them is the so-called Rotunda of 600 AD, also known as the "Church of Vladimir," where it is believed that Vladimir the Great was baptized. In the monumental architecture of Kyivan Rus, baptisteries were also constructed within the general space of the main church (such as the St. Sophia Cathedral in Kyiv, the Church of the Saviour at Berestove, the Illinska Church in Chernihiv, and others).

In the St. Volodymyr's Cathedral in Kyiv, on the fresco "The Baptism of St. Prince Volodymyr" by Viktor Vasnetsov, characterized by clear centrality, harmonious colors and light, the Baptizer of Kyivan Rus is depicted in a hexago-

nal baptismal font on a raised platform.

Here is a description of a specially arranged baptismal place in the Kyrylivska Church in Kyiv: "In the southern part of the narthex, a baptistery was located... The presence of the baptistery is confirmed by the following findings: remains of a semi-circular niche (apse) with a diameter of 137 cm, wall fragments located 18-20 cm from the ancient floor, a width of 130 cm, as well as remnants of the floor discovered during the research conducted by M. Kholostenko in 1950-1955. This researcher believed that the eastern wall of the baptistery constituted a niche-apse within the thickness of the wall between the southern pier and the pilaster and was constructed up to the level of the slate cornices (a similar niche was present in the Uspensky Cathedral of the Eletsky Monastery in Chernihiv, but instead of projecting outside as a small apse, it was only within the walls of St. Sophia's Cathedral)" (Nikitenko, 2003, p. 79).

During restoration work in 1977, beneath layers of later additions, small fragments of fresco compositions were discovered on the side parts of the pier and pilaster in the baptistery. These frescoes were created in the 12th century. Researchers determined that the ancient plaster base in these areas and other adjacent surfaces was applied simultaneously. Therefore, the baptistery was constructed before the commencement of the painting work. The "death" of a person to the old life in sin and their "birth" into a new, saved, heavenly existence is also an integral part of creating an analogy to the cosmic reality of the heavenly realm in a Christian church.

In St. Kirill's Church, there are preserved plant ornaments on the walls, totaling 3311, with various depictions but a common symbolic meaning - the reflection of paradise's existence. "The ornaments of Kirill's church are intended not only to decorate the temple but also to emphasize its architecture, divide compositions, and soften the stern features of the fortress-like structure. It is worth noting that the diversity of frescoed Kirill's ornaments, their skillful drawing, and colorful execution do not distract from the overall painting when observed. Therefore, the ornaments exist in a harmonious pictorial symphony with the main frescoes, and their disappearance from the walls would undoubtedly destroy this polyphonic enchanting harmony... A widely used ornament consisted of circles with stylized five-petal flowers inscribed within them. The space between the circles is filled with three-petal flowers" (Bezverkhyi et al., 2001, p. 387).

Returning to the image of the Oranta from St. Sophia of Kyiv, whose image is framed by heavenly text and ornamental attributes, let us turn our attention to another depiction of the Mother of God from the Kirill's Church, which is part of a composition attributed to Ivan Yizhakevych - the "Procession to Paradise". This iconographic representation is divided into two parts. In the first part, an angel is depicted turning towards the Apostle Peter, who leads people to salvation with an anchor cross, towards the gates of the Heavenly Kingdom. The second part, above the described scene, portrays the actual paradise: "The plane on which the composition is depicted is divided into two parts by a window opening. On the left are the doors to Paradise, which can be accessed by stairs. At the doors stands a guardian - a six-winged seraph, whose red wings signify fervent love for God. On the opposite side is the Mother of God, standing on either sidearchangels. The Mother of God has opened her palms as if indicating her readiness to embrace all the righteous into her embrace. The background of the composition is lavishly adorned with flowers, grapevine garlands, birds and intricate lacework of trees with green, pink, and blue leaves. Such a combination creates an impression of a delicate, lace-like tapestry" (Bezverkhyi et al., 2001, p. 385).

Nadia Nikitenko (2014) reveals the symbolism of geometric and plant ornamentation in St. Sophia of Kyiv: "Two magnificent ornamental friezes run along the cornice that separates the figure of the Oranta from the 'Eucharist': the upper one is of a geometric type, while the lower one is of a floral nature. Particularly striking is the exquisite upper ornament, laid out in light white lines against a dark blue background, creating an impression of sparkling iridescence. The ornament above the 'Eucharist' resembles a conch frieze, but its motifs are not separated; instead, they form a continuous vine, which is the thread of the overall pattern. This motif embodies the symbol of unity between Christ and the apostles depicted in the 'Eucharist': 'I am the vine; you are the branches' (English Standard Version Bible, 2001, John 15: 5). As a symbol of infinity, the ornament emphasizes the timeless and transcendent nature of the Eucharistic sacri-

fice" (Nikitenko, 2014, p. 83).

Let us add something to the previously quoted conclusion. From the perspective of Christian symbolism, which continues the tradition of the Old Testament and Jewish symbolism, the grapevine, together with wheat, holds the highest position in the "symbolic hierarchy" of plants. As it is known, symbolic references to a particular image are often given based on its external or natural characteristics. Therefore, considering that the grapevine, especially in the Near East and Southern European regions, vigorously entwines trees, creating shady arbors and canopies, it has acquired interesting significance in early Christian apocryphal literature, written in the genre of revelation (similar to the canonical last book of the Holy Scriptures, the Book of Revelation of John the Theologian). In the "Shepherd of Hermas," the grapevine is described as a symbol of mutual brotherly assistance between the wealthy and the poor members of the Christian Church. The rich (grapes) clothe the poor (the tree), who, in turn, envelop them with sincere prayers and, at the same time, enable them to perform good deeds, which develop their spirituality and help them progress towards the Kingdom of Heaven the texts of the Church Fathers compare the grapevine to the Church, and in wine, considering the context of Acts 2:12-18 (And they were all amazed and perplexed, saying to one another, "What does this mean?" But others mocking said, "They are filled with new wine". However, Peter, standing with the eleven, lifted his voice and addressed them) and he addressed them: "Men of Judea and all who dwell in Jerusalem, let this be known to you, and give ear to my words. These people are not drunk, as you suppose, since it is only the third hour of the day. But this is what was uttered through the prophet Joel: 'And in the last days it shall be, God declares, that I will pour out my Spirit on all flesh, and your sons and your daughters shall prophesy, and your young men shall see visions, and your old men shall dream dreams; even on my male servants and female servants in those days I will pour out my Spirit, and they shall prophesy!'' (English Standard Version Bible, 2001, Acts 2:14-18) and Ephesians 5:18: "And do not get drunk with wine, for that is debauchery, but be filled with the Spirit." In these passages, the Church Fathers see the fervor of the Holy Spirit and the symbol of Christian unity (individual grapes being transformed into one cup of wine).

Pope Benedict XVI (2011), a brilliant scholar of the patristic corpus and a great admirer of the classical Church tradition, during his sermon at the Holy Mass in Berlin on September 23, 2011, analyzes the grapevine as a "symbol of vitality and a metaphor for the beauty and dynamism of Jesus' relationships with His disciples and friends". He draws the following theological conclusion from the biblical text: "'As you are united with me, so you are united with one another.' This belonging to one another and to Him is not merely an ideal symbolic relationship, but - I would say - a biological, life-giving condition of belonging to Jesus Christ. This is what the Church is, this communion of life with Him and for one another, a communion that is rooted in baptism, deepened and receives increasing vitality in the Eucharist. 'I am the true vine' actually means: 'I am in you, and you are in me' - an unprecedented identification of the Lord with us, His Church".

Conclusion

Therefore, the plant ornaments in a Christian church primarily serve a symbolic function, being endowed with connotative characteristics of the paradise garden as an overall idea of the temple - a place separated from the secular space and inhabited by God (or gods in polytheistic religious systems). The formation of the model of Christian sanctuaries can be traced from the ancient temples of the Ancient Near East, which, among other things, expressed through lush vegetation the lost paradise existence and the longing for eternal bliss that humans sought, as seen in various mythical narratives (such as the Epic of Gilgamesh). The concept of the temple as a paradise garden was adopted by the Jews during the formation stage and the formation of the temple cult in Jerusalem. The First and Second Temples featured distinct plant ornaments (palmettes) in their decoration, and the central seven-branched menorah held one of the primary symbolic meanings as the embodiment of the Tree of Life from Eden. In Christian liturgical worship and the embellishment of churches, the ancient tradition of using plant symbolism was continued. It is also worth noting that plant ornaments

in Christian churches serve significant aesthetic, decorative, and visual-spatial functions (such as vertical ornaments creating an effect of "growth" towards the celestial realm). A vivid and artistically rich example of lavish plant symbolism is the adornment of the Kyiv Sophia and Kyrylivska churches. On the one hand, it was a reception of the already established Byzantine model of interior decoration in Christian churches. On the other hand, it incorporated the local significance of vegetation in pagan religious cults and folk rituals.

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PHILOSOPHY OF LANGUAGE

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THE PHILOSOPHY OF THE CONCEPT "PRIVACY" IN ENGLISH AND CHINESE LINGUOCULTURE

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Abstract: The current article is devoted to the study of the linguophilosophical concept "Privacy" in English and Chinese linguocultures, which plays a vital role in the formation of the meaning of life for any individual and the major axiological functions of personality.

The aim of the study is to give a complete characteristic of the philosophical concept "Privacy" in English linguocultures.

The novelty of this work is determined by representing the construction of the model of as a linguocultural concept, as well as defining its socio-psychological, cultural, philosophical and linguistic characteristics. This study is also important in identifying the ways of expressing "Privacy" in the lexical-phraseological system of language and communicative behavior.

The material for the study is presented by linguistic units, found in dictionaries, reference books and popular literature.

Keywords: privacy, concept, linguophilosophy, intimacy, freedom, property, personality.

In today's modern society the linguophilosophical term "Privacy" is intermittently used in various fields of scientific investigations such as linguistic, political, philosophical, legal as well as culturological studies, yet scientists have not found any single definition or a thorough analysis of the term that will contain the whole semantic elements of the term.

The origin of the term "privacy" could be traced in ancient well-known philosophical discussions, most notably in Aristotle's works with the distinction of public sphere of political activity and the private sphere deeply associated with one's domestic and family life (*Privacy*, 2018).

Starting from the second half of the twentieth century, philosophical debates concerning definitions of linguophilosophical concept "privacy" became prominent and have been deeply affected by the emergence of privacy protection (private rights protection) in Western and American laws.

American scientist Alan F. Westin defines privacy as "The claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others". Meanwhile Ch. Fried defines privacy as "The control we have over information about ourselves". Velecky susggests that privacy should be defined as "The state of a person who, in persuit of the good, jus-

tifiably can choose the nature and duration of contact with others" (Schafer, 2011, p. 5).

As Arthur Schafer (2011) mentions "Despite innumerable attempts by contemporary philosophers and jurists to formulate a definition, the concept has remained elusive" (p. 5).

Schoeman (1992) points out that the question of whether or not privacy is culturally relative can be interpreted in two ways (p. 113). One question is whether privacy is deemed valuable to all peoples or whether its value is relative to cultural differences. A second question is whether or not there are any aspects of life that are inherently private and not just conventionally so. Most writers have come to agree that while almost all cultures appear to value privacy, cultures differ in their ways of seeking and obtaining privacy, and probably do differ in the level they value privacy (Westin, 1967, p. 76).

In modern society human interaction is an integral part of social activity. People interact with each other, stay alone, feel the protection and assistance of surrounding people. Meanwhile, human beings try to preserve their relatively comparative privacy and independence from others and the society as a whole.

The interwoven interrelation of an individual and society has been defined by historical facts in different aspects of science. Collective interests mainly prevail in primitive societies; people usually work together, they live in big families (the form of extended family is highly appreciated), meals are special forms of family union, sharing a bedroom with other members of the family is considered a normal phenomenon (the results of anthropological investigation of primitive communities have been thoroughly illustrated in scientific literature).

Throughout the history under diverse circumstances primitive societies transformed into another community where physical privacy turned into a major way of human interaction.

In modern society the physical aspect of privacy has become indispensable for life. For example, modern Western perception of physical privacy has become a fundamental aspect of child upbringing. Children in modern Western societies have their private rooms (private space). From early childhood they learn to be independent both emotionally and economically from their parents. They start earning money earlier, and many of them live separately after leaving school. Through this way the philosophical concept of privacy becomes a necessary part of upbringing in Western cultures.

In linguocultural studies scientist often utilize models for in-depth perception of different transnational concepts. These cultural models are often investigated from the viewpoint of cultural dimensions. The basic conception of cultural dimension is actually based on the idea that different nations have the same values systems on different levels (Rokeach, 1973, p. 3). Those cultural dimensions are mainly evaluated on a scale according to their importance. Therefore, it is quite possible to discuss various cultures in the same dimension aspect and study the degree of reflection of this or that value there. One of such dimensions is considered to be individualism and collectivism.

In the early 2000's some culturologists conducted a research about the role of privacy in individualistic and collectivistic linguocultures.

Table 1. (Hofstede et al., 2011)

Individualism	Collectivism
Everyone is supposed to take care of him or herself and his or her immediate family only "I"-consiousness	People are born in extended families or clans which protect them in exchange for loyalty
Right of Privacy	"We"-consiousness
Speaking one'es mind is healthy	Stress on belonging
Others classified as individuals	Harmony should always be maintained
Personal opinion expected: one person one vote	Others are classified as in-group or out group
Transgression of norms leads to guilt feelings	Opinions and votes predetermined by in group
Languages in which the word "I" is indispensable	Transgression of norms leads to shame feelings
Purpose of education is learning how to learn	Language in which " I" is avoided
Take prevails over relationship	Purpose of education is to learn how to do
	Relationship prevails over task

As the column illustrates scientist Hofstede (2011) the concept privacy dominates in individualistic culture societies, while in collectivistic culture societies the concept is more surpressed (Hofstede, 2011, p. 9).

Individualism tends to prevail in developed and Western countries, while collectivism prevails in less developed and Eastern countries; Japan takes a middle position on this dimension (Hofstede, 2011, p. 9).

For many years, the Chinese-majority society like PRC, Hong Kong, Taiwan and Singapore were classified by Hofstede as "low individualism" or "collectivism" had a relatively high degree of collectivism (Wong, 2001, p. 2).

However, the geographical map of the perception of the linguophilosophical concept "privacy" has drastically changed a lot. Nowadays people from Asian cultures highly appreciate the concept "Privacy". Lots of people in China have started to attach much importance to privacy. Chinese people regard privacy as freedom. In modern China people want to possess their own apartments and live apart from their families.

After examining there is the apparent evolution in work values among young Chinese managers in Shanghai over a 2½ - year period, Ralston et al. (1995) suggested a growing spirit of "Chinese -style" individualism and more Western ways of thinking are being adopted by these young Chinese managers in China.

"Privacy" belongs to the group of concepts, that according to Yu. S. Stepanov "wander over words" (Karasik, 2001, p. 112). In addition, it should be mentioned that this kind of linguophilosophical concepts are by and large expressed not explicitely, but implicitly, with the help of associations. The very peculiarity of this concept is that it does not have an objective perception. Everybody perceives privacy in their own way.

During the end of the last century there have been many attempts by scholars of different disciplines to define the linguocultural concept "Privacy". For instance Lillian Be Vier writes that privacy is a chameleon-like word, used denotatively to designate a wide range of wildly disparate interests - from confidentiality of personal information to reductive autonomy - and connotatively to generate goodwill on behalf of whatever interest is being asserted in its name (Solove, 2006, p. 478).

Perhaps the most striking feature about the right to privacy is that actually no one seems to have any clear and distinct idea what it is. It seems like the only possible way to totally understand this "strange" concept is to look up in the dictionaries, find out the etymological base and bonds, as well as see what meanings and connotations are observed in the large semantic field of "Privacy".

The English words "private" and "privacy" originated from the Latin "privatus", meaning "withdrawn from public life, deprived of office, peculiar to oneself" and the generally negative sense is continued into the early understanding of the English word "private" (whose first recorded appearance goes back to 1450).[1] By the end of the 19th century the linguophilosophical concept "privacy" had deeply related to legal and political rights, associated with modernization of the civilization, and attributed relatively or very high value. Synonyms (semantically close words) for "private" as a descriptor in English in different contexts include "individual", "personal", "familiar", "family", "domestic", "secret", "confidential", "secure", "inner", "interior" and "intimate". According to Magnusson (1999) an Elizabethan equivalent term for privacy "avant la letter" is "contemplation" (p. 75). Many European languages do not have exact equivalents of the terms "private" and "privacy". For example, in Dutch, the words "eigen" (cognate with "own") and "openbaar" (cognate with "open") are used with reference to property or access where English would use "private" and "public". Swedish has a close equivalent for "private" ("privat"), but not for privacy. The Finnish words related to privacy, such as "yksitisasia" (private or intimate affairs) and "yksityinen" (private as opposed to public) are derived from the word "yksi" meaning "one" or "single".

The Chinese word privacy "yinsi-隐私" implies something secret which should be hidden and kept secretly from others. It is made by the combination of two characters: "yin" (hide) and "si" (secret).

[1] See www.etymologicaldictionary.com.

It is worth mentioning that differences in denotational or connotational meanings do not disprove the rationalization that concepts of privacy exist in relatively equivalent ways among different linguo-culturological groups. In the late 20th century as rights to privacy have come under menace through technological, legal, economic and political changes, privacy has acquired some new semantic elements, functions and value patterns. Nowadays modern English dictionaries identify mainly the following meanings of the concept "privacy". E.g. *1) Referring to a particular person, 2) Being a part of somebody's property, 3) Separate, isolated, 4) Unofficial, non-state, 5) Belonging to certain group, 6) Secret.*

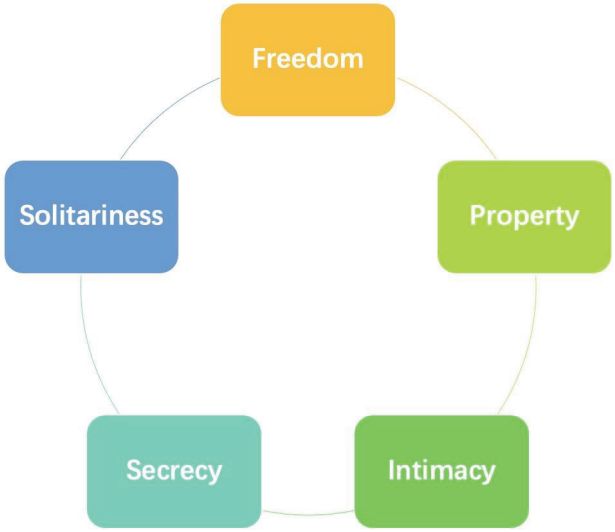
Therefore, before we proceed with an analysis of philosophical-semantic fields of "Privacy" we may compose preliminary list of conceptions associated with privacy. These are mainly *individuality and interaction between people, freedom, intimacy, loneliness, secretness, property,* etc.

In the works of many scientist the linguophilosophical concept "privacy" often finds its realization through the following expressions, e.g. *"to violate somebody's privacy", "an invasion of one's privacy"*. It is often used in such typical contexts as *"unacceptable invasion of people's privacy", "better privacy protections online", "the release of photographs violates a privacy provision in the state constitution", "the government's too much on our privacy"* and so on.[2] It is easy to come to the conclusion from the following examples, that privacy is often realized when it is violated. Thus, the importance of the study of privacy through its violation is often confirmed by examples where violation (as well as negation) is mentioned. E.g. *"privacy is when no one else reads your diary", "it is freedom from unauthorized intrusion"*.

Therefore, the linguistic circle of semantic patterns of privacy can be represented as a frame formed at the expense of conceptions deeply associated with privacy. Here privacy-related notions can be mentioned (*freedom, secrecy, intimacy, loneliness, ownership*), as well as those notions that include privacy as their important characteristics, e.g. *individual and interpersonal relations*. Besides, as we have mentioned above, privacy is connected with violations due to which a number of semantic fields are shaped within the frame. They are: 1) actions assuming violation of privacy, 2) personal characteristics that violates others' privacy, 3) personal characteristics that excessively react to violation of privacy.

Each of the above mentioned important conceptions form their semantic field which receives certain lexical completion. Here are the main conceptions that complete the lexical frame of the concept "Privacy".

[2] See *Washington Post.* (The above-mentioned words and expressions related to the concept "Privacy" are taken from different articles published by Washington Post).



The Semantic Field "Freedom"

For human beings deprivation of freedom frequently entails a violation of privacy. So, the nucleus of freedom is interconnected to privacy. It is important to emphasize that the semantic field of freedom as the right and privilege is constantly illuminated as the national-specific understanding in many cultures. It is not an abstract entity or absolute philosophical category but a privilege which should be protected by the state while preserving individual autonomy. By and large, the concept ''freedom'' plays a crucial role in the national consciousness of the representatives of Western, Armenian and Chinese cultures which is actually conditioned by the spiritual-historical heritage. Western typical cultural symbols of freedom are *Wings, Marianne* (especially in France), *Bird in Flight, Broken Chains, Bonnet Rouge, Vindicta, Statue of Liberty* and so forth. For Americans typical cultural symbols are *the Declaration of Independence, Independence Day, Independence Hall, Liberty Bell, Statue of Liberty*, etc. These examples show actually prove the essential place that freedom has in the individualistic culture of US. In the world lots of people perceive America as the cradle of democracy and equality. For Armenians the major symbol for freedom is *Broken Chains*. For many Armenians broken chains stand for freedom and independence. For Chinese mentality dragon stands as a symbol of freedom because in Chinese mentality dragon has the power to control cosmic forces.

Synonymic field of freedom includes; *liberty independence, self-determination, self-government, self-reliance, autonomy, license*. The sign of "freedom" is expressed explicitly or implicitly in these words;

Liberty - *freedom* from rules, control, interference, obligation, restriction, confinement.

Independence - the state of being independent (independent - free, showing a desire for *freedom*).

Self-determination - *freedom* to as one chooses, or to act or decide without consulting others.

Autonomy - independence or *freedom* of one's will or actions.

License - permission to act, *freedom* of action.

Self-government - condition of being self-governed (self-governed - not influenced or controlled by others (so we can say freedom from external influence, control).

Self-reliance - reliance on one's own efforts and abilities (in other words - *freedom* from external help). According to dictionary of synonyms self-reliance "expresses confidence in one's own resources, independently of other's aid" (Funk and Wagnalls Standard handbook of Synonyms, Antonyms and prepositions).

Limiting one's freedom or depriving him of it presupposes violation of ''privacy''. This violation can be represented via group of verbs with two aspects;

1. Physical limitation of freedom: *confine* (shut or keep in, prevent from leaving a place be-

cause of imprisonment, illness, discipline); *imprison* (confine in or as if in prison); *enclose* (hold in confine); *detain* (keep under restraint), *restrain* (deprive of liberty) and others.

2. Restraining one's actions, behaviour i.e. control, e.g. *restrain* (to hold back from action, check or control), *bound* (to set limits or bounds to), *repress* (to hold in check), *check* (to restrain or diminish the action or force of; control).

The semantic field of privacy of the given verbs can be sorted out as associative. It actually belongs to implicational meaning and is explained in contexts or transitional meanings.

The Semantic Field "Intimacy"

An indisputable connection between privacy and intimacy has been marked. The semantic field of intimacy contains at least three group of words, that possess associative signs of intimacy.

1. Close friend relationship, which as a rule presupposes high degree of privacy and good will to its violation;
   a) words having signs of intimacy in denotational meaning: *intimacy, closeness, familiarity, friendly relationships, tenderness, affection, fondness, dearness, warmth, endearment, friendship* etc. (James, 2009, p. 47).

      Intimate relationships, as a rule, are characterized by intimate distance of socializing and are basically associated with freedom:

      Now however she was thinking about her son… The marvellous intimacy could not last. He had withdrawn first from Blaise, now from her. Blaise said it was natural and proper. He had become untouchable (Murdoch, 1984, p. 114).
   b) Words where the sign of intimacy is associative, e.g. *friendliness, fraternity, brotherhood, sisterhood, fellowship, companionship.*
2. The associative list of words describing sexual behaviour.
3. Associative list of words outlining intimacy (privacy), which partially intersects with the field of secrecy: *secrecy, privacy, retreat, seclusion, retirement*, that are characterized by the signs of seclusion (*secluded, isolated place*), security *(a place of refuge),* privacy *(private or secluded place*).

   She sought the privacy of her own apartment after her interview with her sister. She had for the moment time to think (James, 2009, p. 264).

The Semantic Field "Secrecy"

The linguophilosophical concept "Privacy" is closely connected with the human right to process private information: e.g. *to hide some private information*. In one of its meanings the noun secrecy includes the meaning of privacy in denotational meaning, e.g. *secrecy - the habit or practie of keeping secrets or maintaining privacy or concealment*. At the same time secrecy can be represented as a state of privacy and as a means of achieving it.

> *Em, kid, you won't ever, will you, tell Harriet about, you know, our special word? That's private, such things have to be. An outsider wouldn't understand. Harriet would just be upset. That's our secret, isn't it?*
>
> (Murdoch, 1984, p. 98).

Synonyms of secrecy make up the field of secrecy: *confidentiality, covertness, stealth, silence*, *mystery, underhandedness, concealment,* etc. Privacy is predominantly expressed in the semantic interpretations of nouns and the majority of these word-expressions possess negative connotations.

Confidentialty (confidential) - spoken, written, or acted on in a strict confidence, secret, *private* way.

Clandestine - held or done in secrecy or concealment, especially for the purposes of subversion or deception.

The government carries on clandestine activities like spying.

Stealth - secrecy, especially with a plan to harm.

The robber approached the house with stealth.

Surreptitiousness (surreptitious) - done secretly to avoid discovery:

He was watching her surreptitiously while she wasn't looking.

Covert - secret, concealed disguised:

Spies had a covert plan to steal secrets.

Furtive - hidden from public view, secret and possibly deceitful:

We were suspicious of his furtive manners.

The sign of "Privacy" can be optionally expressed in the verbs within the semantic field of "to hide": *hide, conceal, obscure, cover, veil, screen, cloak, curtain, shroud, shadow, confuse, misrepresent*, etc. Actually, the denotative meaning of the following verbs doesn't have signs of "Privacy", but these verbs can easily obtain that quality in certain contexts. In the same way, they can associatively express sign of privacy in the meaning "to hide".

The antonyms of the word "to hide" have the common meaning of "opening up, revealing secrets", which presupposes both voluntary and involuntary intrusion into other people's personal spaces*: confide, reveal, disclose, impart, divulge, confess, entrust, unbosom.*

The Semantic Field "Solitariness"

The concept "Privacy" presupposes a sort of balanced distinction between individual and public. In this aspect two types of situations are basically analyzed: situations where necessary loneliness, voluntary seclusion is needed and situations of obligatory isolation of individual, his/her intentional deprivation from society. Thus, the frame of solitariness will include two groups of words:

1. Situations characterized by undue degree of privacy (against the wish of a person): verbs *ostracize, exclude, shut, bar, boycott , exile, reject, eject, evict, shun, spurn, avoid, ignore, snub, neglect, abandon, isolate, forsake, estrange, banish, expatriate, alienate, isolate, segregate, maroon* (in a figurative meaning).

Verbs belonging to this group mainly obtain negative connotation as the actions themselves are considered negative.

2. Situations characterized by lack of privacy. This aspect can more or less be characterized with the help of concept *"crowd"*. In Modern English this concept to a great degree is represented with the group of synonyms*; throng, press, crush, swarm, jam, mob, rout.*

The word *"crowd"* in English evokes negative associations. The following concept is first of all interesting as crowd always brings to violation of physical privacy. It obviously erases all the boundaries of personal space and people experience the feeling of discomfort.

> *She turned towards her seat. A large elderly lady shifted a little to make room. Feeling fet and hot in the smart featureless coat and skirt which she hadn't worn since the spring, Dora squeezed herself in. She hated the sensation of another human being wedged against her side. Her skirt was very tight. Her high-heeled shoes were tight too. She could feel her own perspiration and was beginning to smell that of others. It was a devilish hot day…*
>
> (Murdoch, 2001, p. 103).

The Semantic Field "Personality"

In so far as we are aware the linguophilosophical conept "privacy" on the whole refers to personal space of human beings and their perception as individuals. For example, in one of its meanings adjective *private"* is defined as *"pertaining to or affecting a particular person or a small group of persons"*. At the same time adjective *"personal"* has the meaning *"of pertaining to, or concerning a particular person, individual; private"*. Thus the concept of "Privacy" is associated with concepts "Person", "Self", "Personality". It is worth mentioning, that concept "Self" occupies a crucial role in Western and American system of values. In Modern English one can come across to lots of word-units starting with "self" (self-praise, self-love, self-pride, self-knowledge, self-made, self-confidence and so on).

Concept "Self" in its turn lies at the basis of "individualism". It goes on without saying that "Individualism" is basically viewed as a positive value in Western culture: For Asian culture individualism is mainly viewed a wanted value which is hard to achieve.

It is important to note, that "self" is opposed to concept "Others". For instance, self/others opposition is the contrast of private/public opposition. This is why the semantic field of "personality" can be presented with the following groups of words:

1. *Self, ego, person, personality, individual, individualist, individuality, personal, private,*

selfish, egoistic

2. *People, group, society, company, community, social, communal, collective, public.*

The first group distinguishes the opposition man/other men. In the first group, especially in the meanings of nouns personality and individuality the semantic trace of uniqueness is observed; personality - distinction or excellence of personal and social traits, individuality - a *total character peculiar to an individual*. In the second group the words are united under the general meaning "people".

The Semantic Field "Property"

In one of its meanings the adjective "private" appears as "belonging to some particular person or persons", which bind the concept "privacy" with the concept "property". Oftentimes people evaluate some objects as their own continuation and these objects obtain private symbolic meaning (*property, private letter, personal belongings*, etc.) Later the sense of privacy expands itself over the private territory of people. Objects and their referents can acquire private status in a particular context: *personal letter, my house, her own room, his private study*, etc. In the given contexts the shades of meaning of privacy are gained via possessive pronouns and adjectives *private, personal, own, individual*. It is important to mention that the symbolic meaning of privacy gained in the context is manifested implicitly and not explicitly.

She remembered that once, in a borrowed car, after kissing Franny for a half hour or so, he had kissed her coat lapel, as though it were a perfectly desirable, organic extension of the person herself… (Salinger, 2001, p. 76).

In the given context, the object obtains symbolic meaning; the speaker expands its meaning over its owner showing his attitude towards the owner. However, in other cases, the words have "seeds" of privacy in their denotational meaning. E.g.

Diary - a personal record written about one's daily activities and feelings or with accounts of important events.

Dossier - a file containing detailed records on a particular person or subject.

There is incredibly large amount of verbs describing the violation of personal space: *intrude, interlope, interpose, accost, encroach, infringe, squat, occupy, trespass, poach, invade, impinge, break in, butt in, overstep, transgress*. We can find the following traces of meaning these verbs:

a. Contravention of privacy (trespass - *encroach on a person's privacy, time, etc*: invade - *intrude upon: to invade someone's privacy*).
b. Violation of other's personal space (trespass - *commit a trespass; e.g. That is a wrongful entry upon the lands of another;* encroach - *trespass upon the property, domain, or rights of another;* squat - *occupy property or settle land as a squatter*).
c. Illegality of actions (intrude - *come in without permission or welcome*; squat (squatter) - *a person who occupies property without permission*, *lease or payment of rent;* overstep, transgress - *go beyond boundaries or limits*).
d. Manners for fulfilling actions (encroach - *trespass upon the property, especially gradually or stealthily*; occupy - *take possession or control of a place, as by military invasion;* break-in - *enter a house or building by force*).
e. Infringing the rights of other people (infringe - *encroach upon in a way that violates law or the rights of another;* impinge - *encroach, infringe: e. g. to impinge on another's rights).*

*It is worth mentioning that in some verbs (trespass, squat) the action is described as illegal and unlawful ("*No trespassing", "Private property", "Keep out", "Violations will be prosecuted*").*

I regard your blundering kindness and officious desire to "understand" me simply as a rude trespass upon the fastidious integrity of my being (Murdoch, 1984, p. 89).

"It's no business of his anyway", said Monty. "I have put up with this fantastic invasion of my privacy. Must I have my private concerns discussed as well?"

Conclusion

The philosophy of "Privacy" as a social, philosophical, linguistic and cultural phenomenon finds numerous manifestations in language, especially in the semantics of lexical and phraseological units as an attribute. The specificity of this attribute is the uniqueness of the combining models. The attribute of privacy accords with other units of similar meaning, namely with free-

dom, loneliness, property, privacy, intimacy, privacy violation, territory, status, politeness, regulatory.

The conceptualization of privacy, which mostly refers to abstract concepts, to a large extent takes place metaphorically, i.e. it finds figurative expression in the language, most evidently observed in the phraseological system of English. In comparison to English, the Chinese phraseological system is not rich of the concept "Privacy". Analyses of phraseological units show that combinations of "Privacy" with such concepts as "Personal space", "Territory", "Physical space perception" (biological conditions the phenomenon of "privacy") are fundamental for understanding the essence and nature of "Privacy".

Being a chameleon-like concept, "Privacy" has a very subjective perception and people may carry different imagination about it. However, there is still something in common in perceiving "Privacy". In this respect the factors of culture and mentality are of paramount importance. People who share the same culture and mentality are more likely to have the same understanding about it. Particularly the bearers of Western and American culture share the common "belief" that privacy is something that should not be violated. Whenever there is intrusion into other's privacy, it is always estimated negatively. The representatives of individualistic culture highly value the collective activities, when they are connected with family and home. In this case collectiveness is not considered as intrusion or violation of privacy.

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PHILOSOPHY OF LAW:
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PHILOSOPHICAL AND THEORETICAL ASPECTS OF COURT-NOTARY INTERACTION: CURRENT RELATIONSHIPS IN THE PROVISION OF EVIDENCE

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Abstract: The article examines the modern relationship between the interaction of the court and the notary when taking measures to ensure evidence. In particular, it is indicated that when providing evidence, these bodies are guided by the norms of civil procedural legislation and implement similar goals aimed at fixing factual circumstances of legal significance in a procedural form. It is emphasized that their competence touches, moreover, the notary, as it were, replaces the court in the implementation of interim measures. One of the tasks of the effective activity of the notary is to relieve the judicial system from the consideration of local and time-consuming issues, which are solved, as a rule, without the application of the principle of adversarial parties, including the provision of evidence on the Internet. Thus, the potential of unloading the court is excluded from its competence to solve problems that do not relate to the administration of justice.

Keywords: competence of the court, justice, notary, providing evidence, notarial procedure.

Introduction

The certification activity of the notary prevents the occurrence of disputes about the law, the resolution of which is attributed to the competence of the court. The notary certifies indisputable facts, which he can verify directly or on the basis of relevant documents. If there are no documents confirming a particular legal fact, then it can be established by the court in the framework of special proceedings.

The notary and the court are in close contact within the framework of the implementation of preliminary and subsequent control over the legality of civil turnover. For example, when performing a notarial action to provide evidence, a notary, like a court, is guided by the norms of civil procedural legislation. And in this area, their competence touches, moreover, the notary, as it were, replaces the court in the implementation of interim measures. There are also a number of other notarial actions that historically were the exclusive competence of the court, but over time were delegated to the notary for unloading the court (execution of executive inscriptions, certification of facts and mediation agreements).

Competence refers to the scope of authority of an authority or a person that is established by law, the implementation of which is their duty in the public interest. Both courts and notaries are

engaged in human rights activities, which have a lot of similar features. However, their activities are traditionally divided into disputed jurisdiction - the resolution of disputes about law and undisputed jurisdiction - the certification and fixation of undisputed rights (Rozhkova et al., 2015, p. 36).

Currently, the issue of improving the procedure for optimizing the interaction of the notary and the court in matters of their overlapping competencies in such an important institution of civil procedure as the provision of evidence does not cease to be relevant. Of course, "the courts are the main, central in the totality of public authorities ensuring justice ... since the temporal factor in the judicial activity of judicial bodies cannot be underestimated in any case: after all, a vector of improving the justice mechanism is being formed here, ensuring justice, protecting the violated rights and legitimate interests of those whose justice has been destroyed and its restoration is necessary" (Kleandrov, 2022, p. 8). At the same time, it is worth understanding the function of the notary as an activity aimed at achieving similar goals, but in an indisputable jurisdiction. Thus, the legal implementation competence of the notary and the court has a similar goal-forming structure.

In law enforcement practice, there is an understanding that guarantees of almost any constitutional rights (the right to protection (The Constitution of the Russian Federation, 1993, Article 46), the right to receive qualified legal assistance (The Constitution of the Russian Federation, 1993, Article 48)) they are associated only with the judicial method of protection, which is not quite correct, since this judgment detracts from the role of other methods of both protection and realization of constitutional and other rights, freedoms and legitimate interests of citizens and legal entities (Degtyarev, 2006, p. 12). Therefore, it would be correct to include in the guarantees of these constitutional rights and the right to access a notary, as a guarantor of the stability of civil legal relations. This condition will facilitate the unloading of vessels in matters of undisputed jurisdiction. The activity of a notary carries a great social function of the state (Begichev, 2015, p. 26), contributing to the out-of-court settlement of disputes, since it is aimed at preventing conflicts, thanks to the pre-performed verification of all the terms of the contract before signing it in order to resolve problems that may arise in the future, and the use of alternative means of settling disputes through reconciliation and mediation (the issue of further regulation), as well as establishing facts of legal significance, and providing the evidence necessary for the lawful resolution of the dispute in the judicial process.

Methodology

The effective activity of a private (extra-budgetary) notary, which in Russia de facto fully implements the state policy on the legal protection of the rights and interests of citizens and legal entities by performing notarial actions, is aimed at implementing the following tasks:

1. Strengthening legal security when certifying transactions and fixing legal facts;
2. Formation of favorable conditions for the development of economic relations (Frolova & Rusakova, 2022, p. 66);
3. Complete exclusion of encumbrances on the state budget for the maintenance of notary offices, archive storage, remuneration of employees, the work of notary chambers, the introduction of new forms of interdepartmental interaction, the functioning of information systems, etc.
4. Unloading the judicial system from the consideration of controversial issues.

According to Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary, the provision of evidence is carried out by a notary according to the rules of civil procedural legislation. Thus, only the appeal to one category of actions performed by the court – the provision of evidence, allows us to state the existence and binding relationship of institutions such as the court and the notary. Moreover, this is due not only to the needs of judicial practice, but also to the direct indication of the law (Mizintsev, 2012, p. 41).

The procedural features of the consideration and resolution of issues related to the provision of evidence are dictated precisely by the absence of a dispute about the law in them and, consequently, parties with opposing legal interests in the case. These circumstances in cases of undisputed proceedings were pointed out by V. K. Puchinsky (2022, p. 46).

However, it is worth noting that the modern

interpretation of Article 102 of the Fundamentals of the legislation of the Russian Federation on the notary allows the applicant to apply for evidence at any time – both pre-trial and during the consideration of the case in court. The judicial procedure for securing evidence also allows the applicant to choose the time to file the relevant petition. At the same time, these two methods are not opposed to each other and are considered as equal. To be more precise, the notarial procedure for providing evidence complements the judicial one and currently prevails due to objective reasons due to the elementary accessibility of notary offices.

If there are a number of restrictions for the pre-trial procedure (according to the Arbitration Procedure Code of the Russian Federation, after interim measures, the applicant must file a lawsuit in court within 15 days, otherwise the interim measures are automatically removed), then out of court, by contacting a notary, interim measures are retained indefinitely.

As for the judicial procedure for fixing them, in fact, the adversarial process is not carried out, the judge only examines and fixes the evidence in a procedural form on the basis of the application received by the court. In this case, as Mikhailova E. V. (2022) notes, it is difficult to attribute the activities of the court to justice (p. 40).

And here we come to the key issue: the potential of unloading the court is in withdrawal from its competence to resolve issues that do not relate to the administration of justice! Since in these matters, as mentioned above, the notary is precisely the very human rights body capable of resolving legal cases in an undisputed jurisdiction. The key point in evidence cases is the absence of adversarial parties.

Of course, not all types of evidence support are carried out without elements of a procedural contest (for example, interrogation of a witness), but most of them. In particular, those of them in which the notary can record the evidentiary value of already existing facts, for example, located on the Internet, by examining the monitor screen of Internet pages without giving them a legal assessment.

The law enforcement practice of notaries poses an important problem, so that when considering issues of expanding the competence of the notary, the Regulations for Notaries to Perform Notarial Actions, which establish the amount of information necessary for a notary to perform notarial actions and the method of recording it, prescribe the necessary procedural aspects of the notarial action performed to provide evidence.

Considering the issue of expanding the competence of notaries, it is worth noting that the key changes in the competence of notaries occur in the digital sphere. The notary is actively integrated into the digital environment by performing certain actions remotely and remotely (The Fundamentals of the Legislation of the Russian Federation on the Notary, 1993, Article 44.2). In connection with the development of the "digital notary" in the competence of the notary, a new format for securing evidence without a personal appearance to the notary has appeared, which has been positively received in society. According to art. 44.2 Fundamentals of the legislation of the Russian Federation on the notary to apply to the notary for the implementation of the provision of evidence on the Internet is possible in a remote format.

Given the workload of the courts and the lack of technical ability to apply for the provision of evidence in a remote format, the notarial form of legal protection may become more in demand and gradually this method may displace the judicial procedure for providing electronic evidence.

It should be emphasized that the evidence provided by a notary, according to Article 61 of the CPC of the Russian Federation (2022) and Article 69 of the APC of the Russian Federation (2022), does not require additional proof at a court hearing. Thus, notaries provide citizens and legal entities with indisputable evidence to guarantee the protection of their rights and legitimate interests.

Main Study

According to its orientation, the action to provide evidence is carried out in order to certify a legal fact by recording information of evidentiary value for civil proceedings, which determines the nature of the actions of the notary to perform this notarial action.

In 2022, notaries made over 37 thousand proofs, 70% of them are the recording of information on the Internet (*Information about the notary of the Russian Federation for 2022*, 2022); over the past 10 years, the number has

increased by 2 times. The practice developed by notaries, overwhelmingly happens, is positively perceived by the courts. It seems that on this issue there is a question of coordinated development of recommendations on the interaction of the court and the notary, one of the goals of which is to generalize the current practice and warn notaries from making all kinds of mistakes. As a result, such recommendations should help courts, notaries, as well as persons who apply to them for qualified legal assistance.

The notary's task in providing evidence is to assist courts and administrative bodies in carrying out their activities. This notarial action, on the one hand, saves time and effort of participants in civil legal relations, and on the other, relieves courts and administrative bodies from considering issues of an indisputable nature. For a long time of performing this notarial action, the notary has proved its effectiveness in solving the issues put before it. To date, notaries provide 500 times more evidence than courts of all levels. This speaks volumes, including (1) the need for such a form of protection of the rights of participants in civil turnover, and (2) the confidence of judges in this activity of notaries. In the practice of courts, there are definitions that oblige participants in the process to apply to a notary to provide evidence (indirect delegation of authority), both during the consideration of the case and in the pre-trial procedure.

In civil law relations, there are various and sometimes unpredictable situations in which a notary acts as the only impartial professional who has in his arsenal an effective legal tool for fixing the violated rights of the applicant (or, conversely, confirming compliance with the requirements of the legislation and/or the terms of the contract). There are also such problems when a notary cannot and does not have the right to replace a court in choosing the method and limits of recording evidentiary information due to a subjective attitude towards them. The notary's subjective opinion on the necessity and other conditions for the presentation of evidence cannot complicate the procedure for securing or lead to a refusal to perform a notarial action. Moreover, it seems that the procedure for securing evidence should be based on the principle of conflict-free and absolute trust in the actions of the notary as an impartial person.

With a wide range of procedural tools, the notary should choose those that:

1) contribute to avoiding the dispute;
2) lead to the commission of securing evidence with the least difficulty;
3) are understandable to all persons involved in the production of evidence.

Considering the problems of interaction between the court and the notary, it should be noted that the notary's functionality is narrower than that of the court. Thus, a notary has no right to provide other evidence other than those specified in Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary, for example, to view and describe video recordings, listen to and transcribe audio recordings. At the same time, there are reasons to believe that a limited list of types of evidence should not be taken literally. The opposite opinion has been repeatedly expressed in scientific discussions. Given that interested parties do not always have the technical ability to download audio and video files and then save them to the alienated machine media attached to the protocol, it seems that a huge layer of evidence will be lost, and the refusals of notaries to provide such evidence will cause reasonable misunderstanding and dissatisfaction of citizens and legal entities. Moreover, an arbitrary ban or restriction of a notary in procedural actions, without a direct indication in the law, is a direct connivance to violators of the law, in which the courts are not interested, including those performing a conciliatory function aimed at the triumph of the law. Courts almost always ignore such requests of applicants, and notarial protocols are accepted unhindered. Often, notarial protocols with transcription help resolve a conflict situation at the pre-trial stage.

It is important to note the following circumstance. Due to the absence of a direct reference to other types of evidence in this article, there is no direct prohibition on the possibility of examining audio and video recordings that are posted on the Internet, which is confirmed in judicial practice. So, in the resolution of the Federal Arbitration Court of the Moscow District dated 11.05.2010 No. KG-A40/3891-10 in case No. A40-897-51/08-51-773 it is stated that "a notary has the right to inspect audio and video recordings posted on the Internet, since there is no direct prohibition in the legislation on the possibility of such an inspection" (there are others, later, court decisions). Representatives of the judicial community

of different levels have also pointed out this possibility both in private conversations and in public.

Consideration of the issue of inspection of the video recording, coupled with an inspection of the Internet site on which the video is posted, based on the needs of the applicant, can be carried out in two directions:

a. search for the desired video on the Internet, copy it and save it on an electronic media (CD-R, DVD-R, USB flash drive) attached to the protocol of inspection of evidence;
b. search for a record on the Internet, copy it, view and decrypt a video recording with frame-by-frame fixation of video information, save it on an electronic data carrier and attach it to the protocol of inspection of evidence.

Judicial and notarial practice tends to implement the first option of viewing video recordings on the Internet as the most preferable, including for reasons of material and time costs, but does not exclude both options.

In view of the uncertainty of this issue, notaries should refrain from direct inspection of audio and video recordings as an independent type of evidence support. At the same time, once again, we would like to note the need to expand the competence of a notary to provide evidence by "listening to an audio recording and watching a video recording", in parallel with this, it should be proposed to the subjects of legislative initiative to amend procedural laws, primarily the CPC of the Russian Federation (2002) (Article 64) and the APC of the Russian Federation (2002) (Article 72), having supplemented them with the following sentence: "The provision of evidence is also carried out by notaries in accordance with the procedure provided for by the legislation on notaries". Taking into account the development of new technologies in notarial activity, as well as the demand for this type of evidence, this will benefit not only the notary and applicants, but also the courts.

The next problem that should be paid attention to is the actions encountered in notarial practice for the inspection of written or material evidence by fixation associated with the fixation of the circumstances of the purchase of goods acting as evidence. In this case, attention is drawn to the fact that, as a general rule, a notary is not entitled to make a control purchase. This position is absolutely correct, but requires some explanation. Indeed, a notary should not independently carry out the formation of evidentiary information, since according to art. 47 Fundamentals of the legislation of the Russian Federation on the notary, he does not have the right to perform a notarial act in his own name and on his own behalf. Similarly, it should be pointed out that a notary, having registered in a social network group, does not have the right to provide evidence, since he enters the network on his own behalf. However, a notary, in order to give objectivity to the legitimate actions of the applicant when receiving written or material evidence (for example, correspondence at the post office; purchase of goods in a store, pharmacy; ordering goods in an online store), may be present at the specified actions of the applicant with the entry of these facts in the protocol. In the established long-term practice, this procedural fixation is very important for clients and, at the same time, did not cause legitimate complaints from the judicial authorities. In this regard, it seems that the legislation on the provision of evidence in a notarial procedure requires improvement by providing the notary with the opportunity to record the facts of the origin (if possible) of evidence.

