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Dear Readers!

We are pleased to present you Issue No. 2-2023 of the professional publication "Legal Horizons." This issue opens with an article by ***Anatolii Shevchenko and Valeriia Antoshkina*** **titled "Modern Legal Education in Ukraine as the Basis of Professional Activity: Problems and Prospects."** The article thoroughly examines the significance of legal education, taking into consideration the imperative to reform the judicial system, align national legislation with European Union standards, and safeguard national interests amidst the backdrop of armed aggression.

Equally pertinent is the article by ***Tamara Kortukova and Liliia Nevara*****, titled "Features of the Principle of Non-Discrimination in International Trade and Economic Law".** This article delves into the research of the non-discrimination principle's characteristics within international trade and economic law, fostering international cooperation despite disparities in political, economic, and social systems.

In her article, ***Olena Sokalska*** addresses **"Controversial Questions About the Ideological Origins of the Pennsylvania System of Prison Discipline".** This piece explores the historical origins and theoretical foundations of the corrective punishment model implemented at Walnut Street Prison and the system of solitary confinement at Eastern State Penitentiary.

Yevgen Popko's study, **"Development of the State Jurisdictional Immunity Institution in Private International Law",** delves into the pivotal trends shaping the evolution of this institutional framework, provides insight into the concept of immunity, and scrutinizes its implications within the domain of legal norms.

Continuing the discourse, ***Shrastan Yusubov's article***, **"Legal Regulation of Other Forms of Direct Democracy in the Republic of Azerbaijan: Current Situation, Problems, and Solutions",** investigates the existing state of affairs and challenges in regulating alternative forms of direct democracy in the Republic of Azerbaijan.

Zarifa Mammadova's article, **«Administrative Proceedings and Its Nature»,** seeks to address the complexities that emerge in the regulation of relations between citizens and state administrative bodies.

On behalf of the editorial team, we extend our sincere gratitude to the authors and readers of "Legal Horizons."

Yurii Harust,
Editor-in-Chief

CONTENTS

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MODERN LEGAL EDUCATION IN UKRAINE AS THE BASIS OF PROFESSIONAL ACTIVITY: PROBLEMS AND PROSPECTS

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Abstract. Legal education in Ukraine faces numerous challenges in modern conditions that require defining and understanding to improve the quality of training. The article examines in detail the relevance of legal education, considering the need to reform the judicial system, harmonize national legislation with the standards of the European Union, and protect national interests in the context of armed aggression. The authors pay particular attention to the issue of the adaptation of lawyers to innovations in the field of information technology, which requires not only the study of new digital tools but also an understanding of the legal nature of the latest technologies. The authors analyze the interrelation between the training of students of higher education institutions and their further access to the legal profession and consider the possibilities of implementing foreign experience in the Ukrainian legal environment. The article identifies the primary areas of reforming domestic legal education to meet modern challenges and ensure the sustainable development of the legal system of Ukraine.

Keywords: legal education, Ukraine, reform, European integration, information technologies, armed aggression, training of lawyers, foreign experience, public administration, rule of law, Constitution of Ukraine.

INTRODUCTION

Given the contemporary global challenges, the imperative to cultivate proficient, ethically principled, and accountable professionals across diverse domains of public engagement has attained unprecedented prominence. This imperative is particularly pronounced for those who have elected to pursue a vocation in the field of law. The realms of legal practice encompass a multifaceted landscape, wherein legal practitioners undertake responsibilities extending beyond mere formulation of regulatory frameworks and norms that underpin societal functioning. They shoulder the equally pivotal task of orchestrating the effective implementation of these tenets through specific mechanisms, thereby safeguarding the rights and liberties of legal subjects both within the nation-state and within the international milieu.

The legal profession is vested with considerable aspirations and responsibilities, as the nation-state has been consistently engaged in overhauling manifold institutions and seeking optimal organizational and juridical paradigms for societal coexistence over the past three decades. It is noteworthy that both practitioners and the scholarly community have exhibited considerable diligence in this domain. Notwithstanding substantial strides and scholarly inquiries, significant challenges persist concerning the legal profession and the pedagogical preparations of legal professionals. Addressing these challenges necessitates the formulation of a conceptual framework for the progressive evolution of legal education, which fundamentally underpins the professional praxis of legal practitioners.

The present authors observe a fervent discourse spanning the past eight years concerning the quest for an optimal model in the training of legal experts. This discourse has garnered considerable traction, especially following the introduction of the educational authorities' blueprint for the advancement of legal education, which has been subject to lively deliberation within forums such as conferences and roundtable discussions.

Scholars hailing from various institutions of higher learning henceforth referred to as HEIs, have proffered insightful perspectives on the reformation of higher legal education within the Ukrainian context. Although an array of scholarly contributions has emerged, a unified conceptual framework addressing the trajectory for the future development of legal education remains a work in progress.

MATERIALS AND METHODS

Since national institutions and lawyers face unprecedented challenges due to their special role in society, the authors consider it necessary to address the stated issue. These challenges imply the need to complete the reform of the judicial system, develop a regulatory framework for the effective functioning of anti-corruption bodies, harmonize the legislation of Ukraine with the legislation of the European Union, protect the violated rights of the state, and defend the legitimate interests of legal entities and natural persons violated due to the armed aggression of a neighboring state, including in international tribunals.

Another challenge is the inevitable changes that are taking place in the field of information technology. The massive introduction of these new technologies (blockchain, artificial intelligence, information security, etc.) requires lawyers to restructure their work in terms of the use of digital tools. Furthermore, there is a need for a legal understanding of the new reality and the development of legislative norms and rules.

At the same time, it is important to study the issue of training students of HEIs within the realm of access to professional activities because they are interdependent. It is also necessary to find out what skills and knowledge are decisive for a modern lawyer and what experience of our colleagues from other countries can be implemented in domestic law schools.

The authors believe the solution to these problems implies identifying the strengths and weaknesses of domestic legal education and arguments and approaches of state management bodies in education and representatives of Ukrainian law schools regarding education reforms. Furthermore, it is necessary to figure out whether legal education is the only factor preventing the formation of a significant layer of experts in the legal sphere who would contribute to the development of a truly legal and social state, as proclaimed in the Constitution of Ukraine.

RESULTS AND DISCUSSION

In considering the facets of legal education necessitating enhancement, it is incumbent upon us to turn our attention to the draft "Concept of Legal Education" as proffered by the Ministry of Education of Ukraine in 2018, a document prominently available on the official website. This document delineates that the caliber of theoretical and practical instruction provided to students is, on occasion, suboptimal, consequently rendering graduates of law schools deficient in the requisite practical acumen essential for the adept execution of their professional duties amidst the contemporary challenges and exigencies confronting modern legal practitioners. The outcomes of a precedent study on the state of legal education reveal that more than 60% of employers adjudged the proficiency of graduates to be wanting, and a staggering 80% of employers found themselves compelled to undertake the responsibility of training nascent professionals de novo (Legal Bulletin of Ukraine, 2020).

Within the contours of the Concept, a trajectory for the advancement of legal education emerges, delineating an idealized future state. Broadly, the envisaged reforms operate within several dimensions – augmented oversight and requisites about the quality of educational provision (educational quality), coupled with the deployment of mechanisms of external scrutiny to gauge the extent of students' knowledge, facilitated through the examination framework. However, it is noteworthy that the authors underscore the reality that the aforementioned draft Concept has undergone revisions akin to a negotiated settlement, considering that its initial iteration elicited critical feedback from representatives of domestic law institutions. The initial version was deemed incongruent with the tenets of the Bologna process and endorsed restrictive stipulations about access to education and the legal profession at large (Kovalskyi, 2020).

Preceding iterations of the conceptual framework for the advancement of legal education predominantly drew upon foreign models that had demonstrated efficacy in the training of legal practitioners in their respective epochs. However, none of these models could be wholesale adopted due to the presence of multifarious objective constraints. At present, it is safe to say that there is no clear strategy for legal education development and further access to the profession, while the following problematic aspects remain the same: 1) a large number of law schools cannot provide high-quality educational services, and state authorities are unable to clearly define a single approach to the development and functioning in this area, which results in a constant change in the conditions of activity of law schools and access to education for students; 2) there are cases of violations of academic integrity by students and teachers; 3) "the actual dominant state-centric worldview of legal education does not comply with the dominant human-centric paradigm of the development of domestic society"; 4) legal education is highly theorized and isolated from the needs of practice; 5) students and teachers have a weak motivation to obtain the final result of proper quality (Kryvytskyi, 2020); 6) the number of domestic developments of teaching and learning materials for distance (online) learning is insufficient (including for those lawyers who have a diploma but would like to deepen their knowledge in particular professional areas) (Manhora, 2022); 7) cooperation between the best law schools on the exchange of innovative positive experiences in the organization of the educational process is low, which could allow, subject to limited resources, disseminating the most successful methods and raising the overall level of knowledge and skills of both teachers and students.

Since the causes of these problems in legal education were laid down in the process of formation of the education system itself after Ukraine's independence, the authors briefly outlined them. First, the number of educational institutions that began to train lawyers increased dramatically (from 6 to more than 200) after 1991, as the demand for legal personnel, especially in the private sector, was driven up in the context of large-scale political, social, and economic changes.

Law faculties of different directions were opened in HEIs, so the training of lawyers is still carried out by four types of institutions: HEIs of the legal orientation; HEIs of the law enforcement orientation; Classical universities with law faculties; HEIs of the professional orientation, different from the legal one (Stoliarchuk, 2019). On the one hand, this made it possible to solve certain tasks and saturate the labor market with specialists; on the other hand, they had to acquire practical skills directly while working in their degree field.

Legal education has been the most desirable and popular among graduates for many years, although not everyone was able to find a job with their degree after getting a diploma. Significant education reforms, including the legal one, began in the second half of the 2000s. The focus shifted toward the quality of training since it was difficult to find those who could adequately solve the state tasks among many citizens with a law degree. These tasks varied from extremely complex (writing laws, reforming the judicial system) to everyday ones (legal support for business entities, representation of the interests of citizens in court). The introduction of the extra-university exam (Unified Vocational Entrance Exam) was a significant event in legal education; it became a prerequisite for admission to the Master's level, and many bachelors of law could not continue their further education due to the failure to pass it. The next important step of the Ministry of Education and Science of Ukraine was the approval of standards for the training of bachelor and master of law, which detailed the content of curricula and requirements for the knowledge and skills of future lawyers. Some laws on the regulation of particular types of legal professionals, such as judges, prosecutors, notaries, and defense attorneys, prescribe provisions for access to these professions that are as follows: higher legal education (Master's degree), work experience in a legal field, passing a special exam, which is held for each type of activity separately, and (or) competition for a position. Competitive examination is also provided for lawyers intending to work as civil servants. Private companies determine their personnel policies independently and hire a bachelor or master of law to provide legal support for their activities.

Another challenge and unresolved problem in education reform is how to deal with lawyers who received a degree in law before these innovations and did not pass a thorough selection through the examination system. Do they need additional confirmation of their professional qualifications? However, law graduates who studied according to new standards and passed the test of their knowledge through the system of external examinations would constitute a minority among all lawyers for a considerable time. This, in the medium term, will not affect the improvement of the level of professional knowledge and skills of experts in general. Various options for resolving this issue were discussed, but no generally acceptable solution has been reached yet.

Thus, Ukraine is following the path of closer supervision over educational institutions that train lawyers and independent tests of the knowledge of those graduates who will be admitted to the profession. However, as the scientific literature correctly emphasizes, it is necessary to carefully verify these actions and implement only the successful experience of other countries that can work in Ukraine, given the specifics of its legal system. It is essential to introduce innovations after conducting a scientifically based forecast of the volume of training of experts, taking into account regional aspects (Tatsii & Komarov, 2019). Thus, it would make it impossible to destroy the achieved positive developments. In addition, many developed countries with successful experience in training lawyers also discuss directions for reforming their legal education in light of the global changes and challenges (Dunn et al., 2022).

The authors emphasize that it is possible to develop a further vision of the development of legal education if the characteristics decisive for an expert lawyer are defined. Can they be achieved while studying at a higher education institution? The above draft concept of legal education reform defines the purpose of legal education and the legal profession, which are formulated quite broadly.

It is noteworthy that foreign scholars pay considerable attention to the interaction between lawyers and consumers of legal services in their studies of legal education and the profession (Stychin & Mulcahy, 2010); this aspect is always left behind because people are accustomed to ignoring this aspect of the lawyer's activities for historical reasons. Other issues highlighted in foreign scientific works are the access of various segments of the population to education and the profession and integrity in all its manifestations. Domestic lawyers also mention the issue of integrity, especially academic, in their works and during competitions and exams passed by graduates when applying for such positions as judges, notaries, civil servants, or advocates. There will be no qualitative changes unless students have a transparent and honest admission to jobs, no matter how well the education process is organized or practical skills are mastered. It will not be possible to work in one direction to reform vocational training successfully. The hope to train experts who reform, for example, the judicial system, will not work until real access to jobs in this system is provided to them.