Article 102 of the Fundamentals of the Legislation of the Russian Federation on the notary does not clearly regulate the form of the applicant's appeal to the notary with a request to provide evidence. At the same time, in paragraph 8 of the Regulations for Notaries to Perform notarial Actions, which establishes the amount of information necessary for a notary to perform notarial actions and the method of recording it (approved by the Order of the Ministry of Justice of the Russian Federation No. 156 dated 30.08.2017 (2017)), it is indicated that attesting the authenticity of the applicant's signature on the application for providing evidence is not required. It is proposed to supplement this paragraph with a provision that, at the request of the applicant, this application can be notarized (the authenticity of the signature is notarized), taking into account the circumstances of the inspection and to reduce tension during the inspection of evidence placed outside the notary office, and with the participation of many conflicting parties and participating persons.

It seems that this proposal requires a detailed explanation. When making an application, as an important procedural document, which is the on-

ly basis for providing evidence, in a simple written form, not infrequently accusations were received from interested persons against notaries in "making an application retroactively" and interest on the applicant's side. Moreover, when carrying out an inspection outside the premises of a notary office (for example, construction sites, shops, pharmacies, warehouses, retail premises, etc.), interested persons require the notary to explain the reason for being in a particular place and provide justification for the inspection of evidence. Practice shows that a notarized statement removes any doubts about the actions of a notary and increases his prestige as a public person. It should also be borne in mind that if it is impossible to conduct an inspection, the applicant will have a notarized application and a corresponding act in his hands, which can also be submitted to the court in the future as independent and only evidence confirming certain facts (reasons for the failure of a notarial action), fixing, including illegal, actions of the other party or interested persons. As an option, the following text of the proposal is proposed: "However, if the applicant insists on a notarized application for securing evidence or this is dictated by the need to present it to the parties or interested persons for access to the place of inspection of written or material evidence, the notary should notarize the authenticity of the applicant's signature".

The issue of providing a copy of the application to the parties and interested parties remains open. Taking into account the provisions of Article 5 of the Fundamentals of the Legislation of the Russian Federation on Notaries ("Information (documents) on notarial actions performed can only be issued to applicants - persons who applied for these notarial actions"), it seems that copies (copy) of the application and information cannot be transferred to these persons, but at the same time the notary must familiarize them with the main the provisions of the statement.

In notarial practice, even at the stage of notifying interested persons and witnesses, problems may occur that lead to the inability to provide evidence. It seems that the degree of completeness of the information reflected in the notification depends on the circumstances of a particular action to provide evidence. It should be borne in mind that receiving a detailed notification may negatively affect the safety of evidence. In notarial practice, there was a case when sending a notice to a trading organization resulted in the destruction of several thousand labels violating the photographer's copyright in one day in all stores of a large retail chain located in the city. Without taking into account such circumstances, a notary may be accused of intentional actions that contribute to the destruction of evidence. Also, witnesses do not always agree to provide information about the upcoming interrogation to the participants of the trial in advance, referring to the fact that pressure is being exerted on them. Thus, the notary's duty follows from paragraph 4 of Article 103 of the Fundamentals of the legislation of the Russian Federation on the notary – "The notary notifies about the time and place of providing evidence ...", and all other information concerning the provision of evidence must be left to the discretion of the notary based on the circumstances of the case and taking into account the opinion (approval) of the applicant, with the sole the purpose is to preserve the evidence and the possibility of fixing it without compromising the quality for presenting it in its original form to the court.

The notary in matters of notification of the parties and interested parties may doubt their proper receipt. As a general rule, proper notification is considered such in accordance with the Civil Procedure Code of the Russian Federation, the Agro-Industrial Complex of the Russian Federation, the Federal Law "On Postal Communications" and other regulatory acts, taking into account judicial practice. In contentious issues related to the proper notification of the parties and interested parties, as well as in connection with requests received from them to postpone (postpone) or refuse to provide evidence, the applicant's opinion should be sought and the further procedure for providing evidence should be agreed with him. By the way, the basics of the legislation of the Russian Federation on the notary do not specify the reasons for non-appearance (valid or not), it does not matter. The notary's task is only to inform (notify) about the date and time of providing evidence to all interested participants. Often the parties or interested persons ask to postpone the procedure for securing on various grounds with reference to the norms of procedural legislation (CPC RF, APC RF). This point should be clarified: in the notarial procedure, the deposition is carried out according to

the rules of the Fundamentals of the legislation of the Russian Federation on the notary (art. 41), while the initiative comes only from the notary. If the notary considers it possible to postpone the notarial action, he has the right to do so.

The provision of evidence without notifying one of the parties and interested parties is carried out only in cases that do not tolerate delay, or when it is impossible to determine who will subsequently participate in the case. At the same time, it is unacceptable to ignore the requirement of the law to notify the parties and interested parties on other grounds, for example, at the request of the applicant. The notary, guided by Article 16 of the Fundamentals of the Legislation of the Russian Federation on the notary, must in this case explain about the possible occurrence of adverse consequences – the destruction of evidence. If the applicant insists on notifying the parties and interested persons, the notary, before notifying them, must warn the applicant about the consequences of such actions.

Cases that do not tolerate delay, as a rule, include the provision of evidence on the Internet (site inspection), because the information posted there can be destroyed at any time. This is evidenced by numerous judicial practice. For example, the Intellectual Property Rights Court Ruling (2017) of March 29, 2017. No. C01-244/2017 in case No. A43-4569/2016 notes that, taking into account the specifics of the Internet and the possibility of promptly removing information from the site, for the fixation of which the person applied, the procedure for providing evidentiary information posted on the Internet, for objective reasons, should be carried out immediately in order to fix it immediately. Otherwise, if the notary notifies the interested persons (violator) of the time and place of providing such proof, this procedure will not be able to be implemented. Thus, the court provides a logical justification that the notification of the interested party may contribute to the destruction of information on the Internet, respectively, the actions of a notary who knows about such a potential possibility can be regarded as deliberate actions aimed at destroying evidence.

It is important to note that paragraph 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation (2017) No. 57 dated December 26, 2017 "On some issues of the application of legislation regulating the use of documents in electronic form in the activities of courts of general jurisdiction and arbitration courts" indicates that "evidence confirming the dissemination of certain information on the Internet, before the interested person the court may be provided by a notary. When assessing such evidence, the court has no right to declare inadmissible the evidence provided by a notary only on the basis that the notary did not notify the owner of the site or another person who allegedly posted information related to the subject of the dispute on the Internet (Article 67 of the Civil Procedure Code of the Russian Federation, Article 71 of the APC of the Russian Federation, Article 84 CAS RF)". This position of the Plenum requires careful study and literal interpretation, without distorting the meaning. It seems that the Plenum contains a recommendation to the notary to carry out actions to identify the owner of the site (for example, by tracing) or from the client's application, as well as to identify the person who posted the disputed information on the Internet; after which the notary must evaluate the information received taking into account all possible risks and circumstances of the case and then the notary should make a reasonable and a reasoned decision to summon or refrain from summoning these persons.

Notarial and judicial practice ambiguously refers to the issue of calling interested participants when examining e-mails (email). Some researchers believe that the examination of correspondence in an electronic mailbox on the Internet cannot be indisputably attributed to cases requiring urgent inspection, since, as a rule, interested persons do not have the opportunity to influence the contents of the mailbox or restrict access to it; the notary should evaluate the stated reasons for the urgent inspection. Others hold a slightly different point of view and consider this statement controversial, because it is not clear how a notary should assess these reasons. In notary practice, there have repeatedly been cases when correspondence in an electronic mailbox disappeared for unknown reasons, sometimes even on the way to the notary office. It is a well-known fact that the Internet itself is a vulnerable resource. Moreover, no one is immune from the illegal actions of hackers acting with both special and general (to harm everyone) intent. In modern conditions of geopolitical perturbations, this circumstance has become more than relevant.

The same arguments should be given when discussing the following opinion that it is not necessary to notify interested parties also when examining messages on telecommunication devices, including smartphones, tablets transmitted via telephone or the Internet, if, due to the features of the software used, messages can be deleted by the sender or are automatically deleted after a certain period of time. This conclusion is unclear, as it leads to critical judgment and legitimate questions: how should a notary know the features of the software? A notary can take on an arbitrary risk of evaluating such features without a specialist? All disputable situations in this case should be covered by a general and understandable presumption about the unreliability of electronic evidence contained on electronic devices.

In notarial practice, it is not uncommon for a person involved in providing evidence to not speak Russian, and the notary also does not speak the necessary language to communicate with such a person, then an interpreter should be involved for such a person. It is important to clarify here that the presence and call, as well as the payment for the services of an interpreter, is carried out only by the applicant and at his expense. The notary also has the right to carry out these actions independently (Part 9 of art. 22 Fundamentals of the legislation of the Russian Federation on Notaries), having received the applicant's preliminary approval for these actions with the further obligation to pay all expenses incurred by the notary, which will contribute to the efficiency of the actions and convenience for the applicant. However, this does not exclude the possibility of a reason for accusing the notary of bias (interest), in connection with which the notary should use this procedural right carefully and as an exceptional measure, as a forced necessity. Approval can be recorded both in the application and in the record of recording information.

In accordance with the civil procedural legislation (for example, Article 167 of the CPC of the Russian Federation, 2022), a person participating in the case has the right to ask the court to consider his application to provide evidence and to inspect in his absence. Taking into account the fact that the rules on the notarial procedure for providing evidence in part of the procedure are blank, the question is natural whether this action is permissible on the part of the notary. It seems that this contradicts the Fundamentals of the Legislation of the Russian Federation on Notaries, since the applicant, like other persons summoned by a notary, must be present in person when performing a notarial act (see, in particular, Article 42 of the Fundamentals of the Legislation of the Russian Federation on Notaries, etc.). Without the personal participation of the applicant, only remote notarial actions can be performed (Article 44.3 of the Fundamentals of Legislation of the Russian Federation on the notary), including providing evidence on the Internet (Article 103 of the Fundamentals of the Legislation of the Russian Federation on the notary). In notarial practice, especially when examining evidence on the Internet, there are cases when various issues arise during the inspection regarding the need to fix certain evidence, which the notary, promptly considering, ensures the completeness of the inspection. It is almost impossible to predict the necessity and sufficiency of the examined evidence. There is no way to draw the applicant's attention to the erroneous algorithm of his actions or take into account other nuances, taking into account the circumstances of the case and the information that became known in connection with this examination. Actions or inaction of the notary without taking into account the applicant's opinion (including the alleged one, since he trusts the notary's professionalism) lead to the formation of distrust of the notary, on the part of the applicant and the court, and create the ground for a conflict situation.

It should be noted that the procedural actions carried out by the court and the notary on similar issues, which include the provision of evidence, have small differences related to the specifics of the activities of these bodies. So, in notarial practice, the question arises about the legality of inclusion in the protocol (resolution), information about explaining to interested persons (parties to the case) their rights to familiarize themselves with the protocol and submit comments on it. It seems that the implementation of this condition in the notarial procedure will be erroneous, due to a misunderstanding of its principle of indisputable justice. In the notarial process, unlike the judicial one, there is no adversarial nature. Consequently, comments cannot be considered by a notary according to the rules of the CPC of the Russian Federation and the APC of the Russian Federation, and there is no such action in the notarial procedure (here the following correspond-

ing questions arise: the time limit for familiarization, bringing comments and considering them). Comments and petitions may relate directly to the examination, interrogation and appointment of expertise. These concepts should be distinguished. With this in mind, and also in order to avoid conflicts, it is not necessary to oblige a notary to follow this rule, and parties and interested parties should not be given the opportunity to familiarize themselves with the protocol and sign it. Here, too, there is a natural request from such a participant to require an instance of the protocol for himself. However, Article 5 of the Fundamentals of the Legislation of the Russian Federation on Notaries prohibits them from issuing this document.

The implementation of this condition calls into question the actions of the fundamental principles of independence and impartiality of the notary. After all, civil procedural legislation in such cases provides an opportunity for the interested participant to have time to familiarize himself with the protocol and submit relevant comments, which the court must consider and make an appropriate determination based on its internal conviction, taking into account the assessment of all the circumstances of a separate procedural action. In the notarial procedure, these issues go beyond the scope of the notarial action and are not provided for, and, therefore, are prohibited by law.

It should also be taken into account that the parties and interested persons have a different interest in this procedure for securing evidence, different from the applicant's interest, and they try in every possible way to prevent the commission of securing evidence, which can lead in overwhelming cases to the impossibility of its commission, including inconsistency of information entered into the protocol, etc. Such a controversial situation should not be allowed, this is the main postulate of the notary. It is important to note that the notary can explain to interested persons their right to provide evidence on their application and taking into account their vision of the circumstances of the case.

The following debatable question arises from the different interpretation of the possibilities of the notary and the court. According to Article 229 of the Civil Procedure Code of the Russian Federation, the protocol specifies all received statements, objections, comments from persons involved in providing evidence. The signature of the applicant and interested persons is not required; the protocol is signed only by the judge and the court secretary (Article 230 of the Civil Procedure Code of the Russian Federation). In notarial practice, there is a tradition that the protocol is signed by the applicant, at whose request the proof was provided, and the notary. In a different order of execution of the protocol, for example, with the production of signatures of other persons who participated in the notarial act, or a note about their refusal to sign the protocol, can lead to both problems of implementation of this provision and problems of challenging the reliability of all information contained in the protocol. In this case, the following questions arise that require clarification. All persons must sit and wait for the notary to print the protocol; what is the procedure for collecting all participating persons if the protocol is complex and is issued for more than one day; how to calculate the production time of the procedural document in order to carry out the call of all involved persons? There is reason to believe that this is an unnecessary problem and not a mandatory procedure (signature of the parties and interested persons in the protocol), delaying the process of drawing up the protocol, as prescribed by Article 102 of the Fundamentals of the Legislation of the Russian Federation on Notaries, and leading to artificial problems and conflicts. It is enough to record the fact of their appearance on a separate sheet with their signature, identification and verification of authority before the start of the examination (appointment of an expert examination, interrogation of a witness), with the reflection of these circumstances in the relevant protocol. If the inspection is long and the notary has announced a break, then the specified procedure must be repeated. In the protocol, you can also indicate the presence of the summoned persons throughout the examination (appointment of an examination, interrogation of a witness) or only part of it. This technique has been tested by many years of practice and tested by various courts and has not caused any complaints. It complies with civil procedural legislation and does not lead to far-fetched inflating of the conflict.

It seems appropriate to clarify the difference between carrying out the inspection procedure and performing a notarial action, which covers the first and includes the procedure for registra-

tion of the protocol (the date of the inspection and the date of the notarial action may differ due to the significant amount of work on the preparation of the protocol and its final form). According to art. 50 Fundamentals of the legislation of the Russian Federation on notaries, a notarial act is considered to have been performed at the time of its registration in the register, therefore, with a large amount of work on drawing up a protocol and other objective reasons entailing the registration of a protocol for several days, the registration of a notarial action is carried out on the day of the end of its registration in compliance with all the rules.

Conclusion

Thus, the parallel consideration of the issue of providing evidence, which has developed in modern law enforcement practice, allows interested parties to choose the body that will provide evidence. The notary office is the most flexible and accessible. At the same time, the notarial method of fixing evidence does not replace the judicial procedure, but serves the purpose of promptly fixing information of evidentiary value. At the same time, taking into account statistical data, the legal procedure for the extrajudicial (notarial) provision of evidence contributes to the unloading of the court when solving issues not related to the administration of justice.

The tendency to a significant preponderance of the notarial order in this matter over the judicial one in no way violates the principle of the administration of justice only by the court, since in matters of providing evidence, we are not talking about justice, but about judicial jurisdiction, which will be determined by the legislator at his discretion. Moreover, the established procedure allows the courts to resolve more complex disputes more efficiently and in a short time, which will play a positive role in protecting the rights and legitimate interests of citizens and legal entities.

Further improvement of the legislation on notaries should be aimed at expanding the notary's ability to provide evidence by "listening to audio recordings and watching video recordings", in parallel with this, the CPC of the Russian Federation (Article 64) and the APC of the Russian Federation (Article 72) should be supplemented with an indication of the possibility of providing evidence in a notarial manner. This supplement will serve the interests of both courts and citizens and legal entities.

In order to increase the stability of civil law relations, it is necessary to develop joint recommendations on the provision of evidence by notaries, consistent with the actions of the courts, with the provision of the latter by local delegation of competence to provide evidence to the notary on the basis of a court ruling. This is especially true in the notarial procedure for providing "electronic" evidence, including those posted on the Internet, due to the lack of procedural time for such a procedure by the courts.

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DIGITAL ARBITRATION IS A NEW WAY OF DISPUTE RESOLUTION FOR THE UNIFIED DIGITAL SPACE OF THE EAEU: POLITICAL, PHILOSOPHICAL AND LEGAL ASPECT

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Abstract: The article discusses the theoretical legal foundations of a new type of arbitration – digital arbitration (or blockchain arbitration). The author formulated the concept of digital arbitration and analyzed the differences between digital arbitration and traditional arbitration from the point of view of theories about the legal nature of arbitration. In particular, the author believes that the term digital arbitration (blockchain arbitration) is used in three meanings. Firstly, the term digital arbitration refers to a way to protect the rights arising from smart contracts. This method is considered as an alternative to those methods that imply the need to seek judicial protection from the State or traditional arbitration. Secondly, digital arbitration refers to the body that organizes the digital trial of a legal dispute. And, thirdly, this concept denotes an artificial intelligence agent (robot), which considered the dispute submitted for its resolution. The author believes that due to its features, digital arbitration can be recommended as an alternative way to resolve disputes in the digital space of the EAEU.

Keywords: digital arbitration, blockchain arbitration, legal nature of digital arbitration, digital space of the EAEU.

Introduction

The digital revolution has radically changed public relations. The global economy is changing rapidly and requires a new regulatory framework to ensure the security of transactions, including transnational ones, also concluded in electronic form and smart contracts. A smart contract is a computer protocol that independently conducts transactions based on the use of mathematical algorithms and monitors their execution (Szabo, 1996). Smart contracts are smart enough to be executed independently, as prescribed in their code, but they cannot resolve situations that are open to interpretation by the parties. Smart contracts also have limitations: they cannot independently check the quality of the goods, find out whether the service is well rendered, whether the counterparty is acting in good faith, etc. Litigation over smart contracts reduces the speed and automation of transaction execution, which leads to high legal uncertainty and high transac-

tion costs, losing all the benefits created by smart contracts (Aouidef et al., 2021; Savage, 2020; Sinitsyn et al., 2021, pp. 40-50).

Over the years, smart contracts have played a significant role in the transformation of blockchain technology, creating a decentralized system. With the help of smart contracts, it is possible to ensure the fulfillment of fully automated legal obligations without the participation of third parties (Rusakova et al., 2019, p. 696). Like regular contracts, smart contracts on the blockchain are subject to a variety of problems, including non-transaction disputes, off-network management issues, and on-network disputes. The online dispute resolution system is still in its infancy. Thus, it becomes necessary to introduce a dispute resolution mechanism regulating digital relations set out in such smart contracts (Advani et al., 2022).

This leads to radical changes in legal practice. Traditional dispute resolution methods, such as state court and international arbitration, are ineffective for dealing with a large volume of disputes in a digital environment (Rusakova & Frolova, 2022, p. 366). We fully share the opinion of the English artificial intelligence theorist Richard Susskind, who stated in 2008 that the legal industry will change in the next 20 years more than in the previous two centuries. All of the above leads us to the idea that in order to settle disputes in the digital environment, new forms of dispute resolution are needed, one of which may be digital arbitration. Undoubtedly, digital arbitration is different from traditional arbitration. To date, digital arbitration uses blockchain, metaverse and NFT technologies, but its legal nature remains controversial. Many authors do not consider digital arbitration to be international commercial arbitration for various reasons.

In our article, we want to reveal the concept and essence of a new form of dispute resolution – digital arbitration, to show the main differences between digital arbitration and proceedings in a state court and traditional arbitration, as well as to outline the way for digitalization of international commercial arbitration as a platform for resolving digital disputes for the Eurasian Economic Union (EAEU). It should be noted that the EAEU was created in order to comprehensively modernize, cooperate and increase the competitiveness of national economies and create conditions for stable development in the interests of improving the living standards of the population of the member states.

Methodology

Modern legal science is replete with approaches to the problem of the concept and legal nature of arbitration in the modern world. In the classical theoretical and legal interpretation, the term arbitration is understood in various meanings.

In the textbook of V. Musin, O. Skvortsov, etc. the authors pointed out that "the term arbitration (arbitration court) is used in three meanings. Firstly, the term "arbitration court" denotes a way to protect civil rights. This method is considered as an alternative to those methods that imply the need to seek judicial protection from state jurisdictional authorities. Secondly, the arbitration court means the body organizing the arbitration of a legal dispute. And, thirdly, this concept denotes the specific composition of the arbitration court, which considered the dispute submitted for its resolution" (Skvortsov & Musin, 2012, p. 19). N. Erpyleva wrote that "in the last two cases, the additional term "arbitration tribunal" is often used. In this context, the broad freedom and flexibility of the actions of the arbitration tribunal, allowed by the laws governing the arbitration procedure and the arbitration rules, in respect of which the parties can agree, are of particular importance (Erpyleva, 2013, pp. 5-6).

To identify the legal essence of arbitration, many authors in Russia and abroad have tried to formulate the main differences between dispute resolution in traditional arbitration and state court. For example, N. Erpyleva formulated three differences between arbitration and the court – 1) the possibility of choosing arbitrators; 2) the finality of the arbitration award; 3) confidentiality of the arbitration procedure (Erpyleva, 2013, pp. 7-8). Many Russian and foreign researchers find other differences between arbitration and a state court, such as the ease of application of arbitration, procedural and jurisdictional certainty of arbitration, procedural flexibility of arbitration, lower cost and speed of arbitration procedure (Davydenko, 2013, p. 10; Skvortsov, 2017, pp. 57-58).

We share the approach of Loukas Mistelis, who emphasized that the main differences be-

tween arbitration and proceedings in a state court are as follows (Lew et al., 2003, p. 10). First, by concluding an agreement on arbitration, the parties withdraw their dispute from the jurisdiction of state courts, transferring its for the permission of an alternative body – arbitration. Secondly, arbitration is a private dispute resolution mechanism (Just as each contract is a private matter of the persons who concluded it; and an arbitration agreement is a private matter of the parties. Accordingly, in case of disagreement, the dispute must be resolved in a private manner determined in advance by the parties: the procedure for electing arbitrators, the procedure for their activities and their decision-making). Third, arbitrators are elected by the parties, the activities of arbitrators for the consideration and resolution of the dispute (procedure, place, timing, choice of applicable law) are also controlled by the parties. Fourth, the arbitration decision is final and binding on the parties (since the parties have agreed on this in advance).

We should especially note that in paragraph A of Article 1 of The English Arbitration Act of 1996 it is established: "the object of arbitration is to obtain a fair resolution of the dispute by an impartial court without unnecessary delays or costs".

The existing theories of the ICA, revealing its legal nature, are also of great theoretical importance. The question of the legal nature of arbitration, as well as the arbitration agreement, remains controversial in the theory and practice of international civil procedure. Legal scholars have been trying to determine the nature of arbitration from a legal point of view for over 150 years. A proper interpretation of the nature of the ICA actually reflects its role in the legal system and contributes to the reform of national legislation on arbitration.

It should be noted that there are several views on clarifying the legal essence of arbitration in general and arbitration agreement in particular - contractual, procedural, mixed and autonomous theories. Within the framework of the contractual theory of the legal nature of arbitration, the consideration of a case by arbitration is qualified as a civil contract. According to proponents of procedural theory, arbitration is a special form of administration of justice. The conduct of legal proceedings is the function of the State, and if it allows the parties to resort to arbitration and agrees to terminate the activities of its judicial bodies in such cases, this means that the content of arbitration is the exercise of a public legal function. Proponents of the mixed theory believe that arbitration as a whole is a complex combined phenomenon that originates in a civil contract and will become procedurally effective on the basis of specific national legislation (Kravtsov, 2012, pp. 282-284).

Main Study

First, let us define the objective process of changing public relations and the emergence of new dispute resolution technologies in arbitration. 2022 was the year of the introduction of Metaverse technologies into dispute resolution systems. In July 2022, the Guangzhou Arbitration Commission of China (GZAC) announced that it had established the first arbitration court of the Metaverse, the Meta City Arbitration Court (Yuanbang). And in November 2022, this court considered the first arbitration dispute using metaverse technologies (Du, 2022).

The case concerned the creation of virtual avatars in the Metaverse community and the trading of non-interchangeable tokens (NFT). Having received a digital image from the NFT developer company, the party used it to print clothes offline and planned to sell the corresponding clothes in the real world. This behavior led to a copyright dispute, which was considered by the Guangzhou Arbitration Commission (GZAC). According to the arbitration agreement reached by mutual consent, the parties submitted their disputes to the Meta-City Arbitration Court (Yuanbang) through the electronic filing channel of the Guangzhou Arbitration Commission in Metaverse. In the end, the NFT developer company granted the other party the right to use the digital image and offered to share the profits. Thus, for the first time in the history of arbitration, the arbitration tribunal considered a dispute concerning the actions of the parties carried out both in the metaverse (creation of virtual avatars) and outside it in the real world (offline printing of clothing and sale of appropriate clothing). The dispute ended with a settlement agreement. But there are questions about what would have happened if an arbitration decision had been made? Would the winning party be able to execute the

arbitration award and how?

What are metaverses and what technologies are used in them? In 2021, the term "metaverse" became widely known: if previously it was used mainly by computer game developers and philosophers interested in cosmology, then after the announcement of work on the creation of prototypes of digital universes of such IT giants as Meta, Google, Microsoft, Amazon, Nvidia, metaverses became a technological trend to discuss which more and more economists, sociologists and lawyers from different countries are joining. The metaverse (parallel digital universe) is a virtual world of the future that will exist alongside the physical world, "populated" by digital avatars of real people. So far, the existing virtual worlds are fragmented, independent and unrelated, interacting only when necessary (Filipova, 2023, p. 8).

The Russian authors argued that the metaverse is a convergence of physical, augmented and virtual reality in a common online space. According to English lawyers, the metaverse includes the creation and development of large-scale, permanent and functionally compatible virtual spaces that allow people to interact with each other using new technologies: 3D software; AI; blockchain; augmented, virtual and augmented reality, etc. The metaverse is a new arena for people where they can make deals, collaborate and create.

The term "metaverse" originated 30 years ago in Neil Stevenson's novel "The Snow Disaster" (Stiehl, 2022). The novel presents important images that help to understand why the problems of the metaverse are actually not so different from existing legal problems. Following Stevenson's images, you can imagine the metaverse as a main street. You can open a store, advertise products, share ideas and participate in any form of real trading - only virtually. Here you do not necessarily move linearly, as you would in the real world. You can instantly move down a side street, attend a virtual conference, or simply disconnect from the network and disappear.

It should be noted that in the first six months of 2021, prices for digital real estate jumped by 3,000 percent. Also, the statements of technology giants make us think about a new virtual future. Global giants Twitter and YouTube have begun to master web 3.0 and NFT technologies in particular. Facebook has turned into Meta, and is creating its own meta universe along with other startups. In these realities, each person can have digital property and their own capabilities that allow them to work in the virtual world and receive real resources.

The metaverse is inextricably linked with blockchain technologies and NFT tokens. Blockchain technology originated from a branch of mathematics called cryptography. At the basic level, blockchain is a decentralized, shared digital registry, whose work is based on the consensus of a global peer-to-peer network. As pointed out by American scientists Grasky and P. Embley, blockchain is a set of technologies that creates an encrypted, distributed registry. Probably the most famous application of blockchain is the digital currency Bitcoin (Graski & Embley, 2018).

According to the definitions of Russian programmers, an "NFT", or non-interchangeable token, is a unit of accounting with which a digital impression is created for any unique item. Among them may be: paintings, photographs, videos, music, gifs, etc. NFT tokens became popular in 2021 after in March the auction house Christie's sold the work of the artist M. Winkelmann in the form of NFT for 69.3 million US dollars. For the first time in history, the State Hermitage Museum has sold a limited collection of museum NFTs at an open auction. In September 2021, the Hermitage collected $440,000. USA at the Binance NFT auction. Five NFT copies were put up for auction, including "Composition VI" by V. Kandinsky, "Judith" by Giorgione, "Madonna Litta" by Da Vinci (150 thousand US dollars), "Corner of the Garden in Montgeron" by Claude Monet and "Lilac Bush" by Van Gogh (Partz, 2021).

Secondly, we will distinguish digital arbitration from traditional arbitration. The resolution of disputes in the metaverse, the use of blockchain and "NFT" technologies raises the question of what digital arbitration is, what is its legal nature, can we put an equal sign between traditional commercial arbitration, online arbitration and digital arbitration (blockchain arbitration)? Which arbitration was held in November 2022 in the Chinese arbitration court of the Metaverse – traditional with the use of a blockchain element or digital?

Taking into account the above, let's try to distinguish between digital arbitration (or block-

chain arbitration) and traditional arbitration. First, it should be noted that blockchain arbitration can be divided into two categories: "on-chain" and "off-chain". "On-chain" arbitration involves the use of a smart contract in the dispute resolution mechanism. Off-chain arbitration involves traditional arbitration dispute resolution, but with automation of certain elements of the procedure (Advani et al., 2022).

Examples of "off-chain" arbitration using elements of blockchain technologies can be found in China. Back in October 2016, the Arbitration Cloud Platform 1.0 system was released in China. This system used blockchain technologies in registering cases, delivering materials, approving the composition of the tribunal, conducting hearings, examining evidence, drafting and ruling decisions, etc. In 2018, the Guangzhou Arbitration Commission reviewed 166,634 online arbitrations totaling US$ 1.4 billion. In addition, the regulations of online arbitration were adopted in China by the Commission CIETAC in 2009 and Shenzhen international court of arbitration in 2019 (Evans & Dang, 2022).

Thus, the first arbitration court in the Metaverse, which took place in November 2022 in China, meets all the signs of "off-chain" arbitration using elements of blockchain technologies, since the dispute was considered by arbitrators-people who attended the meeting online using their avatars.

The on-chain arbitration process (or digital arbitration process) is well described in the Digital Dispute Resolution Rules, published in the UK on April 22, 2021. The Rules were created by the UK Jurisdiction Task Force (UKJT) after extensive public and private consultations with lawyers, technical experts, financial services and commercial parties. The rules of the Regulations should be used for digital on-chain relationships and smart contracts and included in them.

"Digital Dispute Resolution Rules" defines a smart contract as a digital asset. To include this Regulation in a blockchain smart contract, the following text must be included in the blockchain contract: "any dispute must be resolved in accordance with the "Digital Dispute Resolution Rules" of the UK Jurisdiction Task Force (UKJT). "Digital Dispute Resolution Rules" allows you to include these words in the codes. Since the blockchain is programmed in the form of codes, these words can be included in the encoded form.

In accordance with the "Digital Dispute Resolution Rules", disputes related to smart contracts can be resolved without the intervention of human arbitrators using an artificial intelligence agent. So, disputes in accordance with the "Digital Dispute Resolution Rules" can be resolved using an automatic dispute resolution process. Alternatively, such disputes may also be referred to an arbitrator or expert. The Regulation provides a unique mechanism for automatic dispute resolution, which allows the parties to choose a person, a commission or an artificial intelligence agent for automatic dispute resolution. The solution is then immediately applied to the digital asset system, that is, to the platform on which the digital asset exists. Thus, the decision of the digital arbitration is also executed automatically. Rule 8 of the said Regulations makes the results of automatic dispute resolution legally binding for the parties.

Thus, digital arbitration (blockchain arbitration) assumes the following features. First, by concluding an agreement on the consideration of a dispute by digital arbitration, the parties withdraw their dispute from the jurisdiction of state courts, transferring it to the resolution of an alternative body - digital arbitration. Secondly, digital arbitration is a private dispute resolution mechanism. Third, a dispute regarding smart contracts is resolved automatically, i.e. by an artificial intelligence agent (not human arbitrators!). Fourth, the arbitration decision is final, binding on the parties (since the parties have agreed on this in advance), and is executed immediately.

Speaking about such features of traditional arbitration as ease of application, procedural and jurisdictional certainty of arbitration, procedural flexibility of arbitration, lower cost and speed of arbitration procedure, all of them can be applied to digital arbitration to an even greater extent.

J. Tirado and G. Casio argued that due process is a fundamental element of international arbitration. This concept is enshrined in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Article V(1)(b) of the New York Convention may authorize the absence of due process by denying recognition and enforcement of an arbitral award. However, such a sanction is useless in the case of decisions issued using self-executing

smart contracts, since enforcement is carried out automatically (Tirado & Cosio, 2022).

Having made a comparison with traditional arbitration, it should be concluded that the main difference between digital arbitration is point three - a dispute regarding smart contracts is resolved not by arbitrators appointed to the parties, but automatically, i.e. by an agent of artificial intelligence. How serious is this question should be answered by the national legislation of every country in the world. It is no coincidence that one of the first "Digital Dispute Resolution Rules" appeared in England. We have already mentioned that Article 1 of the English Law on Arbitration stipulates that "the object of arbitration is to obtain a fair resolution of a dispute by an impartial court without unnecessary delays or costs." Can an artificial intelligence agent be considered an impartial court? We believe that – yes.

From the point of view of theories about the legal nature of traditional arbitration, we believe that digital arbitration fits perfectly into any of the concepts mentioned above. Indeed, if we are talking about the contractual theory of arbitration, then digital arbitration is a digital contract, or a smart contract. If we talk about the procedural theory of arbitration, then digital arbitration is the implementation of the public law function of the state to resolve disputes in the field of smart contracts. The mixed theory of arbitration is also applicable to digital arbitration as a complex combined phenomenon that originates in a digital contract (smart contract) contract and may become procedurally effective on the basis of specific national legislation. There is no such legislation yet, but this does not mean that such laws on the possibility of digital arbitration will not appear in the next 2-3 years.

Thirdly, we will outline the possibilities of introducing digital arbitration in the EAEU. The Eurasian Economic Union (EAEU) is an international organization of regional economic integration established by the Treaty on the Eurasian Economic Union of May 29, 2014. The EAEU was created in order to comprehensively modernize, cooperate and increase the competitiveness of national economies and create conditions for stable development in the interests of improving the living standards of the population of the member states. Currently, the EAEU consists of five countries: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation.

It should be noted that a successful digitalization process acts as a prerequisite for effective integration. The EAEU Digital Agenda is a range of issues relevant to the EAEU member states on digital transformation within the framework of the development of integration, strengthening of the common Economic space and deepening cooperation of the member states, reflected in the statement on the EAEU Digital Agenda (signed by the heads of the EAEU member States on December 26, 2016) (Korovnikova, 2022, p. 156).

Each EAEU country strives to develop digital technologies, including new technologies in the field of international commercial arbitration. Thus, Uzbek jurists F. Otakhonov and A. Rasulev noted that it is necessary to increase the effectiveness of the institute of arbitration in Uzbekistan as one of the most important institutions of civil society, to ensure a reduction in the time and costs of business entities and foreign investors when considering disputes, to ensure an increase in the reputation of the country in the region in the consideration of controversial issues in international transactions (Otakhonov & Rasulev, 2020). Belarusian author V. Pavlovskaya wrote that in 2017 the President of the Republic of Belarus announced a general course on building an "IT country". First of all, this concerns the goal of broad support for technology companies in Belarus. The new "Silicon Valley of Eastern Europe" will soon begin to develop its legislation on technology and innovation. The first step is Presidential Decree No. 8 "On the development of the digital Economy" dated December 21, 2017 (Pavlovskaya, 2019). All this is impossible without the introduction of the latest technologies in the theory and practice of dispute resolution. Digital arbitration can become one of such new technologies in dispute resolution.

Conclusion

1. The term digital arbitration (blockchain arbitration) is used in three meanings. Firstly, the term digital arbitration refers to a way to protect the rights arising from smart contracts. This method is considered as an alternative to

those methods that imply the need to seek judicial protection from the State or traditional arbitration. Secondly, digital arbitration refers to the body that organizes the digital trial of a legal dispute. And, thirdly, this concept denotes an artificial intelligence agent (robot), which considered the dispute submitted for its resolution.

2. Digital arbitration (blockchain arbitration) assumes the following features. First, by concluding an agreement on the consideration of a dispute by digital arbitration, the parties withdraw their dispute from the jurisdiction of state courts, transferring it to the resolution of an alternative body - digital arbitration. Secondly, digital arbitration is a private dispute resolution mechanism. Third, a dispute regarding smart contracts is resolved automatically, i.e. by an artificial intelligence agent (not human arbitrators). Fourth, the arbitration decision is final, binding on the parties (since the parties have agreed on this in advance), and is executed immediately.

   Digital arbitration is also characterized by ease of application, procedural and jurisdictional certainty, procedural flexibility, low cost and speed of the arbitration procedure.
3. Due to the features listed above, digital arbitration can be recommended as an alternative way to resolve disputes in the digital space of the EAEU.

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SPATIAL PLANNING AND PHILOSOPHY OF JUSTICE: CORRECTIVE ACTION ON COMMUTATIVE JUSTICE THEORY (A STUDY IN KALIMANTAN, INDONESIA)

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Abstract: The absence of an ideal legal norm in determining an equitable spatial arrangement and provision of land has created a major problem with the increase of certificate production concerning property rights and granting permits for managing areas. This research used normative juridical research methods with a philosophic research approach which analyzed research results that produce descriptive analysis data related to holistic written and examined data. Results show that an ideal breakthrough is required to provide a balanced solution between spatial planning and the provision of land for certificate products especially for indigenous people. The breakthrough can be in the form of corrective actions that can be implemented to provide a balance and an ideal solution for spatial planning and the provision of land for certificate products, especially in district/city areas. In addition, the basic principles of commutative justice are considered capable of providing equality, balance, and harmony among the existing laws.

Keywords: corrective action, spatial planning, land provision, product certificates, justice.

Introduction

The regulation of spatial planning is important to create a good quality of life for the citizens of a country. Spatial planning can be an effort to prevent and reduce the impacts of ecological damage and prevent disasters. In Indonesia, before the enactment of Law No. 11 of 2020 on Job Creation, spatial planning was regulated in Law No. 26 of 2007 on Spatial Planning which regulated spatial planning, structure, and patterns. It also regulated the use of land, water, and other resources. Thus, land use management is an integral part of spatial planning and is a subsystem of it. Land use is currently the most dominant element in the spatial planning process.

Globalization and regional autonomy have left major problems related to chaotic spatial

planning in various cities and regencies in Indonesia. In Central Kalimantan Province, chaotic spatial planning is phenomenal because it has not been resolved and it has occurred since the 1990s. This problem causes conflicts between communities and entrepreneurs regarding land usage. Various problems and conflicts are caused by the portion of permit division for the Land Tenure Rights for Business and Building Usage Rights which often override legal rights to community land.

The chaotic spatial planning in Indonesia began with ambiguous and biased laws. Such laws philosophically do not provide the value of justice. Besides that, weak coordination systems and political interests-based decision-making processes add to the spatial planning problems. Moreover, sectoral interests, individual interests of heads of ministries or institutions, and business interests also worsen the situation. Ambiguous laws on spatial planning originated from the issuance of the Basic Agrarian Law, the Law on Forestry, and the Law on Spatial Planning. The three legal products were born under very different moods, spirits, philosophies, and ideologies.

The unclear spatial planning in East Kotawaringin Regency triggered conflicts between the community and oil palm plantation companies (Setiawan, 2018). In addition, case studies that occurred in this area are crucial to be elaborated to provide a more varied picture of conflicts due to unclear spatial and regional status in East Kotawaringan Regency, especially the ones related to social facilities, public facilities, certain areas, completion of programs government, settlements within the area, detailed spatial plans, agrarian reform, and community legality (*Perjelas Status Kawasan Dan Tata Ruang Kotim (Clarify the Regional Status and Spatial Planning of Kotim)*, 2021).

Considering the aforementioned facts, it is necessary to regulate land tenure and land utilization to overcome various unfinished land conflicts, especially in urban areas. Lawmakers should have a good understanding of the philosophies of the Central Kalimantan people and how they perceive forests, land, and regulations, to create laws that bring the value of justice. This is so that it can be used as an alternative solution for the government to realize the social justice of land and the quality of the urban environment in an orderly and well-managed manner (Kapoh, 2017). One of the reasons for the rampant unprocedural use of land in Central Kalimantan Province is the large number of plantation business permits issued by regents/governors that are suspected of being located in forest areas. According to Hartoyo (2011), this is an indication of corruption in granting plantation business permits. Corrupt laws fail to bring any justice because honesty is the main prerequisite to creating justice.

There are overlapping permits for space and land rights for the community in Government Regulation No. 43 of 2021 concerning the settlement of inconsistencies in spatial planning, forest areas, permits, and or land rights. This was allegedly caused by an inconsistency between the Basic Agrarian Law Number 5 of 1960 and Law Concerning Forestry No. 41 of 1999 enacted in the early days of the Reformation Era. These regulations have actually experienced distortion due to conflicts of interest, ideologies, and philosophies embraced by three governmental regimes. The Old Order regime (1945-1966) embraced the socialist ideology and the communal philosophy. Meanwhile, the Reformation regime (1998-now) embraces the ideology of the free market and liberalism.

The spatial rights and land rights in Central Kalimantan Province also refer to the Regional Regulation of the Central Kalimantan Province No. 5 of 2015 on the Central Kalimantan Provincial Spatial Plan for 2015-2035. But the constitutional law basis that was sourced from the Old Order makes these two laws have starkly different philosophies, causing legal chaos.

On the other hand, the conflict between the spatial planning of the Central Kalimantan Province with the Ministry of Forestry forest area spatial planning becomes one of the complicated problems that has been left unresolved for a long time. The problem worsened when the Head of the Regional Forestry and Plantation Office of Central Kalimantan Province requested consideration from the Head of the Planning Agency of the Ministry of Forestry and Plantations regarding the permits to release forest areas for plantations in Production Development Areas, Residential Areas and Other Uses based on the Central Kalimantan Provincial Spatial Plan (Rompas & Waluyo, 2013).

From the magnitude of the regulation's portion, the Basic Agrarian Law has a wide scope,

namely the entire territory of Indonesian law which includes land, seas, water, the air above the territory, and areas under the waters of the Indonesian state. But this law contained philosophic views and ideologies that are different from that embraced by the Reformation regime. Such unsynchronized laws lead to conflicts. Based on the background above, this paper describes the dynamics and conflicts in spatial planning and land provision in East Kotawaringin Regency, Central Kalimantan Province, Indonesia which have not been resolved. The important points to be discussed in this article concern solutions to spatial planning and the provision of land for equity-based property certificate products.

Research Methods

The research method is a series of ways that the authors used to find information to support the study of the paper. (Basri, 2019) In compiling this article, authors used the normative juridical research methods. The normative juridical method was used by collecting secondary data through a literature study that originated from documented legal materials in the form of books, journals, as well as related laws and regulations (Leks, 2015). The philosophic research approach was used to analyze the results of the research. It produced descriptive analytical data related to the holistic written and examined data (Fajar & Achmad, 2010). Data analysis was carried out qualitatively. Systematically, the steps of analysis began with data reduction, namely choosing relevant and valid points. The data were then interpreted. Lastly, the results of the analysis were presented in the form of descriptive-analytical descriptions (Parsaulian & Sudjito, 2019).

Results and Discussion

Spatial Planning and Provision of Land to Achieve Utilization of Community Social Functions Through Land Consolidation

Comprehensive, holistic, just, and integrated spatial planning based on development needs will strengthen national resilience. Therefore, spatial planning must be carried out with a philosophy of justice that considers the perspective, assessment, and culture of the Kalimantan people. One of the strategies to solve the problem in the geographical area is to formulate a just and holistic spatial as the General Spatial Plan, in this case, the City/Regency Spatial Plan. This is to adequately provide geographic space as people's settlement (both in urban and rural areas) and a source of life (such as land/agricultural landscapes) for Indonesia's survival as a nation (Sianipar, 2015).

In general, the Central Kalimantan Province has abundant natural resource potential in various sectors, including forestry, agriculture, plantations, mining, marine, fisheries, etc. (*59 Tahun Kalteng Semakin Mantap (59 Years of Central Kalimantan Becoming More Steady)*, 2016). This makes Central Kalimantan Province attract various parties to undergo various utilization of natural resources. Natural power mining, forestry, and plantations become the sources of state revenue. These sectors are connected to land resources (the land-based sector) (Mumbunan, 2015). If development in these sectors is accommodated without consideration for the life philosophies of the local people, traditional philosophies, and preservation of nature, it will bring disaster and conflicts in the lands of Kalimantan.

Spatial utilization law is an effort to realize the spatial pattern based on the justice philosophy. It is applied through the preparation and implementation of programs and their financing. In such an understanding, the form of adjustment in participatory land tenure, use, and utilization can be carried out through land consolidation with consideration for good land use. There must be a consideration for residential areas, agriculture, business, and society's needs. These aspects must be equally considered by still respecting the perspectives of the local people (Bustomi & Barhamudin, 2020).

Article 2 clauses (1) and (2) of Regulation of the Head of the National Land Agency No. 4 of 1991 concerning Land Consolidation State that land consolidation aims to achieve optimal land utilization by increasing the efficiency and productivity of land use. Its target is to realize an orderly and well-regulated arrangement of land tenure and use according to the land's capabilities and functions. To create an orderly and well-

regulated arrangement of land, there needs to be the harmonization of laws, so that they can philosophically apply at the same time. The government needs philosophical and ideological reviews that can support these laws.

To realize such objectives, efforts regarding land consolidation that is carried out by realigning all of its aspects should be highly emphasized. This includes the constitutional philosophy which is achieving societal welfare and prosperity without conflict. justice (Wardiono, 2019) Equal treatment and an understanding of society's desires are the main prerequisites to making the law have a philosophy of justice (Hasni, 2010). Lawmakers need to consider:

a) The rearrangement of all aspects related to the arrangements of culture, people, and use of natural resources. It does not only focus on the arrangement and issuance of the physical and non-physical form of the land but also includes the legal and philosophic relationship between landowners and their land;
b) The rearrangement of all aspects related to the harmonization of land users with spatial and land use planning;
c) The rearrangement of all aspects related to the land provision for construction interests of necessary public infrastructure and facilities;
d) The rearrangement of all aspects related to improving the quality of the environment or the conservation of natural resources.

To optimally increase the efficiency and productivity of urban land utilization there need to be laws that are not only just but also humane. Development is carried out with the law that lives in society rather than merely using written laws. In carrying out this development, the desires of landowners and the peoples' cultures as consolidation participants must be taken into account. Therefore, the targets areas of land consolidation include:

a) Areas that are planned to become new cities or settlements. The form of land consolidation cannot only be carried out independently in the form of mature plots of land by developers who will build new settlements in the area. Developers can sell in the form of mature plots of land or complete with houses. Government according to law should be intervened if this development is carried out without any consideration of the people (such as the action of displacing customary societies) or the environment (by carelessly felling forests).
b) Areas that have started to grow, where the land is generally located on the outskirts of cities that have already been inhabited. In such a situation, the people of this area must be invited for a discussion. Their aspirations need to be heard and considered to create a humane solution.
c) Rapidly growing residential areas. These settlements grow with an irregular pattern of land parcels. As a result, this area faces difficulties in reaching or accessing infrastructure and other public facilities.
d) Relatively empty areas where development is possible. For this, there needs to be a consideration on whether or not this area is an environmental area that is crucial to maintain balance, such as an area of water reserve which may cause floods if buildings are built on it.
e) Areas that were previously inflicted by natural or social disasters, where renovation/reconstruction is required to rebuild.