Given the above, the authors of this article focus on the following areas in which the reform of legal education is carried out and characterize each of them: 1) the introduction of extra-university supervision over the level of students' knowledge through the system of examinations; 2) the establishment of specified requirements for the qualifications and professional performance indicators of law teachers (both individually and as a group which provides training of experts during the relevant period of study); 3) the definition of the content of the theoretical and practical components in student training and control over their compliance.

As for the supervision of students' knowledge through the extra-university examination, this practice is available in many countries. Although the number of exams, forms, and content can be a subject of discussion, the extra-university examination is a fully justified decision. The authors consider that the exam for studying at the Master's degree program (Unified Vocational Entrance Exam) has justified itself and makes it possible to select students who are able to continue their studies. However, the need for this exam to obtain a Master's degree is doubtful because its practical significance is unclear. Access to such positions as judges, prosecutors, notaries, and advocates is determined through a system of competitions/examinations. In this context, it would be advisable to introduce a unified independent exam for access to work in the specified positions, provided that graduates have several years of experience in the legal field.

Regarding the teaching staff of law schools, the authors should note first those constructive moments that have been achieved in this area over the past 30 years. Those who are now at the forefront of legal science and university education passed their professional becoming during the time of independence, changed, and grew together with the state. The learning process has been completely rebuilt over the past 30 years, the requirements of the Bologna process were implemented, and numerous textbooks and monographs were written. Dozens of monographs on topical issues are published even now in the conditions of war. The quality of some scholarly works can be debatable, but its significant part is of high scientific value. Entire branches of legislation have been developed from scratch since the beginning of the 1990s, and scientists have been involved and are involved in developing many codes and laws. Many representatives of the leading law schools in Ukraine, candidates and doctors of sciences who have many years of teaching experience and significant scientific achievements, work in the Supreme and Constitutional Courts of Ukraine.

At the same time, the current situation related to the full-scale Russian invasion has affected the educational sphere, the legal one in particular, and will lead to significant changes. Firstly, consolidation of HEIs and reducing their number (including law schools) are inevitable since some educational institutions cannot resume their work, especially those whose material base was destroyed. Such a situation, in turn, will increase competition among teachers, and only the most dedicated and professional ones can stay in the position. The number of students is also predicted to decrease; law schools have to raise the standards of educational activities because students will choose only those institutions that provide high-quality modern knowledge and help to acquire practical skills. Secondly, many teachers went abroad. To support colleagues, the scientific community and universities in many countries of Europe and North America introduced various programs for the internship of Ukrainian scientists and the continuation of their teaching and research activities. Ukrainian teachers have the opportunity to learn from colleagues from the best universities in the world, establish long-term professional relationships, work with scientific sources in university libraries, and improve their knowledge of academic and professional foreign languages. This will also help Ukraine to integrate even more into the educational space of the developed countries; practice shows that the positive changes that have occurred in the educational sphere in recent years have been inspired by those who trained or underwent internships in the best educational institutions abroad.

Furthermore, there is an opportunity to join the work of research centers operating at universities in various fields. For instance, such organizations as the Centre for Innovation and Legal Education at the University of Leeds (2023) or Learning in Law Organization (2023) seek to identify, develop, and promote best practices in learning and development. Another example of foreign colleagues that should be followed is the creation of individual professional groups by teachers who deal with similar scientific problems but work in different universities to discuss the results of activities and exchange experiences, especially given the modern technical capabilities.

The creation of research centers or groups for the study and reform of legal education based on the most authoritative law schools is a good solution. They could become an effective platform for developing practical recommendations for reforming legal education.

The third large block of questions on the area under study is the content of education and the formation of practical skills for future lawyers. As for the organization of theoretical training of students, this aspect is the least problematic since it was given considerable attention, and a teaching staff of educational institutions did colossal work on the elaboration of learning and teaching material. Solving legal problems is a common practice during seminar classes, which allows students to develop basic skills and shape ideas about approaches to their solutions (Maidanyk, 2019). However, some teachers still pursue an approach of forcing students to memorize definitions, classifications, and specific norms of legislation but pay less attention to the formation of analytical skills or the ability to interpret legal texts. In general, law schools in Ukraine pay insufficient attention to the language of law and the formation of legal writing skills. As one of the solutions to this problem and as an experiment, it would be possible to introduce separate examinations in the form of essays, especially in such disciplines as Theory of Law, Constitutional Law, and Administrative Law. This form of reposting allows students to demonstrate memory skills, analyze and compare facts and information, and learn to write in clearly defined criteria (number of characters, structure, etc.); all these skills are essential for a lawyer. The formation of a lawyer's skills to communicate with clients (consumers of legal services) is often beyond the attention due to the Soviet-established understanding of the legal profession as that oriented at protecting and representing state interests. Teachers, trying to impart purely professional knowledge, forget about the formation of soft skills in lawyers that affect social and managerial abilities (speed of adaptation, ability to work in a team, critical thinking, emotional intelligence, creativity, etc.) (Popadych, 2022).

At the same time, there is no proper methodological support for introducing innovative methods in the educational process. Thus, the article by Davydova (2017) delves into the results of the introduction of an experimental version of the educational process that relies upon a practical component and is focused on the formation of leading competencies of future lawyers (160 people); the experiment was carried out for two years. The teaching staff of the Taras Shevchenko National University of Kyiv published a textbook 'Methods of solving legal problems (cases): theoretical and practical aspects,' which was the result of a several-year experiment (Lukach & Poiedynok, 2020). The introduction of binary classes conducted jointly by a lecturer and a part-time practitioner is also effective (The Voice of Ukraine, 2020). This positive experience needs to be scaled up. In general, there should be more methodological seminars and pieces of training where colleagues could share the most successful experience.

The interest of legal practitioners in updating their knowledge is also noticeable. This niche is rapidly occupied by companies that provide their services through various online courses on the following modern and promising areas of legal activity: representation of citizens' interests in the ECtHR, international business law, intellectual property law, legal regulation in IT, military law, medical law, advocacy, legal English. Features of such courses are speed of appearance on the market, coverage of topical issues, involvement of practitioners in the development and reading of lectures, flexible schedule, and interactivity. However, teaching methods are not always tried and true in such courses, although they allow students to navigate and get knowledge in an orderly way in a highly specialized field. This direction is promising, and domestic law schools can pick up and develop it, given the considerable experience they gained in online training and the availability of necessary material and technical resources.