The social function of land is based on Article 6 of the Basic Agrarian Law which was a law from the Old Order Era with a different philosophy, i.e., the socialism and communal philosophies. Therefore, land rights do not become an obstacle for the government in undergoing its authority on land consolidation. Meanwhile, associated laws and spatial laws are based on the liberalism and democracy philosophies applied by the Reformation Regime. This makes it difficult to achieve policies governing land tenure, adjusting land use with spatial and land use plans, land acquisition for development purposes, improving environmental quality, and preserving natural resources considering that each law has diametral differences (Hasni, 2010).

The Implementation of Corrective Action as Integration of Spatial Planning and Provision of Land for Equity-Based Property Certificate Products

To increase the product legality of land rights and to balance spatial planning in line with the General Spatial Plan, in this context, City/Regency Spatial Plans require a comprehensive ideal solution. Reviving the movement back to the Basic Agrarian Law 1960 which rec-

ognized hereditary individual rights (*erfelijk individual bezit*), communal rights (*communal bezit*), absolute property rights (*eigendom*), customary rights (*beschikkingsrecht)*, and other traditional land institutions becomes relevant to the principle of benefit to society compared to the ownership system which is fully determined by the state, as what the law regulates.

Contradicting traditional ownership and or even eliminating traditional use rights and replacing them with a formal legal system under the pretext of spatial planning harmony is counterproductive (Angelsen, 2010). It has the potential to cause social conflicts (Haug, 2007). In this case, land provision should not only be based on the rights granted by the state law. It should also accommodate the rights that originate from the recognition of land ownership and or customary forest where the plantation business is established. If the formulation of spatial regulations considers the land philosophy and the people, the law will be harmonious and it will live.

Land registration in Indonesia is regulated by Government Regulation No. 24 of 1997 concerning Land Registration. Article 1 point (1) of this Government Regulation defines land registration as "a series of continuous, sustainable and regular activities carried out by the government, including the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in maps and lists, regarding land parcels and apartment units, including the issuance of proof of title (certificate product) for land parcels that already have rights and ownership rights to apartment units and certain rights that burden them".

Land acquisition for spatial planning is usually pursued by state administration agencies or officials through land acquisition. It means transferring the land with an allotment plan for public interests. Such a determination will result in the revocation or limitation of land rights, resulting in a person or civil legal entity losing their land rights. The loss of land, especially for the ordinarypeople of Kalimantan, is a painful thing. In the name of the state or public interests, contractors or other parties can easily displace customary people using the Law on Spatial Planning. This condition that often happens in Kalimantan leads to endless conflicts.

It is important to provide land that is balanced with spatial planning, citizen benefits, and culture to fulfill the legality of ownership (certificate products) of land rights containing physical and juridical data. The land tenure certificate is a certificate of proof of rights over a plot of land. It contains a copy of the land book which contains physical and juridical data, and a measuring letter that contains physical data.

A certificate is issued so that the holder of the rights can easily prove his/her ownership. This guarantees legal certainty and provides legal protection for the certificate owner. The certificate is issued for the benefit of the relevant rights-holder in line with the physical and juridical data that have been registered in the land book. The certificate may only be submitted to the party whose name is listed in the concerning land book as the rights-holder or to another party that obtained authorization from the rights-holder.

An obstacle that has so far happened was that certification was not given to customary people who owned the land from generation to generation. The philosophy of certification is personal or legal entity land tenure but it does not apply to customary people. For customary people, the land is treated as a whole and they are not divided. They are merely inherited from generation to generation. In the philosophy of land certification, land can be sold. It can have its rights shifted and it can can be given away. This is different from the philosophy of customary land. (Rosyadi & Rizka, 2010)

In this case, an ideal breakthrough is required to provide a balanced solution between spatial planning and the provision of land for certificate products especially for indigenous people. This is especially important in East Kotawaringin Regency. It can be carried out by implementing Corrective Actions, i.e., actions taken to improve the accuracy of purpose or suitability required based on legal certainty. The implementation can be seen in the chart below:

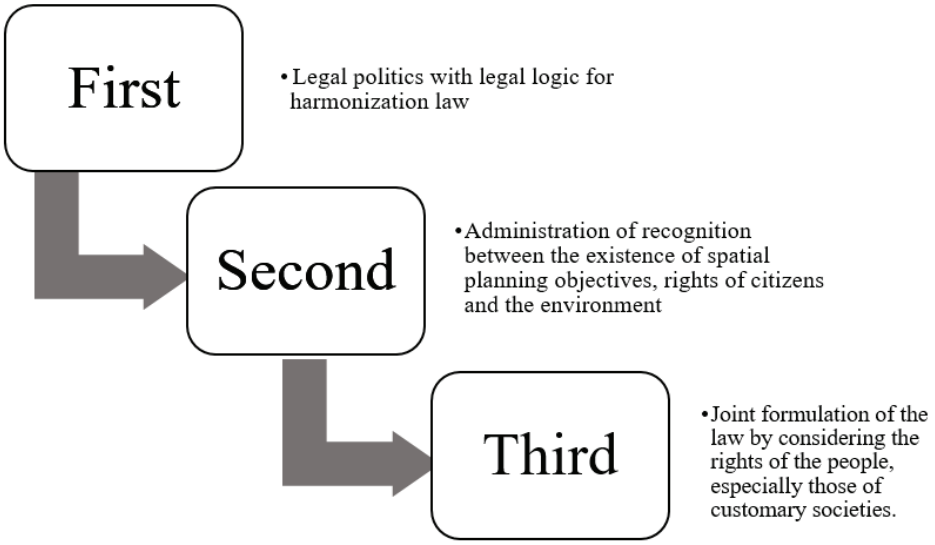

Figure 1. The Implementation of Corrective Actions

The contents of integration in the implementation of spatial planning corrective action and the provision of land for justice-based property rights certificate products are conducted by taking various legal considerations into account. The legal contents that need to be considered are shown in the table below:

Table 1.

Integration of the Legal Consequences of Spatial Planning and Land Provision

Content of Legal Certainty	*Description*
Reinforcing the purpose of spatial planning for land provision needs	Refers to Article 33 clause (3) of the 1945 Constitution and Article 4 clause (2) of the Basic Agrarian Law to acknowledge the rights of customary land.
The rules regarding spatial planning rights and land rights	Ownership and management of land based on nationality and social justice so that customary people can obtain customary land tenure rights according to their customs (where the land cannot be sold or have its rights shifted).
The rules regarding conflict resolution	Absolute authority is given to resolve various community conflicts arising from the implications of spatial planning and land provision from the previous era.

The land is given to people with rights that have been provided by the Basic Agrarian Law and is expected to be used. However, if its use is only limited to the soil as the surface of the earth, it will be necessary to use part of the body of the earth, water, and the space above it for other purposes. Therefore, Article 4 clause (2) of the Basic Agrarian Law states that land rights do not only give the authority to use a certain part of the earth's surface, which is called "land", but also the body of the earth, water, and the space on it. The Basic Agrarian Law has philosophically given more accommodation to customary land and people compared to the new law that was sourced from liberalism and private ownership.

Providing justice in the Indonesian legal framework can be done by considering the philosophy of ideal truth; whether it is about places, objects, or people. John Rawls (1999) stated about this justice philosophy that "Justice is the first advantage (virtue) of social institutions, as well as truth in the system of thought" (p. 235). However, the law and its implementation in this case still failed to provide clarity on what is required by justice. Basically, justice is defined as putting everything in its appropriate place.

The correlation of the meaning of justice in the offer to implement corrective action in spatial planning and providing land for property certificate products is certainly based on commutative justice philosophy which concerns equality, balance, and harmony in the relationship between one rule and another or one party and another. Legal justice is already contained in commutative justice philosophy because legal justice is only a further consequence of the principle of commutative justice, namely for the sake of upholding commutative justice philosophy, the state must distribute rules that tend not to rise different sectoral egos and also different spirits and ideologies.

In this case, the meaning of justice in integrating spatial planning needs with land rights as well as land benefits for society. Land conflicts will disappear when laws that philosophically accommodate customary laws and land as well as personal ownership are created along with the implementation of the law that does not side investors with what has happened.

Conclusion

The philosophic implementation of corrective action to spatial planning and land provision should become a new model for integrating the need of the people in Indonesia. An action to improve the accuracy of purpose or suitability is required based on legal certainty. Especially the Basic Agrarian Law an ideal offer to maintain equality and balance in spatial planning and the provision of land. From the legal aspect, the need for a commutative justice implication can provide a principle so that equality, balance, and harmonious relations between one rule and another or one party with another party can find an appropriate legal concept in further consequences in the distribution of legal rules.

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METHODOLOGY FOR THE STUDY OF THE PRINCIPLES OF ESTABLISHING TERRITORIAL JURISDICTION AND MECHANISMS FOR RESOLVING DIGITAL DISPUTES BY THE COURTS OF THE INTERNATIONAL FINANCIAL CENTER OF DUBAI

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Abstract: The article attempts to analyse the principles of establishing territorial jurisdiction when resolving disputes in the courts of Dubai International Financial Centre (DIFC) in the United Arab Emirates. In the context of globalization scientists and practitioners face the question of selecting appropriate and effective methods to cognize jurisdiction, the application of regulatory methods and mechanisms to resolve digital disputes in international practice. Attention is drawn to the need to develop theoretical approaches to establish the nature of relations arising from digital disputes and to determine the liability of parties in relation to the subject matter of a digital dispute, as well as in relation to technologies controlled by artificial intelligence and robotics.

Keywords: jurisdiction, digital dispute, DIFC, artificial intelligence, digitalisation, jurisdictional methodology.

Introduction

The Courts at the Dubai International Financial Centre (DIFC) in the United Arab Emirates are a uniquely complex and efficient judicial system, generally governed by common law, delivering independent and speedy justice in English, through the resolution of national and international commercial or civil disputes. The Dubai-based courts are completely transparent. DIFC's highly qualified judges apply international legal standards in delivering their judgments.

The Dubai International Financial Centre (DIFC) is an integral jurisdiction of the Emirate of Dubai and the United Arab Emirates. Neither the DIFC Authority nor the DIFC Courts themselves can enter into international treaties on their own, but they must comply with the conditions set out therein. The experts believe that Article 24(2) of the DIFC Court Law (*DIFC Courts*, 2023, Law No. 10 of 2004) should be followed in this regard, which clarifies that: "Where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the Court of First Instance shall comply with the terms of such treaty" (Enforcement of Foreign Judgments – DIFC, 2022).

Initially, the DIFC Courts were geographically limited as they were only established to hear cases relating to the Dubai International Finan-

cial Centre. The rapidly growing reputation of the DIFC Courts for administering justice quickly and efficiently enabled them to expand their jurisdiction in October 2011. However, this raised a host of questions in establishing territorial jurisdiction between the DIFC Courts and the Dubai courts. In this regard, by Decree No. 19 of 2016, the Emir of Dubai established the Joint Judicial Tribunal to resolve conflicts of jurisdiction that may arise between the Dubai Court and the DIFC Courts. Thus, the DIFC Courts apply the Law governing the contract in question, but if this cannot be ascertained the DIFC common law system, based primarily on the UK law system, must be applied. Furthermore, amendments were made to Law No. 10 of 2005 on the Law Relating to the Application of DIFC Laws. In particular, paragraph 10 of Part 3 "Applicable Law of Contracts" provides that, in the absence of expressly stated governing law, unless the parties specify the governing law of a contract, the contract shall be governed by the law of the DIFC.

There is also a provision in Law No. 10 of 2005 which clearly sets out the rules for the interpretation of the DIFC legislation:

> "(a) Federal Law is law made by the federal government of the United Arab Emirates;
> (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
> (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC; and
> (d) the Law is the law relating to the Application of DIFC Laws, DIFC Law No.4 of 2004 made by the Ruler" (*DIFC Courts*, 2023).

Lawyers and partners at the UAE law firm Afridi & Angell, Bashir Ahmed, Chatura Randeniya, Mevan Kiriella Bandara and Tania Garg (2022) note in their research that until very recently, the decisions of the Judicial Tribunal have favoured the view that "the Dubai Courts have general or ordinary jurisdiction and that the DIFC Courts must only exercise this power in exceptional circumstances (as in the case where a defendant has assets within the DIFC)" (p. 24).

One of the basic principles of establishing jurisdiction in territory is the principle of territoriality, according to which the judicial system is based on geographical boundaries and the allocation of territories. However, in the context of technological development and the emergence of a digital environment, borders become less obvious and the ability of the judicial system to adapt to the new realities is important. The need to resolve digital disputes poses a challenge to the courts – achieving justice requires the creation of dispute resolution mechanisms that can operate in the digital sphere, ensuring fairness and compliance with legal postulates.

In addition, the topic raises the important question of legal efficiency and the enforcement of court decisions in the context of digital disputes.

Professor I. V. Mikhailovskii (1914) more than a century ago expressed the position that the philosophy of law is intended to indicate the ideals and ideal models to which law should aspire. This philosophical thought has not lost its relevance in today's digital reality in relation to judicial and executive proceedings, since the execution of court decisions in the digital environment generates specific difficulties and requires appropriate mechanisms and infrastructure that will ensure the proper application of legal decisions.

Professor D. A. Kerimov (2007) described "philosophy as the "soul" of methodology, its core, because it acts not only as a universal method of cognizing nature, society and mind, but also as a general theoretical premise for any research" (p. 9). Based on this statement, the philosophical significance of the topic under study lies in recognizing the need to develop and adopt legal systems to the modern challenges of the digital age. It requires consideration of issues of fairness, independence and legal efficiency to ensure the protection of the interests and rights of all participants in the digital environment.

Methodology

In the popular legal encyclopaedic dictionary edited by O. E. Kutafin, the term "jurisdiction", which in Latin "jurisdictio" means legal procedure, from "jus" – right and "dictio" – say, is understood as the totality of the powers of the relevant state bodies established by law to settle legal disputes and resolve cases of offences, assess actions of a person or other subject of law in terms of their legality or illegality, apply legal sanctions to offenders (Kutafin et al., 2000, p. 795).

Or a similar definition is given in the glossary

to the textbook on the history and methodology of legal sciences, where jurisdiction should be understood as a set of powers of relevant state bodies established by a normative legal act to resolve "legal disputes and solve cases of offences", dissemination of information defaming the honour and dignity of a citizen or organisation, etc., "disciplinary offences and administrative offences, etc." (Komarova, 2015, p. 171).

For a detailed analysis of the jurisdiction methodology, it is first necessary to identify what this legal category is. In order to avoid mistakes in determining jurisdiction and to ensure the correct application of the normative legal acts, when using the jurisdiction methodology it is important to consider all aspects of the legal regulation, the essential terms of the concluded international agreements, as well as the established requirements for the enforcement of DIFC Court decisions by foreign courts and vice versa, according to the diplomatic arrangements.

If we look at the methodology of jurisdiction from the point of view of a substantive characterisation, it follows that it is a set of rules, principles and methods used to determine jurisdiction in legal and procedural matters. Consequently, the methodology of jurisdiction includes the analysis of legal norms, agreements and treaties, as well as the practice of their application.

Firstly, jurisdictional methodology can be used to determine which laws and regulations apply to certain issues and to determine the competence of the judiciary and other authorities in dealing with legal matters. This may include determining the location of the court, adjudicating disputes related to international treaties, etc.

Secondly, jurisdictional methodology is a field of law that studies the methods and approaches used to define and apply the legal rules within a jurisdiction. The study of jurisdictional methodology is undertaken not only by legal practitioners, judges, attorneys at law, but also by academic and educational institutions specialising in the field of jurisprudence.

Thirdly, jurisdictional methodology is a scientific discipline that studies methods and approaches used in jurisprudence to address legal issues. Within this discipline, scholars are engaged in studying legal norms, analysing how they are interpreted and applied, and developing new methods and approaches in the field of law.

Among the leading scholars specialising in the study of the methodology of legal science are: N. A. Vlasenko, D. A. Kerimov, I. P. Kozhokar, A. I. Komarova, A. V. Malyshkin, V. M. Syrykh (Syrykh, 2012), Y. A. Tikhomirov (2008, 2011), etc.

Researchers have been analysing and developing new methods and approaches in the field of law for many years. However, not all innovations can be effective. For example, Professor N. A. Vlasenko (2019) "sharply criticises the proposed new methodologies in the theory of law. This is the so-called paradigmatic approach. The author believes that the change of scientific paradigms is a natural phenomenon for legal and other sciences. ...Synergetic, phenomenological and other ideas of new methodological foundations in the theory of law and state are criticised" (p. 5).

Professor Y. A. Tikhomirov (2008) in his research "The Development of Theoretical and Methodological Approaches to Evaluating the Effectiveness of Existing Legislation (Legal Monitoring)" draws attention to the lag between law enforcement and lawmaking and notes that "a passion for normativity has led to an overrated attention to the texts of legal acts whose preparation and adoption have become synonymous with legal regulation" (pp. 92-93).

We agree with the opinion of Professors I. P. Kozhokar and E. P. Rusakova that "the real regulatory effect of the correct application of the legal terminology proposed by the legislator arises in the process of law enforcement activity. ...the enforcer is obliged to observe certain legal-technical rules, including the consistency of terminology of the enforcement act with the terminology of the applicable normative legal act" (Kozhokar & Rusakova, 2023, p. 127; Kozhokar et al., 2023).

A. V. Malyshkin writes about the choice of methods of jurisdiction, noting that "the correct choice of methods of jurisdiction predetermines the efficiency of jurisdictional activity". In order to achieve the tasks set before the jurisdiction one should be guided by the methods of legal regulation. However, one of the main tasks of modern researchers remains the choice of necessary methods of cognition of jurisdiction "as a complex activity and the prospects of its transformation" (Malyshkin, 2018, p. 126).

Continuing to reflect on the topic of jurisdiction A. V. Malyshkin (2018) in his research points out that this legal category also represents "a kind of legal activity and, taking into account the abovementioned, in relation to it methods can be designated as a set of theoretical and normatively fixed practical actions for the implementation of jurisdictional activity aimed at achieving the goals of jurisdiction" (p. 127).

The methods of introducing artificial intelligence technologies into the judicial system, digital courts, national laws on the admissibility of decisions rendered by online or electronic arbitration, and issues of applying modern information and telecommunication technologies in legal activities and proceedings are analysed in detail by Professors E. P. Ermakova and E. E. Frolova (2021).

An interesting conclusion is drawn by Professors E.P. Rusakova and E. E. Frolova on the methods of legal regulation of the new procedure for the protection of digital rights in foreign practice. The authors believe that "the developed foreign experience of resolving smart contracts is progressive and effective: 1) for the first time special rules of digital dispute resolution appeared, in the development of which not only lawyers, but also IT-specialists participated; ...; 4) there is an ongoing process of improvement of the digital dispute resolution procedure" (Rusakova & Frolova, 2022a, 2022b, 2022c).

Main Study

The peculiarity of establishing jurisdiction in the DIFC Courts.

There is a certain peculiarity related to the conduct of official court proceedings. The DIFC Courts operate in English, despite the fact that more than half of the staff are native Emirati speakers of Arabic. Thus, all hearings are conducted in English and all paperwork is done in English – this reduces the time required to resolve disputes concerning English-language contracts.

What is the fundamental difference between DIFC vessels and those in the Emirate of Dubai?

The DIFC Courts are part of the courts in Dubai and their main difference is the limits of the courts' competence, i.e. their jurisdiction and the legislation that governs them.

As mentioned above, the DIFC Courts have jurisdiction over certain civil and commercial disputes. The civil courts in Dubai handle all other cases in these matters. The DIFC Courts adjudicate cases based on English common law, whereas the civil courts in Dubai follow the Federal Civil Procedure Law.

The Dubai International Financial Centre (DIFC) Courts include:

- Small Claims Tribunal;
- Court of First Instance, which includes the following divisions:
  - Civil & Commercial Division;
  - Technology & Construction Division;
  - Arbitration Division;
  - Digital Economy Court Division;
- Court of Appeal.

Let us take a closer look at the activities of each court.

Small Claims Tribunal of DIFC Courts (SCT).

The Court Act states that the Small Claims Tribunal of DIFC Courts (SCT) was formed to hear and resolve specific claims that fall under the jurisdiction of the DIFC. The difficulty with this dispute resolution mechanism is the length of the process, which averages four weeks. The SCT usually deals with cases whose value of the subject matter or amount of the claim is up to AED 500,000 (approximately USD 136,164.28). Also, labour disputes or disputes with a claim value of less than AED 1 million (approximately USD 272,323.70) can be handled by the SCT if the parties have agreed in advance in writing.

In the event of an unsatisfactory outcome of the case, the parties may seek legal advice from the Court of First Instance (CFI) before filing an appeal.

Court of First Instance (CFI).

According to Article 5 of Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts "the Court of First Instance (CFI) shall have exclusive jurisdiction to hear and determine any civil or commercial claims or actions where it relates to the DIFC. Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations" (Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts).

However, the rule is not absolute, so there are a few exceptions to the rule that should be noted. These are final judgments rendered by other courts in respect of civil or commercial claims. In this case, the Court of First Instance (CFI) cannot hear these types of claims.

Under section 5(3) of Law No. (16) of 2011, a civil or commercial claims falling within its jurisdiction may be brought before the Court of First Instance even if the parties have agreed in writing to hear the case before another court which has dismissed the action for lack of jurisdiction.

The Court of First Instance may hear cases where the contract specifies the jurisdiction of the DIFC Courts or where both parties decide to use the DIFC Courts to resolve a dispute that has already arisen.

Civil & Commercial Division of the Court of First Instance.

The Civil and Commercial Division acts as a mechanism for resolving complex disputes requiring specialist knowledge and involving breach of contract, property rentals, banking and finance. The task of the judge is not only to persuade the parties to agree on a timetable for dealing with the cases, but also to ensure that the matters that require resolution are dealt with quickly and fairly, in line with the DIFC Courts' predilection for transparent and efficient access to justice.

Technology & Construction Division (TCD).

The Technology and Construction Division (TCD) is staffed by judges who are experts in the new industry rules, ensuring that disputes are resolved quickly. The department handles only technically complex cases. These can include procedures arising in the construction sector, complex engineering disputes or claims arising from fires, as well as issues relating to new technologies such as artificial intelligence or unmanned vehicles, technology-related cases, can include liability for cybercrimes, disputes over property rights and data use.

Arbitration Division.

In 2020, the Arbitration Division was set up in order to deal with arbitration cases quickly. The Arbitration Division uses a special court electronic register that allows effective control over the supervision and management of cases, which allows for the instant processing of requests for interim measures in one of the mechanisms for resolving digital disputes and the judicial protection of infringed rights.

The official website of the DIFC Courts notes that the existence of extensive national, regional, and global connectivity, "the DIFC Courts empowers its specialised Arbitration Division to leverage existing enforcement expertise, helping to ensure certainty of recognition and enforcement of arbitral awards".[1]

Thus, guided by common law principles, the Arbitration Division employs judges specialising in international arbitration to decide the following matters:

- the appointment of independent arbitrators;
- interpretation of arbitration agreements;
- the application of interim measures for the duration of the arbitration;
- enforcement of the decision after the end of the process.

Digital Economy Court Division.

In 2021, the DIFC Courts established its Digital Economy Court Division "to oversee complex national and transnational disputes related to current and emerging technologies across areas ranging from big data, blockchain, AI, fintech and cloud services, to disputes involving unmanned aerial vehicles (UAVs), 3D printing and robotics".[2]

The growth of digital transformation around the world inevitably integrates digital technologies in processes mainly related to trade and services. This inevitably leads to digital disputes. "An innovative judicial system is key to ensuring the safety, security and protection of companies and businesses" in resolving digital disputes.

The Digital Economy Court Claims ("DEC Claims") are governed by Part 58 of the Rules of the Dubai International Financial Centre Courts (2014) ("RDC 2014") and the "Rules of the DIFC Courts and the Guidelines, Registrar`s directions and Practice directions DEC".

BSA Dubai senior lawyer William Prasifka (2023) notes in his study that the Rules of the DIFC Courts 2014 "RDC 2014" "provide a procedural framework that allows technology to be used throughout the proceedings … the default

[1] See https://www.difccourts.ae/media-centre/newsroom-/worlds-first-international-digital-economy-court-unveils-new-specialised-rules-and-global-judicial-expertise

[2] See https://www.difccourts.ae/media-centre/newsroom-/worlds-first-international-digital-economy-court-unveils-new-specialised-rules-and-global-judicial-expertise

position is that all trials are held remotely, with the pretrial exchange of documents taking place electronically" (pp. 20-21). Article 58.9 "Power to conduct proceedings digitally" states that "The Court shall, as far as possible, conduct DEC Claims making appropriate use of information technology and with a view to maximising the efficiency and minimising the costs and environmental impact of court proceedings" ("RDC 2014" - The Rules of the Dubai International Financial Centre Courts, 2014).

According to Article 58.5 of the Rules of the DIFC Courts 2014 "RDC 2014" a "DEC Claim" means a claim which:

Firstly, involves issues relating to the digital economy arising independently, referred to the Digital Economy Court or arising from an appeal from the Financial Markets Tribunal of the DFSA in respect of its supervision of legal entities.

Secondly, the parties have agreed to be a DEC Claim.

In addition, the value of a "DEC claim" cannot exceed AED 500,000, the exception being claims with a value exceeding AED 500,000, but the parties have consented to the claim being determined under the Consumer DEC Claim.

According to Article 58.12 "Smart forms" of the Rules of the DIFC Courts 2014 "RDC 2014" an electronic dynamic system may be operated by the Court for DEC Claims by which the parties provide information through smart forms, driven by artificial intelligence, which procure necessary information for the conduct of the claim.

An appeal against the decisions of the Court of First Instance may be lodged with the Court of Appeal.

Court of Appeal of DIFC.

The Court of Appeal of DIFC is the highest court in the DIFC legal system. Here, parties seeking fair justice can only appeal against decisions made by lower courts. The Court of Appeal of DIFC does not accept new cases. Cases may be referred to the Court of Appeal for judicial review. The Court of Appeal of DIFC shall also deal with the judicial interpretation of the laws of DIFC. The Court of Appeal makes the final judgment or decision of the courts and the decision of the Court of Appeal is not subject to appeal.

A person who has created an account on the e-Registry portal on the DIFC website, an online platform for filing documents, claims, paying fees and participating in case hearings, can file a claim with the DIFC Courts.

So how are DIFC Court decisions enforced?

The UAE is party to a number of bilateral treaties relating to the enforcement of foreign judgments. Based on international instruments such as the Riyadh Convention of 1983, the GCC Convention of 1996, the decisions of the DIFC Courts are enforceable throughout the Arab world by the member states. DIFC judgments and orders are also enforceable in France under the 1992 Paris Convention on judicial assistance, recognition and enforcement of judgements in civil and commercial matters between France and the UAE (1992) and in many other countries, including China and India, in accordance with domestic laws governing the recognition and enforcement of foreign judgments.

The main sources of law relating to the enforcement of foreign judgments are:

- Law No.12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre as amended (known as the Judiciary Law);
- DIFC Court Law (DIFC Law No. 10 of 2004);
- Rules of the DIFC Courts; and
- A growing body of case law relating to the enforcement of foreign judgments, including:
- DNB Bank ASA vs Gulf Eyadah Corp (2015) DIFC CA 007;
- D'amico Shipping Italia Spa vs Endofa DMCC [2016] DIFC CFI 042;
- Barclays Bank PLC and Ors vs Essar Global Fund Ltd (2016) DIFC CFI 036;
- McConnell Dowell South East Asia Pte Limited vs Essar Projects Limited (2018) DIFC CFI.

In addition to the above, and although they do not have the force of law, the DIFC Courts have entered into memoranda with the courts of several foreign jurisdictions that are designed to determine how parties can expect the signatory courts to deal with each other's cases.

In accordance with Federal Decree-Law No.42 on Civil Procedures Law, only subject to the procedure stipulated by the DIFC Law (Dubai Law No. 12 of 2004 as amended) DIFC Court decisions must be enforced through the Dubai Courts. Also, according to Article 7 (2) of

Law No. 16 of 2011, from the entry into force of the said Law, "decisions of the DIFC Courts can be enforced in other Emirates or by execution in Dubai by a judge or directly by the local "competent authority" in the UAE".

The official website of the DIFC Courts includes several examples of possible formalities for the enforcement of DIFC Court judgments by foreign courts and vice versa, according to diplomatic arrangements (Memorandum of Guidance):

- between the DIFC Courts and United States District Court for the Southern District of New York (SDNY), March 22, 2015;
- between the UAE Ministry of Justice and DIFC Courts, May 05, 2015;
- between Supreme Court of the Republic of Kazakhstan and DIFC Courts, August 28, 2015, et all.

It is important to note that the aforementioned Memoranda are not legally binding, but rather define the parties' understanding of the procedure for enforcing judgments: "The parties believe that the cooperation demonstrated by these Memoranda will promote a mutual understanding and guidance of the judicial processes and will improve public perception and understanding" (official website of DIFC Courts, 2023).

For example, in order to sue in the DIFC Courts, the decision of the New York court must be final and uncontested. In order to resolve a dispute under DIFC Law and conflict of laws rules, the New York State Court must have jurisdiction. DIFC Courts generally hold that the New York court had the necessary jurisdiction only if the person against whom the judgment was rendered:

- was located, at the time of the commencement of proceedings, in that jurisdiction or within the jurisdiction of the Court of New York; or
- had, prior to the commencement of the proceedings in relation to the subject matter, consented to submit to the jurisdiction of the New York Court.

In New York State it is not allowed to bring an action for recognition or enforcement of a foreign judgment after the statute of limitations for enforcing the judgment has expired in New York, or in a foreign jurisdiction. The applicable statute of limitations in New York is usually 20 years.

Before the signing of the Memorandum between the Supreme Court of the Republic of Kazakhstan and the Dubai International Financial Center, in 2009, the "Agreement between the Republic of Kazakhstan and the United Arab Emirates "On the provision of legal assistance in civil and commercial cases was signed". This agreement is incorporated into the national law of the UAE by Federal Decree 2009 No. 117 of 2009 on Ratification of Agreements and Judicial Cooperation in Civil and Commercial Matters between the UAE and the Republic of Kazakhstan. This act provides for the conditions for the recognition and enforcement of judicial acts of each of the parties (Paragraph 8 of the Memorandum, Press Service of the Supreme Court of Kazakhstan).

The Parties are guided by internal legislation, as well as the Agreement between the Republic of Kazakhstan and the United Arab Emirates of 2009.

Under Article 128 of the Kazakh Code of Civil Procedure, the Courts of Kazakhstan shall not review the merits of the decision of the DIFC Courts. The decision cannot be challenged on the grounds that it contains a factual or legal error.

The procedure for the recognition and enforcement of judgments must comply with the provisions of the Agreement between the Republic of Kazakhstan and the United Arab Emirates (see, in particular, Articles 21-27 of the 2009 Agreement, which specifically provide for the requirements for the recognition and enforcement of judgments).

Requirements for the enforcement of judgments of the courts of the Republic of Kazakhstan in the DIFC Courts.

In order to apply to the DIFC Courts, a decision of the courts of the Republic of Kazakhstan must be final and unconditional, even if it is subject to appeal. It is noteworthy that the DIFC Courts do not enforce certain types of decisions of the courts of the Republic of Kazakhstan, such as decisions on the recovery of taxes, fines and penalties.

The courts of the Republic of Kazakhstan must have jurisdiction under the DIFC conflict of laws rules in order to hear a dispute.

A judgment of a court of the Republic of Ka-

zakhstan is enforceable on the basis of a legal obligation of the defendant recognised by the DIFC Courts to enforce the judgment of a court of the Republic of Kazakhstan.

Thus the DIFC Courts apply general common law principles for the recognition and enforcement of foreign judgments from any sending jurisdiction and do not require proof of reciprocity between a foreign court and the DIFC Courts (although a number of Memoranda of Understanding or guidelines agreed between the DIFC Courts and the courts of many foreign jurisdictions set out the procedure for enforcing judgments involving foreign monies).

Logical questions arise: what is the limitation period for enforcing a foreign judgment, and under what circumstances will the enforcing court consider the foreign jurisdiction's limitation period? According to Article 38 of the DIFC Court Law, subject to any other DIFC law, litigation must not commence more than six years after the date of the events that give rise to the proceedings.

Alternative dispute resolution.

What action should the court take if the parties have an enforceable agreement to use alternative dispute resolution and the defendant argues that this requirement has not been complied with by the party seeking enforcement?

Enforcement of a foreign judgment in the DIFC Courts may be challenged if the judgment is rendered in proceedings initiated contrary to the jurisdiction or arbitration agreement. If the agreement also contains an obligation for alternative dispute resolution (e.g. as part of a tiered provision) that is sufficiently certain to be enforceable, it may be open to DIFC. The courts have concluded that the foreign court does not have jurisdiction because the person against whom enforcement is sought has not agreed to submit to the jurisdiction of the foreign court prior to the commencement of the proceedings and as to its subject matter. However, given the common law preference not to disturb the foreign court's reasoning, this does not necessarily render the DIFC Courts' conclusion that the foreign court had territorial jurisdiction, or that the foreign judgment was rendered, without any conflict with UAE public policy, or if the proceedings were conducted in the manner established by the DIFC Courts, not contrary to the principles of equity.

Conclusion

The issue of determining territorial jurisdiction when resolving digital disputes by DIFC Courts remains complex and ambiguous, so judicial jurisdiction is more often applied depending on the prevailing subjective, objective and legal factors individually or in combination. The topic has not been sufficiently explored at the doctrinal level. Especially when it comes to the Digital Economy Court established by the DIFC Courts in 2021. The growth of digital transformation around the world inevitably leads to digital disputes and an innovative judicial system must provide security, stability and protection for businesses when resolving digital disputes. The specific nature of the new court is to oversee complex national and transnational disputes related to information technology in areas ranging from big data, blockchain, artificial intelligence and cloud services, to disputes arising from the use of drones (UAVs), 3D printing and robotics.

However, one of the main challenges remains - there is no clear definition and interpretation of the legal category of "digital dispute". Another issue that arises from this is the establishment of the territorial jurisdiction of courts when resolving digital disputes. In addition, the nature, legal rights, obligations and liability of the parties in relation to the subject matter of the digital dispute in various fields, as well as in relation to technologies controlled by artificial intelligence and robotics, are to be established at the legislative level. Who should be liable in the event of a software failure, e.g. its developers or owners, who may be physically located in different parts of the world, or will they be jointly and severally liable?

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Vo Dvortse Nezavisimosti sostoyalas' tseremoniya podpisaniya Memoranduma mezhdu Verkhovnym Sudom Respubliki Kazakhstan i Dubaiskim mezhdunarodnym finansovym tsentrom (The ceremony of signing the Memorandum between the Supreme Court of the Republic of Kazakhstan and the Dubai International Financial Center was held at the Palace of Independence, in Russian). (2015, August 28). *Press-sluzhba Verkhovnogo Suda Respubliki Kazakhstan* (Press Service of the Supreme Court of the Republic of Kazakhstan, in Russian). Retrieved June 2, 2023, from https://sud.gov.kz/rus/news/vo-dvorce-nezavisimosti-sostoyalas-ceremoniya-podpisaniya-memoranduma-mezhdu-verhovnym-sudom

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THREE PHILOSOPHICAL PILLARS OF THE 2022 ARMENIAN CONSTITUTIONAL REVISION: EMPOWERMENT OF PUBLIC DISCOURSE, THEORY OF JUSTICE, AND ENVIRONMENTAL ETHICS

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Abstract: The first chapter of this article presents the consequences of the 2015 constitutional change and the specifics of their implementation before and after the 2018 Velvet Revolution. The second chapter makes substantive considerations on the constitutional reforms launched in 2022 through the prism of the rule of law and the improvement of public discourse. It addresses the procedural democracy developed by modern political philosophy and focuses on legal mechanisms in an attempt to improve the political discourse promoted by Jurgen Habermas. It also discusses the theory of Justice developed by John Rawls and provides reflections on Environmental Ethics stemming from the philosophy of responsibility of Hans Jonas.

Keywords: transition from semi-presidential governance into parliamentary democracy, constitution making, constitutional change, empowerment of political discourse, political shared culture, recognition of social, economic, and cultural rights, theory of justice of John Rawls, environmental ethics.

The constitutional change of 2015 transformed Armenia from a semi-presidential system of governance into a parliamentary democracy. Former President Serzh Sargsyan ensured the public that he did not have any intention to become a Prime Minister after the transition becomes effective. Despite the promise, Serzh Sargsyan stood as a candidate for the Prime Minister's position and was elected by the Parliament in April 2018. That election prompted demonstrations, marches, and other acts of civilian disobedience of an unprecedented scale paralyzing the work of public institutions which become known as the "Velvet Revolution" (*USA Helsinki Commission, Revolution in Armenia?*, 2018, p. 4). Serzh Sargsyan was forced to resign on 23 April 2018 and Nicol Pashinyan, the leader of the opposition came into power. During the campaign ahead of the 2021 snap parliamentary elections, which came about after the loss of the Nagorno Karabakh war, Prime Minister Pashinyan promised a constitutional revision. The key point of his 2021 election campaign was the promise "to complete the unfinished job of the revolution" and the struggle was between two polarised camps that had zero tolerance for each other and viewed each other as the enemy. Nikol Pashinyan secured a confident win in the elections and launched constitutional revision.

An analysis of the 2015 amendments to the

Constitution of Armenia reveals the main triggers of the proposed changes and the consequences of a "false agenda". Apart from the uncompleted transition from a semi-presidential system to parliamentary democracy, the constitutional change of 2015 introduced the division of fundamental human rights, downgrading the economic, social, and cultural rights. It buried the environmental agenda and diminished the quality of political discourse. The first part of this article presents the consequences of the 2015 constitutional change in Armenia and the specifics of their implementation before and after the 2018 Velvet Revolution. The second part makes substantive considerations on the constitutional reforms launched in 2022 through the prism of the rule of law, environmental ethics, the indivisibility of human rights and improvement of political discourse.

1. The Aftermath of the 2015 Constitutional Change Instigating the Transition from a Semi-Presidential System of Governance to a Parliamentary Democracy

The constitutional change of 2015 established the parliamentary system of governance in Armenia and almost all presidential powers were transferred to the Prime Minister. In the parliamentary system, the relationship between the legislative and executive branches of power, including the checks and balances are different and the dividing line is more emphasised between the political majority and the parliamentary minority. The developments following the constitutional change present a better context in assuming, that they were implemented, in addition to other matters, for Serzh Sargsyan to stay in power as Prime Minister after the completion of the presidential term (Foster, 2019). The introduced amendments were based not on frameworks that should have facilitated high-quality substantive discourse in the state's political machinery, but rather on the intention to maintain the power in the hands of one individual by revising the format of the transference of power. This would allow the former President, who by many experts has been considered the sole decision-maker in the semi-presidential system of governance with a non-functioning parliament, to continue ruling with an iron fist through the parliamentary majority that he formed (Khalatyan, 2023).

The aftermath of these amendments can be broadly divided into two periods. The period prior to the 2018 Velvet Revolution, when the constitutional framework was used to keep the power in the hands of one individual with the help of the political majority (A). An analysis of the second period which was after the 2018 revolution, becomes important considering that all heads of key state institutions (President, Secretary of the National Security Council, Minister of Defense, Chief of General Staff of the Armed Forces, President of the Constitutional Court, President of the Supreme Judiciary Council) and the political parties in the parliament changed. Following the Velvet Revolution, after the snap elections of 2018, many activists representing civil society who had fought for years in pursuit of the establishment of democracy and fair elections in Armenia were elected members of the parliament, and the public had great expectations from them. Despite the high legitimacy of the parliament, nevertheless, the imposing will of the political majority was maintained, this time mainly due to the low quality of political discourse and a lack of shared political culture (B).

A. Preservation of Self-Serving Constitutional Powers through "Dictatorship of the Political Majority"

In the parliamentary system of governance, legislative and executive powers are somewhat merged, deriving from the mandate given to the parliament to form the government (le Divellec, 2016, p. 168). Armel le Divellec provides an excellent description of the relationship between the political majority and the government, noting that the principle of political accountability of the government before the parliament leads to the unity of opinions of these two institutions. Moreover, Armel le Divellec notes "the government can lead and rule the political majority in the parliament, and, in turn, the political majority can demand the right to be heard in exchange for its support to the government and labels this relationship as a fusion of powers in contrast to the separation of powers". This merger significantly changes the implementation of the principle of checks and balances. To understand the real balance of powers, it is imperative to further exam-

ine the relationship between the political majority and the parliamentary minority, particularly, to consider the constitutional tools (levers) given to the parliamentary opposition, their use and practicality, and the political discourse in the country's political system. From the perspective of constitutional design and the assessment of the current constitutional framework, the major factors developed by modern political philosophy are the following: the electoral system in place; the election of the Prime Minister and the formation of the government; the mechanisms of forming coalitions; the procedure of vote of no-confidence against Prime Minister and dissolution of the parliament; the powers and duties of the "non-executive president"; the constitutional status of the opposition (opposition leader). It is also vital to consider the frameworks, which the Constitution provides for the political parties to participate in the formation of politically neutral bodies (Central Bank, Central Electoral Commission, etc.), including the judiciary as well as the solutions the Constitution offers for deadlock situations (when the political majority is not able to secure the requested $3/5^{th}$ supermajority in the parliament and make nominations).

Firstly, despite the adoption of the proportional electoral system at the constitutional level, the Electoral Code transformed proportional representation into a ranked voting system. This is a proportional system, in which citizens vote for a political party or bloc, but the state is divided into a certain number of electoral districts where each party has a list of candidates for each district. When voting for a party, the voter can also choose a candidate from that party for the specific constituency, and the candidate with the most votes will get the most favorable ranking in their party to enter the parliament. This type of electoral system enhances the role of individuals who have better public influence in their specified electoral district. Typically, these candidates were not originally part of the political party, they neither share the political party mentality nor participate in any movement led by the party. However, the leader of the ruling party needs their influence to gain the most votes, and the leader remains the only authority for them (the ranked voting system was abolished under the government of Nikol Pashinyan). Secondly, the Constitution envisages the possibility of selecting the Prime Minister through the second round of direct elections (a guaranteed stable parliamentary majority). When no political party wins most seats and no coalition is brokered within the established period, two political parties with greater votes enter the second round of direct elections. It should be noted that the political forces that gain enough votes to pass the first round of elections (i.e., reach the required threshold) can join any of the two powers, or they can keep their mandates and enter the parliament without participating in the second round. The leader of the political power that wins the most votes in the elections becomes Prime Minister by law. A guaranteed stable parliamentary majority means that the winner after the first or second round of elections should get as many additional seats as necessary for it having at least 52% of all seats in the parliament. These regulations do not facilitate a culture of compromise and agreement on inter and intra-party levels. The major political parties do not have to reach an agreement with the minority parties that have fewer seats in the parliament, and they can impose the second round of elections. Additionally, the guaranteed stable parliamentary majority does not facilitate the development of democracy within the political party. The political party leadership should consider the opinions of its members of Parliament (**MP**s) and do its best to prevent them from leaving. The stable majority provides the winner of the election with additional seats in the parliament and thus further strengthens the position of the political majority's leader, who can afford to lose a few members. That does not facilitate democratic processes within the ruling party, and the leader of the political majority can maintain power unchallenged. Thirdly, all appointments to the politically neutral institutions established by the Constitution (the Central Bank, Central Electoral Commission, Audit Chamber, High Judiciary Council, Television and Radio Commission, as well as the nomination of the Human Rights Defender and the Attorney General) are made by the parliament without any specific powers given to the parliamentary minority, while executive, diplomatic, and military senior officials are appointed by the Prime Minister without any parliamentary procedure in place at least to question those appointments. The Constitution does not establish any procedure for election or short-listing of candidates, such as the establishment of the joint panel by the political majority and the

minority with the possible involvement of representatives from civil society and legal organizations, professional bodies, and/or the nomination of a candidate by the parliamentary opposition or the opposition leader (on possible scenarios please see *International IDEA, Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition. International IDEA Constitution-Building Primer 22*, 2021). There is no reference to competition or merit-based requirements in the law. Moreover, the constitutional regulations do not support a meaningful association between the non-executive president and the politically neutral bodies that must remain non-partisan (*International IDEA, Non-Executive Presidents in Parliamentary Democracies, International IDEA Constitution-Building Primer 6,* 2017, pp. 7-13). The President does not have any power in the formation of these institutions except nominating a candidate for the justice of the Constitutional Court.

Under the current Constitution, the candidate is appointed to the given position if he or she receives a 3/5th of the votes in parliament. It might seem that the high threshold can force political powers to negotiate, but then two scenarios transpire, and in both the political majority's candidate is appointed. In the first scenario, the ruling party or bloc has a 3/5th of all seats in which case the parliamentary minority simply cannot play any role. We witnessed this scenario in recent years, and the Constitution does not provide any alternative action for the parliamentary minority. In the second scenario, the ruling party or bloc does not have a 3/5th of the votes but does not want to reach an agreement with the parliamentary minority. The Constitution considers the matter a deadlock and establishes the involvement of the President as a solution. Given that the President is elected by the political majority, any deadlock situation at the end is solved through the person who has been elected by the political majority. In both scenarios, the political majority holds all cards.

As far as the role of the parliament and its committees in the appointment of political, diplomatic, and military senior officials is concerned, they do not have any involvement and the entire process is run by the executive. The government is formed by the Prime Minister without any involvement of the parliament or standing committees. The National Assembly and its committees are not provided any role by the Constitution in the selection and nomination of the candidates for ambassadors or heads of law enforcement and other security sector bodies. There is no discourse, the parliamentary minority has no lever to investigate or delay the appointments. Moreover, the Constitution does not oblige the government to consult with the parliament's standing committees before making substantial changes in vital areas such as foreign policy and armed forces. For instance, in Denmark, a substantial change in foreign policy must be consulted beforehand with the standing committee on foreign affairs (Para 3, Article 19 of the Danish Constitution). Arts 152 and 155 of the Armenian Constitution clearly establish that in case of urgent need, the Prime Minister can make the decision on the use of armed forces at the suggestion of the defense minister, informing the government about it. In other words, the parliament is not involved in the decisions concerning the deployment of armed forces outside of the Armenian territory and the deployment of foreign armed forces in Armenia.

The analysis of the above-mentioned items allows us to state that the constitutional amendments of 2015 consolidated the "dictatorship of the political majority" as all the decisions at the end are taken by the running majority without providing any meaningful rights for the parliamentary minority and while having a non-executive president as the ceremonial figurehead.