Most researchers in law note that the list of subjects offered for the study for a Bachelor's degree in law is overbroad in Ukraine, especially in comparison with other countries. The authors are convinced that the necessary steps are the optimization of curricula, the reduction and integration of subjects, and the direction to train more highly specialized experts. This will definitely allow lawyers to be more competent in their field. Just as a teacher cannot lecture on many different subjects since the quality of work is lost, a practicing lawyer will be more effective when mastering a particular field. Although it can hardly be achieved in our realities and complicates finding a job, it will improve the quality of knowledge and skills. It is necessary to highlight a particular trend that is common even in domestic law schools; students are offered to acquire in-depth knowledge in other specialties or branches of law, such as business, human rights, medical law, intellectual property law, etc.

The authors support the opinion of colleagues who believe it is urgent to change the format of extramural legal education through its transformation into blended learning for the first (bachelor's) level and dual education for the second (master's) level of higher education (Bondar, 2021). Moreover, modern distance learning technologies allow working students to receive education on a more flexible schedule and build individual educational trajectories.

Another relevant aspect is foreign language learning, especially a professional one, by both teachers and law students. This is evidenced by the draft law introduced by the President of Ukraine, Volodymyr Zelensky, to the Verkhovna Rada in June 2023 that officially consolidates the status of English as one of the languages of international communication in Ukraine (UkrinForm, 2023). Moreover, this skill is not just a development path but also to the direct survival of Ukraine in the complex conditions of a full-scale war when the country seeks to hold a dialogue and cooperate with the whole world.

The Ministry of Education and Science of Ukraine has been dealing with this issue for a long time; it introduced a foreign language proficiency test when applying for a Master's degree and requirements for teaching academic subjects in a foreign language. Such a policy gives its results, but the following objective reasons prevent it from being successful: there are not enough teachers who can teach the foreign professional language at the proper level (not only for lawyers); the methodological support for the study of professional English is not sufficient, especially using modern technologies. Here it would be possible to introduce dual degree programs - linguistic and legal. It would solve the stated problem quite quickly, especially in classical universities where there are law and language schools. In the context of limited resources and a shortage of teachers, it also makes sense to resort to the best practices of successful online language schools operating in Ukraine. Law schools, in partnership with language schools, using the tremendous experience of the latter in online language teaching, methods, and platforms, could quickly teach many legal experts. There is an urgent need for this because traditional approaches to learning professional English may not be as efficient; it is of particular value that training can be conducted with minimal participation of teachers. The translation of the textbook "English of Law International Instruments on Human Rights" into the Ukrainian language following the described format can be the first step in this experiment. Each section of this textbook is supplemented with a dictionary and lexical-semantic and grammatical exercises (Borysenko, 2022). Even though the information and material presented in this textbook are important and relevant, its traditional book format is quite complicated to learn from, and it is almost impossible to master in the case of self-education. It would be advisable to present this textbook in an electronic format used for foreign language learning by modern language schools that includes explanations, audio recordings, and exercises. The experience of foreign colleges would be consolidated in such a way, and many students of different law schools could improve their knowledge in this very relevant field.

Another possible form of foreign language learning is a lecture on legal English and other languages of the European Union held by experts from foreign universities. Thus, several Ukrainian universities were involved in a series of thematic online seminars called the "Global Legal Skills Virtual Workshop Series" in 2022, and students of these universities could attend courses in legal English (The George Washington University, 2023).

The language barrier makes a Ukrainian scholar school quite closed, limits the possibility of establishing working relations, and prevents acquiring and sharing experiences with colleagues from other countries. The increase in student exchange programs and internships for teachers in foreign universities should contribute to the change in this trend. There are a few translations of foreign legal bestsellers in Ukraine, such as R. Posner or R. Dworkin, the most cited scholars in the jurisprudence of the twentieth century (Shapiro, 2000). It is also necessary to work on this to create conditions for the further development of legal science in Ukraine.

Further, the authors of this article discussed the most complicated issue for legal education, namely, the practical training of students. Since this aspect of training lawyers causes most complaints, it is advisable to turn to the experience of foreign colleagues to find an answer to this question and

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determine what allows them to solve it more effectively. Thus, the experience of training lawyers in Germany is thoroughly described in the book “White Paper on the Reform of Ukrainian Legal Education” (Melnyk et al., 2015). According to this book, future lawyers have to go through a four-year course of study and pass exams. This is followed by a two-year practical training course, which also ends with an examination after which a person can work in the specialty. The schematic model of training lawyers in England and Wales is available at the following link (Paths to Becoming a Lawyer, 2023). In summary, a person has several options to become a solicitor. The first option implies getting a Bachelor’s degree in law or any other specialty, undergoing a two-year internship in a law firm and a one-year practical training course, and passing the Solicitors Qualifying Exam (hereinafter - SQE). This exam is divided into two parts; SQE1 checks functional legal knowledge, and SQE2 focuses on basic legal skills (The Solicitors Qualifying Examination, 2023).

The second option is an apprenticeship; a person gets full access to work in the legal specialty after six years of practical activity in the legal field and parallel theoretical training (respectively stretched in time) and passing the SQE. It is a kind of analog of extramural education, provided that students work simultaneously in the legal field.

As for domestic realities, Ukrainian law schools make many hours for practical training in the curricula, but the problem of legal education is rooted in different approaches to organizing practical training. Bilichak (2019) rightly notes that the practical training of law students is rather formal, and supervising teachers help only those students to acquire the proper quality of practical skills who have the possibility of further employment in the organization where they undergo practical training.

The above experience of foreign countries in training experts and allowing them to work in their specialty clarifies the main mistake in Ukrainian legal education, which is an effort to turn higher legal education into a kind of mix, combining university education with a school of professional training of legal practitioners (Sushchenko, 2019). The successful realization of this plan causes many doubts since students can form basic practical skills within the walls of educational institutions that need further development outside the law school.

The experience of attracting law students during their studies at the legal clinics at law schools is quite advantageous. However, the question is whether it is possible to provide such an experience to all students of each law school since this practical Toll gives the desired effect only if it is long (at least six months) and under the guidance of an experienced mentor.

The best option for the development of students’ practical skills is their several-year practical training in law firms (that have long been working in this market and have an impeccable reputation and well-developed approaches to the organization of work) or state bodies after completing a theoretical course of training in law schools. Even though the number of students is expected to decrease, there are still not enough practice bases for students in the form of law firms with a high reputation and well-established staff training; this also applies to government agencies that do not have enough employees and resources to ensure proper training of law school graduates. Thus, it turns out that the issue of acquiring practical skills is shouldered upon the students themselves and their employers (both in the public and private sectors).