B. The Velvet Revolution and the Continuation of Poor Political Discourse

Lord Sumption (2020), the former UK Supreme Court judge, in his lecture at Oxford Martin School referring specifically to the Westminster parliamentary democracy demonstrates the role of the conventions as a main barrier against the ministerial despotisms which would otherwise follow and affirms that its effectiveness largely depends on the shared political culture. Lord Sumption (2020) defines the shared political culture "as a mutual acceptance that the Constitution must be made to work in the interests not just of one side but of the system as a whole, it embodies what are the proper limits for political propriety and means not everything that you can

get legally should be done. All of this requires a culture that accepts pluralism and diversity of opinions, in which opponents are not enemies but fellow citizens who disagree and with whom it is necessary to engage". Contemporary political philosophy views democracy from two perspectives. The first approach is based on "the relativity of values," according to which the mind cannot determine what the truth is. According to this perspective, the legitimization of orders is based solely on power, in other words - the will of the majority. The supporters of the second approach prioritize the "substantial approach," according to which the mind can determine the axiological hierarchy that the sovereign, too, must respect. In other words, a decision is democratic if its substance is democratic. While the first approach affirms the tyranny of the majority over the minority, the second approach views the tyranny of experts (lawyers, scientists, economists, and others) in a balance against citizens and politics (Viala, 2014, p. 136). Today, there is already talk of a third approach, the "processual" concept of democracy (developed mainly by Jurgen Habermas) which explains the democratic nature of adopted decisions by the quality of the decision-making process, rather than the power or the truth; it prioritizes the ethicality of the discourse, and the rules and culture by which the political forces relate and reach decisions (Habermas, 1997, 1987). Therefore, the existing constitutional provisions should be examined for determining the extent to which they secure a high-quality of discourse and the realization of the main principles of parliamentarism - publicity and debate (Schmitt, 1988). This concept brings into focus the ethics of discourse and the rules and culture of interaction and decision-making among the political forces (Viala, 2014, p. 136). After the Velvet Revolution, the matter of the legitimacy of the parliament was settled in Armenia, and all the pre-conditions for the functionality of the parliament were ensured. Ordukhanyan (2022), an Armenian political scientist, through his method for verbal assessment of political culture, evaluates political regime and political discourse with five variables. Using this method and through the analysis of political processes that occurred between 2017 and 2021 Ordukhanyan (2022) demonstrates that although there has been progress in terms of political regime, the progress cannot be viewed as substantial in terms of interactions between main political parties. Society is divided into a "us versus them" narrative, the so-called "revolutionaries" and "the old ones". One can observe a fractured interaction between the two camps and at times stubborn one-sidedness. A large portion of the society demands transitional justice mainly addressing the demands of victims and their families for truth, reparations, and accountability for human rights violations, including those related to violent political repression, the detention of opposition activists, the corrupt and unjust expropriation of property in Yerevan, and the deaths under suspicious circumstances in non-combat situations of young Armenian conscripts in the military (Carranza & Abrahamyan, 2021), political recognition of "usurpation of statehood" (at the core of the roadmap developed by Asparez Journalists Club, Open Society Foundations Armenia, Transparency International, Union of Informed Citizens, Helsinki Committee of Armenia, and Helsinki Citizens' Assembly-Vanadzor (*Concept of the reforms necessary to restore the Republic of Armenia (Roadmap)*, 2018)), and investigation of the privatization process that took place after the collapse of the USSR under the third Armenian Republic. Civil society organizations raise the issue of restoration of social, economic, and cultural rights, which were removed from the list of fundamental human rights and freedoms by the 2015 constitutional amendments. Moreover, the Constitution no longer provides for the right to a clean, healthy, and sustainable environment, and the State's constitutional obligations toward the protection of the environment are reduced. There are continuous and justified calls for addressing the injustices that have been caused by corruption since the country became independent.

As the underlying issues leading to the Velvet Revolution are yet to be openly and publicly addressed, the process of reconciliation has not borne fruit or arguably completely formed in Armenia. This was apparent in the latest snap elections of 2021 that were held again following the agenda and promises of the 2018 revolution. During the latest snap elections, two main camps were radicalized on the background of the active formation of factions within the parties (Revolutionaries within the ruling party and revanchists and nationalists within the opposition). The current ruling party asked for the mandate to finish

the job it had started. Society had reservations that the representatives of the previous regime could return to power. High-quality political discourse was undermined largely by the constant criticism against "the old regime" without initiation of the reconciliation process, which makes the discourse non-constructive, and mainly reliant on emotional appeals.

The legitimate parliament did not always display high-quality political discourse nor was the Constitution interpreted in line with the political shared culture but merely to advance the political majority's will. For instance, although parliamentary inquiry commissions are created by the parliamentary minority, the number of members of the inquiry commission is determined by the majority of votes in a Parliament. In recent years, the Parliament did not vote on a decision, which would define the number of members in the inquiry commission, thus obstructing the work of inquiry commissions formed by the parliamentary minority. Certain powers reserved for the parliamentary minority, such as the organization of urgent discussions, were not fulfilled as a quorum was not obtained. The majority considers that the parliamentary minority has the right to initiate processes, but if the majority does not want to participate in them, the initiatives will not be implemented.

Similarly, using the rules of procedure, the Parliament restricted certain levers the parliamentary minority can use. Article 121 of the Parliament's Rules of Procedure (hereinafter also referred to as the Rules of Procedure) states that within the one and the same regular session, a faction may address an interpellation to the Government representatives no more than once, although there is no such restriction in the Constitution.

Article 118 of the Rules of Procedure states that during the debate of the annual report on the performance of the state budget, if the resolution is adopted, the report shall be considered approved, and in case of non-adoption it shall be considered rejected. This excludes the possibility of a third option (e. g. adoption with reservations). However, the Constitution does not state that there can be only two options in this case.

The abovementioned examples of application and interpretation of the Constitution demonstrate how the efficiency of the National Assembly is undermined if there is no shared political culture and the quality of political discourse is weakened. In such circumstances, the main principles of parliamentary democracy – publicity and debate – are not completely fulfilled. All these issues discussed in this part largely explain the urgent move of the Prime Minister, Nikol Pashinyan to launch constitutional revision so that they can be properly addressed at the constitutional level.

2. The Push for the 2022 Constitutional Reform

The constitutional reforms of 2022 should be undertaken for the purpose of strengthening the rule of law and ensuring the intended empowerment of political discourse. That is well within reach if the process of reconciliation is implemented or at least launched in society, which also implies a restoration of social, economic, and cultural rights and the inclusion of the environmental agenda (A). This is also contingent upon the bolstering of the institutional mechanisms ensuring the rule of law (e.g. strengthening the institution of the Presidency, which is tasked to preserve the constitutional order but does not have sufficient discretionary powers to do so, revision of the relationship between the political majority and the parliamentary minority, and provision of additional levers of influence to the parliamentary minority, which will force the political powers to participate in meaningful and impactful discourse (B).

A. Launch of the Reconciliation Process, Encompassing the Introduction of An Inclusive Environmental Agenda, and Restoration of Social, Economic, and Cultural Rights

Article 3 of the Constitution states that the public authorities are restricted by the Fundamental Rights and Freedoms of Human Beings and the Citizens stipulated under Chapter 2 of the Constitution as directly applicable law. One of the most controversial changes largely deplored by civil society organizations the 2015 constitutional amendments led relates to the exclusion of social, economic, and cultural rights from the list of fundamental constitutional human rights and

freedoms. The rights to social security; health care; a healthy environment; an adequate standard of living for himself and his family, including housing; safe and healthy working conditions, the enjoyment of just and favorable conditions of work; and the right to take part in cultural life are excluded from the Chapter 2 on Fundamental Rights and Freedoms. Instead of directly applicable rights, some of those social, economic, and cultural rights have been transferred into a newly created constitutional chapter 3 entitled 'Statutory Guaranties and Main Objectives of State Policy in Social, Economic and Cultural Spheres. The Government is only committed to providing a yearly report to parliament as to the steps undertaken for the fulfillment of its objectives in the social, economic, and cultural spheres. This change has had both dramatic axiological and legal implications on the protection of social, economic, and cultural rights in Armenia. Firstly, the rights and freedoms enshrined in Chapter 2 of the Constitution have indirect effects on private legal relations (horizontal effect), as judges must have in mind Fundamental Rights and Freedoms when adjudicating private disputes, as well as the parliament is restricted by these rights and freedoms while providing a legal framework for private relations (Hovhannisyan, 2020, p. 69). Secondly, neither the citizens nor the Human Rights Defender of Armenia are qualified anymore to apply to the Constitutional Court claiming the violation of the social, economic, and cultural Rights (the right to apply to the Constitutional Court is reserved only for cases of violation of fundamental rights and freedoms). Finally, the constitutional guarantees, including the principles applicable for the limitations of the rights and freedoms (proportionality, certainty, etc.) are reserved to the Fundamental Rights and Freedoms enshrined under Chapter 2; and therefore, not directly applicable to the social, economic, and cultural rights.

The drafters of the 2015 constitutional amendments referred to the old definition of socio-economic rights defining them in terms of positive entitlements, arguing that the constitutional recognition of socio-economic rights can politicize the judiciary, pointing out the difficulties to ensure their enforceability in courts, etc. Their supporters also note that by declaring these rights at the highest level and failing to fulfill them, the state reduces the importance of fundamental rights altogether. Several counterarguments have been summarized by the International IDEA in its Social and Economic Rights Primer 9. The fulfillment of these rights implies the distribution (share) of existing assets, not the creation of new resources. When we declare the right to housing, we imply that there at least should be a social housing strategy. Unfortunately, the 2015 constitutional amendments were largely driven by the utilitarian theory, which assumes that the right policy is the one that will produce the greatest good for the greatest number of people (Billier, 2010, p 58).

Meanwhile, remote villages that posed no threat to the authorities in terms of electoral weight, were but a few and far away from the capital found themselves in tough conditions. More than half of Armenia's villages do not have proper water supply, and the quality of supplied water does not comply with the required standards (*Water Supply and Sanitation Sector Strategy, and Financing Plan for 2018-2030*, 2018, para 2(1)). Moreover, remote villages do not have any public transport that would connect them with the regional centers and so on. In the framework of transitional justice, which also involves constitutional intervention, it is imperative to restore social, economic, and cultural rights at the highest level and include elements of John Rawls' *Theory of Justice*, which states that society is just if its progress is felt by each member or at least by the most vulnerable (Russ & Leguil, 2020, pp. 43-49; Rawls, 1987).

As to the enforceability of these rights in courts, in some countries, it was established that there is a certain minimum bar and a step below it would be unconstitutional, in other words, the achievement of a certain minimum core of socio-economic rights for everyone is possible (Chenwi, 2013, pp. 742-769.). The progressive realization then proceeds from this minimum as state capacity increases (*Social and Economic Rights, International IDEA Constitution-Building Primer 9*, 2017, p. 21).

Along with the downgrading of the socio, economic and cultural rights, the most criticized aspect of the 2015 constitutional amendments relates to environmental rights. The environmental agenda was overlooked by the 2015 constitutional amendments, one could even say it regressed. The right to a healthy environment was omitted. Although the principle of cooperation

was established in the Constitution of 2015 (everyone is obliged to protect the environment) and references were made to sustainable development and responsibility toward future generations, the regulations are not completed yet. Based on the axiological and deontological challenges that technology has created Hans Jonas developed his theory of responsibility (Mommier, 2022, p. 23; Jonas, 2013). The Constitution states nothing about environmental responsibility and no reference to the precautionary principle. It is applicable when addressing innovations with the potential for causing harm when extensive scientific knowledge on the matter is lacking. The precautionary principle has been enshrined at the constitutional level by the French Charter for the Environment approved in 2005. It has largely extended the scope of preventive responsibility and goes beyond the damage, addressing the risk of damage (Ewald, 2008; Thibierge, 2004). The lack of efficient environmental impact assessments (cost-benefit analysis, efficient risk assessment techniques, etc.) saw irresponsible mining gain pace in Armenia. Without the mechanisms needed for the implementation of the precautionary principle, the number of mines, which were opened only to be exploited for a few years, grew, which brought the environmental situation in Armenia to the brink of collapse. Given the absence of the concept of environmental and sanitary responsibility (these two are in confrontation with the paradigm of freedom), the courts are not entitled to adjudicate on the environmental damage. Environmental damage is not perceived yet as harm to the ecosystems without any reference to the impact on human life. The ecosystems themselves do not have any intrinsic value under the legal regulations in Armenia. As for sanitary responsibility, it cannot have any place in the Armenian legal system because this type of responsibility is based on trans individual harm when the victims cannot be identified; they belong to some group of people who in the future might suffer or not any harm because of the environmental impact of some activities in question. The scope of the responsibility, the actors, compensation, and beneficiaries are subject to a unique regime developed under environmental and sanitary responsibility (Duffrène, 2020, pp. 215-231). The Constitution should at least create legal grounds for their further development within the legal system of Armenia. Finally, the process of constitutional changes should include substantial debates on transitional justice. Affected groups and civil society (the victims of torture and political detention, the mothers in black seeking the truth about why their soldier sons were killed away from combat, farmers and rural communities who need access to social services, etc., Carranza, 2019) should be given chance to present their views and concerns. Comprehensive implementation of the constitutional drafting process can greatly contribute to reconciliation within the society even without resorting to controversial mechanisms such as vetting, reexamination of privatization of public property, etc. The bad state practices and the lessons learnt can be reflected in the preamble of the Constitution or other declaratory provisions of the Constitution, which will reduce public anger to a certain degree. We ought to use the opportunity provided by the process of constitutional reforms, to categorize the issues that have piled up over 30 years and give those a cautious assessment, listen to the affected groups, recognize their suffering, establish mechanisms to prevent violations, and promote integrity, professionalism, and responsible approach in the public affairs.

B. Constitutional Framework Consolidating High-Quality Political Discourse between Political Majority and Parliamentary Minority

Along with supermajority rules for enacting legislation, it is necessary to consider, firstly, the adoption of minority delay mechanisms that provide minorities with opportunities to scrutinize proposals, voice their opposition to them, and mobilize public opinion (*International IDEA, Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition. International IDEA Constitution-Building Primer 22*, 2021, pp 35-38). Secondly, several North European constitutions (Denmark and Latvia) in addition to the delay mechanisms adopted provisions on minority veto referendums. This rule enables the minority to suspend a bill, pending approval by the people in a referendum. It should be noted that these procedures have been used only a few times over decades in Nordic Countries, but the political majority was forced to consider the views of the opposition and compromise. In oth-

er words, these powers are largely aimed at facilitating the empowerment of political discourse in the country.

Under para 3, Article 89 of the Armenian Constitution, the Parliament must be elected through the proportional electoral system and the Constitution ensures a guaranteed stable parliamentary majority. The constitutional provision should be amended to exclude the distortion of the proportional voting system. The proportional representation in place should stimulate the parties to reach agreements, form coalitions, and ensure inter-party democracy.

Another sphere in which political moderation can be constitutionalized is that of appointments, especially appointments to politically neutral, autonomous bodies. The Armenian Constitution requires appointments to be made by a qualified majority of 3/5th of the members of parliament. In the latest two snap elections in Armenia, the political majority received more than 3/5th of parliament seats and the opposition did not have any say in the entire process. Moreover, there have been appointments of fellow party members from the political majority to those apolitical bodies after they resigned from Parliament, thus becoming technically non-partisan. There are several ways summarized by International IDEA in which the opposition's role may be exercised: consultations with the political minority, granting appointing power directly to the political minority, establishing the joint panel (with the involvement of representatives from the NGOs, legal and professional bodies) entrusted with the appointments or shortlisting. The competition and merit-based approach should be enshrined in the Constitution.

As far as the appointment of political, diplomatic, and military senior officials is concerned, it is necessary at least to empower the Parliament or its standing committees with additional tools to question the nominations, thus ensuring the fairness and transparency of the entire process. The standing committees of the parliament (on foreign affairs, defense, security, etc.) should hold discussions with candidates for ambassadors and senior positions in law enforcement and the security sector regarding their career paths and views on certain issues. Such discussions will motivate the candidate to take the job opportunity more seriously and at the same time will enchain the executive with the public opinion.

The range of matters under the parliament's jurisdiction is not usually defined in parliamentary democracy. It is assumed that all crucial decisions should be considered and approved by parliament. However, the strategic papers (National Security Strategy, Judiciary and Legal Reforms, etc.) that predetermine the adoption of the relevant legislative statutes are adopted in Armenia by its government without any parliamentary deliberation, although the parliament's involvement is required for the adoption of the statutes. There should be mechanisms in place to require consultation with the Parliament or its standing committees prior to the adoption of those strategic documents. Moreover, it is also important to consult the Parliament or its standing committees prior to any substantial change in foreign policy or the adoption of decisions on the use of military force as well as to provide the Parliament with more effective tools while exercising parliamentary oversight over the use of martial law or emergency regimes. With this respect, it is necessary to engage the Parliament in such decision makings (e.g. the Danish government must consult with the parliament's standing committee on foreign affairs about key issues of foreign policy) or establish procedures that make it mandatory for the National Assembly to conduct oversight. For instance, an ad hoc commission can be formed by law in case of the use of armed forces, declaration of emergency regimes, etc. The commission should oversee the implementation of measures under the marital or emergency regimes. As to the inquiry commissions, the Constitution should be amended so that the determination of the members' number, along with the execution of its powers can be carried out by a 1/3rd of the membership in the commission. In addition, the political factions as well as a 1/3rd of the standing parliamentary committee should be entitled to summon any public officer to appear before it and testify without resorting to the establishment of the inquiry commission.

Finally, the drafters should consider the formation of autonomous bodies under the umbrella of the Parliament consisting of independent experts (usually lawyers, lecturers, former militaries, etc.) with the aim of assisting the Parliament or its Standing Committees on Defense and National Security in exerting more effective parliamentary oversight over the security sector, including defense and national intelligence ser-

vices. The formation of these expert autonomous bodies proved very efficient in European countries, they succeed to bridge civil society with the politicians and experts with the main objective to ensure the rule of law in the security sector governance and promote effective dialogue within society. As well explained by (Jouanjan, 2016), concentrating the representation on the parliament significantly reduces the modern comprehension of the doctrine of the representative government. While recognizing the pivotal role that the parliament plays between the state and society, the representation rises and falls from State to Society and its function, to use a modern language, is to provide feedback (Jouanjan, 2016 pp. 41-42).

Conclusion

The constitutional change of 2015 transformed the presidential dictatorship into the imposing will of the political majority. The transformation from a semi-presidential system of governance into parliamentary democracy remained uncompleted, there is a need to assess the role of the non-executive president and reconsider the balance of powers between the political majority and parliamentary minority with a main objective to empower the high-quality of public discourse. The downgrading of social, economic, and cultural rights by the 2015 constitutional amendments has completely changed the social nature of Armenian statehood. The recognition of social, economic, and cultural rights and the proper consideration of the theory of Justice remain of high priority. Environmental ethics along with the introduction of constitutional provisions on environmental responsibility, environmental damage as well as the precautionary approach should be at the core of the current constitution revision.

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INTERNATIONAL EXPERIENCE OF CONSTITUTIONALIZATION OF CRIMINAL LAW REGULATIONS REGARDING THE CREATION OF ELECTED PUBLIC BODIES

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Abstract: The scientific paper focuses on examining the challenges associated with incorporating criminal law norms into the formation of the highest public authorities within the constitutional framework. The need to study the problems of constitutionalizing of criminal law regulations in the sphere of formation of the highest public authorities was clarified. The experience of constitutionalizing of criminal law regulations in the sphere of formation of the highest public authorities of the Russian Federation, the United States of America, France, and Germany was studied. As a result, it became evident that, in developed states, there are deficiencies in incorporating criminal law regulations into the constitution, particularly regarding the establishment of higher bodies of public authorities. These regulations do not always align with constitutional principles and the state's philosophy.

Keywords: international experience, criminal law, public authorities, elections, constitution, constitutionalization.

Introduction

The problems of the formation of public authorities have been and remain in the focus of attention of outstanding scientists in several fields of science for centuries. The formation of elected public authorities, due to its complexity and multilevel structure, is of even greater research importance both from a theoretical and applied point of view. The issues of formation of public authorities through legitimate and legal elections are of great importance both in international law, constitutional law, criminal law, political law and philosophical aspects.

In this context, taking into account also the fact that the constitutions of States have the highest legal force, it is especially important that any process related to elections should not only proceed from the Constitution, but also correspond to the spirit and philosophy of the latter. It is no coincidence that almost every state (including developed progressive states), regardless of what stage of development it is at, fixes at a high constitutional level not only the fact that it is democratic, but also clearly fixes through what mechanisms and methods the people exercise their power. In particular, the third article of the French Constitution, which enshrines the fact that the people are the bearers of sovereignty, establishes that the people exercise their sovereignty through their representatives and referendums (Constitution du 4 octobre 1958 à jour de

la révision du 23 juillet 2008, n.d.). The second part of article 20 of the Basic Law of Germany stipulates that State power comes from the people, which is carried out through elections and special legislation, executive power and judicial bodies (Basic Law of the Federal Republic of Germany, n.d.). Developing the above-mentioned approach to constitutional and legal regulation, the Russian Federation, presenting at a high constitutional level the fact that the people are the source of power, according to part 4 of Article 3 of the Constitution considers it a crime to appropriate any kind of power (The Constitution of the Russian Federation, n.d.).

Considering this perspective, ensuring seamless and disruption-free elections holds significant scientific significance when it comes to constitutionalizing the criminal law regulations governing the formation of elected public authorities.

The above-mentioned problem and, consequently, the specifics of the qualification of crimes against the formation of elected public authorities, including the problems of proportionality of the prescribed punishment, contain great relevance for each democratic and law State.

In this sense, the study examines the experience of qualification and sentencing for crimes against the formation of elected public authorities in a number of states (Russia, USA, Germany, France), as a result of a comparative analysis, the features of these states are presented.

Methodology

The research methodology is based on a comprehensive method, including the analysis normative literature. The study uses comparative legal and field research methods. The following approaches are used to solve the identified problems: institutional, philosophical-legal, political-legal, historical-legal, value, etc. Methods of quantitative and qualitative content analysis and monitoring are used to form the empirical base of the study. The research involves the integration of various scientific fields (constitutional law, theory of state and law, criminal law, philosophy of law, etc.).

Russian Experience

The Criminal Code of the Russian Federation (1996) provides for liability for obstructing the exercise of electoral rights or the work of election commissions in the Article 141, which consists of three parts.

The first part of this article is for "preventing a citizen from freely exercising his electoral rights or the right to participate in a referendum, violating the secrecy of voting, as well as obstructing the work of election commissions, referendum commissions or the activities of a member of an election commission, referendum commission related to the performance of his duties", - provides for punishment in the form of a fine of up to forty thousand rubles or in the amount of wages or other income of the convicted person for a period of up to three months, or compulsory labor for a period of one hundred twenty to one hundred eighty hours, or correctional labor for up to one year, and the second part for the same acts: a) connected with bribery, deception, coercion, the use of violence or with the threat of its use; b) committed by a person using his official position: c) committed by a group of persons by prior agreement or an organized group, - provides for punishment in the form of a fine of up to two hundred thousand rubles or in the amount of wages or other income of the convicted person for a period of up to eighteen months, or correctional labor for a period of one to two years, or arrest for up to six months, or imprisonment for up to five years. The third part of the article 141 of the Criminal Code of the Russian Federation (1996) provides for punishment in the form of a fine in the amount of one hundred thousand to three hundred thousand rubles or in the amount of wages or other income of a convicted person for a period of one to two years or imprisonment for up to four years with a fine of up to eighty thousand rubles or in the amount of wages or other income of a convicted person for a period of up to six months or without it, for "interference with the use of official or official position in the exercise of its powers by the election commission, the referendum commission, established by the legislation on elections and referendums, in order to influence its decisions, namely, the requirement or instruction of an official on the registration of

counting of votes of voters, referendum participants and other issues related to the exclusive competence of the election commission, the referendum commission, as well as unlawful interference in the work of the State automated system of the Russian Federation "Elections"".

The Article 141[1] Criminal Code of the Russian Federation (1996) - "Violation of the procedure for financing the election campaign of a candidate, an electoral association, an electoral bloc, the activities of an initiative group for holding a referendum, or another group of referendum participants", consists of three parts. According to the first part of the mentioned article for "providing financial (material) support in large amounts[1] to the election campaign of a candidate, an electoral association, an electoral bloc, in addition to the funds of the election fund, by producing and (or) distributing campaign materials not paid from the election fund or paid from the election fund at unreasonably low prices, payment for the manufacture and (or) distribution of such propaganda materials, transfer of funds, material values on a gratuitous basis or at unreasonably low prices to a candidate, an electoral association, an electoral bloc for the implementation of their election campaign, as well as providing financial (material) support in large-scale activities of the initiative group for the referendum, another group of referendum participants in addition to the funds of the referendum fund by producing and (or) distributing campaign materials, not paid from the referendum fund or paid from the referendum fund at unreasonably low prices, payment for the production and (or) distribution of such campaign materials, transfer of funds, material assets on a gratuitous basis or at unreasonably low prices to a member or an authorized representative of the initiative group for holding a referendum, another group of referendum participants to carry out their activities aimed at putting forward the initiative of holding a referendum, obtaining a certain result in a referendum, as well as making large-scale donations to the electoral fund, the referendum fund through figureheads" – it provides for punishment in the form of a fine in the amount of one hundred thousand to three hundred thousand rubles or in the amount of wages or other income of the convicted person for a period of one to two years, or compulsory labor for up to one hundred and eighty hours, or community service for up to one year, or imprisonment for up to one year, and the second part of the article defines a fine in the amount of one hundred thousand to five hundred thousand rubles or in the amount of wages or other income of the convicted person for a period of one to three years, or deprivation of the right to hold certain positions or engage in certain activities for a period of one to five years, or compulsory labor for a period of one hundred and eighty to two hundred and forty hours, or correctional labor for a period of one to two years, or imprisonment for up to two years, for "using in large amounts, in addition to the funds of the relevant election fund, financial (material) support for the election campaign of a candidate, an electoral association, an electoral bloc by a candidate, its authorized representative on financial issues, authorized representative on financial issues of an electoral association, an electoral bloc, the use in large amounts, in addition to the funds of the relevant referendum fund, of financial (material) support for putting forward an initiative to hold a referendum, obtaining a certain result in a referendum by an authorized representative on financial issues of an initiative group for holding a referendum, another group of referendum participants, and also spending in large amounts of donations, prohibited by the legislation on elections and referendums and transferred to a special election account, a special referendum account".

The Article 142 of the Criminal Code of the Russian Federation (1996) - "Falsification of electoral documents, referendum documents" consists of three parts. The first part - "Falsification of electoral documents, referendum documents, if this act is committed by a member of the electoral commission, the referendum commission, an authorized representative of an electoral association, a voter bloc, a group of voters, an initiative group for holding a referendum, another group of referendum participants, as well as a candidate or his authorized representatives" -

[1] A large amount in this Article of the Criminal Code of the Russian Federation is recognized as the amount of money, the value of property or property benefits that exceed one tenth of the maximum amount of all expenses of the election fund, respectively, of a candidate, electoral association, electoral bloc, referendum fund, established by the legislation on elections and referendums at the time of the commission of the act provided for in this article, but at the same time they amount to at least one million rubles.

is punishable by a fine of up to three hundred thousands of rubles or in the amount of wages or other income of a convicted person for a period of up to two years or imprisonment for up to four years. The second is "Forgery of signatures of voters, referendum participants in support of the nomination of a candidate, an electoral association, an electoral bloc, a referendum initiative, or the certification of knowingly forged signatures (signature sheets) committed by a group of persons by prior agreement or an organized group, or combined with bribery, coercion, the use of violence or the threat of its use, and also with the destruction of the property or the threat of its destruction, or entailed a material violation of the rights and legitimate interests of citizens or organizations or the legally protected interests of society or the state", - is punishable by a fine in the amount of one hundred thousand to five hundred thousand rubles or in the amount of the salary or other income of the convicted person for a period of one to three years, or by deprivation of the right to hold certain positions or engage in certain activities for a period of two to five years, or by imprisonment for a term of up to three years, and the third - "Illegal production, as well as storage or transportation of illegally manufactured ballot papers, ballot papers for voting in a referendum" – is punishable by a fine in the amount of one hundred thousand to five hundred thousand rubles or in the amount of the salary or other income of the convicted person for a period of one to three years or imprisonment for a term of up to three years.

The Article 142^1 of the Criminal Code of the Russian Federation (1996) "Falsification of voting results", for "inclusion of unaccounted ballots in the number of ballots used in voting, or submission of knowingly incorrect information about voters, participants of the referendum, or knowingly incorrect compilation of lists of voters, participants of the referendum, expressed in the inclusion of persons who do not have an active electoral right, the right to participate in the referendum, or fictional persons, either falsification of signatures of voters, referendum participants in the lists of voters, referendum participants, or replacement of valid ballots with the marks of voters, referendum participants, or spoiling of ballots, leading to the inability to determine the will of voters, referendum participants, or illegal destruction of ballots, or deliberately incorrect counting of votes of voters, referendum participants, or signing by members of the election commission, the commission of the referendum protocol on the results of the vote before the counting of votes or the establishment of the results of the vote, either knowingly incorrect (which does not correspond to the actual results of voting) drawing up a protocol on the results of voting, or illegally making changes to the protocol on the results of voting after filling it out, or knowingly incorrect setting of the results of voting, determining the results of elections, referendum", provides for punishment in the form of a fine in the amount of one hundred thousand to three hundred thousand rubles or in the amount of wages or other income of a convicted person for a period of one to three years or imprisonment for a term of up to four years.

USA Experience

The US legislation went a slightly different way. Federal law applies to federal elections, and in other cases, it applies only when such a crime is not provided for in state law. The Article 594., of section 18, U.S. Code of Laws (n.d.) (next - NW USA), defines a fine of up to 5 thousand dollars and/or imprisonment for up to five years, only for intimidation of voters, and the Article 595 for interference of administrative employees at the federal, state or local level provides for punishment in the form of a fine of up to 5 thousand dollars and/or imprisonment for up to five years, suspension from his position, deprivation of salary and trust from the United States.

Bribery of voters is punishable by the Article 597 of a fine of up to 1 thousand dollars and (or) imprisonment for a period of one year. In the case of an intentional crime – a fine of up to 10 thousand dollars and (or) imprisonment for up to two years, and economic pressure on the voter – the Article 598, a fine of up to 1 thousand dollars and (or) imprisonment for up to one year.

For promising a candidate to appoint or use his influence for appointment to a position in exchange for supporting his candidacy, the US legislator, the Article 599, provides for punishment in the form of a fine of up to 1 thousand dollars and/or imprisonment for up to one year. In the case of an intentional crime – a fine of up to 10 thousand dollars and/or imprisonment for up to

two years, for promising employment or other benefits for political purposes, art. 600, a fine of 1 thousand to 10 thousand dollars and/or imprisonment for up to one year, for deprivation of the Article 601 of Section 18 of the Civil Code provides for a fine in the amount of 1 thousand to 10 thousand dollars and/or imprisonment for up to one year, and forcing a federal employee to speak on the side of a certain candidate or to refuse to do so is punishable by art. 610 with a fine of up to 5 thousand dollars and/or imprisonment for up to three years.

A fine of up to 5 thousand dollars and/or imprisonment for up to five years is punishable by the US Code of Laws for "Deprivation or restriction of the right to vote on the basis of race or skin color with the use of electoral qualifications or other conditions; establishment of violations of the right to vote", the Article 1973 section 42, "Suspension of the use of tests and other means when determining their suitability for voting" section 42, art. 1973a., "Application of prohibitions against other states (disenfranchisement of a person at the local, federal or state elections on the basis of his non-compliance with tests or other means of verification)" section 42, art. 1973aa., "Residence permit for participation in elections" section 42, art. 1973aa-1., "Prohibited actions - Confusion, threats and coercion by officials" section 42, art. 1973i.

The Article 602 - "Conscious petition for political contributions", the Article 603 - "Creation of political contributions by public servants, both elected and appointed, whose recipients are persons authorized or controlled by them", the Article 606 - "Intimidation in order to secure political contributions", the Article 607. "Application or receipt of a sum of money in excess of 5 thousand dollars for the reporting year for political purposes", the Article 610. "Forcing a federal employee to make a monetary contribution or to refuse it" provides for punishment in the form of a fine of up to 5 thousand dollars and/or imprisonment for up to three years.

The Article 593 of Section 18 of the US Civil Code provides for punishment for "Interference of employees or officers of the US Army in the course of voting" in the form of a fine of up to 5 thousand dollars and/or imprisonment for up to five years, removal from office, deprivation of salary and trust from the United States, and the Article 1973i of Section 42 of the Civil Code The United States provides for punishment in the form of a fine of up to 10 thousand dollars and/or imprisonment for up to five years., "voting more than once".

German Experience

There are only two articles in the German Criminal Code concerning encroachments on political and, in particular, the electoral rights of citizens, in which eight elements of the crime are concentrated.

§ 108 of the German Criminal Code - "Obstruction of the free use of electoral rights", consists of two parts, the first of which provides for criminal liability in the form of imprisonment for up to five years or a fine, and in particularly serious cases – imprisonment for a period of 1 to 10 years, for those who unlawfully – through violence, threats of serious harm, abuse of professional or economic dependence, or through other economic pressure, forces another person to vote in a certain way or prevents him from exercising his right to vote according to his inner conviction. The second part states that an attempt on this act is punishable (Shestakov, 1998).

The Article § 107-C of the Criminal Code of Germany - "Violation of electoral secrecy", for those who intentionally violate regulatory prescriptions that serve to protect electoral secrecy in order to obtain for themselves or for someone else information about how a person voted, establishes a penalty of imprisonment for up to two years or a fine (Shestakov, 1998).

The Article § 107 - "Obstruction of elections", consists of two parts. The first part establishes that anyone who, by physical violence or the threat of its use, disrupts elections or hinders their conduct or the establishment of their results, is punished by imprisonment for up to five years or a fine, and in particularly serious cases – imprisonment for a term not less than one year. Since this article does not indicate the limit of severity of punishment, it should be noted that the maximum of imprisonment under the German Criminal Code is 15 years, which in turn means that for this act the offender may face up to 15 years in prison. And the second part states that an attempt on this act is punishable (Shestakov, 1998).

Voter fraud, according to the Article § 108-A

of the Criminal Code of Germany is punishable by imprisonment for up to two years or a fine, and the disposition of this article is set out as follows: who by deception will ensure that another person during the act of voting when submitting his vote was misled and voted against his true will or made the ballot invalid against his own will...

According to Article § 108-B - "Bribery of voters", anyone who offers, promises or guarantees gifts or other benefits to a voter for not taking part in voting or will vote in a certain way is punishable by imprisonment for up to 5 years or a fine. Moreover, under German criminal law, the same punishment is imposed on anyone who, in order not to vote at all or to vote in a certain way, demands, accepts or allows gifts or other benefits to be promised to him (Shestakov, 1998).

The Article § 107-B of the German Criminal Code "Falsification of election prerequisites" states: anyone who enters incorrect information about himself into the voter list; registers as a voter a person who knows that he has no reason to be included in the voter list; requires registration as a voter of a person, knowing that it has an active right to vote; admits the nomination of his candidacy in the elections, knowing that in reality he does not have a passive electoral right, is punished by imprisonment for up to six months or a fine of up to 180 daily rates, and this is if a more serious punishment is not threatened for this act according to the norms of other laws. And the article § 107-A of the German Criminal Code "Election fraud" consists of three parts (Shestakov, 1998).

The first part reads: Anyone who improperly participates in elections or provides incorrect data on election results or falsifies their result is punished by imprisonment for up to five years or a fine. According to the second part, anyone who publishes incorrect data on election results or permits such publication is subject to the same punishment, and the third part states that an attempt on this act is punishable.

France Experience

Unlike other States, there is no definition of political and electoral rights in French legislation. But from the meaning of the existing acts, it can be concluded that state crimes, in addition to crimes that are committed for political reasons, include the violation of the totality of citizens' rights that allow the latter to take an active part in the public and political life of the state, influence it, elect and be elected to the legislative and governmental bodies of France. Obstruction by someone of the exercise of these rights entails criminal or administrative liability of the guilty person.

According to the article L.98 of the Electoral Code of France (Code e'lectoral, n.d.), - "Violation of the normal functioning of the electoral district by organizing noisy gatherings or threatening demonstrations, which will damage the exercise of the right to vote and free voting," is punishable by imprisonment for a term of three months to two years and a fine of 360 to 20 thousand francs.

The Article L.99. of the Electoral Code of France for aggressive violent actions or attempts to commit them in order to prevent voters from making their choice is punishable by imprisonment for a term of one to five years and a fine of 3,600 to 30,000 francs., and the Article L.100. establishes a measure of imprisonment from 5 to 10 years, in the case, if the perpetrators were armed or they violated the normal course of voting (Code e'lectoral, n.d.).

And the Article L.101. states: if a crime was committed as a result of a pre-developed plan covering the entire Republic, or one or more departments, or one or more districts of the department, it is punishable by imprisonment for a term of 10 to 20 years.

For exceeding by an individual the amount of financial support established by law for a candidate, financial support of a candidate by a legal entity, receiving financial or material assistance from a foreign state the article L.52-8. provides for imprisonment for up to one year and a fine of up to 25 thousand francs or one of them.

An attempt, directly or through third parties, to influence the voting of one or more voters, to obtain their votes or to induce them to abstain from voting with the help of monetary or other gifts, promises, benefits, official favors or the provision of other special advantages, according to the article L.106., is punishable by imprisonment for a term of three months to two years and a fine of 18 thousand to 30 thousand francs. And the Article L.108. For the provision of gifts,

promises of gifts or the provision of administrative benefits in favor of the commune or any collective of citizens in order to influence the vote of the voters of the district or part of the voters is punishable by imprisonment for a period of three months to two years and a fine of 1800 to 30 thousand francs. Unlike a number of other States, the article L.109. And the Electoral Code of France notes: the penalty for violating the provisions of the articles D.106- D.108 is doubled if it is committed by a public servant (Code e'lectoral, n.d.).

For registration in the electoral lists under a false name, concealment of the fact of disenfranchisement, inclusion in two or more electoral lists, the article L.86. establishes punishment in the form of imprisonment for a period of one month to a year and a fine of 360 to 15 thousand francs, and for deceptive actions when issuing or preparing a certificate of entry into the electoral list or exclusion from it, the article L.87. provides for imprisonment for a term of one month to one year and a fine of 360 to 15 thousand francs or one of them. The introduction of a person by oral deception or forgery of certificates, as well as his exclusion from the list, by the article L.88., is punishable by imprisonment for a period of six days to one year and a fine of 180 to 15 thousand francs. In addition, the guilty person, as well as his accomplice, may be deprived of civil rights for a period of 2 to 10 years.

In case of participation in the voting of a person who has lost the right to vote by virtue of a court decision or due to commercial insolvency, the article L.91. establishes a penalty of imprisonment for a period of 15 days to 3 months and a fine of 72 to 15 thousand francs.

The Article L.94. establishes a penalty in the form of imprisonment for a term of 1 to 5 years and a fine of 1800 to 30 thousand francs, for the withdrawal of a part of the ballots by a person charged with receiving, sorting or counting the ballots submitted during the elections, or vice versa, their addition or distortion of their content, distortion of the name of the person entered according to the Article L.95., a person who, taking advantage of the voter's instruction to fill out his ballot, enters another surname, not named by him, is subject to the same punishment.

Failure to comply with the requirements of the law or regulations of prefects by members of the administrative or municipal commission in the electoral bureau, in the bureau of mayors, prefectures or sub-prefectures before, during or any other fraudulent actions on their part that violate or attempt to violate the secrecy of voting, distort or attempt to distort the results of voting, the Article L.113. is punishable by imprisonment for a term of one month to one year and a fine of 360 to 15 thousand. or only one of them, and in cases where the perpetrator is a certified civil servant of the administrative or judicial corps, an employee or employee of the Government or public administration or an official of the ministry in charge of public service affairs, the punishment is doubled.

The Article L.116., establishes punishment in the form of imprisonment for a period of one month to one year and a fine of 360 to 15 thousand franks or one of them, for fraudulent actions that damage fair voting, violation or attempt to violate the secrecy of voting, change or attempt to change the results of voting, use or attempt to use a machine for voting in order to interfere with electoral operations or distort their results. According to the article L.103. - The theft of an urn containing empty and unassembled ballots is punishable by imprisonment for a term of one to five years and a fine of 3,600 to 30,000 francs, and if the theft was carried out in public and with the use of violence, it is punishable by imprisonment for a term of 5 to 10 years.

The Article L.91-1. for violation by a candidate of the prohibition of the use of commercial advertising in the press or with the help of audiovisual means during the election campaign, a fine of 10 thousand to 500 thousand francs is provided for. A visit by a person to a polling station with a weapon, the article L.96., is punishable by imprisonment for a period of 15 days to 3 months and a fine of 180 to 15 thousand francs.

An attempt by disinformation, spreading slanderous rumors or using other fraudulent means to influence the vote of voters, its distortion, as well as an attempt to induce one or more voters to abstain from voting according to the article L.97., is punishable by imprisonment for a term of one month to one year and a fine of 360 to 20 thousand francs. The Article L.98. establishes a penalty of imprisonment for a term of three months to two years and a fine of 360 to 20 thousand francs, for violating the normal functioning of an electoral district by organizing noisy gatherings or threatening demonstrations,

which will damage the exercise of the right to vote and free voting. Insulting a voter or committing violent acts against the electoral bureau or any of its members by their actions or threats, delaying or interfering with the conduct of electoral operations, the article L.102., is punishable by imprisonment for a term of one month to one year and a fine of 360 to 20 thousand francs. And in cases where the course of elections was violently violated, the same article applies a penalty of imprisonment for a term of one to five years and a fine of 3,600 to 30,000 francs.

The Article L.104. provides for severe punishment in the form of imprisonment for a period of 5 to 10 years, for violation of the course of elections by members of the bureau or representatives of the authorities entrusted with the protection of the ballots that have not yet been opened.

Conclusion

Analyzing and summing up the results of criminal law regulations in the sphere of the formation of elected supreme public authorities in the represented states, our conclusion is that even from the perspective of constitutionalizing criminal law regulations, international experience is not flawless. It does not fully align with the latest principles outlined in constitutions and fails to encompass the entire philosophy behind constitutional regulations. In none of the studied States are crimes against elected public authorities considered crimes against the constitutional order. That is, in the countries represented, these types of crimes are also qualified as crimes against the constitutional rights and freedoms of a citizen. This, in turn, means that the criminal law regulations in the sphere of formation of elected bodies of these states do not correspond to the spirit of the constitutions of these countries. Summarizing the similarities and peculiarities of criminal law norms in the sphere of the formation of elected supreme public authorities in the represented states, the following can be distinguished:

1. Despite the fact that there are only four articles in the Criminal Code of the Russian Federation concerning encroachments on political and, in particular, electoral rights of citizens, it is worth mentioning that these articles encompass approximately twenty criminal elements, which is considerably higher than the combined number found in the legislations of Germany and France.
2. There are only two articles in the German Criminal Code concerning encroachments on political and, in particular, the electoral rights of citizens, in which eight elements of the crime are concentrated.
3. Despite the fact that the German Criminal Code does not specify a specific term of imprisonment for obstructing elections, however, according to German criminal law, such an act can be punished up to 15 years in prison.
4. Among the Criminal Codes presented, only the German Criminal Code in the article § 108-b. - Bribery of voters, provides for punishment for not voting at all or voting in a certain way, requires, accepts or allows him to be promised gifts or other benefits.
5. Unlike the legislations of other States, there is no definition of political and electoral rights in French legislation, however, from the meaning of existing acts, it can be concluded that state crimes, in addition to crimes that are committed for political reasons, can include crimes related to the exercise of political and electoral rights.
6. The legislator of France clearly distinguishes between crimes committed by ordinary citizens and civil servants, moreover, taking into account the fact that the public danger when committing crimes of this kind by civil servants is greater, the legislator has established a more severe punishment for civil servants.
7. French legislation provides for the deprivation of civil rights for a period of 2 to 10 years for specific crimes.

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THE PHILOSOPHICAL AND LEGAL RATIONALE FOR A SYSTEMATIC ANALYSIS OF DIGITAL DISPUTE RESOLUTION MODELS IN MODERN ARBITRATION

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Abstract: In the article, the author presents a systematic analysis of models of digital dispute resolution in modern arbitration. The author studied the dispute resolution models on the platforms "Kleros", "Aragon", "CodeLegit", as well as the Draft arbitration rules for smart contracts "JAMS-2018" and the English "DDRR-2021". The author identifies the following types of models of arbitration dispute resolution: 1) traditional arbitration; 2) traditional arbitration with blockchain elements (a model based on the CodeLegit platform), 3) digital arbitration ("DDRR-2021"). The most important feature and difference of the English "Digital DR Regulation" 2021 is the fact that the entire process from the beginning (occurrence of the case) to the end (execution of the decision) is resolved automatically without the intervention of human arbitrators with the help of an artificial intelligence agent. This is the procedure for resolving a dispute in the field of smart contracts that should be called digital arbitration. The so-called "decentralized arbitration" on the platforms "Kleros", "Aragon", "OpenLaw", "Mattereum Protocol", "Rhubarb Fund", "Jury.Online", "Jur", "OATH Protocol", "Juris" and other models of this type does not allow these models to be considered arbitration. The author believes that these models should be conditionally called crowdsourcing quasi-arbitration.

Keywords: traditional arbitration, digital arbitration, crowdsourcing quasi-arbitration, DDRR-2021, Kleros, Aragon, CodeLegit.

Introduction

The COVID-19 pandemic has accelerated the trend towards the use of intelligent technologies to improve the efficiency and quality of arbitration. When resolving disputes, there was a transition to electronic filing of documents and, as a result, the restriction of personal contacts between the parties. Digitalization is considered as a potential solution to the problem of inefficiency

of traditional courts, weakness of judicial authority, as well as inconveniences for the parties. The process of digitalization is inextricably linked with the future of arbitration courts around the world. Such digitalization (collection of electronic evidence, conducting online hearings, etc. due to the needs caused by the global pandemic, it will have an impact and create a new basis for the functioning of the global arbitration system (Lągiewska, 2022, p. 208).

For example, if physical hearings are not possible, the parties and arbitration tribunals will hold online meetings, video conferences, which will allow them to meet over the Internet in real time. Practical needs and limitations quickly adapt traditional arbitration, which is "done by people", into electronic arbitration, which is "done" using AI technologies (Apostolova, 2020; Koleilat-Aranjo & Dilevka, 2020). Currently, AI applications based on machine learning are already widely available, which can help arbitrators in performing their functions. At some point in the future, it will be possible to conduct arbitration completely without human participation through the systems of arbitrators working on AI. But many authors are wondering - will it still be arbitration? Does arbitration require "human arbitrators" or can it be conducted entirely by AI machines? More specifically, will the machines be able to conduct a legal and fair arbitration process? Will artificial intelligence be able to make decisions? Or is it just a matter of time? In addition, will emotional human intelligence always outperform AI, or will AI, on the contrary, strengthen the arbitration process? (Argerich et al., 2020).

English authors H. Eidenmueller and F. Varesis (2020) answer all these questions positively: "Brought to its defining functional characteristics, arbitration is a dispute resolution process that is managed by an independent/impartial third party, and in which a third party makes a final and binding decision. Functionally, this task can be performed by an AI application that manages a registered arbitration business without human involvement. The limitations that this happens in practice are technological and legal, not conceptual." Can we agree with these statements of English scientists? No – because the robot arbitrator cannot and will not be able to recognize all the subtleties of the relations between the parties to the arbitration; and also because the robot arbitrator will not be able to correctly determine the applicable law, and most importantly - to justify its application. In addition, the robot arbitrator will not be able to catch those moments when arbitrators refuse to apply the law and apply the principles of the business community or the norms of morality and justice.