In this situation, law schools should do everything possible to help future lawyers feel more confident and be prepared for work, including the following: to create conditions for participation in model court hearings, where they will work with the histories of cases; to form legal writing skills; to develop the ability to use technical and technological products used by modern lawyers (Kravchenko, 2021).

Digitalization and automation are the last but not the least directions of transformation of legal education and profession (electronic documents, digital signature, mobile applications for lawyers, online contract designers, analytical online platforms, smart offices of law firms, search databases, electronic registries, electronic dispute resolution platforms, legal bots, etc.) (Manko, 2020; Svitlak, 2018).

It should be noted that this question is also not as unambiguous as it may seem at first glance. Legal activities will undoubtedly rely on these tools, but the issues of the extent to which lawyers should master their skills to work with such tools, necessary to involve experts from the IT sphere to help with this, and the legal regulation of these processes remains debatable (Denvir, 2020).

Although the introduction of these tools into everyday activities in the legal field allows systematizing legal information and increasing the transparency of the judicial system, it also leads to a reduction in the number of jobs for lawyers whose functions are already successfully performed by relevant programs (Kryvytskyi, 2021). This should be considered when teaching students since they must possess the skills to use these tools in their activities and knowledge of the specialty after receiving a Bachelor’s diploma.

As for the educational activity, its digital transformation has significantly accelerated by objective reasons, such as the Tondemic and the largescale Russian invasion in 2022. In the next year, undergraduate studies are completed by students who have mastered most of the curriculum online. Thus, law schools actively use the following components of digitalization: online educational process, electronic educational resources, electronic document management, training using simulators, and the formation of competencies necessary in the digital world. The involvement of the teaching staff in digitalization manifests in using corporate e-mail, cloud technologies, and electronic means of educational and scientific activities, creating accounts in leading social networks, holding web conferences, and conducting open online courses (Hromovenko & Tytska, 2020). The authors notice that although much has been done in this area by Ukrainian universities, they are still at the beginning of this path, especially when it comes to the organizational and legislative consolidation of these processes. It is also crucial to find the optimal formula for using AI tools (for example, ChatGPT) in the educational process so that this takes place in compliance with the requirements of academic integrity.

Given the above, the authors recognize that online education is not a temporary phenomenon associated with a pandemic or war “but a priority facet of a new reality.” However, one should understand that it is impossible to organize the online educational process in the same way as in the classroom. This form of training requires a new methodology, especially when conducting seminars or practical classes and testing knowledge. At the same time, it helps to automate routine tasks, provides interactivity and flexibility, and makes it possible to attract the best teachers and practitioners to work with students (Chornyi, 2023).

Practical training could also be partially transformed with the help of digital tools and practical skills training through work on relevant training platforms. Similarly, online training is the best option for lawyers who want to improve their skills or deepen their knowledge in a highly specialized field. A problematic aspect here is the need to invest significant material resources for organizing such online training efficiently (especially at the initial stage), but it is necessary in modern conditions.

CONCLUSIONS

Summarizing the above, the authors would like to draw attention to the following points regarding the further development of legal education in Ukraine. Firstly, transformational processes in public life and technology necessitate the search for optimal models of educational activity in many countries, but an ideal model has not yet been invented. Therefore, it is impossible and inappropriate to fully copy the experience of a particular country, although many practices that have long been used by foreign colleagues successfully could be implemented in domestic law schools. Secondly, legal education reforms should rely on accurate data on the state of legal education and the forecasted need of relevant experts; the decision on further changes should be consensual between the educational authorities, representatives of law schools, and employers. All measures should be aimed at, on the one hand, preserving achievements of recent decades and, on the other hand, ensuring sustainable and predictable development of the industry, considering modern trends in the development of society. Thirdly, one should remember that training in an educational institution is an important but basic element in the evolvement of an expert. Teachers can help develop legal writing skills, teach the main approaches to solving practical problems, and master the ability to analyze court decisions and understand the norms of laws. However, it is possible to form more or less stable skills and determine a person’s competency for the chosen professional activity only after a few years of practical experience in auxiliary specialties under the guidance of experienced legal practitioners. Furthermore, if there is no transparent and fair selection for judges, prosecutors, notaries, advocates, and state bodies at the state level, all efforts will be in vain, and students will not have an incentive for further professional development. With all the shortcomings of modern legal education, if this issue were resolved now, we would have qualitative changes in the professional legal environment. No reform in education will achieve its goal unless the judicial system is transformed to ensure transparency, impartial consideration of cases, and integrity of judges. Fourthly, it is necessary to monitor the quality of educational services in law schools to continue the work of only those schools that can carry out activities at the proper level. This implies transforming extramural education into more acceptable formats that allow students to work and simultaneously acquire appropriate knowledge, including through individual educational trajectories. Fifthly, it is required to deepen cooperation between representatives of law schools (and colleagues from foreign universities) to discuss the concept of legal education development and share experiences on successful experiments on the introduction of innovative methods in the educational process. It is also advisable to pool material resources for the implementation of joint projects and the creation of scientific and educational online platforms, including for the study of foreign languages of professional orientation. In general, more attention should be paid to the development of EdTech and modernization and deepening of knowledge for legal practitioners, which can be an additional source of funding for educational institutions. Sixthly, it is time to reform the curricula by optimizing the list of academic subjects, paying more attention to legal writing skills, developing analytical and soft skills, and teaching to use digital tools in professional activities (Denver, C.,2020)).

In general, the determination of the concept of legal education development and access to the legal profession is multifaceted; it requires thorough study and definition of specific measures and methods to achieve the defined goals, development of a clear plan for their implementation, and organizational and legal registration.

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CONTROVERSIAL QUESTIONS ABOUT THE IDEOLOGICAL ORIGINS OF THE PENNSYLVANIA SYSTEM OF PRISON DISCIPLINE[1]

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Abstract. The present article delves into the origins and theoretical underpinnings of the carceral model of corrective punishment at Walnut Street Prison and the system of solitary confinement at Eastern State Penitentiary. The central research question to the extent to which the ideology advocated by the Society of Friends served as a formative influence in shaping the Pennsylvania system of prison discipline and its implementation in practice, as frequently acknowledged in historiography. To probe this inquiry, we have resorted to primary source materials and literature addressing the historical trajectory of penal institutions in Pennsylvania.