However, one more important point should be taken into account. If the parties to the dispute decide that the work of the arbitrator to settle the dispute is reliable, fast and economical, then the parties will submit their dispute to such digital arbitration or decentralized arbitration. And only one consideration will be able to force the parties to abandon any decision - whether national state courts will recognize and execute decisions made in whole or in part by robot arbitrators.

This leads to radical changes in legal practice. Traditional dispute resolution methods, such as state court and international arbitration, are ineffective for dealing with a large volume of disputes in the field of smart contracts. Despite the fact that online dispute resolution (ODR) has existed since the 1990s, the industry has not been able to achieve the growth potential that was expected in the early years. But over the past 2-3 years, new projects that have emerged in the field allow us to think about a new innovative way to provide a quick and affordable dispute resolution procedure for new claims of the digital economy.

One of these options is decentralized justice - the result of the convergence of online dispute resolution, blockchain, international arbitration and new technical solutions. As a rule, the decentralized justice projects include the platforms "Kleros", "Aragon Network", "Mattereum Protocol", "Rhubarb Fund", "Jury.Online", "Jur", "OATH Protocol", "Juris", etc. In addition, on April 22, 2021, the "Digital Dispute Resolution Rules" were published in the UK, which regulated the digital arbitration process (digital arbitration or blockchain arbitration) for resolving disputes in the field of smart contracts. The Regulation was created by the UK Jurisdiction Task Force (UKJT) (Kenyon et al., 2021). From our point of view, the digital arbitration procedure is significantly different from the decentralized arbitration procedure that takes place on the Kleros or Aragon platforms.

This article will analyze the dispute resolution models in the above-mentioned decentralized arbitration and digital arbitration according to the

English "Digital Dispute Resolution Rules" of 2021.

Methodology

System analysis involves the study of complex objects by presenting them as systems and analyzing these systems. Therefore, we will investigate each model of dispute resolution on digital platforms, identify their common features and features, and combine them into possible groups.

The technique of these platforms is described in detail in the works of the Australian author J. Metzger (2019) (University of New South Wales), French scientists Y. Aouidef, F. Ast and B. Deffains (2021) (University of Paris II), Dutch jurists A. U. Janssen and T. J. Vennmanns (2021), Russian researchers E. Rusakova (2022), O. Zasemkova (2020), E. Frolova and E. Rusakova (2022) etc. authors.

We have studied the concept of French scientists Y. Aouidef, F. Ast and B. Deffains (2021) and agree with their definition that decentralized justice platforms are a form of digital courts in a broad sense, supported by blockchain technology, the purpose of which is to settle disputes with jury participation (by crowdsourcing juries) to make fair decisions. The dispute resolution procedure on these platforms is encoded as smart contracts on the blockchain, which seeks to guarantee legal certainty. Decentralized justice platforms aim to provide a way to address the interpretation issues inherent in smart contracts. This reduces transaction costs and ensures the prosperity of many decentralized applications built on the blockchain. French scientists considered three projects that play an innovative role in platform justice: "Kleros", "Aragon" and "Jur". However, the "Jur" platform is not yet operational.

The functioning of the Kleros platform as a kind of decentralized justice and blockchain arbitration was also studied in detail by American authors L. Bergolla, K. Seif and Chinese lawyer C. Eken (2022, p. 55). These authors called "Kleros" - a decentralized arbitration solution based on blockchain, based on smart contracts and crowdsourced juries.

Australian author J. Metzger (2019) noted that each decentralized platform promises to provide a dispute resolution method that gives the parties to a smart contract the opportunity to enable an automatically available dispute resolution mechanism that can be encoded directly in a smart contract. The smart contract itself will still eventually be self-executing, but the dispute resolution mechanism will allow you to suspend the automation of execution until the outcome of the dispute. How this result is determined is one of the factors that distinguish these platforms from each other. J. Metzger has already explored 9 platforms, including the above-named "Kleros", "Aragon" and "Jur".

Dutch jurists A.U. Janssen and T. J. Vennmanns (2021) emphasized that the very level of smart contracts already entails (online) dispute resolution. They called this phenomenon smart (contrast) dispute resolution in a broad sense. The authors investigated various forms of smart (contrast) dispute resolution.

Indian authors V. Singh and M. Bahmani (2021) in their publication examined in detail the problems that arise in ensuring the legal recognition of digital arbitration (pp. 45-61).

In 2022, English lawyer J. Schaffer-Goddard (2022) and English lawyers S. Kenyon, D. Jewell, Ch. Mears, S. Gokarn-Millington (2021) presented an analysis of the features of the UKJT Digital Dispute Resolution Regulation and the provisions of the English Arbitration Act 1996.

As a rule, Russian authors study the decentralized platforms "Kleros", "Aragon" and "Jur", as well as some other platforms.

Thus, O. Zasemkova (2020) presented an analysis of the decentralized platforms "Kleros", "CodeLegit" and "SAMBA" (Brazil) (pp. 10-12). The author noted that if the Kleros procedure is a decentralized justice project, then the CodeLegit and SAMBA procedures, also designed to resolve disputes arising from smart contracts, function on fundamentally different principles. Being based on blockchain technology (like Kleros), CodeLegit is much closer to the traditional dispute resolution procedure through international commercial arbitration. At the same time, the dispute resolution procedure is regulated by Blockchain Arbitration Rules developed by CodeLegit in cooperation with an expert in the field of blockchain technology Markus Kaulartz. These Rules in many ways resemble the standard arbitration rules, which is explained by the fact that the UNCITRAL Arbitration Rules were adopted as the basis for their development,

designed to regulate the dispute resolution procedure by international commercial arbitration.

E. Rusakova (2022), examining in detail the procedure for dispute resolution on the decentralized platform "Kleros", noted that "Kleros" considers disputes arising from smart contracts through arbitration, in which the decision is made by randomly selected jurors for the verdict and its execution (p. 280).

A. Gudkov (2020), considering dispute resolution models, singled out: a) state courts, b) professional private arbitration, c) online dispute resolution, d) crowdsourcing dispute resolution (p. 252). The author noted that there are two types of dispute resolution on the blockchain, depending on professional skills and the number of jurors. The first employs professional arbitrators, and the second uses a crowdsourcing dispute resolution model. As an example of the latest model - the crowdsourcing model of dispute resolution – the author studied the platforms "Kleros" and "Rhubarb".

It is obvious that with such a variety of approaches to the problem of digital dispute resolution models in modern arbitration, it is necessary to develop its own method of analyzing the problem posed. We believe that in this article it is necessary to answer the question - which models of digital dispute resolution exist in modern arbitration and what are their inherent features.

Main discussion

Most Russian and foreign authors study the models "Kleros" and "Aragon". We will also consider the CodeLegit models, the Draft Arbitration Rules for smart contracts "JAMS-2018" and the English "DDRR-2021".

Firstly, the Kleros platform. The platform was founded by F. Astom and K. Lesage in May 2017. Efforts to develop the Kleros protocol are coordinated by the Société Coopérative d'intérêt Collectif (SCIC), registered in France. Launched on the Ethereum blockchain in July 2018, Kleros became the first functioning justice platform. which has become operational and the most used at the moment (Bergolla et al., 2022, p. 55). Coopérative Kleros follows a hybrid strategy combining blockchain-based use cases and an online dispute resolution (ODR) system. The platform allows you to appeal decisions. As of November 2020, about 500 disputes were resolved on the Kleros platform and about 400 users participated on the platform as jurors. The jury was paid about $123,000. in the form of arbitration fees.

Secondly, the Aragon platform. The platform was created in February 2017 by L. Kuende and H. Izquierdo is in Spain and is currently registered with the Aragon Association based in Zug, Switzerland. The Aragon project is to provide users with software tools for creating decentralized autonomous organizations (DAOs). Aragon launched its decentralized court in November 2019 with a mechanism design largely inspired by the work of the Kleros platform (Metzger, 2019, p. 92).

"Aragon Court" is a Web3 plug-in arbitration platform available via API for any decentralized application (DApp), but fully implemented in "Aragon OpenStack". The platform includes a "Protocol of decentralized dispute resolution" The platform court has 239 jurors, but does not inform about the number of resolved disputes. The Russian author O. Zasemkova (2020) noted that after a dispute arises, a seven-day period is provided for the presentation of evidence, which will later be considered by a jury (p. 14). During this period, the creator of the dispute may also decide to close the presentation of evidence at any time. The proofs can be presented in text format, but HTTP and IPFS links are also accepted. The dispute is considered by 5 judges of the "first instance", randomly selected from among the persons who expressed a desire to act as such. The decision is made by a majority vote based on the materials submitted by the parties, as well as the Aragon Network Jurisprudence rules. The platform also allows you to appeal decisions.

So, we can distinguish the following features inherent in dispute resolution on the Kleros and Aragon platforms: 1) blockchain (a decentralized database), 2) crowdsourcing (involving a wide range of jurors in dispute resolution), 3) game theory (a mathematical method for studying optimal strategies in games). We believe that the presence of an element of crowdsourcing in these models - involving a wide range of jurors in resolving disputes, does not allow us to consider these models as arbitration. The dispute resolution models "Kleros", "Aragon" and other models of this type can rather be attributed to digital mediation procedures. From our point of view, arbitration – as a special alternative to state courts for dispute resolution – is characterized

primarily by the appointment of independent qualified arbitrators by the parties. As we can see, neither in the Kleros procedures nor in the Aragon procedures, the requirements for independence and qualifications do not apply to jurors. We can call this model of dispute resolution - crowdsourcing quasi-arbitration.

Third, the CodeLegit platform. Parties who agree to "Codelegit" certified smart contracts also agree to arbitration prior to transacting with one another using arbitration clauses from the "Blockchain Arbitration Association". As a result, in the case of a dispute, predefined (updateable) human arbitrators can be automatically activated to adjudicate on the dispute after which the Codelegit certified smart contract execution resumes. The arbitration agreement "CodeLegit" has a specific form. It is fixed in the form of a code included in the smart contract, and is designated by the term "arbitration library".

As O. Zasemkova (2020) emphasized, the dispute resolution process resembles the standard procedure for dispute resolution by international commercial arbitration, although it has some features due to blockchain technology (p. 15). In particular, in the event of a dispute, the party that considers its rights violated launches the "arbitration library" by calling the "Pause and Send to Arbitrator" function. After that, the smart contract suspends its execution, and the arbitration library sends a notice of arbitration to the appointing authority, which is the CodeLegit platform. Arbitrators are elected by the parties to the dispute from among the persons included in the list of arbitrators provided by CodeLegit, or are appointed by CodeLegit. Just as in ordinary arbitration, the arbitrator of blockchain arbitration must fill out a declaration of independence and impartiality, as well as give his consent to the consideration of the dispute. The person appointed as an arbitrator of the blockchain arbitration must have not only the knowledge that allows him to resolve the dispute, but also have an understanding of blockchain technology and smart contracts. After the appointment of the arbitral tribunal, the plaintiff and the defendant exchange procedural documents, which are also sent to the arbitrators. If necessary, oral hearings are held via videoconference, and then a decision is made, which is automatically executed. Note that quite reasonably Fr. Zasemkova refers dispute resolution on the CodeLegit platform to the standard dispute resolution procedure by international commercial arbitration with the features of blockchain technologies.

Fourth, the Draft Arbitration Rules for "JAMS" smart contracts. English lawyers K. Scott, S. Brown, R. Flakoll, D. Ossio (2022) wrote that in 2018 the American JAMS Association published a draft set of rules for disputes arising from smart contracts. The regulations contained several features. Discovery is limited to the testimony of an expert witness about the meaning of the code. The review of evidence by the arbitrator is limited to these statements, the code, any wrapper contract and witness statements. The regulation also provides for how to interpret a smart contract written in code. The whole process is extremely fast, and the arbitrator is obliged to make an arbitration decision within 30 days from the date of his appointment. We agree with the classification of English lawyers who referred the Draft Regulations "JAMS" 2018 to the category - "Off chain" arbitration in a digital context. This Draft Regulation combined the procedures of traditional arbitration and blockchain technologies that were used in the Discovery procedure of others.

Fifth, the DDRR-2021 Regulation. From our point of view, the on-chain arbitration process (or digital arbitration process) is well described in the Digital Dispute Resolution Rules (DDRR). In 2021, the United Kingdom Jurisdiction Task Force of the Legal Technology Delivery Group (UKJT), a body created by the Minister of Justice and headed by Master of the Rolls, published version 1.0 of "Digital Dispute Resolution Rules". These arbitration rules, in force in accordance with the laws of England and Wales, are intended for use by parties in commercial disputes, in particular, in disputes related to "crypto assets, cryptocurrency, smart contracts, distributed ledger technology and fintech applications" (Schaffer-Goddard, 2022).

English lawyers have noted that the DDRR is in some ways more ambitious than the JAMS rules. Currently, DDRRS are not a "finished product" and should only be accepted with careful consideration of whether the procedure is appropriate. However, DDRRS are a clear demonstration that the London legal community is serious about creating a safe environment for developing, marketing and investing in new technologies (Scott et al., 2022). There is no information

yet about the resolution of digital disputes under these rules. However, DDRRS received the approval of the Commission of England and Wales in its "Recommendations to the Government on Smart Contracts" in November 2021, where DDRRS were discussed in detail and described as "particularly well suited for disputes related to smart legal contracts". The growing use of distributed ledger technologies and smart contracts, combined with the increasing complexity and scale of decentralized finance, makes it highly likely that DDRRS will play an increasingly important role in the future. Although the Rules are not the only arbitration rules proposed for smart contracts (the JAMS rules were published in 2018, but remain in the draft), DDRRS have a number of innovative features that are not in the JAMS rules (Schaffer-Goddard, 2022).

The Digital DR Regulation defines a smart contract as a digital asset. To include this Regulation in a blockchain smart contract, the following text must be included in the blockchain contract: "any dispute must be resolved in accordance with the "Digital DR Regulation" of the UK Jurisdiction Task Force (UKJT). The "Digital DR Regulation" allows you to include these words in the codes. Since the blockchain is programmed in the form of codes, these words can be included in an encoded form (Kenyon et al., 2021).

In accordance with the "Digital DR Regulation", disputes related to smart contracts can be resolved without the intervention of human arbitrators with the help of an artificial intelligence agent. So, disputes in accordance with the "Digital DR Regulations" can be resolved using an automatic dispute resolution process. Alternatively, such disputes may also be referred to an arbitrator or expert. The Regulation provides a unique mechanism for automatic dispute resolution, which allows the parties to choose a person, a commission or an artificial intelligence agent for automatic dispute resolution. The solution is then immediately applied to the digital asset system, that is, to the platform on which the digital asset exists. Thus, the decision of the digital arbitration is also executed automatically. Rule 8 of the said Regulations makes the results of automatic dispute resolution legally binding for the parties.

J. Schaffer-Goddard (2022) identifies three features of DDRR that can change the principle of operation of challenging decisions: 1) the provision for on-chain enforcement of arbitration awards by the tribunal; 2) the provision on anonymity between the parties; 3) the provision that "automatic dispute resolution" is legally binding between the parties.

1. By allowing the award to be enforced by the arbitral tribunal, the successful party in the arbitration receives benefits that go beyond those that it could receive from a State court by seeking reimbursement of costs or securing a decision when the decision is challenged.
2. The provision of anonymity during arbitration in the framework of DDRR may be particularly attractive to the parties to transactions in a distributed registry, where anonymity of transactions themselves is the norm. However, the DDRR recognizes that absolute anonymity is inappropriate, providing for the disclosure of "personal data" when it is "necessary for a fair resolution of a dispute, for the enforcement of any decision or decision, for the protection of an arbitration tribunal in its own interests or if required by any law or regulation or court order" (DDRR, Clause 13).
3. While the DDRRS describe automatic dispute resolution as "legally binding", the "Additional Guidance" published with the DDRR indicates that the DDRR "may, for example, be adopted to resolve disputes as to whether the automatic dispute resolution processes were properly followed or worked as intended. Where such automatic processes are present, the parties will need to agree on how the Rules should work together with them" (DDRR, page 12). This increases the likelihood of a situation in which the parties agree to use arbitration in accordance with the DDRR to confirm or formalize the decision of the automatic dispute resolution process in the form of an arbitration award.

So, having studied the features of dispute resolution in accordance with DDR 2021, we believe that this type of arbitration should be attributed to digital arbitration.

Conclusion

1. Based on the conducted research, the following types of arbitration dispute resolution

models can be distinguished: 1) traditional arbitration; 2) traditional arbitration with blockchain elements (a model based on the CodeLegit platform), 3) digital arbitration ("DDRR-2021").

2. The most important feature and difference of the English "Digital DR Regulation" 2021 is the fact that the entire process from the beginning (occurrence of the case) to the end (execution of the decision) is resolved automatically without the intervention of human arbitrators with the help of an artificial intelligence agent. We believe that this procedure for resolving disputes in the field of smart contracts should be called digital arbitration. The procedure for resolving disputes in digital arbitration is regulated by the special Rules of Digital Arbitration, which must be established by the relevant permanent arbitration institution and comply with either national legislation (in this case, the English Arbitration Act of 1996) or an international document (if digital arbitration is created under an international organization, for example, the EAEU).
3. The so-called "decentralized arbitration" on the platforms "Kleros", "Aragon", "OpenLaw", "Mattereum Protocol", "Rhubarb Fund", "Jury.Online", "Jur", "OATH Protocol", "Juris" and other models of this type does not allow to read these models arbitration. Traditional arbitration is a form of dispute resolution in which claims are resolved by private individuals (arbitrators), and not by national courts. Like other experts, we believe that the presence of an element of crowdsourcing in these models - involving a wide range of jurors in resolving disputes, does not allow us to consider these models as arbitration. These models can be conditionally called crowdsourcing quasi-arbitration.

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SHAREHOLDERS' AGREEMENT IN THE CROSSROADS OF PHILOSOPHY OF LAW

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Abstract: This article is devoted to the identification and analysis of the essence and content of shareholders' agreements as innovative tools in the context of philosophy of law, as well as legal consequences and liability measures arising in case of violation of a shareholders' agreement.

The article deals with the issues of conclusion, execution of a shareholders' agreement, enforcement, termination of obligations, as well as liability arising from violation of a shareholders' agreement.

Referring to the experience of foreign countries, it was proposed to introduce a number of liability measures under the legislation of the Republic of Armenia: options, "default", "bad leaver", "discount", etc.

On the other hand, exploring the features of a shareholders' agreement in venture joint-stock companies, we have proposed to legislate the mechanism of an investment and/or shareholders' agreement.

Keywords: shareholders' agreement, liability, venture joint stock company, venture investor, investment and shareholders' agreement.

Introduction

In the light of current philosophy of law, measures of legal regulation in corporate relations can be divided into two groups: normative (centralized regulation) and individual (sub-normative, local legal regulation) (Gribkova, 2011, p. 105), which are often applied in parallel and agreed way.

Currently, in legal and philosophical terms, it is ambiguous what place and role shareholders' agreement have in corporations in general, and in venture joint-stock companies in particular. Therefore, the purpose of this article is to study such agreements, as well as liability measures applied in case of their violations.

The shareholders' agreement has been widely distributed among the measures of individual legal regulation, with the help of which the participants regulate the corporate relations between them. Thus, it is necessary to clarify the nature of the shareholders' agreement, in particular, figure out whether it is exclusively a civil-legal agreement, or another, special type of contract with its characteristic features.

In English law, a shareholders' agreement is understood as a contract between shareholders or shareholders and the company defining the pro-

cedure of exercising the rights of the company, according to which the shareholders minimize the possibility of the conflict formation (Inozemtsev, 2017, p, 59; Thomas et al., 2007, p. 1; Clashfern, 2013).

In the American legal system, shareholders' agreements are considered closed (confidential) contracts, and allow to solve all problems in practice, including the decision of the company's management structure, by taking into account the subjective composition while concluding an agreement (Hamilton, 2000, pp. 114-115).

Under French legislation**,** the shareholders' agreement is a contract between all shareholders or a part of them, which is aimed at the formation and organization of effective control over the company (Inozemtsev, 2017, p. 59; Belot, 2008).

In Germany and Switzerland shareholders' agreement is not considered to be an independent type of contract, but as an agreement regulating the relationship between shareholders or their group (Trubina, 2015, pp. 65-66; Mayer, 2006, p. 281).

The provisions of Article 38. 1 (1) of the RA Law on Joint Stock Companies (hereinafter referred to as "JSC Law") gives the concept of a shareholders' agreement, according to which the shareholders' agreement is an agreement on the peculiarities of exercising the rights verified by shares and/or exercising the rights over the shares. By the shareholders' agreement, the parties undertake to implement the rights certified by shares in a certain manner and/or the rights to shares, or refrain from the exercise of those rights.

From the given definition, it follows that the shareholders' agreement has a special subject, which is the procedure for exercising (or refraining from) the rights attested in stocks. Thus, the range of issues within the scope of its regulation is outlined under the law.

The material object of the shareholders' agreement is the shares belonging to its party and providing complex property and non-property rights, and the legal object is the obligation to realize or refrain from the exercising of certain rights (Trubina, 2015, pp. 104-105).

It can be argued that the shareholders' agreement has a dual legal nature; on the one hand, it regulates property relations, and on the other hand, it is connected with the regulation of participation or management of corporate relations within corporate organizations (Inozemtsev, 2017, pp. 55-56).

At the same time, the same article of JSC Law stipulates that the following can be provided under the shareholders' agreement:

1. voting in the manner prescribed under the agreement at the general meeting of shareholders, arranging the voting procedure or coordinating voting with other persons, voting by other persons' instructions,
2. to acquire and/or alienate the stocks at a predetermined price and (or) upon the appearance of the circumstances defined under the agreement and (or) to refrain from alienating the stocks until the appearance of the circumstances under the agreement,
3. obligation to take other coordinated actions regarding the management, operation, reorganization and liquidation of a joint-stock company.

The above-mentioned implies that the law envisages a non-exhaustive list of issues (exercise of rights) regulated by the shareholders' agreement, listing also their main manifestations (voting, acquisition / alienation of shares, etc.).

At the same time, the issue of publicity/confidentiality of shareholders' agreements is of special importance.

Note that Article 38.1 of the JSC Law does not give an answer to the aforementioned question and it is not clear whether such agreements are subject to disclosure (to the company, other shareholders and/or third parties), publication, state registration, other procedures or not.

In the English law shareholders' agreements are not subject to installation in public sources and their parties/participants have the right to keep any information concerning such agreements confidential. In other words, they refer to shareholders and are not subject to publication.

The exceptions to the mentioned rule shall be the cases when its provisions 1) differ to one extent or another from the founding documents (articles of association) and essentially make changes to it or 2) relate to the issues, for which decision-making requires a special protocol under the law (for example, non-application of the condition of right to preference, etc.) (Ovcharova, 2009).

The science believes that the company and third parties should be notified about the fact of concluding shareholders' agreements and/or

about a certain content of it (Gribkova, 2011, p. 187).

We agree with the approach according to which the shareholders of the joint-stock company, which have signed a shareholders' agreement, are obliged to notify the company within 15 days upon the execution of the agreement (Serobyan & Soghomonyan, 2021, p. 55), which gives the company an opportunity to be informed about existing (executed) agreements.

At the same time, we believe that the shareholders are also obliged to notify the competent body about the fact (but not the content) of the shareholders' agreement. This is due to the fact that potential investors should be informed about the existence of such agreements when acquiring the share(s), but the content can be acquainted with upon the consent of its shareholders.

Signing of Shareholders' Agreement

The Article 38.1 (2) of the JSC law stipulates that the shareholders' agreement is signed in writing, the parties to which may be the company, the shareholders, as well as persons who subscribe to the company's stocks. By virtue of section 4 of the same article, the shareholders' agreement is mandatory only for the parties of the agreement.

In practice, it is interesting what happens to the shareholders' agreement, when during the validity period of the agreement the stocks of the shareholder changes, whether the agreement can be concluded only with regard to the shares of the shareholder at the time of its signing, and is not applicable to the shares to be acquired in the future or not.

T. Gribkova (2011) considers it permissible to mention in the shareholders' agreement that it is signed towards all the shares, both in relation to the shares belonging to the shareholder at the time of the signing, and regarding the shares acquired in the future during the validity period of the shareholders' agreement (pp. 145-146).

In general, we also agree with the presented view, at the same time, in our opinion, the parties of the shareholders' agreement have the right to envisage that the provisions of the agreement apply to the shares of the parties at the moment of execution of the agreement and / or to the shares to be acquired in the future.

The Article 38.1 (2) of the JSC Law stipulates that the parties of the agreement may be the company, the shareholders, as well as persons who subscribe to the company's stocks. In case the company is a party to the shareholders' agreement, the execution of such a shareholders' agreement is carried out taking into account also the provisions of Chapter 9 (interest in the company's transactions) of the JSC Law.

In connection with the agreement executed between shareholders and third parties, there is a point of view according to which such agreement has a mixed nature (it may contain elements of other agreements) (Trubina, 2015, pp. 133-135).

According to definitions of Y. Sukhanov (2014), if third parties participate in the corporate agreement, it ceases to be a corporate agreement and becomes a special contract created by the model of a corporate agreement (p. 5).

And, for example, in English law, individual third parties (e.g., the guarantor) can also be a party of a shareholders' agreement (Hewitt, 2011, p. 124).

Taking into account that the provisions of the Civil Code of RA apply to the shareholders' agreement, we think that if it also contains elements typical of other types of contracts and not regulated under the JSC Law, they will be regulated under the provisions of the Civil Code of RA.

In practice, the issue of the joint stock company's being a party to the agreement is controversial, which is stipulated under the Article 38.1 (2) of the JSC Law. The joint stock company may not be a party to the shareholders' agreement, as it cannot exercise its rights verified by its own shares.

Article 38.1 (2) of the JSC Law stipulates that the obligation of parties to a shareholders' agreement to vote according to the instructions of the board or the executive body of the company cannot be a subject of a shareholders' agreement. Whereas, when the shares belong to the company, the latter cannot dispose them otherwise than by the board or through the general meeting.

In addition, in any case, the company will be aware of the existence and content of a shareholders' agreement, as well as the actions of other participants within its framework, violating the principle of confidentiality of such agreement.

On the other hand, the participation of the company together with the shareholders may

result an increase in the risk of holding them accountable for the company's obligations. Therefore, taking into account the mentioned circumstances, the scientists think that the company should be excluded from the list of parties to the agreement (Gribkova, 2011, pp. 158-159).

The question of whether the shareholders' agreement applies to the new shareholders of the company and whether they are obliged to become a party to such agreement is also interesting**.**

JSC Law does not in any way oblige or compel the new shareholders of the company to become a party to the shareholders' agreement, at the same time it cannot apply to entities that are not a party to it, including new shareholders. The mentioned, however, does not exclude or restrict the right of new shareholders to become a party to the agreement or to conclude such other agreement.

Implementation of the Shareholders' Agreement

Fulfillment of shareholders' agreement implies the fulfillment of the rights and obligations of the parties to the agreement, which are stipulated under Article 38.1 (1) of the JSC Law. The following obligations are particularly notable:

1. The obligation to vote in a certain way

It is disputable in terms of the discussed obligation whether the agreement can be limited only to the determination of general standards or principles, the goals of the company's activities and business problems, on the basis of which the management of the company should be carried out, or whether it is necessary to agree on a joint position for voting on a specific issue on the agenda.

The more detailed it is described what actions must be performed or refrained from which, the higher the probability of avoiding conflicts related to voting in the future is. At the same time, when concluding the agreement, it is not always possible to thoroughly regulate the voting issues and to imagine the whole range of issues and questions.

Therefore, the approach put forward in the science seems reasonable and acceptable, according to which it is expedient not only to define concrete rules on the procedure of the voting, but also to envisage provisions containing general principles, problems and goals that should be realized by the parties of the agreement (Gribkova, 2011, pp. 166-167).

2. Prohibition of the obligation to vote according to the instructions of the company's management bodies

Article 38.1 (3) of the JSC Law stipulates that the obligation of the parties to vote according to the instructions of the company's board or executive body may not be subject to shareholders' agreement.

We believe that voting of the parties of the shareholders' agreement at the discretion of the company's governing bodies can endanger the rights and interests of the participants of the agreement, and the discussed ban is logical and expedient.

At the same time, Article 38.1 (1) of the JSC law stipulates that the number of votes sufficient for the adoption of decisions at the company's general meeting, provided under JSC Law or the charter based on the mentioned law, cannot be changed by a shareholders' agreement, which, in our opinion, is also justified.

3. Exercising the rights to stocks

Under the obligation in question are understood, among others, the obligation to acquire and/or alienate the stocks at a predetermined price and (or) upon the appearance of the circumstances defined by the contract, to refrain from alienating the stock until the appearance of the circumstances under the agreement.

In general, in this case it refers to stocks' transactions, and in practice it is proposed to also include mechanisms (Russian Roulette, Texas Shoot-out, Fire-side chat, Multi-choice procedure, Cooling-off/Mediation, Deterrence approach, One cut, The other choose, Tossed coin and etc.) to solve "deadlock" situations (deadlock resolution) (Gribkova, 2011, pp. 171-174).

4. An obligation to refrain from exercising rights

With respect to this obligation, the specialists of the sector face the following problem: they can refrain from exercising material rights only or it also includes procedural rights (for example, filing lawsuits to the management bodies of the company or refraining from challenging the decisions of the company's governing bodies).

Our approach is that the shareholders of a shareholders' agreement are free to define an obligation to refrain from both material and pro-

cedural rights, moreover, the JSC Law does not envisage a ban on an obligation to refrain from the exercise of this or that right.

5. The obligation to take agreed activities related to the management, operation, reorganization and liquidation of the company

Given that the mentioned provision is rather comprehensive, according to scientists, it is subject to broad interpretation, which may include the right to demand information from the company, to buy the shares, to refuse to participate in the meeting and other rights.

In this regard, the question arises: under which conditions the actions can be considered agreed, in particular, whether the consent of all the participants of the agreement is required, or whether the approval of a part of them is enough.

The JSC Law does not regulate the issue, therefore, in our opinion, the shareholders' agreement should also define the necessity of approval of all or the corresponding number of participants to the agreement to consider the actions agreed.

Termination of Shareholders' Agreement

In JSC Law there are no provisions on the term and procedure for termination of shareholders' agreements, therefore the parties may define its validity period, which expires on the basis of termination, as well as foresee circumstances that lead to its automatic termination (e.g. liquidation of the company, reorganization, bankruptcy, etc.).

In addition, the agreement may be terminated by the consent of the parties or by the request of one of the parties in judicial procedure (in cases prescribed under law or agreement).

It should be noted that shareholders' agreements in Italy may be signed for a period not exceeding 5 years, and if no deadline is set, they are valid for 5 years. At the same time, the party who wishes to withdraw from the agreement must announce at least 6 months before the withdrawal.

Shareholders' agreements in Switzerland cannot be signed for an indefinite period ("eternal"), and notification of their intention to solve should be sent in advance, 6 months ago.

It is acceptable that the parties should be free to define the terms of the shareholders' agreement (for a certain period or termless). In addition, it is advisable to envisage in law or in the agreement the procedure and conditions for withdrawal from the agreement or termination thereof (for example, by notifying/informing in advance within the established period) (Trubina, 2015, pp. 119-121, 126-127).

Ensuring the Fulfillment of Obligations Arising from the Shareholders' Agreement

Article 38.1 (6) of the JSC Law stipulates that the shareholders' agreement may provide measures of ensuring the fulfillment of obligations arising therefrom, as well as of civil liability for non-fulfillment or improper fulfillment of obligations envisaged therein.

At the same time, pursuant to Article 368 (1) of the Civil Code of RA, the fulfillment of obligations may be ensured through collateral, penalty, withholding of the debtor's property, guarantee, prepayment and other methods provided under the law or agreement.

This implies that the parties of the agreement are free to choose, at their own will and discretion, the means provided under the law and the agreement, which ensures the fulfillment of the obligations arising from the shareholders' agreement, or to refrain from them.

Referring to the international experience, O. Arter, F. Jörg (2007, pp. 475-476) and R. Müller (n.d., p. 14) distinguish the following measures ensuring the fulfillment of obligations arising from shareholders' agreements:

1. joint depositing, including the sequestration of shares;
2. transfer of powers relating to the exercise of the rights of shareholders to the authorized person or to another third person, which must exercise the powers of the representative of the rights and stocks certified by the concluded shareholders' agreement;
3. the consent on penalty in case the agreement is violated;
4. transfer of party's shares of the shareholders' agreement to the common property of all shareholders;
5. investing the shares in a holding company, where all the shareholders authorized under the agreement are participating;
6. fiduciary transfer of shares to a third party

carrying out trust management of shares;
7. transfer of the right to use in case of violation of the agreement,
8. the transfer of the conditional right to sell if the agreement is violated.

In our opinion, the above-mentioned measures can be implemented in the RA legislation as well, because they are aimed at ensuring the fulfillment of the obligations arising from the shareholders' agreements.

It is quite possible to use a combination of means ensuring the fulfillment of obligations envisaged under the Civil Code of RA, including penalty, guarantee, pledge, etc. When choosing this or that measure, it should be taken into account to what extent it enables to effectively guarantee proper fulfillment of obligations.

Legal Consequences of Breach of Shareholders' Agreement (Applied Sanctions)

In case of its violation the realization of the rights and obligations stipulated under the shareholders' agreement should be guaranteed and secured with the opportunity to create adverse consequences for the party, who made the violation (to bring him to liability).

The ground for liability for the breach of the provisions of the shareholders' agreement is non-fulfillment or improper fulfillment (violation) of obligations arising from that agreement, and the subjects for liability are the participants of the agreement (Kudelin, 2009, pp. 8-9).

Breach of the shareholders' agreement is possible in two cases:
1. through execution or non-execution of this or that transaction, e.g. alienation of shares contrary to the prohibition established under the agreement (*proprietary component*),
2. through the exercise of the right to manage the company, e.g. voting at the general meeting of shareholders contrary to the terms of the shareholders' agreement (*organizational-administrative component*) (Gribkova, 2011, p. 177).

In fact, in case of violation of shareholders' agreement, the methods for the protection of civil (including corporate) rights as prescribed under Article 14 of the Civil Code of RA shall apply.

S. Stepkin (2011) believes that in case of breach of shareholders' agreements, material liability can be classified as the loss of the right to vote, the loss of the right to participate in the distribution of profits in that financial year, the obligation to sell its share in the charter capital at a certain price or the obligation to buy the share of the remaining participants of the agreement at a certain price, to recognize invalid the transaction by violation of the conditions of the shareholders' agreement, forcing to fulfill the obligation in material way (p. 11).

In Anglo-American legal system the structure of options (put option and call option) is widely used, which envisages right of one of the parties to demand the purchase of his/her shares from the other party in the event of certain circumstances, or, conversely, the obligation to purchase the package of shares of the other shareholder at a specified price (Gribkova, 2011, pp. 220, 222).

In the legal system of England and Wales damage compensation ("contractual damages"), default, forced termination of the power ("bad leaver") and discount are provided as measures of liability.

As a result of bad leaver the shareholder leaves the company's shareholder list, if he/she has violated the provisions of the shareholders' agreement, and in case of the discount, the share price of the shareholder who has violated the provisions of the shareholders' agreement is reduced.

As for the default, in case of violation of the shareholders' agreement, the sale of shares of the innocent party can be provided at a higher price than the market price (Kostina et al., 2011, p. 29).

We believe that both individual and combined application of the above-mentioned sanctions can contribute to a strict and complete fulfillment of obligations under shareholders' agreements, ensuring a balance of interests of all parties thereto.

In addition, it should be emphasized that agreements equivalent to the shareholders' agreement can be signed in other corporations as well, and the above is also applicable to them, taking into account their specifics.

Referring to the conclusion and specifics of the shareholders' agreements of the venture joint stock companies (hereinafter "VJSC") (Meliksetyan, 2022), it should be noted that due to the participation of venture investors, they are

quite common, sometimes investment and shareholders' agreements are signed simultaneously.

In the investment agreement (in case of one investment and shareholder's agreement - in the relevant part) the parties determine the terms and conditions of capital investment, additional financing details (amount, goals), assurances and guarantees, liability measures, the scope of damage, circumstances excluding liability, the thresholds, etc..

The agreements provide that the shareholder's liability cannot be excluded or limited in case of willful misconduct, at the same time the investor is deprived of the right to demand compensation if:

- at the time of signing the investment agreement the investor knew about the circumstances underlying the claim or such circumstances were dsiclosed to the investor or relevant documents were provided;
- the relevant circumstance has been taken into account as a deduction in the initial pre-investment evaluation (pre-money valuation) period;
- the damages occurred due to the change of legislation following the day of execution of the agreement (Greulich., 2018, pp. 24, 41-47).

Conclusion

Considering the above-mentioned, *we propose to introduce a number of liability measures, widespread in international practice, in the legislation of the Republic of Armenia: options, "default", "bad leaver", "discount", etc.*

It can be stated that unlike joint-stock companies, VJSCs have a single model of investment and shareholder's agreement, which gives an opportunity to regulate the relations between venture investors and company (as well as shareholders) more comprehensively.

Therefore, *we propose to legislatively envisage the introduction of the investment agreement (or investment and shareholder's agreement) in VJSCs, allowing venture investors to clearly regulate the subject (procedure, conditions of investment, means of liability, other interrelations) they are interested in.*

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POLITICAL AND PHILOSOPHICAL ANALYSIS OF THE INTERPENETRATION OF PUBLIC-LAW AND PRIVATE-LAW SPHERES OF REGULATION IN THE ACTIVITIES OF THE EURASIAN ECONOMIC UNION

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Abstract: The research objective of this article is to analyse the interpenetration of private law and public law regulation carried out within the framework of the Eurasian Economic Union. It is noted that in the sphere of private law, the EAEU has virtually no powers to unify / harmonise the national legislation of member states, but achieving the goals of building a common (single) market is often impossible without the elimination of private law barriers. This phenomenon is discussed using the example of restrictions on the freedom of establishment (in terms of opening branches of foreign organisations) and digitalisation of public procurement within the EAEU. It is argued that the phenomenon of "privatisation" of state functions, characteristic of the period of so-called globalisation, cannot be a distinctive feature of a multipolar world order. It seems more correct to speak of a close interrelation and interpenetration of private and public legal regulation of social relations.

Keywords: common (single) market, customs union, freedom of establishment, freedom to provide services, private law, public law, competing federalism, free market access.

Introduction

According to par. 2, article 1 of the Treaty on the Eurasian Economic Union (ed. on 05.08.2021, amended on 09.12.2022) (hereinafter – EAEU Treaty), the Union is an international organization of regional economic integration with international legal capacity. Despite the declared international legal status, the Eurasian Economic Union (hereinafter – EAEU, the Union) has the competence inherent to supranational associations of states, which on the basis of international agreements have delegated some of their powers in certain areas of regulation to the Union bodies. The integration association ensures freedom of movement of goods, services, capital and labour, and the implementation of a coordinated, coherent or unified policy in the sectors of the economy defined by the EAEU Treaty and international treaties within the Union. For the purposes of this study it is particularly important to note that a common policy implies the application by the

Member States of a unified legal regulation, including on the basis of decisions of the Union bodies within the scope of their powers. Coordinated policy, in turn, uses as an instrument of integration processes a "softer" method – harmonisation of legal regulation, to the extent necessary to achieve the goals of the Union as set out in the Treaty on EAEU. Within the framework of a coordinated policy, cooperation between the member states is carried out on the basis of common approaches approved within the Union bodies. Thus, the scope of powers of the Union's bodies directly depends on what kind of policy the Union is entitled to pursue in a particular area of integration. Article 4 of the EAEU Treaty enshrines the objectives of this international organisation, which are of an obvious economic nature. However, we should not forget that economic growth cannot be an end in itself, neither for an individual state, nor for an association of states, so the first fundamental objective of the EAEU sounds not just "to create conditions for sustainable development of the member-states economies", but is supplemented by the ontological basis – "in order to improve living standards of their population". Thus, it becomes apparent how private interest is breaking through the slender ranks of public law goals.

One cannot but agree with the opinion of Professor Jürgen Basedow (2016, p. 380), who suggested that the role of the state in regulating international relations is multivalent and multifaceted, as it operates in two legal worlds: at the level of the international community and at the level of national legal orders. With regard to the EAEU, this means that the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation have agreed by international treaty to transfer part of their sovereign powers to the Union, so the interests of integration prevail over the interests of the individual state in addressing issues within the scope of a common policy. However, in legal regulation in the areas of coherent or coordinated policies, the dominance shifts and states usually tend to emphasise the protection of national interests. In this case the "achievement of the goals of the Union" may be overshadowed and take on the character of a complexly interpreted abstraction.

As an association of regional economic integration of states based on the principles of a common (single) market and customs union, the EAEU naturally takes into account the experience of previously established associations with a similar orientation, in particular the European Union (hereinafter, the EU). At the same time, this experience cannot be accepted unconditionally, as the EU was born in other historical conditions (the 1950s), aspects of the post-war world order had an impact; integration processes in the EU were slowed down by a significant number of its participants which was constantly expanding; economic integration was formally supplemented by political aspects and cooperation in the law enforcement sphere only on the basis of the Maastricht Treaty of 1992. In addition, the integration of states within the EAEU is significantly influenced by the widely deployed processes of digitalization of all spheres of social life; they significantly spur the interaction of member states, as only joint efforts can lead to the prevention of digital lag and the achievement of digital advantages.

It should be noted that the EAEU bodies are not competent to harmonise civil, family or international private law (the main segments of private law regulation); nevertheless, the desire to form a single market for goods, services, capital and labour is one of the main objectives of the EAEU. At the same time, natural and legal persons are direct actors of such common market, so the unified / harmonised regulation within the Union inevitably serves the purpose of protecting private interests by having a direct impact on the private law of the member states.

The removal of barriers to the realisation of single market freedoms is the primary objective of a public-law integration association, but the barriers themselves may arise from both public-law and private-law national regulation.

The present study is based on an analysis of a number of illustrative examples of the interpenetration of private law and public law regulation in the activities of the EAEU.

Methodology

This study is based on the general systems theory in L. Bertalanffy's axiomatics (1950), which helps to consider the systemic interaction of private law and public law regulation in the EAEU activities. At the same time, it is worth agreeing

with the opinion of I. V. Blauberg (1997), according to which "the conceptual framework that has successfully served science for many years increasingly fails for the simple reason that it proves inadequate to modern tasks and even their very formulation" (p. 165). Thus, the positivist and formal-dogmatic approaches cannot cope with the analysis of the EAEU legal order, as it intertwines the regulation of national legal systems and the supranational level; the goals of the integration association, based on which its powers must be interpreted, play a determining role; the competence to explain the provisions of the EAEU Treaty, international treaties within the Union and decisions of Union bodies is given to the EAEU Court, whose activities, in fact, border with judicial rule-making (art. 46 of the EAEU Court Statute (Annex No. 2 to the EAEU Treaty)).

The concepts of methodology based on the instrumental approach, when methodology is understood as a set of principles, means and ways of cognition applied in the process of studying legal phenomena (Semyakin, 2016, p. 117) seem to be truncated. Thus, M. N. Semyakin reasonably believes that the use of various instrumental means should be complemented by appropriate philosophical and general scientific interpretations, epistemological foundations and methodological principles.

The modern post-non-classical methodology of legal science offers various approaches, including in the field of private law research. When considering the processes of interaction between private and public law in the EAEU legal order, it seems justified to rely on the ontological foundations of both private and public law.

Ontology (Greek: ontos – being, logos – doctrine) is the philosophical science of being per se, its main types and properties. In the context of the present study, it is proposed to focus on the "being" of private and public law within the EAEU, to consider examples of the impact of private law regulation on the achievement of public law integration goals.

It is not the purpose of this study to explore contemporary approaches to the distinction between private law (*jus privatum*) and public law (*jus publicum*). Despite the fact that the noted systematic division of law dates back to the Ancient Rome, the debate about the distinctive features of public and private law continues to this day. G. V. Shershenevich (1995) noted, at the beginning of the 20th century, that despite the commonplace nature of this division, it is still not scientifically clear where the boundary line between private law and public law lies and what are their distinguishing features (p. 9). At present, this boundary is even more difficult to draw, precisely because of the increasing interpenetration of private and public regulation. However, among the many doctrinal concepts of private law, let us refer to the one which, in our opinion, is the most informative and essentially correct. It is based on the criterion of interest, refers to the subject of regulation and fundamental principles, defining private law as "the totality of legal norms and other regulations that express the freedom of individuals in the private sphere, regulating property and personal non-property relations on the basis of legal equality of subjects, autonomy of will, dispositiveness, property independence, in order to ensure the most effective implementation and protection of private rights and legitimate interests" (Semyakin, 2014, p. 33).

In addition, we believe that the private sphere of public life and, accordingly, private law regulation have a steady tendency to expand (Miashchanava, 2017, p. 34). In Western legal doctrine, the phenomenon of the so-called "privatization" of state functions, among which are law-making, law-enforcement and dispute resolution (Mills, 2023, p. 8), is actively debated. It is argued that the modern phenomenon of privatisation has given rise to a number of important international legal consequences, especially when combined with another structural change in the functioning of states, globalisation. For example, the combination of privatization and globalization of capital flows has contributed to a massive increase in foreign investment, with foreign investors acquiring state assets or competing in the market for public service contracts. As a result, annual global flows of direct foreign investments increased (in real terms) by more than 10,000% between 1970 and 2021 (*The World Bank. Foreign direct investment, net inflows (BoP, current US$)*, n.d.). The increase in foreign investment has coincided with the emergence of international investment law, which has again challenged the established public/private boundaries of modern international law. International investment law is based on inter-state treaties but gives

private parties the right to initiate proceedings against states in international commercial arbitration. This combines claims based on a breach of international agreements with claims arising from a breach of contract.

Although research into the phenomenon of "privatisation" has some factual basis, nevertheless, the concept of globalisation has suffered a noticeable crack in the last few years. The world is objectively breaking up into regional financially-technological ethical clusters with prevailing values orientation, financial systems and technologies. The world order is becoming multipolar. In the context of major geopolitical changes, states have traditionally come to the fore, seeking through their public legal regulation to unite the population in solving the most important political, economic, social and cultural problems. "Privatisation" as such cannot be the hallmark of such historical period. It seems more correct to speak of the close interrelation and interpenetration of private-law and public-law regulation of social relations.

Main Study

As noted earlier, one of the main goals of the EAEU's creation and activity is the formation of a single market for goods, services, capital and labour within the Union (Article 4 of the EAEU Treaty). This goal is to be achieved through the gradual removal of barriers to the implementation of single market freedoms, which may have both obvious and hidden nature. Barriers may be based on the current legal regulation of the member states, but they may also result from the existing law enforcement and administrative practice. In the process of removing barriers it seems advisable to rely on a study of the EU experience, as well as the right choice of the so-called "internal market model".

In creating a single (internal) market and improving its functioning mechanisms, it is customary to distinguish between two main models:

1. Decentralised model based on the principles of non-discrimination, free market access and the concept of competing federalism;
2. The centralised model, which involves harmonisation/unification of the legislation of member states (Miashchanava, 2010, p. 17).

Let us consider the principles underlying the decentralised single (internal) market model.

The cornerstone of all four internal market freedoms is the principle of non-discrimination. This principle is based on Article 18 of the Treaty on the Functioning of the European Union (consolidated version of 01.03.2020, hereinafter – TFEU), which prohibits any discrimination on grounds of nationality. Based on this provision, the Court of Justice of the EU has formulated a general principle of law known as the "principle of equality". However, the prohibition of discrimination on grounds of nationality was interpreted more broadly to include the prohibition of discrimination on any ground. Both direct and indirect discrimination are recognised as unacceptable in order to ensure freedom of movement of goods, persons, services and capital. The latter is predicated on grounds other than nationality, but creates a less attractive environment for goods, persons, services and capital from other EU Member States. To date, the EU Court of Justice has not only condemned any (direct or indirect) discrimination, but has gone further by declaring non-discriminatory restrictions contrary to TFEU in regulating internal market freedoms. The EAEU Treaty does not contain a single rule prohibiting discrimination, but the prohibition can be seen in certain provisions regulating the implementation of single market freedoms (Article 29 – trade in goods; Article 65 – trade in services, freedom of establishment, making investments; clause 39 of Annex No. 7 – discrimination against third countries as well as disguised restrictions on foreign trade in goods; clause 12 of Annex No. 16 – payments and transfers; clause 36 of Annex No. 16 – relocation of workers).

The principle of non-discrimination is closely related to the principle of mutual recognition (or reciprocity). Some authors see it as a constituent element of non-discrimination (Barnard, 2007, p. 18). The principle was first formulated in Case 120/78 known as Cassis de Dijon (*European Court Reports 1979-00649*) in the context of free movement of goods. The essence of the principle of mutual recognition is that if a product is lawfully produced and placed on the market in one Member State, it must be admitted to the market of any other Member State, even if it does not meet the latter's technical or other requirements. It is only possible to restrict the admission of such goods to the market on the grounds set out

in Article 36 of the TFEU and on the basis of mandatory requirements to protect essential public interests. The principle of mutual recognition has gradually been applied not only to the freedom of movement of goods, but also to the freedom of movement of services and the recognition of qualifications of EU citizens. The main positive effect of using this principle is that there is no need to harmonise Member States' national legislation and thus preserve the diversity of products and services available on the internal EU market. The European Commission has identified the main problems within the application of this principle, clarified its meaning and declared the principle of mutual recognition to be the main tool of the internal market strategy.

The next principle is provisionally called the principle of "free market access". It follows from the principle of non-discrimination that imported goods (or migrant workers) have to meet the requirements laid down in the legislation of the host state, which applies equally to its own goods/workers as to imported/foreign ones. It has therefore become apparent that any national rules impeding broad market access should be considered abusive if they create not formal but so-called "de facto" discrimination. The principle of "free market access" is reflected in the Court's case law in the Gebhard case (*European Court Reports 1995 I-04165*), which concerns freedom of establishment, i.e. the application of Article 49 TFEU. In this case, the Court does not apply the term "discrimination", but instead refers to national measures that "may hinder or make less attractive the enjoyment of fundamental freedoms guaranteed by the Treaty". In the Court's view, these measures breach Article 49 of TFEU unless they are objectively justified.

The advantage of the "free market access" principle is that it goes further in building the internal market by eliminating any undue restrictions on trade. At the same time, however, the principle represents a deeper intrusion into the domestic competence of states to regulate certain relations than is permissible under communitarian law. The result is that virtually any provision of national law can be held to be unlawful because it has an impact on the mutual trade of member states, even if there was no intention on the part of the national legislator to impede trade, and such an impact is negligible. At the modern stage the Court has become aware of the dangers of this approach and uses various legal techniques to distinguish between those rules which should be abolished under communitarian law and those which are not subject to the regulatory impact of the latter.

The practical application of freedom of movement of goods, persons, services and capital inevitably leads to competition between different national legal systems, as individuals dissatisfied with the political, legal or social environment in which they exist, may relocate to another state where conditions are more agreeable to them. This encourages national authorities to develop better, more attractive models of legal regulation of the relations in question. This phenomenon is known as "competing federalism" or "regulatory competition" (Tiebout, 1956, p. 416).

For "competing federalism" to function, two conditions must be met. First, the central government (in our case the EAEU through its bodies) must develop and enforce rules under which goods, persons, services and capital can move freely from one state to another. Secondly, the member states should retain the freedom to regulate the production of goods, the provision of services, the definition of requirements for workers, etc. in accordance with their own standards, as an objective prerequisite for the development of competition. The outcome of the "competing regulation" process should be the development of optimal, effective, innovative legislation capable of attracting private parties. However, the said process has not only positive consequences, as "the most attractive legal regime" does not always mean the most optimal and perfect legal regime. This phenomenon has been explored in corporate law with the "Delaware syndrome" (Charny, 1991, p. 422). The model of "competing federalism", with an active role of national authorities drafting domestic legislation in line with consumer interests and a limited role of the central authority (the EAEU authorities) ensuring only freedom of movement, certainly has considerable appeal, but this model cannot be used in its pure form in the present context. Thus, the principles of non-discrimination, free market access as well as the concept of "competing federalism" in their interplay have been the basis for the decentralised model of the EU single (internal) market and seem to serve as a starting point for developing appropriate approaches within the EAEU.

The centralised model, in turn, proposes establishing a uniform set of rules at central government level that should apply to a wide range of relationships. Harmonisation and unification of member states' law are the main instruments of development. This model poses a number of problems. The legal problem is that the central authority does not have sufficient competence to act in this way, given that uniform policies are only possible in a limited number of sectors of the EAEU member states' economies. The practical problem is to develop the unified standards themselves on the basis of the most common approach in the practice of member states or on the basis of the most modern, progressive approaches. Finally, the political problem is the leveling out of national differences, the loss of the advantages connected to local responsibility, which could eventually lead to a "market freeze" and stagnant legislation. Thus, the centralised model cannot be applied in the process of building and functioning of the EAEU single (internal market) in its pure form.

Let us turn to the problem of removing barriers to the creation of a single market. Thus, the Republic of Belarus in its domestic legislation contains a barrier to the implementation of the freedom to provide services (according to the classification of the Eurasian Economic Commission (hereinafter – EEC)) – the absence of the possibility of opening a branch of a legal entity of a member state of the Union in the Republic of Belarus (*Barriers in States. Portal of general information resources and open data of the EAEU*, n.d.).

Based on sub-paragraph 24(6) of the Protocol on Trade in Services, Establishment, Operation and Investment (hereinafter – Annex 16) to the EAEU Treaty (Terms and Definitions) the establishment is carried out in the following forms: establishment and/or acquisition of a legal entity; acquisition of control over a legal entity of a member state; opening of branches and representative offices; registration as an individual entrepreneur. The establishment is carried out, inter alia, for the purpose of trade in services and/or production of goods. Under European law, the establishment of a legal entity in another member state is permitted in the forms of "primary" and "secondary" establishment. In the case of a "primary" establishment, a legal person is created in one state and then moves its administrative centre (head office) to another state. This phenomenon has been referred to as "freedom of company relocation". The term "secondary establishment" speaks for itself, and includes the right of companies incorporated within the EU to freely establish agencies, branches or representative offices in all member states.

Annex 16 treats the concept of "establishment" more narrowly (more literally) and does not in fact include the freedom of companies` relocation, but only refers to the creation, acquisition of a legal entity or acquiring control over a legal person. Nevertheless, "secondary" establishment through the creation of branches and representative offices is defined quite clearly in Annex 16.

The distinction between freedom of establishment and freedom to provide services seems to be fundamentally necessary because entrepreneurs and legal persons who seek to "establish" in the host state must go through all domestic procedures provided for such "establishment" and meet all the requirements of the host state. If, on the other hand, a person provides services in the territory of the host state without being "established" there, such requirements do not apply, it is sufficient that the person meets the requirements of the state of origin for access to certain activities (Miashchanava, 2010, p. 78). Thus, the barrier contained in the national legislation in terms of the lack of possibility to open a branch of a legal entity of a Union Member State in the Republic of Belarus is nothing but an obstacle to the freedom of establishment. The point is that Article 51 of the Civil Code of the Republic of Belarus (hereinafter, the Civil Code of Belarus) defines the concept of branches and representative offices of legal entities and their distinctive features. However, Article 51-1 of the Civil Code of Belarus only regulates representative offices of foreign organizations, which are recognized as separate subdivisions, located on the territory of the Republic of Belarus and performing protection and representation of interests of foreign organizations and other functions that do not contradict the legislation. Thus, the legislator establishes an original restriction for foreign organisations, without mentioning a possibility of establishing branches by them. Besides, the Regulation on the procedure for opening and activities of representative offices of foreign organisations in the Republic of Belarus, approved by the

Resolution of the Council of Ministers of the Republic of Belarus No 408 of 30 May 2018, regulates the procedure for establishing such representative offices, including defining a non-exhaustive list of purposes for their establishment and activities. According to the clause 8 of the Regulation, a representative office of a commercial foreign organisation may be opened, unless otherwise established by legislative acts or international treaties of the Republic of Belarus, only for the purpose of carrying out preparatory and auxiliary activities on behalf of and on instruction of the foreign organisation it represents. As a general rule, such representative offices have no right to carry out commercial activity on the territory of the Republic of Belarus.

The specifics of legal regulation of activity of representative offices of foreign organisations in the territory of the Republic of Belarus consists also in availability of the concept "permanent establishment of a foreign organisation", which is a public law term of tax legislation and can in no way correlate with corporate regulation. If the foreign organization carries out works and (or) renders services in the territory of the Republic of Belarus during the period, which exceeds one hundred eighty days continuously or in total during any twelve-month period, starting or finishing in the appropriate tax period, such activity is considered as permanent establishment of the foreign organization, including in case of its realization in different places (clause 3 of article 180 of the Tax Code of the Republic of Belarus (General Part) of December 29, 2009 No. 71-Z). It is obvious, that in order to carry out such activity it is not necessary to establish a separate subdivision of a foreign legal entity. Thus, the concept of corporate law – "establishment of a foreign company" is close to the extent of confusion with the concept of tax law – "permanent establishment of a foreign company", which, in our opinion, is a problem of the Belarusian legislation, since the substantive content and the purpose of those concepts do not coincide. At the same time, the legal framework of Belarus does not mention branches of foreign legal entities, including those incorporated in the territories of EAEU member states.

The removal of barriers to the implementation of freedom of services and freedom of establishment within the EAEU is envisaged in phases. The first stage establishes a ban on the introduction of new discriminatory measures against trade in services, establishment and activities of persons of other member states as compared to the regime in force at the date of entry into force of the EAEU Treaty. The second stage is the gradual liberalisation of the conditions for mutual trade in services, establishment, activities and investments (Article 66).

The barrier in question appears to be of a private law nature, as it interferes with the right of individuals (companies) to freely establish separate units with a wide scope of competence (branches). At the same time, the List of "horizontal" restrictions retained by the member states in relation to all sectors and activities (Annex No. 2 to the Protocol on Trade in Services, Establishment, Activities and Investments) does not include the considered barrier, therefore, gradual liberalisation is needed in the sphere of establishment of foreign organisations in the territory of the Republic of Belarus, which should be implemented taking into account international principles and standards through harmonisation of legislation (Article 67 of the EAEU Treaty).

One of the areas of close interaction between public and private law regulation is the area of public procurement, which is currently under the close scrutiny of the integration association. Thus, the List of Measures to Enhance the Stability of Economies of the Eurasian Economic Union Member States, including Ensuring Macroeconomic Stability, approved by Eurasian Economic Commission Council Decision No. 12 of March 17, 2022 (clause 2.14) provides for the accelerated formation of a set of measures to fully digitalise public procurement in the member states, including issues of mutual recognition of EDS (electronic digital signatures) and bank guarantees. These aspects of building the EAEU internal market could be the subject of an independent study, including the fact that the introduction of digital technologies in the implementation of legal relations necessitates scientific understanding of legal practices carried out "electronically" (Inshakova et al., 2020, p. 601). At the same time, the mutual recognition of EDS and bank guarantees is of paramount importance for the conclusion of public procurement contracts that have a civil law nature, despite their explicit public purposes.

The possibility of opening branches in the territories of member states other than the state of

incorporation of a legal entity, as well as digitalisation of public procurement are by no means a complete list of possible examples of the relationship between private law and public law regulation in the activities of the EAEU. However, it is important to emphasise that often the liberalisation of public relations within the framework of a free single market must be based on a corresponding liberalisation of the private-law segment of regulation. Otherwise, the attainment of the set goals may be in question.

Conclusion

We believe that the processes of interpenetration of private law and public law regulation are clearly manifested in the Union's activities, which necessitates the direct application of certain legal acts of the EAEU bodies within the national legal framework. At the same time, such direct application is possible only in relation to the EAEU acts adopted within the framework of a single policy. In order to eliminate barriers to the implementation of single (internal) market freedoms, it is necessary to take measures aimed at harmonisation of national legal regulation, as well as liberalisation of conditions for mutual trade in services, establishment, activities and investments. These processes of harmonisation and liberalisation may involve both public and private law, and very often these areas are closely intertwined. Using the example of the barrier to freedom of establishment present in the legislation of Belarus with regard to the lack of possibility to open a branch of a legal entity of a Union member state in the Republic of Belarus, we show how the private law restriction (the right to open branches and representative offices of legal entities is provided by civil law) affects the creation of the EAEU single market, which is one of the primary objectives of this integration association.

The trend towards a close intertwining of private and public interests and the corresponding legal regulation is evident in the area of public procurement. The correlation between national and supranational interests in this area could be the subject of a separate study.

In conclusion, we would like to emphasise that the study of various manifestations of interpenetration of public and private legal spheres of regulation in the activities of the Eurasian Economic Union is not only of theoretical and doctrinal interest. The EAEU's actual lack of authority to harmonise the private law of its member states is a significant obstacle to realising many of the public-law objectives of this integration association. In this regard, further analytical work is needed to prepare proposals for expanding the EAEU's competence in interrelated areas, including those regulated by private law.

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PHILOSOPHICAL FOUNDATIONS OF THE TRANSFORMATION OF THE JUDICIAL METHOD OF RIGHTS PROTECTION IN THE CONTEXT OF THE CREATION OF A UNIFIED INFORMATION SPACE OF THE EEU

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Abstract: The article is devoted to the study of the dispute resolution procedure by the EAEU Court in the context of creating a single information space of the member countries of this integration association. Within the framework of the theoretical and practical orientation of this study, special attention is paid to conceptual problems related to the description of key social and digital phenomena that arise in the process of implementing the digital agenda and its impact on the judicial method of protecting the rights and legitimate interests of citizens and business entities. The transition to digital or electronic justice will increase the efficiency of the EAEU Court and create the most attractive conditions for the parties to the dispute to protect their rights and legitimate interests. Digitalization provides for large-scale changes in the field of justice, the emergence of new means of proof, the introduction of an electronic form of cases, remote court sessions all this leads to a change in the fundamental principles of legal proceedings. The solution to this problem should begin with the creation of a comprehensive program of legislative changes to the judicial method of protecting rights related to their digital transformation within the EAEU.

Keywords: EAEU Court, judicial proceedings, electronic justice, digital agenda, integrated information system.

Introduction

In the conditions of sanctions and unstable geopolitical situation in the world, their integration associations play a special role in the economic development of countries, one of which is the EAEU (Meshchanova & Frolova, 2021). One of the main areas of cooperation is the implementation of the "digital" agenda of the EAEU and the concept of cross-border information interaction of the EAEU, which should create all conditions for favorable business and effective economic cooperation of the participating countries (Inshakova et al., 2020). At the last international conference of the EAEU Court in November 2022, one of the main topics was touched upon,

namely: legal support of modern technologies within the EAEU, in the context of the development of the legal framework of the Union in the field of technical regulation. However, in June 2023, at a meeting of the Eurasian Intergovernmental Council, the Target Program for the Development of the Integrated Information System (AIS) of the Union until 2027 and the Terms of Reference for its development were approved. The AIS will become the foundation for the digital transformation of all cooperation processes in the EAEU.

The main objectives of the implementation of the IIS are to ensure the free movement of goods, services, capital and labor within the Union; open access to all IIS services; leveling the level of digital development of all participating countries; improving the competitiveness of economies; ensuring information security; development of the digital space of the EAEU.

The creation of a single digital platform and the integration of all services on it will ensure the most effective interaction in all areas of cooperation and solve a number of urgent tasks: providing qualitatively new functions and services in the process of information interaction; ensuring state control; conducting a coordinated information policy; increasing the number of participants in the integrated system. However, the main task is the formation and development of digital infrastructures and ecosystems.

The digital capabilities of the AIS will allow all the authorities of the participating countries to interact on the basis of a "single window", which will greatly accelerate the process of creating a single information space, but most importantly, the business community and citizens of the participating countries will be able to receive the necessary interstate services. AIS will provide communication in such areas as customs, antimonopoly, currency, financial, labor regulation and other areas.

However, such an important issue as ensuring the protection of the rights and legitimate interests of citizens and economic entities in the process of economic cooperation of the EAEU has not found proper consolidation within the framework of the creation of the AIS, which is a serious omission.

Integration of a single information space and a common AIS will allow for rapid, effective interaction of all participants in this process (Entin et al., 2022, pp. 315-330). Therefore, in the process of creating an AIS, it is necessary to create a service that provides an opportunity to transfer the dispute to the competent authority for its resolution. Currently, this may be the Court of the EAEU.

Methodology

The theoretical and methodological basis of the research is the dialectical-materialistic method of cognition of social processes and socio-legal phenomena during their digital transformation. In particular, the dialectical-materialistic method will allow us to study the rules of procedural law governing the procedure for resolving disputes in the EAEU Court, taking into account the creation of a single information space. The legal and sociological orientation of the work also determines the use of general scientific methods: generalization, abstraction, analysis, synthesis, induction, deduction, historical, logical, comparison, classification. Allowing to conduct a comprehensive legal study of the judicial method of protecting the rights and legitimate interests of citizens and business entities within the framework of the EAEU integration association.

The existing judicial method within the framework of the EAEU for protecting the rights and legitimate interests of citizens and business entities does not allow for an effective legal mechanism, since digital rights are rapidly evolving and constantly changing, and end-to-end digital technologies themselves are constantly "flowing" from one sphere of public life to another, and the proceedings in the EAEU Court remained the same as during its institution. Instead of actively integrating information and communication technology into the dispute resolution process and introducing the EAEU Court into the integrated information system (AIS), it remains outside these processes, which negatively affects its main function.

The main problem currently lies in the fact that in the current draft documents that form the basis of legal regulation of the development of digitalization, as well as legal protection, there is a largely artificial transfer of the existing regulatory models to fundamentally new relations, which leads to contradictions and the impossibility of implementing legal regulation of new pub-

lic relations, as well as to guarantee the safety and protection of rights and the legitimate interests of citizens and economic entities in the EAEU.

As other important and system-forming methodological principles on which the study is based, the following can be distinguished:

1) the principle of complementarity in understanding the specifics of the phenomena associated with the integration of digital technologies into the legal sphere;
2) the principle of "understanding interpretation", this approach allowed us to consider the sphere of legal interaction of the judicial method of protecting rights and individual digital technologies;
3) the principle of integrity is a methodological principle of systemic and organic unity, interaction and interdependence all elements of the legal and digital life of society, comprehensive consideration of private and public interests in the context of ensuring the protection of the rights and legitimate interests of citizens and business entities.

Main Study

Within the framework of the Eurasian Economic Union, a Court was established whose competence includes disputes, one party of which is a member state or an economic entity of a member state or a third state, arising on the implementation of the Treaty, international treaties within the Union and (or) decisions of the Union bodies. Participants in the judicial process can be both legal entities and individuals registered in accordance with the legislation of the Member State as an individual entrepreneur. However, the defendant is a member State of the Union or the Commission.

However, despite its status as a judicial body, the EAEU Court does not administer justice, but only ensures the unity of application by Member states and Union bodies of international treaties and decisions of Union bodies aimed at ensuring the harmonious development of the economy, trade, competition, as well as the development of a coordinated, unified and coordinated policy in economic sectors.

It is supposed to achieve the set goals by harmonizing and unifying the legislation of the member states of this regional integration association, the decisions of the EAEU Court play an important role in this process.

The normative basis of functioning is the Treaty on the Eurasian Economic Union of 29.05.2014, the Statute of the Court of the Eurasian Economic Union (Annex No. 2 to the Treaty on the Eurasian Economic Union of May 29, 2014), the Decision of the Supreme Eurasian Economic Council of December 23, 2014 No. 1 "On approval of the Rules of the Court of the Eurasian Economic Union".

The Regulations fix the procedure for applying to the Court to resolve a dispute, depending on the applicant: a member State, an economic entity, as well as for clarification by Member States or Union bodies, officials or employees.

Some authors highlight the supranational nature of the decisions of the EAEU Court, since the Court of the Eurasian Economic Union, as well as the Court of the Eurasian Economic Community, can accept complaints that have not passed the national judicial instances of the EAEU member states, which is one of the most important signs of supranationality in the jurisdiction of the EAEU Court (Khachatryan, 2019, pp. 51-57).

Analyzing the activities of the EAEU Court, it can be concluded that its practice demonstrates examples of judicial activism on issues such as the properties of the law of the integration association, the formation of general principles of law (Dyachenko, 2020, pp. 103-125).

The procedure for applying to the court is clearly regulated and divided into separate stages. The first stage is written, includes the submission of an application, the conclusion of a specialized group (if it was going to) and other documents to the Court. Moreover, it should be noted that the only mention of the electronic form of documents concerns the filing of an application to the Court. Thus, in the Logoservice case of 11.10. 2022, in paragraph 4 of the section "Conclusions of the Board of the Court", it was established that, in accordance with paragraph 4 of Article 9 of the Rules of Court on the submission of an application and documents attached to it in 1 copy on paper, as well as on electronic media, implies identity (identity) materials submitted on paper and electronic media.

Then this application is registered and the formation of the composition of the court begins.

When applying to the Court to resolve a dispute, the applicant must attach the contested decision of the Commission; documents confirming compliance with the pre-trial procedure for resolving the dispute; documents confirming the requirements; documents confirming the sending of a copy of the application and documents to the defendant after that, the application is registered in the manner determined by the Chairman of the Court.

Then the composition of the court is formed by the Chairman of the Court, on the basis of the submitted application, the judge-rapporteur, the secretary of the court session is appointed and transferred to the appropriate composition of the Court. If the case is considered by a Grand Collegium, then the Chairman of the Court is the presiding Judge, and the Judge-Rapporteur is chosen from the Grand Collegium of the Court, if the case is considered by the Collegium of the Court, then the presiding judge is the speaker, who is selected from the Grand Collegium of the Court alternately by the judge's surname, starting with the first letter of the Russian alphabet. The secretary of the court session, as a rule, is an assistant to the judge-rapporteur.

Within 10 calendar days from the date of receipt of the application, the Court decides to accept the application for production, to leave the application without motion or to refuse to accept the application, which it notifies the parties by sending a resolution.

The next stage is the examination of the case materials by the Court, after which the persons participating in the case are notified of the time and place of the court session, and this information is posted on the official website of the court no later than 15 days before the date of the court hearing.

The Regulations provide for the possibility of protecting the defendant by sending objections to the Court and the plaintiff, if this is not done, the Court has the right to consider the case and make a decision based on the documents available in the case.

At the next stage – the preparation of the case for trial, the judge-rapporteur has the right to propose to the plaintiff to submit additional documents and materials, and to the defendant objections, if they were not submitted; to clarify the requirements and objections of the parties, as well as to resolve the need to involve experts, specialists and other actions in the case. This stage ends at the suggestion of the judge-rapporteur with the appointment of the case to the court session, the time and place are determined, as well as the circle of persons to be summoned to the process, about which the persons participating in the case are notified.

After that, the second stage begins – oral, which includes the report of the judge-rapporteur, hearing of the participants in the process, as well as the announcement of documents, materials, rulings and Court decisions. According to the Regulations, the total period of consideration of the case (making an application or explanation) should not exceed 90 days from the date of receipt of the application to the court.

With regard to the general requirements of the proceedings, it is fixed that the use of technical means of recording is possible with the permission of the Court and taking into account the opinions of the parties, about which a corresponding entry is made in the minutes of the court session. This provision, in the light of the adoption of various digital agendas of the participating countries, does not correspond to the present realities, when information and communication means of communication are being introduced everywhere in order to increase the effectiveness of this method of dispute resolution.

The trial of the case is open and begins with the speech of the judge-rapporteur, which reflects all the actions taken to prepare the case for trial, as well as the content of the case materials.

Then the representatives of the parties speak, who give explanations to the Court on the evidence presented, and also answer the clarifying questions of the judges on the merits of the dispute, and they address the Court and the judges with the words: "High Court!" or "Your Honor!". The sequence of speeches of specialists, experts and witnesses is determined by the Court.

The procedural actions of the participants in the trial are recorded in the minutes of the court session, audio and video recordings of the court session are also made, which is attached to the case materials. The protocol is signed by the presiding judge and the secretary of the court session, and written statements submitted by the parties in court debates are attached to it.

Experts, specialists, witnesses, interpreters may participate in the trial, who, before their entry into the process, give an obligation, which is

attached to the protocol. An interesting fact is that the party requesting their entry into the process must ensure the appearance of these persons.

After examining all the evidence presented in the case, the court proceeds to debate. The parties or their representatives participate in the debate, who justify the position. The right of the last remark remains with the defendant.

At any stage of the process, the parties have the right to conclude a settlement agreement, which they are obliged to notify the court about. The plaintiff still has one of the administrative rights in the process - it is to abandon the claims in full or in part, or withdraw his application.

In addition to the above-mentioned circumstances leading to the termination of the proceedings, the rules fix two more, these are: the consideration of the dispute does not fall within the competence of the Court; there is a Court decision that has entered into force in a case with the same parties on the same subject and on the same grounds.

However, according to statistics, from 2015 to 2022, a total of 46 applications for dispute resolution were filed; 28 applications for clarification; 21 complaints to the Appeals Chamber of the Court.

In the process of implementing its functions, the EAEU Court still raises the question of its competence. Thus, the competence of the Court arises in the presence of two conditions simultaneously operating: a dispute arose on the implementation of decisions of the Union bodies; the decision of the Commission or its individual provisions directly affect the rights and legitimate interests of an economic entity in the field of entrepreneurial and other economic activities.

In addition, the competence of the EAEU Court does not include the authority to confirm the conclusions of economic entities, but most importantly disputes related to the obligation of the Union bodies to carry out legally significant actions. Thus, the main functions of the EAEU Court are the interpretation and filling of gaps in the law of the Union.

Analyzing the practice of the EAEU Court, K. V. Entin (2022) believes that despite the fact that for the first time the EAEU Court used the term "general principles of the law of the Union" in an advisory opinion on the case of public procurement in 2021, the process of forming its own system of principles was started by it already in 2016-2017. This is evidenced, in particular, by the systematic appeal of the EAEU Court to the principles of proportionality and legal certainty, not only when interpreting the law of the Union, but also as an independent requirement determining compliance with the law of the Union of Commission decisions and acts of the Member States of the Union (Entin, 2022, pp. 64-83). Thus, the EAEU Court forms the "law of the Union" to ensure the rule of law and protect the rights and legitimate interests of citizens and economic entities (Savenkov et al., 2021). According to T. N. Neshatayeva, currently there has been a failure in this area due to a change in the balance towards national or personal interests, accompanied by a denial of the meaningful role of the Court in the development of integration. The latter should be overcome, since, perhaps, to a very significant extent in the future, the Court's practice will have an impact on new areas transferred to supranational competence: this is antimonopoly regulation, intellectual property protection, ahead is the transfer of all issues related to energy, etc. (Neshatayeva, 2022, pp. 107-126).

The analysis of the dispute resolution procedure by the Court and its competence do not meet modern trends in the protection of rights and legitimate interests in the field of international economic integration (Rusakova & Frolova, 2022, pp. 323-332). Moreover, within the framework of the Union, it is planned to transform all integration processes to a qualitatively new level by comprehensively modernizing and achieving interoperability of information systems at four levels: regulatory, organizational, semantic and technical, therefore, the judicial method of protecting rights is in urgent need of digital transformation.

Honored Worker of Kazakhstan, R. K. Sarpekov (2022), in his work "Theoretical and practical issues of the introduction of remote justice at the international and national levels" drew attention to the need for a radical change of the EAEU Court towards digital transformation, using the example of judicial proceedings in Kazakhstan.

It should be noted that due to the small number of cases that the Court is considering, the situation caused by COVID-19 did not play an important role in the digital transformation of the Court's activities, compared with the experience

of the courts of the EAEU member states during this period. Thus, according to the Chairman of the judicial composition of the Court of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation, Yu. G. Ivanenko (2022), the use of various remote technologies along with traditional procedural forms will contribute to ensuring the right to a fair trial within a reasonable time and the availability of justice, including in relation to the need for social distancing, which remains relevant during the pandemic.

However, the lack of the possibility of carrying out procedural actions in electronic format can make this method extremely unattractive and hindering the development of the Union (Mikhaliova, 2019, pp. 251-264).

It seems most appropriate to turn to the foreign experience of creating electronic justice and implement it into the practice of the EAEU Court. Thus, within the framework of the European Union, a single economic space has actually already been created on the basis of an electronic platform where transactions can be made, and in case of disputes, there are ways to resolve them – online Dispute Resolution and alternative dispute Resolution (Frolova et al., 2020, pp. 76-87).

The Security Strategy of the European Union stipulates that cross-border judicial cooperation should be based on the constant interaction of the competent authorities of the participating countries related to the digitization of judicial services, the use of videoconferencing, simplification of access to national databases and registries, as well as the promotion of the use of secure electronic data transmission channels.

It is obvious that the creation of a single information space of the EAEU member states will ensure the implementation and functioning of a cross-border trust space, namely, the creation of special conditions agreed by the participating countries to ensure trust in the interstate exchange of data and electronic documents.

Thus, it will be quite simple for the EAEU Court to receive all the necessary information from the EAEU AIS, which will allow the Court and the parties to concentrate directly on the substance of the dispute rather than on collecting evidence.

In addition, it is necessary to improve the procedure for applying to the Court, giving the parties to the dispute a choice of paper, electronic form, including an electronic document. An electronic document can be created by selecting a special template depending on the nature of the dispute.

In this regard, it is necessary to give the parties the right to choose the form of participation in court sessions, giving priority to a web conference rather than videoconferencing, since the latter option is unlikely to simplify the dispute resolution procedure, but on the contrary, it may complicate the procedure, since the parties will need to appear in court at their place of residence.

It is also necessary to convert many procedural actions into an electronic format, for example, the record of a court session can be completely switched to automatic mode when a special program will transcribe the process.

Conclusion

Taking into account the general trend in the development of legal proceedings, namely: the in-depth introduction of modern technical means into the dispute resolution process through the creation of special platforms as the most convenient and popular form, it will be necessary to apply special regulations or introduce into the existing rules of conducting legal proceedings in electronic form. However, in order to ensure a balance of private and public interests, it is necessary to provide the parties with a choice of appropriate procedure.

In addition, it is necessary to consider the transformation of the EAEU Court into an electronic court based on an AIS, in which the entire process can be carried out in electronic form, as well as using artificial intelligence technologies, which will make the judicial method of protection effective, transparent and safe.

The fundamental problem of defining digital and electronic justice remains unresolved. The emergence of a qualitatively new legal procedure in the EAEU will require the regulation of fundamental principles through the prism of digitalization. The process of constant legal and technical "adjustment" of existing regulatory models to fundamentally new social relations is ineffective (Kozhokar, 2019, pp. 14-17). The solution to this problem must begin with the formation of a

unified concept for the development of the EAEU Court in the era of digital transformation.

According to M. A. Sarsembayev (2022), the EAEU Court could adopt an autonomous Technical Manual for the implementation of remote justice based on digital technologies or supplement the existing Regulations of the EAEU Court with sections, norms of digitalized justice, on the basis of which remote justice can be developed. This option is preferable in comparison with the technical manual, since the Regulations of the EAEU Court are an official document subject to unconditional execution, while the technical manual as an organizational and technical document can hardly be perceived as an official document.

To increase the efficiency of the Court, it is necessary to integrate information and communication technologies into the dispute resolution process, in which all actions could be carried out in electronic format, including pre-trial procedures, which will significantly speed up the dispute resolution process and increase the number of disputes resolved in a pre-trial manner, but most importantly, it is necessary to integrate the option of applying to the EAEU Court through the EAEU AIS. Attention should be paid to the opinion of Ispolinov A. S. and Kadyshev O. V. (2021) on the rather narrow competence of the Court and the possibility of considering the issue of its expansion (pp. 93-110). In particular, the expansion of its competence by returning to the Commission the right to appeal to the Court with applications for dispute resolution (Baishev, 2019, pp. 57-75); expanding the list of state bodies authorized to apply to the Court (Ispolinov, 2016, pp. 152-166); possibilities and permissibility of judicial activism (Chaika & Savenkov, 2018, pp. 5-22).

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METHODOLOGICAL ASPECTS OF DIGITALIZATION OF LAW

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COMPLEX REGIONAL UNIFICATION OF PRIVATE INTERNATIONAL LAW RULES ON THE BASE OF A THREE-PART STRUCTURE: POLITICAL AND LEGAL FRAMEWORK

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Abstract: This article examines the theoretical and legal framework of a complex regional unification of private international law rules on the basis of a three-part structure. The authors analyzed reasons for spread of trends to regional unification of private international law. Special attention in the article is given to the definition of the content and essence of a complex regional unification. The authors define acts of complex unification as acts structured according to the principle of a consistent response to the questions of applicable law, jurisdiction, recognition and enforcement of foreign decisions in the regulated area. The article identifies the key advantages and disadvantages of a complex unification of private international law based on a three-part structure. The authors conclude that, to date, the adoption of acts of complex unification based on the three-part structure is one of the key trends in the unification of private international law.

Keywords: regional unification, complex unification, three-part structure, private international law, international civil procedure, conflict of laws rules.

Introduction

In a rapidly changing world order, one of the main tasks of a civilized society is the preservation and protection of both property and personal non-property rights. The development of national legal systems and processes of international cooperation are crucial to the existence of civil liberties, legal interrelationship, and the development of economic relations. The issues of private international law are becoming increasingly important as the number of cross-border legal relations is increasing, arising not only in the economic sphere, but also in everyday life. The doc-

trine emphasizes: "A well-developed and harmonized private international law regime is an indispensable element in any economic community" (Oppong, 2006, p. 912).

The effective regulation of relations in international practice requires a mechanism that will adequately address complex legal problems in the course of crossing state borders and the interaction of multinational structural units. Despite the localization of private international law systems, these systems face a number of common problems related to the cultural peculiarities of states and the differences in their legal systems.

In conjunction with these trends, one of the current problems is the issue of choosing the best form of unification of private international law rules. To solve this problem, it is necessary to analyze the current state of the relevant systems and to identify common factors that may accelerate the process of unification. This involves developing a general approach to the implementation of national legal systems in an international context, adapting private international law rules to dynamically changing realities, systemizing and harmonizing international acts. Based on the results of this analysis, a solution is seen in the adoption of regional international acts of complex unification based on a three-part structure.

The purpose of this study is to analyze the trend of complex regional unification of private international law rules. The main objectives to achieve the set goal are: 1) review the processes of complex regional unification of private international law rules; 2) determine the key advantages of complex unification based on the three-part structure in comparison with other structures; 3) identify key disadvantages of acts of complex unification that prevent the development of this legal phenomenon.

Methodology

The system of methods and approaches used to disclose the stated theme of research, is determined by the goals and objectives of research, its object and subject matter. Given the importance and complexity of the nature of the object under study, as a toolkit used to study it, the whole complex of general, general scientific and private scientific methods and techniques of knowledge, including formal-legal, comparative legal, system, functional, logical and other scientific methods of research, including the method of legal prediction were used. Such modern general-scientific methods as explanation, analysis, synthesis, analogy, abstraction, deduction are widely used for solution of particular research tasks.

Main Study

Reasons for Spread of the Trend Towards Regional Unification of Private International Law

The regional unification of private international law has been a significant trend in recent years. Regional unification of private international law is a process by which a group of countries in a certain region adopts international instruments to coordinate and unify the rules of private international law in order to facilitate and regularize interaction between the subjects of these countries when entering into civil and commercial relations, as well as to increase work efficiency of state authorities that accompany these relations or resolve disputes arising from their implementation. Every year regional international organizations and associations pay more and more attention to unifying private international law rules in their regions and protecting rights and legal interests of civil relations` participants. As noted in the doctrine: "These regional groupings then eventually metamorphosized into something much more profound and much more protective of the human rights of the individual than could have been envisioned by the original protagonists of economic integration" (Wilets, 2010, p. 769). This trend reflects the recognition that a unified international legal framework is necessary to provide legal certainty, facilitate cross-border transactions and effectively resolve disputes.

As it was indicated before, regional organizations and their international agreements play a crucial role in the unification of private international law by facilitating cooperation and integration among member states. An example of a regional integration association, which is actively engaged in the unification of private international law, is the European Union (EU). The aim of unification of private international law in the EU is to create uniform rules and regulations for civil

law dispute resolution, as well as to settle cross-border relationships arising in situations involving the crossing of EU borders and the interaction of different jurisdictions.

Within the framework of activities of the EU regulatory authorities several important international legal acts were elaborated and adopted, including Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation (EU) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); Regulation (EU) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) and etc. These and other acts adopted by EU regulatory authorities contribute to the unification of private international law in EU member states. They also facilitate access to legal protection and strengthen interaction and economic integration between EU countries.

The main results of unification of private international law in the EU include the creation of a single legal area, where rules and regulations are applied with a high degree of uniformity and predictability in all member states. This helps to overcome legal conflicts and facilitates trade transactions, civil and commercial cooperation, and protects rights and interests of citizens and enterprises within the EU.

Unification of private international law in the EU continues to evolve and improve in order to ensure stability, efficiency and fairness in international legal relations within the EU and with the rest of the world. However, we can already state that the EU has achieved a high level of unification of private international law.

To summarize, there are many factors that lead to the unification of private international law specifically at the level of regional integration unions.

These factors include, for example, the fact that regional unification of private international law takes into account the particular needs, legal traditions and cultural context of the member states in a particular region. It reveals that a one-size-fits-all approach may not be applicable, and allows for regional adaptations and assumptions to ensure that the rules adopted are consistent with the particularities of the region. As the doctrine notes: "Growing interaction between societies, markets and cultures that used to be far apart also means coping with more diversity. Some issues of private (international) law can be better dealt with at regional rather than at global level, or can be further refined at regional level" (Loon, 2008, p. 201).

Regional unification of private international law is often driven by the goal of promoting economic integration and the smooth functioning of regional markets. By providing a consistent, systemized and harmonized legal framework, regional agreements stimulate cross-border trade, investment and business activity. The convergence of private international law helps to remove legal barriers and creates a more favorable environment for economic cooperation in the region.

In this regard, regional systematization and harmonization efforts are aimed at establishing clear and predictable rules for the conclusion and enforcement of cross-border transactions and the resolution of disputes within a particular geographic region. Through the unification of private international law, these initiatives reduce legal uncertainty and provide civil parties and courts with a sound legal basis on which they can rely when dealing with cross-border issues. By establishing common rules on jurisdiction, choice of law, recognition and enforcement of foreign judgments, regional agreements contribute to efficient and coordinated cross-border proceedings, saving time and costs for parties and increasing access to justice. This, in turn, contributes to legal certainty, predictability and uniformity in the resolution of cross-border disputes. As noted in the doctrine: "The focus of most PIL treaties and model laws is the creation or recognition of rights directly accessible by private parties and enforceable in courts or otherwise without governmental intervention or approval" (Burman, 2008, p. 741).

This is also borne out by the fact that regional unification initiatives often include provisions for judicial cooperation, such as mutual assistance in gathering evidence, recognition and enforcement of foreign judgments, and coordination of parallel judicial proceedings. These provisions promote closer cooperation between courts in different countries, ensuring effective resolution of cross-border disputes and avoiding conflicting or

inconsistent decisions. As legal scholars stressed: "Large scale international trade needs, in addition to other favorable conditions, a certain measure of security and predictability with regard to the enforcement of obligations" (Yiannopoulos, 1961, p. 553).

The Content and Essence of Complex Regional Unification

Traditionally, the approach to the unification of private international law was entitled to adopt separate international agreements dealing with specific aspects, such as jurisdiction, choice of applicable law, recognition and enforcement of judgments. However, a remarkable trend towards the adoption of more complex and "sophisticated" acts of unification based on a three-part structure has been observed.

The trend toward the adoption of acts of complex unification reflects a shift towards the development of a complex legal framework that covers many aspects of private international law in a single instrument. This is important because "private international law rules typically govern (up to) three topics: jurisdiction; applicable law; the recognition and enforcement of judgments" (Block-Lieb & Halliday, 2015, p. 50). Instead of having separate international acts on different aspects of private international law, complex acts combine, systemize and harmonize different legal provisions, resulting in a more coherent and predictable legal framework.

Complex unification acts usually have a three-part structure in which three main components are regulated: conflict of laws rules in private international law, international civil procedural rules and provisions on jurisdictional cooperation. The conflict of laws rules of private international law determine which law applies to a cross-border dispute, while the rules of international civil procedure regulate the procedural aspects of litigation. The rules of jurisdictional cooperation facilitate coordination and cooperation between courts in different member states.

These acts aim to provide a coherent and complex approach to the resolution of cross-border disputes, covering both conflict of laws rules of private international law and procedural aspects. The aim of this trend is to provide a more integrated and coherent framework for resolving cross-border disputes within a regional integration association. Such integration allows smoother and more effective treatment of cross-border disputes, since the acts do not only deal with determination of applicable law, but also cover practical aspects such as rules of law, submission of procedural documents, evidence, interim measures as well as recognition and enforcement of foreign judgments. This coherent approach is aimed at streamlining cross-border proceedings and facilitating dispute resolution.

Examples of acts of complex unification based on a three-part structure are Council Regulation (EU) № 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; Regulation (EU) № 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession; Council Regulation (EU) № 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; Council Regulation (EU) № 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships and etc.

The adoption of acts of complex unification based on a three-part structure seeks to address the interaction of private international law, international procedural rules and jurisdictional cooperation in a more complex and systematic manner. This approach recognizes the need for a coherent and integrated framework to deal effectively with cross-border disputes.

It is worth noting that although the acts of complex unification aim to systemize and harmonize private international law in the member states of a regional integration association, they also strike a balance with the principle of autonomy of the member states. The acts often leave room for national procedural rules and allow for flexibility in certain areas, taking into account different legal traditions and practices of member states.

Thus, the adoption of acts of complex unification is aimed at improving the effectiveness and productivity of cross-border judicial processes. By unifying the rules of private international law and procedural rules, these acts contribute to the smooth conduct of judicial proceedings, minimize conflicts of law and ensure the enforceability of judgments in the territory of member states.

The Advantages of Complex Unification

A widely growing trend towards the adoption of complex unification acts based on a three-part structure is due to the advantage of such acts over the adoption of separate acts dealing with specific aspects, such as jurisdiction, choice of applicable law, recognition and enforcement of judgments.

Thus, the act of complex unification provides a coherent and consistent legal framework, combining the rules of private international law, international civil procedure and jurisdictional cooperation in a single act. Such integration ensures that the various components of cross-border litigation are dealt with together, reducing conflicts and discrepancies that may arise in the application of separate provisions of different international acts. This contributes to systematization and harmonization of private international law rules in the member states of a regional integration association, since the act of complex unification sets common standards for determining the applicable law, resolving conflicts of jurisdiction, recognizing and enforcing judicial decisions. Complex unification reduces legal fragmentation, provides consistent solutions to cross-border disputes and facilitates the free movement of judicial decisions within a regional association.

The three-part structure helps to systemize and harmonize the implementation of private international law, international civil procedure, and the rules of jurisdictional cooperation. It ensures that these interrelated elements are dealt with together, facilitating a comprehensive understanding of the legal framework and promoting a more coherent approach to cross-border dispute resolution, thereby contributing to the efficiency and predictability of cross-border proceedings. In addition, this structure reduces the need to systemize and harmonize multiple legal instruments, as all relevant rules and procedures are consolidated in a single act. This facilitates access to justice for natural and legal persons and contributes to a more convenient and efficient legal framework. Thus, litigants and legal practitioners can refer to a single set of rules and procedures, simplifying the legal process and reducing the time and costs involved in resolving cross-border disputes. Instead of having to deal with separate international instruments, interested parties can refer to a single comprehensive instrument. It also allows the courts to apply a single set of rules governing both the conflict of laws and the procedural aspects of cross-border cases, which simplifies the judicial process, minimizes delays and improves the overall efficiency of cross-border dispute resolution.

Complex unification acts increase legal certainty by providing clear and uniform rules for cross-border litigation. Parties to cross-border disputes can have confidence in the application and interpretation of law, knowing that the same set of rules applies uniformly in all member states of a regional integration association. This promotes to establishing equal conditions and reduces uncertainty and unpredictability in cross-border litigation (Ermakova et al., 2021, p. 1591).

The inclusion of rules of jurisdictional cooperation in the act of complex unification facilitates the enforcement of judicial decisions in the member states of the regional association. Such an act establishes mechanisms for the recognition and enforcement of foreign judicial decisions, reducing obstacles and delays in the enforcement process. This builds confidence in a regional association's legal framework and encourages cross-border trade and investment (Frolova & Tsepova, 2021, p. 825). At the same time, a complex unification act may include provisions that promote the use of technology in cross-border proceedings. For example, it can regulate and legitimize the use of electronically signed documents, the electronic delivery of procedural documents and the use of online platforms for dispute resolution. This connection with technological developments reflects the evolving nature of cross-border dispute resolution in the digital age.

As noted earlier, despite the desire for systematization and harmonization, the complex

unification act, based on a three-part structure, also respects and accommodates the principle of autonomy of the member states. It strikes a balance between the desire for coherence and allowing member states to maintain their own procedural rules and legal traditions within the boundaries established by the act. This preserves the diversity of legal systems within a regional association, while at the same time helping to maintain consistency in the regulation of cross-border legal relations. At the same time, it ensures that the rules of private international law, international civil procedural provisions and provisions of jurisdictional cooperation work as a unified system. Such coordination minimizes conflicts and maximizes productive cooperation between courts, facilitating the efficient handling of cases and resolving cross-border disputes.

Thus, by adopting a complex unification act based on a three-part structure, the regional association seeks to create a reliable, predictable and efficient legal framework for cross-border litigation, benefiting individuals and entities, as well as the functioning of the internal market. Overall, the acts of complex unification based on the three-part structure provide coherence, efficiency, legal certainty and enhanced cooperation under private international law, which ultimately contribute to the seamless functioning of the internal regional market and the efficient resolution of cross-border disputes.

Disadvantages of Complex Unification

Although complex unification based on the three-part structure in private international law has many advantages, which have been outlined earlier in this research, there are some potential disadvantages that must be taken into account.

Thus, among the disadvantages is the limited flexibility of this instrument. Although the purpose of a complex unification act is to systematize and harmonize private international law among the member states of a regional association, it may also limit the flexibility of individual member states to adapt and develop certain pieces of legislation in accordance with their specific legal traditions and practices. This may be seen as a potential infringement on the autonomy of member states and their ability to formulate their own procedural rules. Member states may find it difficult to strike a balance between systematization, harmonization and preserving their unique legal characteristics within the boundaries established by the act.

It should also be kept in mind that developing a complex unification act that satisfies the different legal systems and interests of all the member countries of a regional association can be a difficult task. Different legal traditions, cultural factors and political considerations of member states may make it difficult to reach consensus on the provisions of the act (Inshakova et al., 2020, p. 241). This may require lengthy discussions and compromises. Disagreements among member states in a regional association can lead to delays in the legislative process and potential compromises that do not fully satisfy the needs or interests of all parties involved, potentially undermining the effectiveness and coherence of the legislation.