It has been ascertained that the contention positing the pivotal involvement of the Society of Friends in the reformatory initiative gained traction primarily within the European penitentiary discourse on penology, through accounts of American prisons penned by La Rochefoucauld, Niemcewicz, Beaumont, and Tocqueville. The carceral model at Walnut Street Prison, characterized by distinctive attributes encompassing segregated confinement, hard labor, distinct treatment protocols grave for the most egregious of offenders, and administrative oversight by the Board of Inspectors, largely adhered to the English carceral model of corrective punishment. The conviction in the redemptive potential of seclusion was intrinsic to both religious and materialist penitentiary discourses of the era. Therefore, the ideology of the Society of Friends was not determinative here.

The establishment of the system of separate and solitary confinement during the 1820s was instigated by the challenges encountered within the carceral model of Walnut Street Prison. It was a complex process and cannot be reduced to the realization of one religious group's idea: it took into account the practical experience of prisons in Pennsylvania and other states, the theoretical research, and analyzed statistical data. The reform was predated by active public discourse and scholarly dialogues appraising the merits and limitations inherent in diverse models of prison discipline.

Keywords: Pennsylvania system of prison discipline, Walnut Street Prison, Quakers, penitentiary, solitary confinement.

INTRODUCTION

While historical knowledge predominantly serves the cognitive purpose of pursuing an "objective historical truth," an inherent ideological dimension

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permeates even historical studies of prison. The reference to history and the reevaluation of the origins of penitentiary systems have frequently been linked to paradigm shifts and method changes in the application of incarceration. The International Penal Commission, initiating the historical reviews of the prison systems of the participating countries at the Rome Congress, recommended starting from the era of Howard (Actes du Congres penitentiaire, 1888). However, penal scholars from Spain, France, and the Netherlands sought to extend this chronology to underscore their respective nations' contributions. Amidst the globalization of penal systems, the pursuit of identifying national foundations for penal reforms persisted well into the 20th century. German scholars contended that the re-socialization and correction of offenders stemmed from Protestant ethics in the 16th century. Representatives from the Netherlands asserted primacy in introducing workhouses and labor for inmates, perceived as precursors to contemporary penitentiaries.

Concomitant with the evolution and modification of fundamental principles and components within penal systems, there emerged a reevaluation of their historical antecedents, predominantly conducted within the purview of a reformist approach until the mid-20th century. Critiques of the penitentiary model and rehabilitation methods extended to the historical genesis of prison. The revisionist historiography during the 1960s and 1970s reoriented focus towards economic determinants, the strategy of power, and the role of social control as impetuses behind the modern prison. In the early 1980s, a counter-revisionist paradigm emerged, rooted in the precepts of the "new social history". Scholars somewhat transitioned from exploring the origins of the modern prison and reformist rhetoric to probing penal institutions through the lens of inmates' experiences and daily life.

Post-non-classical historiography not only revisited conventional approaches to the periodization of the modern prison but also reanalyzed the motivations underpinning shifts in punitive strategies (Gibson, 2019), including the religious factor's role in shaping corrective penitential punishment (Skotnicki, Throness). However, a recurring pattern emerged akin to the revisionists, manifesting as an exclusive emphasis on the Christian origins of penitential reform while overlooking other influential determinants. Nevertheless, the institutionalization of the modern prison was multifaceted, entailing intricate interactions among diverse components and gradual changes spanning protracted developmental phases (Spierenburg, 2007).

Within the broader context of the ideological foundations of corrective carceral practices, the present article endeavors to hone in on a specific facet: the emergence of the model of corrective punishment at Walnut Street Prison and the system of solitary confinement at Eastern State Penitentiary and their theoretical basis. The central research question is as follows: Did the ideology of the Quakers (Society of Friends) play a decisive role in the evolution of the Pennsylvania system of prison discipline and its practical enactment, as recurrently posited within historiography, and what factors influenced this process?

MATERIALS AND METHODS

In pursuit of addressing the central research inquiry, our study engages an array of primary sources that meticulously chronicle the process of institutionalizing the Pennsylvania carceral model. This engagement extends to scrutinizing the historical milieu and contextual circumstances that provided the backdrop for the formation of this model. Furthermore, a comprehensive analysis of secondary sources is integral to our approach, encompassing firsthand accounts of Walnut Street Prison penned by visitors, as well as relevant works elucidating the historical trajectory of penitentiary establishments in Pennsylvania. Within these secondary sources, the discernible influence of the Quakers and their ideological underpinning on the formulation of the corrective punishment model during the transitional period from the 18th to the 19th century is prominently underscored.

The central methodological tenet of this study is rooted in a deliberate endeavor to circumvent inherent ideological or political biases within pre-existing national-patriotic narratives that illuminate the origins of corrective carceral models. In this vein, a functional approach forms the bedrock of our methodology, with its essence lying in the contextual understanding of the examined primary sources within the trajectory of the tradition that birthed each specific source. Consequently, we subjected the primary sources to the analysis of knowledge systems, the purpose of the analysis was to study the possibilities of dissemination of previously formulated theories and their influence on other knowledge systems. The approach adopted is dialectical, perceiving the subject of investigation as a dynamic field where issues assimilate historical attributes and are grasped by exposing latent contradictions. The historical apprehension of the corrective punishment model rests upon sources that were subjected to dogmatic interpretation, emanating from a critical stance towards the veracity or fallibility of specific substantive content.

RESULTS AND DISCUSSION

In historiography, the question of the origins of the Pennsylvania system of prison discipline remains debatable. Although certain scholars, exemplified by David Rothman and Ashley Rubin, attribute its “genesis” more closely to the Eastern State Penitentiary, it is inherently rooted in the previous experiences with prison reform in Pennsylvania, notably at Walnut Street Prison. Consequently, this study undertakes a comprehensive examination of both carceral models. Advocates aligned with the reformist approach (Harry Barnes, Negley Teeters) asserted the reform movement (both penal and prison systems) was a triumph of Quaker principles. Barnes posits that “the ideas and theories of the reformers were wholly in harmony with Quaker precedents (probably meant the “Great Law of Pennsylvania” of 1683 - auth.), even if they were to some slight degree affected by the contemporary reform currents in Europe”. Solitary confinement was the only element that needed to be added to constitute the Pennsylvania system (Barnes, 1927). However, it is precisely the intimate nexus between solitary confinement and the precepts of the Society of Friends that contemporary researchers, champions of the theological underpinning of the Pennsylvania system, anchor their assertions upon. In their assessment, solitary confinement seamlessly aligned with the core tenets of Quakerism, deeply rooted in the pursuit of Inner Light (Vasilyeva, 2015; Skotnicki, 2000).

Svitlana Vasilyeva discerns within the primary constituents of the Pennsylvania penitentiary model, the theological essence of early Quakerism, alongside the humanistic ideals of European penology and the legal legacies of the erstwhile colony (Vasilyeva, 2015). But, the precise instantiation of the impact of the "theology of early Quakerism" remains unelaborated. She approaches both the carceral model of Walnut Street Prison and the system of solitary confinement of Cherry Hill State Prison as an integrated Pennsylvania system of solitary confinement, underpinned by religious constructs. Consequently, when she asserts that protestant Quakers proposed and implemented a prison practice where the criminal/sinner had the opportunity for penance and redemption through solitary confinement (Vassilyeva, 2022), the referent – whether it pertains to the penitentiary house of the Walnut Street Prison established in 1790 or the Eastern Penitentiary inaugurated in 1829 – remains ambiguous.

According to Skotnicki, the very principles of the Quakers constituted the impetus that propelled the formulation and execution of the stringent solitary confinement system, with the divergence into two distinctive penitentiary models (Pennsylvania and Auburn) being ostensibly driven by Pennsylvania's Quaker affiliation and New York's Calvinist inclinations (Skotnicki, 2000).

The aforementioned approach, in our assessment, exhibits a certain degree of oversimplification and neglects the findings of eminent scholars within the realm of penitentiary studies, including David Rothman, Adam Hirsch, and Michael Meranze, who underscore the secular impulses of reform. Revisionist scholars, as a whole, veered from their predecessors' convictions regarding the paramount role of evangelical Christianity in shaping prison transformations, instead forging connections between reforms and broader social changes and the exigencies of the post-revolutionary period. The rapidly evolving demographic, industrial, economic, and cultural landscape highlighted the inefficacy of traditional control mechanisms (Rothman, 1990). The escalating incidence of crime engendered substantial apprehensions, catalyzing changes that were propelled not exclusively by humanitarian ideals. As noted by Hirsch, citing the instance of Massachusetts, the establishment of new penitentiaries was not confined solely to states harboring influential philanthropic entities, religious organizations, or reformist advocates (Hirsch, 1982).

Recent inquiries, notably those conducted by Jen Manion, have redirected the focus of penitentiary system investigations toward themes of gender, sexuality, and race. The social crisis at the juncture of the 18th and 19th centuries precipitated a recalibration of perspectives on the concept of freedom, exerting a palpable influence on the evolution of novel penal practices. The penitentiary, though initially designed as an alternative to corporal punishment for the most egregious of offenders, quickly became a repository for those who attempted to lay claim to the new nation's promise of liberty (Manion, 2015).

Ashley Rubin, a scholar delving into the history of the Pennsylvania system, accentuates that "The role of American Quakers in penal reform more generally has often been overemphasized." In this context, Rubin cites the authoritative viewpoint of Carl Schneider, who posited that solitude as a rehabilitative technique is not an innovation of the American Quakers, but it was advocated by English Christians of several denominations throughout the eighteenth century (Rubin, 2013; Schneider, 1979).

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Undoubtedly, the religious impetus underscoring penitentiary reforms and the formulation of strategies grounded in Christian doctrine to influence criminals are arduous to dismiss (Schmid, 2003; Ignatieff, 1978; Yarmysh et al., 2021). Similarly, the active involvement of representatives from the Society of Friends in reformative social initiatives is notable. The concept of moral transformation and communal accountability vis-à-vis the prodigal noncriminal occupied a central niche within the annals of the Society of Friends' pioneers, with prison reformers typically embodying fervent Christianity. However, was Quaker ideology the determining or dominating factor in the formation of the Pennsylvania system of prison discipline?

Jennifer Graber contests the notion that the Quakers' affinity for silence and Inner Light provides a comprehensive explanation for their alleged predisposition toward solitary confinement. She deems such an approach overly simplistic, highlighting that penitentiary reformers from diverse religious backgrounds, including Calvinists, also espoused the belief in criminal reformation through systematic labor, introspection, and solitary confinement (Graber, 2008).

A common argument in favor of the notion that the Pennsylvania system was a "product of the Quaker movement" rests on the premise that the Philadelphia Society for Alleviating the Miseries of Public Prisons was established by Quakers, who were also at the forefront of penitentiary reform. The names of the founding fathers of this philanthropic entity are widely recognized. Indeed, some of them were members of the Society of Friends, but the most important was that they were powerful local industrialists and religious and public figures. Notably, among the 340 members of the penitentiary society during the period spanning 1787 to 1830, a mere 136 (40%) were members of the Society of Friends. The leadership of the Philadelphia Society for Alleviating the Miseries of Public Prisons included Bishop William White of the Episcopal Church (1787-1836) and Dr. William Rogers, the pastor of the First Baptist Church, who served as vice president from 1797 to 1824 (Rubin, 2013).

Mark Colvin observes that Quakers did not constitute the predominant religious cohort within the Philadelphia Society for Alleviating the Miseries of Public Prisons. The society boasted participation from major Protestant denominations, underscoring that the notion of Quaker authorship of the Pennsylvania system is, in essence, a myth. Colvin, representing the revisionist stance, underscores that the proactive members of the society, primarily Quaker industrialists advocating capital interests, challenge the notion (Colvin, 1997).

The activities of the Philadelphia Society for Alleviating the Miseries of Public Prisons unfolded in an era marked by religious tolerance. During this period, the Society of Friends experienced a transformative phase wherein radical Quaker principles were reassessed, fostering closer ties with other evangelical denominations (Adamson, 2001). Hence, in contemplating the sway of religious convictions on prison transformations, it becomes imperative to account for the expansive evangelical corrective penitential discourse during the embryonic stage of American disciplinary models. Analogous trends also resonated within the landscape of European penology during the 18th century.

Nonetheless, to what extent did this influence hold sway in the nascent independent state? By examining penitentiary reforms in New York, Graber scrutinizes the endeavors of Protestant evangelicals to enshrine religion as a pivotal facet of the novel philosophy and punitive practices. Her analysis concludes that amid secularization and broad religious tolerance, these attempts floundered as secular paradigms gained ascendancy (Graber, 2011).

Turning to Pennsylvania, Michael Meranze dispels the notion of Quakers as catalysts of the reform in the punishment system. According to Meranze, the revisitation of criminal statutes was instigated and executed by state judges under the sway of Beccaria's ideals. The forces of patriotism and Enlightenment wielded more influence in shaping punitive measures aligned with the republican order. The structuring of the punitive execution model was profoundly shaped by Howard's ideas and Rush's penological framework (Meranze, 1984).

The principal contentions advanced by proponents advocating the "Quaker origins" of penitentiary reform encompass several facets: that Walnut Street Prison's inception was attributed to Quakers; that they formulated and executed solitary confinement as a conduit for convicts to establish communication with the divine, to repent, and to reform, thereby laying the groundwork for the emergence of a novel institution – the penitentiary house.