In addition, keeping a complex unification act current and adapting it to changing circumstances and legal conditions can be challenging. As legal systems evolve, new legal issues arise, or international instruments are being updated, the act may require frequent amendments and revisions to accommodate new developments or unforeseen issues. The process of updating the legislation can be time-consuming and may involve complex negotiations among member states, potentially leading to delays and problems in keeping the legal framework current and effective. If the act becomes rigid and inflexible, it will be difficult to adapt to new challenges or changing cross-border legal scenarios.

Potential problems include the fact that a complex unification act may not be able to provide in-depth regulation of specific issues of private international law and international civil procedure. In attempting to cover a wide range of subjects in a single act, there is a risk that certain aspects will receive less attention or detail than they would if they were contained in separate specialized international acts. This could potentially lead to less comprehensive treatment of specific issues or scenarios.

On the other hand, attempting to address all problematic aspects, a wide range of scenarios and contingencies in a single complex act can result in an overwhelmingly prescriptive and burdensome legal framework with an extensive set of rules and regulations. This can make it dif-

ficult for legal professionals and concerned parties to assimilate and interpret the law, which can lead to legal uncertainty and delay. Combining private international law, international civil procedure, and jurisdictional cooperation in a single act can make the legal framework more confusing and difficult to navigate. Legal practitioners and parties involved in cross-border disputes may find it difficult to understand and apply the broad provisions included in the act.

There is also a risk of imbalance between the procedural rules and the conflict of laws rules of private international law in a complex unification act. Although the act seeks to integrate both aspects, the procedural rules may receive less attention or detail than the conflict of laws rules. Such an imbalance may affect the effectiveness and fairness of the legal framework, since procedural rules play a crucial role in ensuring access to justice, fair trial and effective protection of rights.

It is important to note that the disadvantages mentioned above are potential and may vary depending on the specific content and implementation of the act of complex unification. Their impact and significance may vary depending on the specific provisions, the flexibility mechanisms and overall effectiveness of the legislative process, the level of involvement of interested parties and the ability to find a balance between systematization and autonomy of member states.

Conclusion

The problem of unification of private international law rules is becoming increasingly relevant at the current stage of development of international relations and cooperation. Complex regional unification of private international law based on a three-part structure is one of the most effective mechanisms to systemize and harmonize the interests of states in resolving cross-border civil and commercial relations. This form of unification is based on a balanced approach to ensuring the unity of legal regulation and preservation of national interests. The main idea of the tripartite structure is to create a universal system consisting of three levels, which define and coordinate the rules of international law: first, provisions on jurisdiction (the competent court); second, provisions on the applicable law; third, provisions on the recognition and enforcement of foreign decisions. The need for a complex regional unification of private international law is now being recognized by an increasing number of States.

During the study it was found that the adoption of acts of complex unification on the basis of a three-part structure is expressed in the simultaneous regulation of private international law rules and international civil procedure in a single act, which reflects their close relationship and eliminates the possibility of contradictions and duplication of rules. This is a major advantage of this approach over other types of unification.

However, a complex unification may cause certain difficulties in inter-state systematization and harmonization, as it will require the adoption of joint commitments and agreement on a number of issues relating to the sovereignty of states with different historical, cultural and traditional characteristics.

It is necessary to carefully choose the type of unification and take into account all the features, advantages and disadvantages of each of them, in order to achieve maximum efficiency of the unification procedure of private international law. The functioning of the legal system, based on the principle of a complex regional unification of private international law rules on the basis of a three-part structure, will protect the rights and interests of citizens and companies in international relations, and in general increase the level of effectiveness of international legal regulation and confidence in it.

Thus, a complex regional unification of private international law rules on the basis of a three-part structure is one of the promising areas for improving the international legal regulation of transboundary civil and commercial relations. Such unification is under active implementation and development, and represents a promising mechanism of international legal interaction between states. All advantages and disadvantages of three-part structure of international acts should be carefully studied and analyzed in the process of its implementation, taking into account national interests of each member state of the regional association, uniqueness of the subject of legal regulation and economic and political situation on the world arena. It is important to maintain a balance of interests of states at all levels of complex regional unification, which guarantees

the effective functioning of this mechanism and the sustainable development of international law.

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INTEGRATION POLITICAL AND LEGAL ANALYSIS OF DISPUTE RESOLUTION AND PROSPECTS FOR DIGITALIZATION OF JUSTICE IN THE EURASIAN ECONOMIC UNION

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Abstract: The article refers to a system of dispute resolution in the Eurasian Economic Union, tendencies of its reforming and prospects for digitalization as a fundamental feature of regional integration policy improvement. A complex variety of disputes in an integration association is considered: interstate, supranational vertical, supranational horizontal, and cross-border. The appropriate mechanisms for each of them and rationale to enhance integration are discussed. The authors suggest amendments for enhancing the cooperation of the EAEU Court with national courts, as well as evolving other mechanisms (arbitration and mediation). Digitalization of justice is an important element of effective regional policy. Digitization elements, including the Court's e-cabinets for the parties, electronic signature, digital documents' circulation, make regional justice accessible, it contributes to peoples' loyalty for integration decisions. The article proves the necessity to harmonize approaches to online dispute settlement in a transboundary context in the EAEU; the authors draw attention to low-cost cross-border disputes in this context and consider an opportunity of creating online dispute resolution platform driven by the Commission. Improvements in regional system of dispute resolution are proved necessary to sustain integration economic and political processes in Eurasia, to promote transparency, accessibility of justice as an element of regional integration policy.

Keywords: administration of justice, arbitration, Court of the Eurasian Economic Union, digitalization, dispute settlement, Eurasian Economic Union, mediation, ODR, integration policy, regional integration.

Introduction

Modern political landscape of integration processes is influenced a lot by digitalization and technological reshaping of day-to-day reality. Indeed, most regional integration associations

today include digitalization in their strategic documents as the main trend of future development (Shinkaretskaya & Berman, 2019; Mikhaliova, 2022; Inshakova & Goncharov, 2023). Within the EAEU, significant progress is currently being achieved in many areas of digital development. The Eurasian Economic Commission has formulated the principles of digital modernization of economic processes, which should determine the grounds for the formation of a set of projects in a digitalized era. Meanwhile, the digitalization process is inseparably linked to the future of the dispute resolution worldwide: either the courts (Stepanov et al., 2021), or the arbitration institutions (Rusakova & Frolova, 2022; Lagiewska, 2023), or mediation (Begichev, 2022) experience the influence of the digital age. Regional integration dispute resolution mechanisms (hereinafter – DRMs) are no exception. Digitalization of regional justice is a new approach to explore a communicative theory of integration and "integration as a network" theory.

However, normatively and strategically digitalization of DRMs is still out of the scope in the Eurasian Economic Union. Access to justice of a regional integration society is an indispensable element for providing loyalty of individuals, entities resided within the integration community, and contributes to a balanced integration political legal system. Currently the modernization of the DRMs is actively discussed, this process could involve digitization and digitalization.

Methodology

The work is based on a deep synthesis of integration comparative and theoretical studies and analysis of different dispute settlement options for different actors of integration, combined with the latest achievements of legal-tech advancements of dispute resolution. Comparative legal method is used to make a range of particular conclusions and derive more general one on this basis. Attention is paid to different regions and formats of integration associations – in European, Asian, African, Caribbean regions. Scientific methods as historical and structural analysis are used to assess underpinnings of political decisions in different regions and refer to the specifics of Eurasian integration processes.

The UNDP report on ASEAN (2021) highlights the following directions of modernization of the justice systems, including: case management systems, virtual proceedings, electronic filing and storage of documents and evidence, asynchronous communication between litigants and with the court, electronic scheduling, and the introduction of new tools such as online dispute resolution (hereinafter – ODR), and artificial intelligence (hereinafter – AI) predictive. The integration in this region had a boom of commercial connections in 2010s, so-called micro level of integration, which was followed by strengthening general integration policy and advancing technological support to integration processes. New technologies and AI especially, become deeply integrated into rationale and policy of this integration association and into administration of justice in the member-states.

As E. P. Ermakova and E. E. Frolova (2022) stress, AI in DRMs can be divided into two levels – low-level (collection of materials, legal expertise, etc.) and strong-level (independent dispute resolution, robot-judge, etc.), and while the first type is commonly used, the second level is rare. So, there are different types of correlation of digital and regular legal relationships in the sphere of DRMs. Importantly, that online mechanisms would be the most friendly and effective when designed to meet the standards of advanced offline dispute resolution mechanisms (Peters, 2021, p. 8).

Traditionally we divide DRMs, with private or mixed *ratione personae*, to litigation, arbitration, mediation, negotiation and some mixed models as med-arb, arb-med, etc. International public law, in its turn, adheres to the classical set of peaceful DRMs (art. 33 of the United Nations Charter): "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

It is worth to note that the integration systems have their own peculiarities, particularly on the scope and subjects of application of the law. It explains the variety of potential disputes, which occur within the jurisdiction and the necessity to the relevant variety of mechanisms to settle them. As far as in 2000 Kleandrov stressed on

the lack of relevant DRMs for all possible disputes in the Commonwealth of Independent States and named at least 9 different potential disputes involving different subjects and different subject-matters. We suppose the classification and typology of the integration disputes is still underestimated. Based upon the theory of multiple actors of integration process (Haas, 1958/2004) we conclude on a complex nature of the potential disputes in an integration association – interstate (between member-states); supranational vertical (between economic entities and an integration association) and supranational horizontal (between state-members and an integration association), cross-border private (economic) disputes. Correspondingly, a complex set of DRMs shall be used in an integration association.

Therefore we consider, firstly, the Union's DRMs generally – the subjects concerned, the existing mechanisms and its peculiarities and their role for enhancing integration and make its social and political landscape effective. Secondly, we analyze the possibility of inclusion of elements of the digitized litigation and other DRMs in the Union's institutional framework. Finally, we explore the possible directions of the ODR in the EAEU based on the Union's Digital Agenda, Strategy-2025 and other integration associations' experience.

Main Study

A new digital reality has become a social reality in which not only traditional relations are transformed, but also innovative political practices are formed and affect all key dimensions of the modern political process. The impact of digital factors on political inclusiveness and transparency is great, especially for modern generations. The system of justice as a reflection of all social and political and economic processes in a society brings to a light main risks and challenges, and prompt and appropriate reaction in the form of digital transformation is a basis for sustainability of all other elements of a system. This thesis refers to regional integration systems, as well.

Currently the system of DRMs in the EAEU comprises the Court of the EAEU, pretrial settlement of disputes within the Eurasian Economic Commission (hereinafter – EEC, Commission).

1.1 *The Court of the Union* is a permanent judicial body of the EAEU (art. 19 (1) of the Treaty on the Union), that acts within the powers granted by the Treaty on the Union and treaties within the Union (art. 8(2) of the Treaty). Its status, jurisdiction, order of formation and functioning are set forth in the Statute of the Court (Annex 2 to the Treaty). The competence of the Court is described in Chapter 4 of the Statute.

The Court has two main functions: a dispute resolution function and an interpretative (clarification) function. The Court's compulsory jurisdiction extends to a) resolution of interstate disputes, b) resolution of disputes over applications of economic entities regarding the decisions of the Commission, actions / failure to act of the Commission, c) clarification upon application of an EAEU member-state or a Union body of the Treaty, international treaties within the Union, decisions of Union bodies, d) clarification at the request of employees and officials of the Union of norms of the Union law, connected with labor relations. In addition, the optional jurisdiction of the Court may also be provided for in international treaties of the Union with a third party.

The competence has been changed in comparison with the Court of the Eurasian Economic Community (2012-2014), such changes are often criticized (Diyachenko & Entin, 2017). Thus, the current statutory documents do not provide for competence on prejudicial requests of national courts - the procedure according to which the Court's opinion on the meaning of the Union law norm was requested in the course of proceedings at the national level.

However, prejudice, although important, is not the only mechanism for ensuring uniformity of law. The Court's interpretative function ("clarification of the Union law" is the term used in the Statute for this function) has proven to be very much in demand, thus becoming a kind of substitute for prejudice. The way, in which the Court's and Member States' practice implements the clarification procedure, gives grounds to conclude on the influence of clarifications on national legislation and application of the Union's law on the national level. For example, the Advisory Opinion on the request of the Ministry of Justice of the Republic of Belarus of April 4, 2017 on the clarification of Articles 74-76 of the Treaty was taken into consideration when the Belarus-

ian antimonopoly legislation was amended (it was at the stage of drafting the new law at the time of the request, and the legislator fully perceived the Court's position). Therefore, this mechanism is *ex ante* quasi-control and dispute preventing mechanism. It proves to be an important element of sustainable regional decision-making process, equilibrating interest of member-states and other actors.

Also, currently the Commission is not empowered to appeal against actions and acts of the member states that are not in compliance with the Treaty, other sources of the EAEU law. Perhaps this is a question of future development of the Union law. It is currently under active discussion and it is included in the plan of the realization of the Strategic directions of development of the Union till 2025 (the Council of the Eurasian Economic Commission adopted a plan for the implementation of Strategic directions of development of the Eurasian economic integration till 2025 (hereinafter – Strategy Implementation Plan) at the session of April 5, 2021).

The Court has no competence to resolve internal labor disputes, but in this respect, too, the advisory procedure of clarification turned out to be in demand. Currently there are 4 advisory opinions of the Court on the issues of the Eurasian civil service, some of them were "a soft tool" for eliminating conflicts and preventing disputes.

In other words, the Court has now been given, albeit not an all-encompassing, but quite effective competences, allowing it to be truly the "guardian" of the Eurasian legal order. Some competences as, e.g., clarification procedure become substitutes for dispute resolution and/or prejudice mechanisms. Advisory opinions concentrate integration wisdom and balance the interests.

However, the main purpose of the Court is to ensure a uniform application of the Treaty and other international treaties in force within the Union and decisions adopted by the Union's bodies (the p.2 of the Statute). In order to implement its main objective the Court needs to have an updated information on the problems and tendencies of such application. In situation when this information is unavailable in prejudice proceedings, there is a need on closer cooperation with national court authorities. This is the second layer of the Court's activity as an intermediary of integration political wills of member-states.

Indeed, the national judicial systems are becoming more and more receptive to the practice of the EAEU Court. Thus, in Resolutions of the Plenum of the Supreme Court of the Russian Federation No. 18 of May 12, 2016 and No. 49 of November 26, 2019 the national courts are instructed to take the acts of the EAEU Court into account when applying the law of the Union. As G. A. Vasilevich (2020) suggests, "in our legislation, it is necessary to resolve the issue of interaction between the EAEU Court and the higher courts of the EAEU member-states. It is advisable to develop a rule on the application of Union's acts by national courts, to determine the place and the role of the Union's Court decisions for the acts of national courts" (p. 181). Developing this provision, we consider it is advisable to adopt the Concept of interaction between the Eurasian Economic Court and the national judicial bodies (Mikhaliova, 2023, p.18). The legal form of such a concept could be in the form of a decision of the Supreme Eurasian Economic Council, and the role of digitalization of this act and its implementation will be discovered below.

1.2 *Pretrial procedure* within the Commission. The Statute of the Court of the EAEU, in its provisions of para. 43 and 44 contains an indication that a dispute is not accepted by the Court without the applicant's prior recourse to a member state or the Commission to settle a dispute by pre-trial procedure by consultations, negotiations or by other means provided for by the Union Treaty and international agreements within the EAEU, except for the cases, which are directly stipulated by the EAEU Treaty (e.g. some instances of competition disputes which can be directed to the Court with no pretrial procedure).

If a member state or the Commission cannot resolve it in a pretrial procedure within 3 months from the date of receipt of an application, then this is a ground for filing a relevant application to the Court. The parties may refer the dispute to the Court by mutual agreement before the expiry of the period specified above. The failure to comply with the pre-trial order is the basis for refusal to accept the application by the Court.

The pre-trial procedure has its advantages compared to the judicial procedure. It is expeditious, effective and allows avoiding the costs (the application of an economic entity to the Court is subject to a fee). However, there are critical

views on the clarity and effectiveness of pretrial procedure in the EAEU. The procedure of pretrial dispute settlement with participation of economic entities is carried out by the Commission on the basis of the Decision "On the procedure of consideration of appeals of economic entities on contesting decisions of the Eurasian Economic Commission, the Commission of the Customs Union, their Certain Provisions or Actions (Inaction) Eurasian Economic Commission" of March 19, 2013 № 46 (hereinafter - the Procedure). Ispolinov and Kadysheva, Bortnikov and Kiseleva note the radical divergences in the issues of pretrial procedure application by the Commission and the Court's positions on the issue, which creates legal uncertainty and prevents predictability of some decisions, that negatively affects the effectiveness of application of the dispute settlement system at the Union (Ispolinov & Kadysheva, 2016). In the same time the digitization of this procedure is reached: there is an online application form to the Commission, elaborated with all necessary requirements, which are clear and legally grounded.[1]

1.3 *Arbitration is* an alternative dispute resolution (hereinafter – ADR) method to be introduced within the Union. ADR is supposed mostly as DRMs for cross-border economic disputes. Currently, disputes between economic entities are not included in the jurisdictional mechanisms of the Union, but there is a systematic movement towards the development of alternative mechanisms for resolving cross-border disputes involving economic entities from different member states.

One of the provisions, namely subpara 9.1.1 of the Strategy implementation plan, provides for drafting an international arbitration within the EAEU to consider disputes on the applications of economic entities. This issue is not new one to the integration agenda. There have been at least two previous stages in the implementation of a similar idea. Within the Commonwealth of Independent States back in 2008 an arbitration court was established - the International Court of arbitration for Dispute Resolution under the aegis of the CIS Economic Court. On May 16, 2013 the Eurasian Economic Commission (a predecessor of the current Commission) adopted Decision No. 32 on the draft concept of establishing an arbitration court within the Customs Union. The concept envisaged the creation of the International Arbitration Center of the Customs Union, the competence of which would be significantly broader than the competence of any other international commercial arbitration.

The current proposal is based on the following premises, widely circulated in the media and also substantiated in the doctrine: improvement of trust between companies and other economic entities, cost reduction for private parties, jurisdictional independence (as an "alternative to the London Court of International Arbitration, the Arbitration Institute of the Stockholm Chamber of Commerce and the Permanent Court of International Justice in The Hague" (Kurbanov & Naletov, 2018), speed and quality of dispute resolution between enterprises. This is also an issue of quality and reputational characteristics. Finally yet importantly, the economic security factor is considered (Pisarevskiy, 2018).

Describing the potential competence of Eurasian arbitration *ratione personae*, it may be a question of cross-border disputes involving private parties – economic entities. Indeed, currently there is no Eurasian structure, which considers cross-border economic disputes between companies. The jurisdiction of the Court, as we showed above, is limited to appeals by economic entities on certain categories of cases on action/ failure to act or decisions of the Commission.

The competence *ratione materiae* of such arbitration would presumably be broad - economic disputes, or disputes arising from the economic activities of business entities. Entrepreneurial activity is traditionally included in the concept of economic activity, as well as a number of other directions. Thus, the questions of availability of the Eurasian arbitration on intellectual property have long been in the sphere of attention.

Trends in other regional associations also indicate an active discussion of investment public-private arbitration within the integration legal system independently from external authorities and jurisdictions. The case-law of the Court of Justice of the European Union, namely the widely discussed "trilogy" of cases – Akmea case (Slovak Republic v Achmea BV, C 284/16, 2018), Republic of Moldova v Komstroy case (C 741/19, 2021), PL Holdings case (Poland v. PL Holdings Sarl, C 109/20, 2021) envisaged the tendency that domestic investment disputes in-

[1] See https://eec.eaeunion.org/appeals/appeal_economic_entity/

volving EU member states and their residents should stay within the EU jurisdiction, and these trends of delimitation, the so-called autonomization of the integration legal order are understandable, and they will be developed along with the regionalization of international law (Mikhaliova, 2023, p.17). Regional policy becomes more concentrated on regional interests and enforcing regional strategies as a precondition and a result of their sovereign equality, independence and power on a global scene. Correspondingly, independence and security of economic and financial interests in regional association is based on political and legal institutions that are not affiliated to countries of other "regional destiny".

Therefore, a number of factors prove the necessity of creation of an arbitration in the EAEU. Among the issues under consideration are those relating to the scope of its subject-matter competence, the extension of its competence to investment disputes involving member states of the Union, organizational issues, etc. The effectiveness of the arbitration will be dependent to large extent on accessibility, procedural flexibility and guarantees provided. The role of digitalization in the process is undisputable.

1.4 *Mediation* as another ADR method can be developed in the EAEU in several ways.

Firstly, it is possible to use this procedure at the national level to resolve cross-border disputes. All the EAEU member states currently have the institution of mediation developed to a greater or lesser degree and the relevant legal and regulatory framework in place (Vinogradova & Oganezova, 2020). However, even a brief overview of the peculiarities of legal regulation in the EAEU is enough to see the fragmentation and lack of uniformity in terms of procedural and institutional approaches and substantive legal regulation. Despite the fact that this issue remains outside the scope of this article, it is worth to draw attention to the importance of harmonizing approaches to mediation and its application, the recognition and execution of mediation agreements in the member states, especially with regard to family and labor mediation (in view of the development of social and labor relations in the context of the developing freedom of movement of persons) and business mediation. The latter direction, taking into account the common market, freedom of movement of goods, services, and capital, and deepening of cooperative ties of economic entities should be given special attention at the level of the Union.

Secondly, within the Department of functioning of internal markets of the Commission there is a department of expertise and mediation, which develops principles, methods, rules, mechanisms, and forms the regulatory framework for dispute resolution (mediation) arising when ensuring the functioning of internal markets, as well as when identifying specific facts (cases) of barriers. At the initial stage, the formation of agreed approaches to the regulation and application of mediation may be in the form of recommendations, in the future - in the form of a decision of the Board or the Council of the Commission on harmonization of approaches to mediation in the civil and commercial sphere.

Thirdly, the mediation has recently been introduced to the procedure of the elimination of barriers and other obstacles to the common market functioning. The Collegium of the Commission amended the Methodology of qualification of obstacles in the internal market of the Eurasian Economic Union and recognition of barriers and restrictions eliminated in March 2023. The amendments envisaged the improved mechanism for consideration of obstacles, as well as a mediation procedure for resolving situations related to elimination of barriers in the internal market of the Union. In June the Commission reported that the application of mediative approaches have doubled the rate of barriers' removal.

Also, it seems appropriate to provide for a mediation option for those categories of disputes between economic entities, which will be covered by the competence of the newly created arbitration in the EAEU. Institutionally, it is possible to organize a conciliation and mediation panel under such Eurasian body. It will form a systematic architecture of all the ADR mechanisms to resolve cross-border disputes between economic entities in the EAEU. The digitalization agenda for this ADR method remains the same: accessibility, procedural flexibility, data and information security.

Therefore, the system of DRMs should be amended in the EAEU, firstly, by enhancing the cooperation of the EAEU Court with national courts, secondly by evolving other mechanisms as arbitration and mediation. B2B cross-border DRMs should be evolved and improved as far as they provide for prompt, effective cooperation

and trade development.

2. *DRMs' Digitazation.*

Main directions of realization of Digital Agenda till 2025 were adopted by the Decision of the Supreme Economic Council of the EAEU dated 11/10/2017 No 12. The third direction concerns digital transformation of the managing processes, including those on supranational level. However, it does not refer to the digitization of the dispute settlement. As we have mentioned above different Union's mechanisms need different level and measures of digitization. More than that, as Chernyshov (2018) underlines in "Strategy and philosophy of digitalization", "in order to build a new trajectory of movement, it is necessary to form a development strategy, incl. one for the long term, which will be understood and accepted by the majority" (p. 15).

Digitazation of integrational justice may and should refer to the main problems that it experiences, and assists in their solving. Generally, the researchers indicate similar problems for integrational justice independently of the mode (intergovernmental or supranational) which an integration system adheres. Integrational justice is defined as a system of dispute resolution arising from the application of integration norms, as well as the exercise of judicial control over normative documents adopted in integration associations, which are applied both within integration associations and in national legal orders, and the main controversial issue is the relationship between national and integration law (Alekseev & Gapeev, 2019). The courts of integration associations, in addition to resolving disputes between the participants, ensure the unity of application of the law both within the integration entity and at the national level. Therefore, digitization of integrational and national judicial systems will contribute to accessibility of integrational and national judicial acts, prompt and effective cooperation between national courts and national and integration courts. The form of the digitization of this direction can be electronic document circulation.

Digitization is necessary to digital support of the currently existed DRMs. As regards the procedural issues within the EAEU justice system which currently exits, the para 4 of the art.9 of Rules of Procedure of the EAEU Court prescribes the necessity to present paper and electronic versions of the application and all attached documents. The duplication of the paper and digital version sometimes is not an easy task, and there were cases when the difference of the paper and electronic versions become the ground to leave the application without consideration and finally reject it (e.g., Invest Multimodal case CE-3/1-22-KC of 25/01/2022). Moreover, some applications and, further on, case materials, especially in such spheres as antidumping measures, number to thousands of pages. E-cabinets for the parties and digitization of application procedure will make the administration of integrational justice easier, economically and timely more effective. The same approach is recommended by researchers, e.g., for African regional and subregional courts: "at any phase of the judicial procedure (written or oral), technology-based tools and workflows related to e-filing, case management, electronic records management, electric docketing, and scheduling systems, and courtroom technology can work as an overall system to provide real-time reliable and efficient solutions for the speedy delivery of justice to the African regional and subregional communities" (Drabo, 2021, p. 50).

Newly recommended for adoption ADR mechanisms in the Union for supranational and cross-border disputes settlement should be appropriately digitized from the very commence. It will enhance the opportunities of traditional ADR methods by ensuring accessibility and affordability of settling mechanisms. However, all DRMs, which are digitized, shall correspond to the requirements of securing data transferred and digitally contained.

3. *DRMs' Digitalization*. Online Dispute Resolution becomes commonly used in regional associations. This trend is underpinned by the demand to create cost-efficient and convenient mechanisms that employ digital technologies. It is worth to note, that initiatives in many regions are primarily connected to consumer low-cost disputes.

The European Union has a range of ODR initiatives. Regulation 524/2013 provides for the framework for ODR, the creation of the EU ODR platform. Since 9/1/2016 each e-shop in the EU must provide a link of the platform to its website that would give to the European consumers the access to electronically submit their complaints. A special attention to consumer ODR is understandable: "more than half of com-

plaints (56.3%) received by the ECC-Net were linked to e-commerce transactions, out of which less than 9% could be referred to an ADR scheme in another Member State" (Peters, 2021). Obviously, the ODR mechanisms is actively elaborated and implemented in regional associations as ASEAN, the EU, particularly in order to expand and expedite consumer access to redress, with respect to low-value or smaller claims. Therefore, consumer disputes are considered as the most appropriate to ODR.

This type of dispute is not only wide-ranged because a consumer as a weak party lacks effective redress. The reason is in the very essence of the single market concept as a borderless space for free commerce and economic turnover. The limited scope of application of the EU Directive proves the single market specifics of using ODR in integration unions and associations: the consumers and the sellers should be resident in the EU in order to use the special Platform for resolution of transboundary disputes online. However, all parties can recourse to national platforms for online resolution of the disputes. One of the disadvantages is the lack of standardized rules for dispute resolution. As a consequence the EU and the national platforms may differ in their approaches to procedural issues, in particular on the fees to be charged, the terms of dispute resolution (settlement), the binding nature of the decision to be made, etc. (Donskaya, 2021).

The ODR initiative in Asia-Pacific Economic Cooperation (APEC) region refers to small and medium businesses, as it is indicated in its website www.apec.org. Flexibility, promptness and reduced costs are considered as primary benefits of ODR which will promote the regional trade. Under the collaborative framework, ODR providers from the participating APEC economies may partner with the Economic Committee of this association and join the framework by complying with the framework's rules and procedures. These providers must offer their own platform for online negotiation, mediation and arbitration. Once certified as being compliant with the framework, the ODR providers will be listed on the framework's website and required to regularly report their progress to APEC. Currently there are three providers that have been listed; eBRAM International Online Dispute Resolution Centre Limited (eBram); Hong Kong China Guangzhou Arbitration Commission (Online GZAC); and China International Economic and Trade Arbitration Commission (CIETAC). Additional providers will be listed as the initiative expands.

It drives us to the conclusion on the necessity to harmonize approaches to online dispute settlement in a transboundary context. In the EAEU it can be done in the form of the act of the Commission. Subject-matter which is the most appropriate for regional ODR mechanisms, according to other regions' experience, concerns cross-border consumer or small-enterprises' disputes, on other words, the disputes which are low-cost and need alternative flexible, accessible and affordable solutions.

Conclusion

The system of DRMs is still under formation as far as the trial and pretrial procedures are evolving, new kinds of disputes (cross-border) come into view within the integration institutions and currently can be classified to interstate, integration vertical and integration horizontal, cross-border. These processes can be accompanied by digitization and digitalization in order to facilitate effective dispute resolution in the Union, and an effective access to integration justice, prompt and cost-effective, contributes to the loyalty of population in Eurasian countries to all integration decisions, the trust and understanding of the importance and reliable nature of integration policy. It forms necessary nexus between *populus, polis, unitio.*

Generally, the Court is the "guardian" of the Eurasian legal order. Some competences as, e.g., clarification procedure become substitutes for dispute resolution and/or prejudice mechanisms. However, in the course it is advisable to adopt the Concept of interaction between the Eurasian Economic Court and the national judicial bodies (Mikhaliova, 2023, pp. 17-18). The legal form of such concept could be a decision of the Supreme Eurasian Economic Council. The Concept should include the elements of digitalization of the integration and national judicial systems, be interconnected as regards the practice, and a uniform application of the law of the Union. Primary elements of digital support refer to a digitization of some processes: electronic filing and storage of documents, electronic scheduling. Intro-

duction of new digital tools such as virtual proceedings, the use of low-level AI for case-management system is a long-term perspective. The very first task is to make this access easy, low-cost and prompt for ordinary persons, who are involved economically in integration processes. The disrupt in such kind of connection between people, political actors of integration level and integration decision-making procedure was criticized and currently is under serious changes, the Eurasian Commission has been turning to peoples of the Union, inter alia through digital tools, Internet, social networks, etc. The Court is still traditional and conservative as regards it.

Concerning the evolution of ADR within the Union it is worth to note that some initial steps to this direction have already been made: the arbitration is considered as an option for cross-border disputes, mediation is introduced for the procedures of barriers and other obstacles elimination. Also, it seems appropriate to provide for a mediation option for those categories of disputes between economic entities, which will be covered by the competence of the newly created arbitration in the EAEU. Institutionally, it is possible to organize a conciliation and mediation panel under such Eurasian body. It will form a systematic architecture of all the ADR mechanisms to resolve cross-border disputes between economic entities in the EAEU. Newly recommended for adoption ADR mechanisms in the Union for supranational and cross-border disputes settlement should be appropriately digitized from the very commence. However, three A's should be implemented to promote digitized DRMs agenda in the Union: accessibility, affordability, assurances of data security.

Finally, it is recommended to harmonize approaches to online dispute settlement in a transboundary context within the Union. In the EAEU it can be done in the form of the act of the Commission. Subject-matter which is the most appropriate for regional ODR mechanisms, according to other regions' experience, concerns cross-border consumer or small-enterprises' disputes, in other words, the disputes which are low-cost and need alternative flexible, accessible and affordable solutions. All these steps will increase accessibility to integration political and legal landscape, will make it clear for ordinary citizens, economic entities, contributing to their loyalty and support of integration processes. Eurasian integration started as a political project, which was widely supported by population in all member-states, more than 30 years ago (Iskakov, 2014). Afterwards different periods of political integration optimism and skepticism occurred. Modern processes on a global political scene make it necessary to build a strong and relatively autonomous region, where there is a balance between interests of all actors. Now, in an era of new technologies and new opportunities, digital reshaping one of the elements of integration system, namely dispute resolution, is an indispensable part of regaining this support from Eurasian peoples and making political and legal integration in Eurasia a success-story.

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THE POLITICAL IMPACT OF DIGITALIZATION ON THE JUDICIAL METHOD OF PROTECTION OF RIGHTS IN THE EAEU COUNTRIES

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Abstract: The article is devoted to the study of the process of digital transformation of the judicial method of protecting rights and legitimate interests in the EAEU countries. The judicial form of protection of rights has undergone fundamental changes as one of the main forms of protection of the rights and legitimate interests of citizens and business entities through the creation of digital platforms, electronic courts and the integration of information and telecommunication technologies into the process of consideration and resolution of disputes. For effective legal regulation of public relations arising under the influence of digital technologies in the course of judicial proceedings, it is necessary to theoretically develop the concept of a new type – "electronic" civil proceedings and improve the current legislation. In world practice, there are already a number of countries and integration associations that have successfully integrated digital and electronic legal proceedings, so some EAEU countries have taken the path of borrowing their positive experience.

Keywords: e-court, e-litigation, e-CELL, e-mediation, legislation, Russia, Armenia, Kazakhstan, Kyrgyzstan, Belorussia.

Introduction

Digital transformation of public relations within the framework of economic integration is an unprecedented condition for the development of the common market of the EAEU countries. The transition to digital forms of communication between the participating countries increases the volume of electronic transactions concluded, and the use of innovative technologies creates a new reality for cross-border trade and investment climate (Miashchanava, 2022, pp. 79-91). Philosophical and theoretical analysis of modern society involves the introduction of a number of new categories that play an important role in cognition social phenomenas and processes taking place directly in the field of artificial intelligence (Kosarenko, 2023, pp. 39-43). The advantage of this technology is the minimization of the human factor and the impact on this process, although no technology can completely eliminate the occurrence of disputes in the outside world.

The transformation of socio-economic and political-legal relations in the participating countries under the influence of end-to-end digital technologies has made it possible to identify fundamental problems and risks for

the integration of information and communication technologies throughout the economic space of the Union, especially during the sanctions policy of Western countries against a number of EAEU member states.

The process of creating a unified information space began in 2016, when the "Statement on the Digital Agenda of the EAEU" was signed, which contains the main principles of the digital agenda until 2025. In 2017, the Supreme Eurasian Economic Council, in its decision "On the main directions of the implementation of the digital Agenda of the Eurasian Economic Union until 2025", defined the meaning of the term "digital space of the Union" – a space integrating digital processes, means of digital interaction, information resources, as well as a set of digital infrastructures, based on regulatory norms, organization mechanisms, management and use. In all the EAEU member states, the rapid introduction of digital technologies into the public life of citizens is noticeable, often of an aggressive nature in the understanding of the latter, "planting" social relations with complex technologies. Of particular importance were the "digital" agendas adopted at the state level in the EAEU countries, which included, in addition to creating an electronic government, the digital economy also concerned the judicial system and judicial proceedings, in particular.

The EAEU member states, which are in the process of digitalization of economic relations, in order to reduce legal risks when creating and using information products in the innovation ecosystem, by determining the possible legal consequences of the use of digital technologies, should provide a transparent way to resolve emerging disputes. A universal way to protect rights and legitimate interests is judicial. In the context of the collision of the state and society with global challenges, there is a need to create institutions and mechanisms that ensure social and legal control, algorithmization based on digital platforms of political processes, etc. The introduction of digital technologies into the dispute settlement process between business entities is important not only for converting this method into an electronic format, but also for increasing its effectiveness.

Methodology

The theoretical and methodological basis of the research is the dialectical-materialistic method of cognition of social processes and socio-legal phenomena during the digital transformation of the judicial method of protection of rights. In particular, the dialectical-materialistic method will allow us to study the normative legal acts regulating the procedure for creating electronic justice and their impact on national legislation. The legal and sociological orientation of the work also determines the use of general scientific methods: generalization, abstraction, analysis, synthesis, induction, deduction, historical, logical, comparison, classification. Allowing to conduct a comprehensive study of the process of converting the judicial method into an electronic form in the EAEU countries. The process of digital transformation of judicial activity is carried out in all EAEU countries, however, in almost all this process is incomplete and requires both legal and technical support, taking into account the constant evolution of end-to-end digital technologies.

With the help of a systematic method, the distinctive features of electronic justice will be studied and identified. The use of the functional method and the logical method will allow to generalize the distinctive features of the process of formation of electronic justice in the EAEU countries. The forecasting method is a set of techniques that make it possible to make scientifically sound forecasts about future formations of challenges and threats, including the process of digital transformation of the judicial method of protecting rights. The method of legal modeling is used in the context of the formation and justification of the doctrinal and legal framework, individual regulatory provisions and other legal innovations necessary for the formation of an adequate and effective system of protection of rights in the EAEU countries in the context of ensuring national security. The formal legal method will make it possible to interpret the basic provisions and concepts contained in law, legal doctrine and law enforcement practice.

Main Study

More than 40 years ago, lawyer Mauro Cappelletti warned of a gap between civil justice and the complexity of modern society, which requires new methods of dispute resolution because traditional remedies do not meet the needs of society. Currently, the cooperation of the EAEU countries both within the union and with foreign partners is being transformed into multilateral cooperation, which will require the widespread introduction of digital technologies and their legal support (Frolova, 2020, pp. 673-694). In the current situation, it is simply necessary to guarantee the legal certainty of the position of participants in the process of digitalization of economic relations of the EAEU member states in order to reduce legal risks when creating and using information products in the financial and business sectors by determining the possible legal consequences of the use of digital technologies.

The digital agenda adopted by the Member States assumes a radical transformation of all industries involved in cross-industry processes, the development of digital infrastructures, digital platforms, makes it necessary to create transparent ways to resolve disputes arising from the emergence of new objects of digital rights (Kozhokar & Rusakova, 2023, pp. 121-141).

Specific current examples of the transformation of public relations in terms of philosophy illustrate the creation of a new national architecture for the provision of digital services through a comprehensive transformation of this area on the basis of a single digital space.

Highlighting the positive and negative features of digital justice, we can note the lack of unity in assessing this phenomenon of legal reality:

- one of the positive features of digital justice is the implementation of the principle of "rule of law". Increasing citizens' confidence in justice is achieved due to the strict observance of the norms of the law by the courts and the absence of any impact on their activities;
- observance of the principle of inclusiveness within the framework of digital justice can be considered as one of the social guarantees of the rule of law, when any person, in the broad sense of the word, can apply to the court for his protection.

Currently, various state programs regulating the process of digital transformation of society are being implemented in all member States. Thus, the Russian Federation has adopted: Decree of the President of the Russian Federation No. 204 dated May 7, 2018 "On National goals and strategic objectives of the Development of the Russian Federation for the period up to 2024"; Strategy for the Development of the Information Society in the Russian Federation for 2017-2030 (approved by Decree of the President of the Russian Federation dated 09.05.2017 No. 203); "Passport of the national project "National Program "Digital Economy of the Russian Federation" (approved by the Presidium of the Presidential Council for Strategic Development and National Projects, Protocol No. 7 dated 04.06.2019) developed in order to ensure the implementation of the Decree of the President of the Russian Federation No. 474 dated July 21, 2020 "On National Development Goals of the Russian Federation for the period up to 2030", which establishes the legal framework in the field of legal proceedings and notaries in the era of active development of the digital economy, namely: unification of the procedure for applying to the court and the notary, including in electronic form, as well as the admissibility of the use of electronic evidence; remote participation in a court session; development of electronic notary tools (production of notarial documents in electronic form, remote performance of notarial actions, etc.), including Federal Law No. 259-FZ of 31.07.2020 "On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation" regulating the procedure for issuing, accounting and circulation of digital financial assets, as well as the activities of the information system operator.

In December 2017, the President of Belarus signed Decree No. 8 "On the development of the digital economy", which establishes the legal foundations for the development of the digital economy. However, it should be noted that the process of digitalization began long before the adoption of this Decree, we are talking about the creation of a High-Tech Park (HTP) in 2005, as a result, smart contracts, blockchain and cryptocurrencies were legislatively regulated. HTP residents can provide crypto exchange services, as well as use cryptocurrencies and tokens based on blockchain technology in local and international civil circulation. Currently, Presidential Decree

No. 102 of April 12, 2023 "On the development of the Hi-Tech Park" has been adopted, which introduced into the HTP structure a management company representing HTP in cooperation with foreign partners to assist residents of the park in expanding exports and attracting investments. In addition, the resolution of the Council of Ministers of the Republic of Belarus of February 2, 2021 No. 66 "On the State Program "Digital Development of Belarus" for 2021-2025" establishes electronic legal communication between citizens, business and the state, and in all spheres of society, the creation of "smart cities", and each of the directions of digital transformation involves a platform solution, both in relation to public services and economic spheres. The above acts also influenced the process of the emergence and development of electronic legal proceedings in the Republic of Belarus.

In 2017, the state program "Digital Kazakhstan" was adopted in the Republic of Kazakhstan and specific tasks of this program were set: "implementation of the digital Silk Road", namely, the development of a creative society, the achievement of digital transformations in economic sectors, the transition to a proactive state. It should be noted that this state program is primarily aimed at improving the standard of living of citizens through the integration of digital technologies, the development of the digital economy. Another ambitious goal is to create an innovation ecosystem that develops technological entrepreneurship and innovation in cooperation with representatives of business, the scientific sphere and the state.

Since 2017, the Agenda of Armenia's Digital Transformation until 2030 has been implemented in the Republic of Armenia, within the framework of which it is planned to implement six key directions: to create a digital state in which public administration will be carried out using digital technologies to increase the efficiency of administrative processes, accelerate management processes, strengthen control over these processes and reduce corruption risks; digital skills, infrastructure, cybersecurity, private sector and institutional frameworks. By 2030, Armenia plans to achieve 100% digitalization in the state – business relationship and 80% in the line of services to citizens. In addition, special agencies have been established in Armenia to manage the digital transformation of society and the economy, namely, the Information Systems Management Council and the Information Systems Agency.

In 2018, the National Development Strategy of the Kyrgyz Republic for 2018-2040 was adopted, in which the directions of the country's digital development were fixed, and the Concept "Digital Kyrgyzstan 2019-2023" was also developed, which provides for the provision of high-quality digital services, the prevention of corruption in the public administration system through the digital transformation of the state system, the creation of digital economic clusters, the improvement of the level of digital skills of citizens and others. However, seven goals of this Concept are fixed: the construction of digital infrastructure, the creation of a legal environment and institutions for the innovative development of society, the availability of digital services, the involvement of citizens in digital governance of the country, the formation of a digital society, the transformation of the country into a safe place to live and work online, the desire to become a regional hub of the digital Silk Road.

The "digital" agendas or development strategies adopted by the participating countries have had a dominant impact on the transformation of the judicial form of protection of rights into an electronic one. The deep integration of innovative technical means into legal proceedings, such as artificial intelligence, Big Data, blockchain and others, allowed us to talk about a qualitatively new form of obtaining judicial protection. However, in order for the digital agenda to be implemented, it is necessary to create a unified information space, improve legislation in this area, and ensure information security.

The leader of the EAEU countries in the creation of electronic justice is the Republic of Kazakhstan. In the Republic of Kazakhstan, back in 2014, a single Internet platform of judicial authorities was created on the website sud.gov.kz , which allows you to receive all information about the activities of courts in a single window mode, which is not only informative, but also practical. A single portal of judicial services, the capabilities of which allow participants in the process to carry out all procedural actions remotely, as well as to get acquainted with the case materials through the "judicial cabinet" (Burdina, 2021, pp. 49-53). "Judicial Cabinet" provides participants in court proceedings with the opportunity to use a wide range of services in a single

electronic window, and access to the judicial cabinet can be obtained through a mobile application. The mobile application provides transparency of the judicial method of protection of rights. Thus, participants can trace the movement of procedural documents, familiarize themselves with judicial acts, and also participate in the court session remotely. On the website or via the telegram bot "Smart-sot" you can get answers to frequently asked questions during the trial.

In addition, the Strategy of Information and Communication Technologies for the Judicial System of the Republic of Kazakhstan has been adopted and is being implemented, which is of key importance for the development of the entire judicial system and the transition to electronic justice. This strategy includes four directions and 26 tasks. The first direction concerns the creation of an electronic courtroom, within the framework of which mobile videoconferencing has been introduced, the installation of self-service terminals in courtrooms, the development of the AVF system, increasing the accessibility of justice for people with disabilities, the equipment of special premises in courthouses. The second direction is "e-SOT in legal proceedings", according to which, since 2016, the information and analytical system "Torelik" has been launched in all courts of the country, with the help of which automated accounting and control of compliance with procedural deadlines are carried out, statistical and analytical reports are generated, record keeping and legal proceedings are simplified by integrating artificial intelligence technologies, Big Data, blockchain, "IT learning", "mobile-Torelik". The third direction is called "e-CELL for the population", within which the "service for checking the legitimacy of judicial acts", the service for checking the availability of court cases and materials and the search reference and analytical service "e-Discovery" are integrated, as well as depersonalization of judicial acts, "online broadcast of court sessions", "on-lineonline debates", "e-notifications", "e-Mediator", "court-GIS". The fourth direction concerns the creation of a new model of IT and information security management, which involves their improvement, ensuring their security, forming an organizational structure for data analysis within the framework of the Situation Center, creating a Change Management Council, developing a server platform of the Supreme Court of the Republic of Kazakhstan. Thus, according to A. K. Kukeev (2021), in the national judicial system, the result of the introduction of technologies into the proceedings is the creation and full functioning of the Automated information and Analytical system of the judicial bodies of the Republic of Kazakhstan "Torelik", whose task is to provide the user with prompt access to the exchange of information data (pp. 261-271).

The website of the Supreme Court of the Republic of Kazakhstan provides the following data concerning the introduction of electronic justice: in 2014, only 5% of lawsuits were filed electronically, and now their number is 90% of all filed lawsuits. For 9 months of 2022, 900 thousand documents were submitted through the Judicial Cabinet, including more than 313 thousand claims, writ, special and other statements. In addition, the service of external users on the SmartBridge platform has implemented a special option with which the IT community can get access to current judicial acts, which is interested in developing predictive IT products so that people can assess their chances before going to court. The process of robotization of judges' activities is in full swing, so the authorization of decisions of private bailiffs to restrict travel abroad, the registration of received case materials, the issuance of court orders on alimony obligations have already been fully automated. Judges have already been released from a number of actions that took a lot of time, so now they can concentrate on the most difficult cases.

The Russian Federation is one of the leaders among the EAEU member states in terms of the pace of creation of electronic justice. The "Concept of Information policy of the Judicial System for 2020-2030" adopted by the Council of Judges of the Russian Federation establishes the necessary foundations for the emergence and implementation of digital justice, the successful implementation of which contributes to increasing the level of trust of citizens and organizations in justice through the introduction of modern information and communication technologies, improving the technical equipment of courts, the operation of court websites and other state information systems. On February 15, 2021, by Order of the Chairman of the Supreme Court of the Russian Federation, the "Concept of Informatization of the Supreme Court of the Russian Federation" was approved, which establish-

es the new term "Justice Online", which means the remote implementation by the court and/or one or all participants in the judicial process of all or individual procedural actions provided for by law through the use of information technology in the activities of courts. The main attention is paid to ensuring remote interaction of the participants in the process during the trial, ensuring information security, modernization of information systems (Kuznetsova, 2022, pp. 224-227).

In the Russian Federation, state automated information systems of electronic justice have been created: the automated information system of the Supreme Court of the Russian Federation, the state automated system "Justice", "Judicial Proceedings", "Judicial and Arbitration records management", as well as information systems "Card File of arbitration cases", "Bank of decisions of arbitration courts". However, in order to carry out procedural actions in electronic form, users must create a personal account (Rusakova & Frolova, 2022, pp. 143-153).

It should be noted that the idea of creating e-justice is being gradually implemented through the regulatory regulation of new institutions that have emerged as a result of the transformation of the form of justice. New rules concerning electronic justice are being introduced into the procedural codes (Kudryavtseva, 2021, pp. 10-13). Thus, changes were made to the Commercial procedure and Civil procedure codes regarding the form of documents. Currently, a statement of claim, complaint, submission and other documents can be submitted in the form of an electronic document, and participants in the process can also send documents to the court in electronic form. In addition, the testimony of witnesses, explanations of persons involved in the case, can be made via video conference or web conference. The procedure for proper notification of the parties about the trial has been significantly simplified, now the court notice is sent electronically via a single portal of state and municipal services or an electronic document management system of a participant in the process using a single system of interdepartmental electronic interaction, and the court, in turn, places all the necessary information about the course of the trial in accordance with the established procedure on the Internet information and telecommunications network.

According to the "Concept of development of machine-readable law technologies" (approved by The Government Commission on Digital Development, the Use of Information technologies to improve the quality of life and business Conditions, Protocol No. 31 dated 09/15/2021) plans to integrate an electronic machine-readable document flow into the work of judges, which will automate the process of passing a court case and create a full-text electronic bank of court decisions (Bashilov & Berman, 2022, pp. 261-270). The main goal of the concept is to introduce an "electronic case" into Russian legal proceedings, on the basis of which unified templates of court decisions, a statement of claim constructor, as well as a system for analyzing judicial practice will be integrated.

The introduction of digital technologies makes it necessary to consolidate new legal foundations in legislation. The procedural reform carried out in the Russian Federation contains provisions related to the integration of modern digital technologies into the process. However, in judicial practice there are many controversial issues related to their use and evaluation by the court. At the same time, the procedure for carrying out procedural actions using digital technical means needs to be changed in the direction of simplification. The concept of creating electronic justice in the Russian Federation has not yet been implemented and is at the stage of formation.

The creation of electronic justice has been carried out in the Republic of Belarus since the adoption of the State Informatization Program of the Republic of Belarus for 2003-2005 and for the future until 2010 "Electronic Belarus", approved by Resolution of the Council of Ministers of the Republic of Belarus No. 1819 of December 27, 2002, in accordance with the Program of Activities of the Government of the Republic of Belarus for 2011-2015, approved by the resolution of the Council Ministers of the Republic of Belarus of February 18 , 2011 No. 216, the State Program for the Development of the Digital Economy and Information Society for 2016-2020, approved by Resolution No. 235 of the Council of Ministers of the Republic of Belarus of March 23, 2016, the State Program "Digital Development of Belarus" for 2021-2025, approved by Resolution No. 61 of the Council of Ministers of the Republic of Belarus of February 2, 2021.

The initiator of the creation of electronic justice was the Supreme Economic Court, which already in 2009 introduced a number of electronic actions into its activities: submission of electronic copies of documents, electronic schedule of court sessions, placement of the operative part of the decisions of the cassation instance online on the portal of economic courts of the Republic of Belarus, audio, video recording of court sessions. In 2011, the Economic Procedural Code was amended regarding the possibility of applying to the court in electronic form.

The beginning of the formation of electronic justice began in two directions: the creation of websites with e-mail for regional courts, except for the Minsk City Court and the Supreme Court, and the legislative consolidation of the prospects for the development of general courts (Fedotov, 2012).

Since 2019, when working with the "Electronic Court Proceedings" ("E-COURT") services on the Internet portal of courts of general jurisdiction, the software of the EDS technology (electronic digital signature) has been put into test operation, which provided users of the "E-COURT" services with the opportunity to submit documents signed by EDS, provides reliable identification of persons, applying to the court, creates prerequisites for the further development of the service and the formation of a full-fledged electronic case in the future (Guryeva, 2022, pp. 91-97). In 2021, a unified computer system was put into operation, uniting all the courts of the Republic of Belarus, the automated information system of courts of general jurisdiction AIS SOY was modernized, allowing automated accounting of cases of all categories (from the moment of receipt of the application to the resolution on the merits and further), as well as receiving information about the movement of almost every specific court case (Leshkevich, n.d.). The scientific development of issues of the formation of electronic legal proceedings in the civil process of the Republic of Belarus is a prerequisite for improving the availability of legal aid to the population of the country, and on the other hand, contributes to strengthening the rule of law and the rule of law (Stepanov, 2018). The ongoing changes in the judicial process indicate that the task of creating e-justice is strategically important to ensure leadership in this area.

The Republic of Armenia has started the process of state management of informatization since 2000 and in 2014 the "Strategic Program for the Development of Electronic Government" for 2014-2018, approved by Government Resolution No. 14 of April 10, 2014, as well as the "Strategic Program for the Long-term Development of the Republic of Armenia for 2014-2025", approved by Government Resolution No. 14 of March 2014, were adopted. 442-N. As for the process of creating e-justice, in 2019, the Republic of Armenia began two-year work on a project for the development and implementation of e-justice solutions. Within the framework of which it was planned to create a single e-justice platform that would allow users to receive all the necessary information in a single window. The e-justice platform will transform all procedural actions of participants in legal proceedings into a digital format, as well as make unhindered access to justice and new electronic services. In addition, the Reform Strategy of the Republic of Armenia was adopted, in which the modernization of the judicial system 2019 - 2023 is a strategic direction (Hakobjanyan, 2022, pp. 31-35). Thus, in Armenia, writ production has already been fully automated, and local domestic e-justice software is also being tested. In addition, an electronic platform "Personal Account" has been introduced on the website of the Executive Service, where, having registered, citizens and legal entities can get acquainted with the initiated enforcement proceedings: sanctions, payments, tracking of funds in the process of withdrawal of funds and other property and termination of enforcement proceedings. Currently, work is underway on a project for the implementation of the bankruptcy procedure in electronic form.

Work on the creation of electronic justice in the Kyrgyz Republic began quite a long time ago, some authors believe since 20002 (Semenov, 2022, pp. 104-110), when the National Human Rights Program for the period 2002-2010 was adopted. In addition, in 2012, by the Decree of the President of the Kyrgyz Republic "On measures to improve justice in the Kyrgyz Republic", the state automated system of judicial information and management "Justice" (GAS "Adilet Sot") was integrated in all courts of the country, as well as audio and video protocols, video conferencing, electronic document management. In 2019, the relevant amendments were made to the Law "On the status of Bailiffs and

enforcement proceedings", now you can check on the website the presence or absence of initiated enforcement proceedings against a person. In addition, the National Development Strategy of the Kyrgyz Republic for 2018-2040 has been adopted, which also addresses issues related to the digital transformation of the judicial method of protecting rights. According to N. S. Semenov. in addition to the positive aspects associated with the introduction of electronic justice, there are still unresolved issues: the absence of the legal status of an electronic power of attorney, the absence of the legal status of an electronic claim, the absence of a legal institution of electronic legal proceedings, the absence of an electronic legal system for conducting electronic legal proceedings, the lack of equivalence of recognition of the paper form of documents with documents in electronic form.

Conclusion

In the philosophical and legal sense the process of digital transformation of the judicial method of protecting the rights and legitimate interests of citizens and business entities in the EAEU countries allows us to identify both common and distinctive features. A common feature of this process is the adopted state programs aimed at supporting the creation of electronic justice, and the goals stated in them. Distinctive features are contained in the very process of creating e-justice in the countries under consideration (Gronic, 2022).

In the process of creating electronic justice in the Republic of Kazakhstan, a new reference and analytical service "e-Discovery" was integrated, related to the electronic disclosure of evidence, and this institution is characteristic of the countries of the Anglo-American legal system. In addition, on the basis of a single portal of public services in a single window mode, users get access to a wide range of services, including the possibility of accessing the electronic mediation procedure (Frolova & Rusakova, 2021, pp. 1842-1849). Thus, in the process of creating electronic justice, the Republic of Kazakhstan borrows the positive experience of foreign countries that have already achieved significant success in this area.

Exploring the experience of the development of electronic justice in the Republic of Armenia and the Kyrgyz Republic, the European Union plays an active role in its formation. Thus, on March 11, 2019, the European Union Program "Rule of Law in the Kyrgyz Republic-Phase 2", together with the Supreme Court of the Kyrgyz Republic, organized for the first time in Bishkek a presentation of the "AIS of the Court" system for all judges of the first instance and all chairmen of the courts of the second instance, and in 2021 the implementation of two The annual program of the European Union "Development and implementation of e-justice solutions in Armenia", and funding is also provided by the European Union. Consequently, issues related to the creation of electronic justice concern not only the national policy of the state, but are also of interest for the formation of the international agenda of cooperation.

Objectively, the process of implementing the creation of electronic justice in the EAEU countries is becoming important for the successful implementation of the integration agenda within the framework of the association. Perhaps it is necessary to strengthen the interaction of the EAEU countries in the process of implementing national strategies and digital development programs in order to ensure and preserve national sovereignty.

The widespread introduction of innovative digital technologies completely changes the social paradigm of society's development. Populations that do not have access to information and communication technologies may be limited in the exercise of their rights, including judicial protection. The relevance of this process is determined by the need in modern digital society to create new opportunities to exercise one's rights, including the right to judicial protection, to determine legal guarantees, and to maintain social equality in society.

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BOOK REVIEW

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REVIEW OF THE MONOGRAPH: KOLOSOV I. V. THE HISTORY OF LEGAL CONSEQUENTIALISM: THE EFFECTIVENESS OF LAW

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Abstract: This article presents a review of the monograph "The History of Legal Consequentialism: The Effectiveness of Law".

I. V. Kolosov's monograph is a comprehensive study of the use of the principle of utility and other principles aimed at achieving a certain effect, i.e., doctrines that are based on the fact that legally significant actions are approved or disapproved depending on their potential to achieve a result. The subject of this monograph is specific ideas about the effective implementation of legal activities within the framework of these doctrines, including in the context of lawmaking and law enforcement, which determines its practical significance.

I. V. Kolosov's monograph is valuable for modern legal science from the point of view of its systematic, scientific, and representative analysis of scientific sources. The scientific significance of the monograph is expressed in conclusions, generalisations and proposals.

I. V. Kolosov's research organically combines both a theoretical analysis of the content of legal doctrines of various time periods, from the standpoint of general philosophical, axiological, historical, general and comparative legal aspects, and practical conclusions and proposals regarding the possibilities of legal activities, taking into account the theoretical framework of legal consequentialism.

Keywords: consequentialism, legal consequentialism, effectiveness of law, utilitarianism, legal utilitarianism, utility, utility principle, common good.

Introduction

Even before the Hammurabi code of laws was carved on the "cornerstone" in ancient Mesopotamia (Babylonia) more than four thousand years ago, people had already been subject, either by mutual agreement or under the threat of coercion, to norms allowing them to regulate social and economic activities. The need for law arose either almost simultaneously with the emergence of the state or a little later as a result of the development of political structures. The need for law

increased as tribes, clans and other communities developed from small tight-knit groups to more complex and diverse societies with more multifaceted and comprehensive activities and structures. Effective rules and norms were needed to regulate, streamline and control increasingly complicated processes.

The effectiveness of legal regulation is a cross-cutting problem of the entire history of law and state. The entire history is, among other things, the evolution of the self-organisation of humanity and man, the history of the emergence, development and interaction of different types and forms of regulation of public life giving certain social results.

Indeed, the problems of the significance of law, its role in public life, the main areas and forms of influence on society and its individual spheres have long been discussed in the social sciences, including the legal sphere, and raised in legal practice.

In the current conditions, when the objectives of legal regulation are aimed at expressing and coordinating social interests contributing to the harmonious and free development of social relations, the concepts of the effectiveness of law and other elements of the legal system should be changed accordingly. It would be wrong to interpret the effectiveness of a norm as a correlation between the result of its action and the legal and non-legal (economic, political, ideological, etc.) goals prescribed to it.

The same can be formulated in the traditional categories of the correlation between goal and result. The only thing is that it should not be about economic, political, ideological and other goals that are external to law, but about an immanent legal goal consisting in coordinating social interests on the basis of a law-forming interest and thus ensuring the maximum possible universal measure of freedom for the development of a relevant sphere of public life, while the freedom of individuals and the "common good" must be harmonised in such a way that personal freedom does not violate the "common good"[1] (p. 131).

In this regard, it appears that Kolosov's monograph makes a significant contribution to the theoretical elaboration and evaluation of ideas about the concepts of consequentialism, not only within the framework of generalizing the conclusions contained in the analyzed concepts, but also because of measuring the effectiveness of law and its norms by contributing to strengthening the legal foundations of state and public life, to the formation and development of elements of freedom, harmony, justice in social relations, as well as by contributing to the exercise of human and civil rights and freedoms.

Analysis of the Content of Kolosov's Monograph

The formal existence of laws in itself, no matter how sufficiently their text is formulated, no matter how they are really written in such a way that rights and freedoms would follow from their content, in no way can lead to their intended positive consequences. For this reason, the effectiveness of law is so important.

In many developing countries, laws remain unenforced or are enforced selectively, and sometimes are simply impossible to enforce. Laws themselves can also be used as a means of perpetuating insecurity, stagnation, inequality and injustice. At that, laws can serve a variety of interests, including ensuring the prosperity of not the entire society, but only of individuals as a result of the transformation of social relations. Therefore, law is both a product of social and power relations and a kind of tool for challenging and changing these relations.

Based on the above, the effectiveness of law is crucial in the regulation of social relations and therefore the subject of Kolosov's monograph connected with the reference to the classical and modern legal doctrines of the consequentialists is highly relevant. In this regard, Kolosov's monograph deserves special attention.

The undoubted advantage of Kolosov's monograph is the breadth of the doctrines covered in it, namely the prerequisites for the emergence of consequentialism in the ancient world and in the early modern age are considered, classical legal utilitarianism is analyzed in detail, including a separate paragraph devoted to the practical aspects of the doctrines of J. Bentham and J. S. Mill, legal ideas about achieving results and using the principle of utility in the Russian philoso-

[1] Kolosov, I. V. (2023). *The history of legal consequentialism: The effectiveness of law*. Moscow: Yurlitinform (further – Kolosov's monograph; also when referring, the page number is mentioned only).

phy of law are identified and illustrated, and the study ends with an analysis of legal ideas in modern Western consequentialism.

The monograph consists of four chapters that are divided into eleven paragraphs, as well as of a special chapter on the review of scientific literature.

In the first chapter of the monograph devoted to the prerequisites for legal consequentialism in the pre-Bentham legal doctrines, the author shows that the works of philosophers somehow reflect consequentialist ideas associated with the use of the principle of utility in state legal administration and the understanding of the moral significance of actions in the light of their results.

For example, I. V. Kolosov reveals the beginnings of consequentialism in the Arthashastra, an ancient Indian monument of legal thought, and notes the expediency of using the principle of utility as a criterion for evaluating legally significant actions (pp. 24-25). Among ancient Chinese thinkers, he singles out the philosopher Mozi, who not only laid the foundations of state consequentialism, but also "anticipated the basic principle of utilitarianism – utility maximisation" (p. 27). As convincingly shown in Kolosov's monograph, a number of ideas expressing the principle of utility were formulated in the political and legal doctrines of ancient Greek philosophers. Considering that such ideas are found in the doctrines formulated by Aristotle, Socrates and Plato, the author pays special attention to the eudaemonism of Democritus and Epicurus (pp. 30-34).

Analysing the consequentialist ideas expressed in the philosophical and legal doctrines of the early modern period, the author notes a certain commonality of Spinoza's views and the principle of utility maximisation (p. 37), justifies the ideas expressed in the doctrine of T. Hobbes that, in modern terms, can be attributed to rule consequentialism (pp. 38-39), emphasises a number of common points in Montesquieu's philosophy of crime and punishment and J. Bentham's utilitarian approach to the analysis of this problem (pp. 41-43), as well as reveals a number of elements of rule consequentialism in the doctrines of A. Smith, D. Hume, H. Spencer, C. Beccaria, J. Locke, C. Helvétius (pp. 39-59).

"In fact, early utilitarianism developed before J. Bentham and proceeded from the need to achieve happiness and reduce suffering. The achievement of these goals should correlate with legal regulation. At that, early utilitarians proceeded from the need to maintain a balance between the interests of each person in achieving their own personal happiness and the common good. Classical legal utilitarianism reiterated some of the ideas of the early utilitarians" (p. 59). In this regard, the monograph has a pronounced author's line and contains a critical analysis of the views of various thinkers regarding the use of the principle of achieving results within the framework of legal activities, from ancient philosophers, sources of Ancient India, Ancient China, to the theorists of the 18th century.

The paragraph dedicated to the axiological aspect of classical legal utilitarianism is of interest from the point of view of the development of ideas about the value aspect of legal consequentialism. In the paragraph, the author of the monograph convincingly makes the case that the value principle of utilitarianism about ensuring the greatest happiness for the greatest number of people, which determines the comparison of the usefulness of subjects of law, can lead to the fact that when legally significant decisions are made, interests, benefits, utility, common good are on one side of the scale, while equality, justice and legality are on the other. Ultimately, this logic comes to anti-legal and unacceptable conclusions that if it is more profitable not to comply with the law and make unfair decisions, law should give way to the principles of expediency. However, I. V. Kolosov argues against this non-legal approach: "making decisions that contradict the general principles of law and justice will eventually lead to a weakening of the protective function of law, since individual cases of non-compliance with the law entail a general decrease in the level of legality, which means that guarantees of public safety and stability are weakened. As a result, the maximisation (according to this version of utilitarianism) of utility in the short term by making an illegal and unfair decision ... can lead to a decrease in this public utility in the long term due to disenfranchisement and arbitrariness" (p. 201).

Starting with the analysis of legal doctrines of classical utilitarians where the author, although he focuses on the need to ensure the effectiveness of legal regulation, still does not allow the possibility of violating the law and justifying illegal and unfair laws for the sake of the principle

of utility and the need to achieve a different significant result. This attracts the reader to such a well-known and eternal discussion between deontology and utilitarianism about what principles should guide the legislator and law enforcer. Also significant is the new view of the author of the monograph on this discussion, its comprehensive analysis, as well as the author's conclusions, which, unlike the conclusions of many consequentialists, do not run counter to general legal principles.

Still in this chapter, I. V. Kolosov focuses on Bentham's dichotomy between pleasure and pain as "two sovereign masters", as well as his methodology of "moral arithmetic" (p. 66). With that, J. Bentham gives a very specific meaning to the concept of happiness. He theorises that happiness is the maximum of pleasure and the minimum of pain for each individual and generally for society as a group of separate individuals. The axiological origins of Bentham's utilitarianism are rooted in the values of the Enlightenment based on the ideas of "the primacy of human reason, disagreement with the arbitrary dictatorship of the law and faith in progress" (p. 67). The value component of the legal position expressed by J. Bentham was greatly affected by the doctrines of T. Hobbes, according to which the state was considered as a means of reconciliation based on a social agreement of selfish interests to ensure natural rights as a condition for the implementation of private interests and consequently to achieve happiness for a greater number of people.

Another prominent utilitarian of the late modern period is J. S. Mill. Unlike J. Bentham, he did not seek to build a new utilitarian axiology of law, but wanted to develop a "common approach to ethics and law that proclaims the principle of utility as the primary one" (p. 69). At the same time, his understanding of utility in axiological terms was significantly different from J. Bentham's quantitative hedonism because he attached great importance to the quality of pleasures (he placed intellectual and spiritual pleasures before physical ones), which he believed "should be reflected in such regulators of social relations as law and morality" (p. 77).

Analysing the influence that classical utilitarians had on legal practice, the author notes, first, their notable contribution to the humanisation of criminal punishment, which at that time was characterised by excessive cruelty[2]. In this context, considerable attention is paid to the works of English philosopher and expert in moral philosophy H. Sidgwick, which consistently point out that in terms of the principle of utility and rational prudence, criminal punishment should not be aimed at achieving justice through inflicting equal suffering, but to prevent even greater evil. H. Sidgwick developed a theory of crime and punishment that was based on utilitarian principles. The theory hinges on the idea that in most cases, the most effective way of legal defence includes not punitive, but restorative measures, and that a milder type of legal intervention in social relations is preferable (pp. 122-123).

Within the framework of the relevant paragraph, the application of certain utilitarian ideas in the context of rule-making and law enforcement is analyzed, and the most general recommendations to lawyers following from consequentialism are also presented. "In its classical form, in the absence of an exact way to increase the overall social welfare..., utilitarianism proceeds from the fact that in the absence of intervention by state authorities, social relations are ordered without state intervention ... one of the possible options for regulating social relations, according to utilitarianism, is the least intervention in such relations, except in cases of the prevention of lawlessness, social instability and other factors that will clearly reduce the cumulative utility" (pp. 124-125). At that, the author's opinion about the effectiveness of law in this context is based on the positions of a wide range of prominent foreign researchers, as well as on the analysis of primary sources. Nevertheless, it is worth noting that the creation of new legal doctrine of consequentialism personally by the author, based on the results of the study would bring even more practical significance.

Of particular interest is the third chapter of the monograph, which is devoted to analysing the use of the principle of utility and "near-consequential" ideas in Russian philosophy of law in the late 18th and early 19th centuries, since this issue has not been previously covered in le-

[2] Kolosov, I. V. (2021). *Ugolovnoye pravo Anglii XIX v. – effect koley utilitarizma?* (Is XIX century criminal law a path dependence of utilitarianism?, in Russian). *Pravo – yavlenie tsivilizatsii i kultury (Law is a phenomenon of civilisation and culture, in Russian), 3*, 391-398.

gal literature. I. V. Kolosov rightly notes that the arguments presented by a number of Russian enlighteners of the late 18th and the first half of the 19th centuries (I. P. Pnin, A. P. Kunitsyn, V. S. Filimonov, V. V. Popugaev et al.) consider the idea of utility in the context of the correlation of personal and common good in line with a natural-legal approach to the interpretation of the common good as a condition for the good of everyone.

Among the thinkers of the second half of the 19th century, the greatest attention is paid in the monograph by N. G. Chernyshevsky. The author relates his philosophical views to one of their versions of consequentialism and even partly utilitarianism. "N. G. Chernyshevsky," he writes, "comes to the conclusion that utility is a virtue, and the differences between pleasure, utility and good are only quantitative: utility is the superlative of pleasure, good is the superlative of utility" (p. 147). According to N. G. Chernyshevsky, the emergence of law and state is due to the fact that people desire to achieve the maximum utility with limited resources; therefore, the activities of the state and the laws adopted by it should ensure the maximisation of utility.

The final chapter of the monograph gives answers within the framework of modern concepts about what the general principles of maximizing results should be and how they can be implemented in practice. "Rule utilitarianism ultimately justifies the conclusion about the low role of the judicial process as such, since any arguments of the parties to the process and evidence are important solely for determining legal facts. Everything else should be determined by the court in full accordance with the legislator's will, regardless of the specific circumstances of the case not considered by the legislator. For a representative of rule utilitarianism, the expediency of any action is not evaluated from the point of view of its utility, but only in terms of how much it corresponds to the rule of law, which, in turn, should proceed from the principle of utility" (p. 169). Act utilitarianism, following the ideas of J. Bentham (as interpreted by J. Postema), "justifies the need to evaluate the usefulness of the result of a legally significant decision each time that decision is made. In fact, each life situation must be evaluated separately. This determines the mechanism of legal regulation, according to which the court should be given a fairly wide margin of appreciation, since it is the court that can evaluate each specific situation" (p. 168). As to what correlates to act utilitarianism, within the framework of analytical jurisprudence, H. L. A. Hart concludes that the normatively binding rules are not always accurate and as a result there is a "hard case" that is not clearly covered by the rules, and therefore the judge makes a decision at his own discretion[3].

Analysing non-utilitarian post-Bentham consequential legal ideas, I. V. Kolosov dwells on the discussion devoted to evaluation from the standpoint of consequentialism of the legal doctrine by I. Kant, in the course of which a number of authors (D. R. Cummiskey, R. M. Hare, etc.) point out some formal similarities between Kant's ethical rationalism and utilitarianism in their pursuit of common utility, despite all the differences in the motives for action. Concluding his analysis of this discussion, I. V. Kolosov correctly concludes that in Kant's deontological moral theory, the understanding of consequences is fundamentally different from the consequentialist interpretation of this category (p. 159). The considered context pays particular attention to marginalism as a doctrine that uses the limiting values of the utility function. Originating as an economic theory, marginalism turned out to be also vital in law. Thus, marginalism was well combined with the behaviourist foundations of classic American legal realism author O. Holmes's theory, according to which "people respond to incentives by comparing marginal costs with marginal benefits" (p. 166).

As shown in I. V. Kolosov's monograph, modern Western utilitarianism includes act utilitarianism and rule utilitarianism, which differ in their fundamental premise: when making any legally significant decision, act utilitarianism proceeds from the need to evaluate the consequences of the decision in terms of the usefulness of its result, while rule utilitarianism prescribes to evaluate actions in terms of how much they comply with the rule (pp. 168-170). "Contemporary consequentialism defends maximization theories that are somewhat alternative to classical utilitarianism. On the one hand, representatives of the subjective theory of well-being, in particular R. M. Hare, justify the need to maximize desires and preferences. On the other, objective

[3] Hart, H. L. A. (1997). *The Concept of Law*. New York: Oxford University Press.

theories of well-being reject hedonism and the need to maximize desires and preferences, offering instead a pluralistic concept of benefits" (p. 8).

Since the early 1980s, the development of non-utilitarian consequentialism in Western philosophical doctrines, including philosophical and legal ones, has been associated with the desire of a number of experts to respond to the largely fair criticism of utilitarianism while preserving the constructive potential of this approach. As noted in the monograph, the essence of this area is to focus the moral evaluation of actions on consequences and try to take into account values other than utility when evaluating such consequences (p. 179). However, in his analysis of non-utilitarian consequentialism, the author goes beyond the scope of his own definition when, in particular, he finds elements of this approach in the theory of J. Rawls, according to which, in order to achieve justice, relations should be organised in such a way that inequalities can be justified only if they provide "the greatest benefit to the least advantaged group" (p. 181). In our opinion, we should agree with this interpretation of J. Rawls' theory. In this regard, we can also refer to an interesting justification of the "tendency of Kantianism to merge with utilitarianism" that R. Posner gave in one of his works, illustrating such a possibility in the case of J. Rawls' moral philosophy[4].

From the point of view of modern values and the need to ensure the protection of fundamental human and civil rights and freedoms, analysis of modern consequential ideas about individual rights given in the chapter of the monographic research dedicated to Western consequentialism from the late 19th century to the present is significant. "Individual rights ... require protection ... on the grounds that they contribute to the achievement of certain desirable, generally useful goals (thus, as a result of the protection of private property rights, under certain circumstances, not only the interests of the owner will be ensured, but also a socially significant goal can be achieved, which is the effective allocation of resources) ... even if the right is regarded as an end, the end may still require justification. The justification may be based on legitimate interests, the achievement of which is facilitated by individual rights" (p. 182). The conclusions of non-consequentialism that nothing ever justifies the violation of rights, therefore their protection by force should be ensured if necessary, are incontrovertible.

In concluding the monograph and summing up the results of his research, I. V. Kolosov points out that consequentialism, with all its theoretical flaws associated with numerous consequentialist concepts of contradictions to the "principles of equality and justice, moral principles and other fundamental foundations", precisely because of the wide variety of its positions often deviating from a rigid theoretical line, can be applied in legal practice, although it requires caution (p. 206).

As a result, it should be noted that I. V. Kolosov's analysis of the application of the ideas of contemporary consequentialism in law made it even more possible to provide a systematic view of all legal consequentialism as a result of the synthesis. Legal consequentialism in Kolosov's monograph is crystallized taking into account the ideas existing in modern society about what is proper, what is right, and about the social ideal precisely within the framework of the analysis of modern ideas.

A Comprehensive Evaluation of the Kolosov's Monograph

Despite the fact that its object and subject is analysis of the already existing views of consequentialists, Kolosov's monograph is an self-dependent study with a new approach to the use of "common good", "effectiveness", "utility", "efficiency" and other categories in law. The author analyzes consequentialists' views in sufficient depth, including whether implementation of their ideas will really lead to the maximization of utility or other significant results and whether the relevant decisions will not come into insoluble contradictions with freedom, equality and justice.

In view of the fact that Kolosov's monograph is aimed at solving such important tasks for improving life – increasing the effectiveness and efficiency of law, the quality of existing legal regulation and law enforcement, the topic of this research by I. V. Kolosov is quite relevant. The most relevant both in the scientific and practical

[4] Posner, R. A. (1980). Utilitarianism, Economics, and Legal Theory. *The Journal of Legal Studies*, *8*(1), 103-140.

sense is the author's study of the modern legal views of the consequentialists. The topic of the monographic research is interesting and relevant primarily because it is insufficiently studied in modern legal science. Within the framework of both the philosophy of law and the history of the doctrines of law and state, very little attention is paid to the primary sources, i.e., the works of legal consequentialists.

Kolosov's monograph is also relevant due to the need for a proper scientific understanding of the content, specifics and achievements of legal consequentialism as a generalizing characteristic for a set of concepts articulating the principle of achieving results as their basic criterion. Practically coming to the conclusion about the multidimensionality of the views of consequentialists, Kolosov's monograph carries out a comprehensive analysis of the contemporary views and their possible application in jurisprudence. The study of issues related to the use of the principle of achieving results in legal activity is due not only to the needs of legal science, but also to the needs of legal practice, comprising the theoretical basis for creating such legal regulation in all branches of legislation that would provide a solution to immediate social and economic problems in the most effective way without contradicting the general legal principles of equality and justice.

The scientific conclusions and generalizations of the monograph are confirmed by the use of a set of cognition methods (private and general), as well as by the theoretical basis of the study. The undoubted advantage of the monograph is the author's use of a significant number of contemporary works by authors of many countries.

Kolosov's monograph is complex in terms of the analysis of the use of the approaches of consequential doctrines in evaluating the effectiveness of legal institutions. In this regard, this monograph is quite systematic research. The issues of the effectiveness of law in the modern world are becoming increasingly significant. Law should not just provide declarative norms, it should actually regulate social relations in such a way as to promote welfare, happiness, utility or any other factors and characteristics that are significant for society and its members determined by ethical doctrines. With this, it is difficult to overestimate the importance of theoretical understanding of the effectiveness of law.

In its current numerous versions united only by the idea of ethical evaluation of an action based on its result, the consequentialist approach to law allows us to consider the entire history of the philosophy of law from a specific point of view. I. V. Kolosov's work demonstrates quite clearly the prolificacy and prospects of this approach. The author does not confine himself to merely analysing consequentialism in its classical (utilitarian) and postclassical versions, but goes so far as to outline the prerequisites for and the seedlings of this approach, delving into the very origins of philosophical and legal thought.

Achieving the effectiveness of legal institutions is unthinkable in the absence of formal equality. This is because the very essence of law, which is the principle of formal equality, is based on it. However, the ethics of consequentialism typically does not morally prohibit the achievement of a result not corresponding to general legal or deontological principles, thereby prima facie allowing immoral and/or selfish actions, contrary to the principles of goodness, equality and justice. As a result, freedom is violated, and the maximization of a result that is significant for one subject of law occurs to the detriment of the interests of other persons, which is unacceptable because the concept of freedom includes equality, and this, in turn, means that freedom is immanently linked to justice expressed through equality.

In view of this, one cannot argue with I. V. Kolosov's conclusions. Actions by any means to maximise utility may not only be considered morally correct, but may also have harmful consequences for third parties or in the long run. If violated for the sake of maximizing utility, laws can lead to anarchy, disenfranchisement and arbitrariness (pp. 203-204).

Considering the above, it can be stated that Kolosov's monograph makes an obvious contribution to the expansion of ideas about consequential legal thought within the framework of legal science. At that, the structure of the monograph is characterized by logical consistency and completeness, which provides a systematic transmission of information in a way that is accessible for cognitive perception. The results of Kolosov's monograph allow us to clarify the understanding of how to ensure effectiveness and efficiency in law and how to make this law as effective as possible in improving everyone's

life. The conclusions of the research have prospects for use in practice, specifically for improving the current legislation and law enforcement, for achieving universal prosperity to the fullest extent possible in a free and just society, as well as to increase the level of legal consciousness and legal culture.

Conclusion

Consequential ethics offers answers to questions about what the general principles for maximizing a result should be and how they can be implemented in practice, based on the fact that the result is the most important factor determining the moral component of an action. It is based on teleological logic, which evaluates the ethicality of a decision based on the consequences of that decision. Consequential ethics can still offer legal science and practice answers to questions about how to maximize the result in the construction of legal norms and their application, based on the fact that the result is the most important factor determining the moral component of an action. The legal concepts of consequentialism have influenced the development of private law, including the civil legislation of various countries. The trend of utilitarian and consequential determination of the development of law and legal science took place during the 19th century and the first half of the 20th century.

However, the application of consequential theories in legal practice must be approached with caution while ensuring strict compliance with general legal principles, including equality and justice. Indeed, some consequential theories will proceed from the need to achieve a result at any cost, including violating both the content of legal norms and the general principles of law. Breaking the law is more beneficial, and some consequentialists approve such delinquent behavior. And here, it is worth agreeing with the author's conclusions that not every consequential theory should be welcomed in carrying out legal activities. Indeed, a law enforcer's direct appeal to the principle of utility in the absence of a rule of law, its imperfection or bypassing the law, guided by an analysis of interests and not positive law, can often do more harm than good.

Thus, in view of the analysis, one can make the point that Kolosov's monograph:

1) relies on a wide range of primary sources, most importantly, the works of both classical and modern representatives of legal consequentialism;
2) is based on a significant number of modern scientific works regarding the studied subject;
3) has a fundamental theoretical basis in the theory of law and state, in the philosophy and sociology of law;
4) has correctly set goals, objectives, subject of research and other scientific characteristics;
5) is based on methods that are generally relevant to the subject and serve to solve its tasks;
6) comprehensively analyses the prerequisites for the emergence of legal consequentialism;
7) gives a comprehensive overview of legal consequentialism and a sufficient analysis of its main areas;
8) contains a critical understanding of the ideas of consequentialism to improve legal regulation.

Based on the foregoing, the analysis of Kolosov's monograph in the system of scientific literature devoted to legal consequentialism allows us to conclude that the research is independent and scientifically sound, that the conclusions are well-reasoned, convincing and reliable, and that it has a high theoretical and practical significance.

OUR ANNIVERSARIES

TO THE 70TH ANNIVERSARY OF KADZHIK M. OGANYAN

Kadzhik M. Oganyan is one of the most famous Armenian scientists in the world scientific community. During his fruitful career in the field of science, he published about 40 collective scientific and educational works, trained 15 candidates of science, opened the Department of Philosophy and Social Technologies at the St. Petersburg State University of Service and Economics, founded the scientific school "Social Technologies and Modern society". In 2006, Kadzhik M. Oganyan was included in the list of "Outstanding Figures of Russia"; in 2009, the department headed by him was awarded the title "Golden Department of Russia".

It gives me real pleasure to write about the outstanding scientist Kadzhik M. Oganyan for the personal reason that we are brought together by a similar path to science. My school interest in the problems of the nature of time and space led me to graduate from the Faculty of Physics and even post-graduate school in nuclear physics. But the natural inclination to rigorous reasoning prevailed, and I defended my Ph.D. dissertation on formal logic. Kadzhik M. Oganyan also graduated from the Faculty of Physics with a diploma "With Honors", and defended his PhD thesis in a similar scientific field - the methodology of scientific knowledge. And doctoral dissertations brought us even closer together, we both defended our doctorates in the methodology of scientific knowledge and we published monographs in equal numbers - six monographs each.

But then there are striking differences in achievements, and everything is in favor of Kadzhik M. Oganyan. He published more than 20 collective monographs and more than 25 textbooks and teaching aids, I have only a total of 5 and 2, respectively. Under the scientific supervision of K. M. Oganyan, 15 dissertations were prepared for defense, while I did not have a single graduate student,

though I have been teaching at universities in Armenia for decades. It seems time for me to give up in this competition of my own making. But no, it's too early to give up. After all, I have 11 patents for inventions.

The formation of Kadzhik M. Oganyan as a scientist and leader of science took place during critical years in the history of the Soviet Union. In his memoirs about Kadzhik M. Oganyan, Professor V. P. Ogorodnikov recalls the following interesting and important circumstances:

"In the turning point of 1991, in conditions when dissertation councils disappeared one after another, Kadzhik M. Oganyan managed to defend his doctoral dissertation in philosophy with great dignity, when the farewell "curtain" had already fallen on the USSR and the CPSU. The dissertation "Types of natural science knowledge and their interrelation" was defended by K.M. Oganyan in the Specialized Council of the Academy of Social Sciences of the CPSU Central Committee in 14 October 1991. This took place after the September, last in the history, Congress of People's Deputies of the USSR, which announced self-dissolution. The Higher Attestation Commission under the Council of Ministers of the USSR also ceased to exist. Doctoral dissertation by K.M. Oganyan was one of the last dissertations that she approved, and not without truly titanic efforts by the dissertation author himself".

As V. P. Ogorodnikov, a colleague of our hero of the day notes, many, after defending their doctoral dissertation significantly reduce the intensity of scientific work and prefer to rest on their laurels. However, having become a young doctor of science, Kadzhik M. Oganyan showed himself to be a real generator of scientific thought and organizer of scientific and pedagogical activities. He publishes monographs one after another on current philosophical problems, taking into account global events in the world and Russia, he begins to work very fruitfully in the field of sociology, social technologies and philosophical anthropology. In 1992-2002 Professor K. M. Oganyan founded the department of philosophy and social technologies, became dean of the faculty of social technologies, and from 1997 to 2000 was Vice-Rector for Research at the St. Petersburg State Institute of Service and Economics.

Now I would like to present the words from the memoirs of Gagik Avetisyan, one of the many students of our glorious hero of the day, which sound very touching and instructive: "The 21st century is a new era of information technol-

ogy, innovative tools, social environment and online life, where personal qualities, human contacts and a warm friendly atmosphere, unfortunately, have lost their former importance. Time began to pass quickly: everyone is in a hurry, everyone is busy, everyone is working. And in this race you need to quickly find your place, adapt to the demands of the day, become more rhythmic and active. In the context of current globalization, the educational environment is also undergoing significant changes and has great difficulty keeping up with modern needs. In this context, the role of those persons who guide students in educational institutions in the above-mentioned area is very important. Move in harmony with the times, while maintaining a connection with the past and having a quality vision for the future. Professor Kajik Oganyan led us just this way".

It is well known that it is very important for a teacher to have a positive professional reputation among students and enjoy mutual respect. And here G. Avetisyan notes an interesting point related to the image of K. M. Oganyan as a scientist and teacher. He emphasizes that at the same time, it is important for a university teacher to enter into the inner world of the student and understand the problems that concern him. This is truly difficult, especially when there is a significant age difference and opposing preferences. "The professionalism of Kadzhik M. Oganyan lies precisely in the fact that regardless of educational, social, age, gender and even spatial differences, he can give the necessary results in the field of learning".

In connection with writing this text of memoirs, I had an interesting psychological question, prompted by my thoughts about the personality of Kadzhik M. Oganyan. The question is: are strict objectivity and generosity compatible in one person? As a result, I can state: Yes, they are compatible, but only in the personality of our respected hero of the day, a great scientist and sympathetic person, Kadzhik M. Oganyan.

Despite the fact that we lived separated by a huge distance between the northern capital of Russia and the capital of Armenia, personal contacts with Kadzhik M. Oganyan were systematic. This was mainly due to the fact that Kadzhik M. Oganyan constantly maintained contact with his *alma mater*, in particular, he taught special courses for graduate students of the Armenian State Pedagogical University (ASPU) on modern problems of the methodology of scientific knowledge and methods of scientific research.

The topics of our conversations during personal meetings were purely scientific, dealing primarily with issues of philosophy of science and methodology of scientific research. Since my student years I have been interested in the problem of paradoxes of thinking. Discussing my attitude towards the paradoxes of science, Kadzhik M. Oganyan did not delve into technical details, but constantly pursued the principled line that in the aspect of scientific knowledge, dialectical contradiction retains its important status. Despite the presence of serious differences in our views on the problem of dialectical contradiction, Kadzhik M. Oganyan generously agreed to be the editor of our brochure on ways to resolve paradoxes and ways of using them in the development of logical thinking of university students.

When I finally managed to complete my many years of research into the mechanism of scientific discoveries, the head of our department, Hasmik Hovanesovna Hovhannisyan, advised me to send the manuscript of my book for review to Prof. K. M. Oganyan. Knowing the highest competence of Kadzhik M. Oganyan, I was very pleased with this decision, since it would be difficult to imagine a more knowledgeable specialist. In a very short time, feedback on my manuscript was received. The review amazed not only me, but the entire department. The reviewer thoroughly examined each chapter of my manuscript, and in each of them he found grounds for critical remarks. For some of these comments I publicly express my gratitude, because thanks to them the manuscript of the monograph will significantly improve its quality.

I perceive all the comments of our dear hero of the day as instructive scientific criticism worthy of serious consideration. And there is both the above-mentioned objective basis and a subjective factor. Kadzhik M. Oganyan gave my manuscript such a high assessment that I could not have even dreamed of: "To summarize, we can reasonably say that the monograph of Prof. R. Diidjian is a fundamental, multidimensional study of a very pressing problem of the methodology of scientific knowledge and scientific discoveries." I myself could not have spoken better about my work.

This is in my personal perception of Kadzhik

M. Oganyan, our wonderful hero of the day, a great scientist, an outstanding organizer of science, a man of boundless spiritual generosity and inexhaustible energy.

Professor Robert DJIDJIAN

NOTES TO CONTRIBUTORS

MANUSCRIPT MUST:
- correspond to the topics of the journal,
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- not exceed 7000 words,
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One or two authors

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Identify citations with the same author(s) and with the same publication year by the suffixes a, b, c, and so forth. Assign the suffixes alphabetically by title (consistent with the order in the reference list).

> Stress can adversely affect our health (James & Singh, 2012a, 2012b, 2012c).

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If a reference list contains works by two leading authors with the same surname, provide the initials of both authors in all text citations.

> Among studies, we review M. A. Smith (2010) and J. Smith (2007).

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When the publication year of a work is unknown, use the abbreviation 'n.d.' (no date).

> (Walker, n.d.).

Specific parts of a source

(Spencer & Buchanan, 2011, p. 332)
(Nguyen, 2009, pp. 13-14)
(Atkinson, 2007, Chapter 8)
(Jones& van der Meijden, 2013, Appendix)
(Dexter & Attenborough, 2013, Table 3, row 5, p. 34)

Secondary sources

However, results from another study suggested that significant differences… (Smith, as cited in Jones, 2012).

Direct quotations

Lindgren (2001) defines stereotypes as "generalized and usually value-laden impressions that one's social group uses in characterizing members of another group" (p. 1617).
(Mitchell & de Groot, 2013, p. 51).

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References must be arranged in alphabetical order by the last name of the (first) author, followed by the initials. (Hanging - 1.5).

The Latin transliteration of all non-Latin references should be included together with the English translation. There is no need to transliterate the author(s) surname(s).

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*Works by the same author (or by the same two or more authors in the same order) with the same publication date are arranged alphabetically by title (excluding **A** and **The**). Add lowercase letters - a, b, c, etc. - immediately after the year.*

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Doctoral dissertation / Master's thesis

Bartel, T. M. C. (2005). *Factors associated with attachment in international adoption* (Doctoral dissertation). Retrieved from http://hdl.handle.net/2097/131

Patterson, G. W. (2003). *A comparison of multi-year instructional programs (looping) and regular education program utilizing scale scores in reading* (Master's thesis, University of Florida). Retrieved from http://www.uf.edu~asb/theses/2003/

For degrees from institutions outside of the U.S., add the name of the country:

(Master's thesis, Humboldt University, Berlin, Germany).

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If the manuscript contains non-alphabetic characters (e.g. logical formulae, diagrams), then:

- the PDF version of the text should be attached for the demanded verification,
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- References are not included in the review.

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Materials that are written in a free style and are free of demands placed on scientific articles are accepted for publication. Such kinds of works cannot be submitted in the reports about scientific works as scientific publications.

ՎԻՍԴՈՄ

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Տպաքանակը՝ 200
Ծավալը՝ 229 էջ

KADZIK M. OGANYAN

Doctor of Philosophy Kadgik Oganyan was born in 27 October, 1953 in Ashotovan, area of Sisianskiy district of Armenia. He is an expert in the field of methodology of scientific researches, social technologies, social management, applied and branch sociology. He graduated the Physics Department at the Armenian State Pedagogical University named after Kh. Abovyan in 1976 and in 1982 – the Psychology Department of at Leningrad State University named after A. Zhdanov (LGU), then postgraduate course of Philosophy Department at LGU and got PhD degree in 1983. In 1991 he got a degree of Doctor of Philosophy.

Kadzik Oganyan works in Leningrad State University from 1981, a factory-technical college at the Leningrad Metal Factory. Since 1987 at the Leningrad Higher Party school delivered philosophical and psychological disciplines as an assistant, 1981-1992 - as a senior lecturer. From 1992 to 2002 he was a professor and head of the department Philosophy and Social Technologies, then the dean of the faculty of Social Technologies - the first faculty in St.-Petersburg, created for training experts of social sphere, and from 1997 to 2000 he was a vice rector on scientific work of the St.-Petersburg State Institute of Service and Economy where he founded his scientific school.

Since 1992 till present Kadzik Oganyan is a member and the chairman and of the PhD Dissertational Council on sociological sciences. From 2002 till present time works at the St.-Petersburg State university of Economics holding the positions of the head of the sociology department and for some time (2002-2004) was also the dean of the humanitarian faculty.

From 1995 till present Kadzik Oganyan had a probation under the guide of the European Union and Soros's fund on the problem of the population social protection management at the Universities of Frankfurt on Main (Germany), Clermont Ferrance (France), Stockholm (Sweden), Copenhagen (Denmark), Helsinki (Finland), Yerevan (Armenia).

In 1995 the rank of the full member of the Baltic International Pedagogical Academy is obtained, in 1997 the rank of the full member of Academy of Social Education of the Russian Federation was obtained, in 2000 – obtains the rank of the full member of The National Academy of Juvenology, in 2007 - the rank of the honored worker of science PARADISE, in 2008 – the honour title - The FOUNDER of the SCIENTIFIC SCHOOL, in 2013 - foreign member of the Armenian Philosophical Academy.

Under his leadership, from 2003 to the present, All-Russian scientific and practical conferences in the field of social technologies have been held annually. Based on the results of these conferences were prepared and published: Social technologies: Theory and practice. Abstracts of reports / Executive editor. Kadzik Ohanyan, S.P., 2003-2014.

From 1997 to the present, Kajik Ohanyan's scientific school "Social Technologies and Modern Society" has prepared and defended 20 dissertations, published 25 monographs, 15 collections of materials, 205 articles, 105 international, all-Russian and regional conferences.

In 2003 till present state budgetary research work guided by professor Oganyan K.M. innovative and educational policy of Russia's Ministry of Education carried out.

Kadzik Oganyan is the author and co-author over 260 scientific, educational and methodological works, including 15 monograps, the editor of eight collections of proceedings, manuals, 20 of which are approved by the Educational Methodological Department (EMD) of the Ministries of Education and Sciences of the Russian Federation.

Kadzik Oganyan was the scientific supervisor of about three dozen young scientists who defended their doctoral dissertations.

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