It is noteworthy that the endorsement to construct a new gaol, workhouse, and house of correction at the intersection of Sixth and Walnut Street in 1773 was granted by the Pennsylvania General Assembly, propelled by the overcrowding plaguing the existing penal establishment situated on High Street. Upon the inauguration of Walnut Street Prison, its architectural design and operational regimen were scarcely revolutionary or groundbreaking. The architectural configuration of the prison complex adhered to classical conventions, encompassing communal chambers to accommodate several dozen inmates. The predominant objective lay in the provision of improved conditions for housing convicts, debtors, and offenders.

A subsequent phase in the prison's trajectory unfolded after the United States achieved independence and enacted penal reform, marked by the replacement of capital punishment with imprisonment with hard labor (An Act amending the penal laws, 1786). As posited by Rothman, the reformist impetus was more profoundly driven by aversion towards the death penalty than by a conviction in the reformative potential of novel penal institutions (Rothman, 1990). Analogous to contemporaneous developments in Europe, the amelioration of punitive measures was mirrored in the pragmatic utilization of incarcerated individuals' labor, undertaken in seclusion and under surveillance. Convicts had to work not only in prison, but also in repairing and cleaning the streets of the cities or towns, making and amending the public roads, in fortifications, mines, and other hard and laborious works.

Thus, during the formative phase of the restructuring of criminal jurisprudence, the prison assumed a predominantly isolative function, with prime focus directed towards public hard labor. This approach came under criticism in Benjamin Rush's treatise "An Inquiry Into the Effects of Public Punishments upon Criminals and Society". This treatise, coupled with the apparent ineffectiveness of prevailing laws, instigated a critical reassessment of the penal system (Hawke, 1971).

The foremost impetus in driving this evolutionary course was unequivocally attributed to the Philadelphia Society for Alleviating the Miseries of Public Prisons. In January 1788, the Society proffered recommendations to the General Assembly advocating legislative revisions: the introduction of stringent regulations to enforce the separate confinement of diverse prisoner categories, the cessation of public hard labor, and the instatement of labor arrangements within the penal facility, whether individually or within solitary cells. Additionally, the prohibition of the sale and consumption of alcohol was proposed (Barnes, 1927). Benjamin Franklin, in a missive directed towards legislators, underscored the shortfall of extant criminal statutes and advocated for a transformation of punishment into a vehicle of reformation. He cited «Late experiments in Europe have that those advantages are only to be obtained by temperance solitude of labour» (Minutes of the Supreme Executive Council, 1853).

In 1789, the General Assembly enacted amendments to the law, mandating the separate confinement of distinct groups and transferring debtors to a workhouse. Notably, explicit mention of confinement within solitary cells was omitted. Consequently, the Society persisted in advocating "solitary confinement", subsequently publishing "Extracts and remarks on the subject of punishment and reformation of criminals" in 1790 to disseminate insights regarding the envisaged prison reforms. This publication encompassed delineations of the penitentiary in Wymondham, England, its operational regulations, and excerpts from John Howard's works.

David Shapiro's analysis led to the conclusion that it is improbable the pamphlet's authors endorsed protracted long solitary confinement. This refuted the prevalent misconception that the Pennsylvania penitentiary model, characterized by the practice of severe solitary confinement in state penitentiaries from the 1830s, was instigated by prison reformers and Society members during the 1790s (Shapiro, 2019). Instead, their emulation centered on John Howard's counsel, who, notably, did not advocate prolonged strict solitary confinement but merely supported segregation in solitary cells during nocturnal hours. Consequently, the term "solitary confinement" within the pamphlet likely encompassed confinement within solitary cells during nighttime, alongside actual solitary imprisonment. The temporal extent of such confinement, however, remained unspecified (Shapiro, 2019).

Opposition to the prevalent practice of protracted solitary confinement was also articulated by the eminent legal luminary of Pennsylvania, William Bradford. He contended that the redemptive severity of absolute isolation should be reserved for the most dangerous criminals (as an alternative to capital punishment). He further proposed that solitary imprisonment should not be excessively prolonged, suggesting partitioning it into intervals lasting no more than 20 or 30 days. He underscored his stance by referencing Howard: "The intention of solitary confinement, (I mean by day as well as by night), is either to reclaim the most atrocious or daring criminals – to punish the refractory for crimes committed in prison – or to make a strong impression, in a short time, upon thoughtless and irregular apprentices, or the like. It should, therefore, be considered by those who are ready to commit, for a long time, petty offenders to absolute solitude, that such a system is more than human nature can bear, without the hazard of distraction or despair" (Bradford, 1793).

As illuminated by Teeters, the Society's primary aspiration was to persuade the legislature to implement reforms mirroring those undertaken in Wymondham (Teeters, 1955). The pamphlet of 1790 declared: we must follow this English example and make our prisons penitentiary houses and places of correction, the miseries of the unfortunate prisoner have become subjects of deep investigation in Europe and that by an observance of wholesome rules, gaols may prove the happy means of reformation, and that the criminals instead of being a burden may be transformed into serviceable members of the community (Barnes, 1927). Thus, it may be inferred that the proposition of prolonged and comprehensive criminal isolation was not a subject of deliberation during this stage of reform.

The terminology "penitentiary house" appears to have been drawn from the title of the account detailing the reformatory institution in Wymondham, namely "An Account of the Origin, Progress, and Regulations with a Description of the newest-established Bridewell, or Penitentiary House, at Wymondham". About the solitary wing within Walnut Street Prison, this designation was initially introduced by Caleb Lownes in his account of the prison in 1793.

An Act to reform the penal laws of the state of 1790 ordered the erection of a separate building with solitary confinement cells for the incarceration of dangerous criminals. But the term "penitentiary house" was not used in this act. The preamble alluded "whereas the laws heretofore made [...] in some degree failed of success [...] and it is hoped that the addition of unremitted solitude to laborious employment as far as it can be effected will contribute as much to reform as to deter".

The account of Walnut Street Prison's operations, compiled by prison inspector Caleb Lownes, bore witness to radical transformations in the institution's structural configuration, administration, and regimen (Published in Bradford, 1793). Lownes' affiliation with the Society of Friends, coupled with his role as a presenter of progressive prison discipline to foreign visitors, subsequently contributed to the propagation of the notion of the Philadelphia prison as an exceptional Quaker undertaking in European circles.

Within the prison precincts, a wing featuring individual cells (the penitentiary house) was erected in the northern section to confine dangerous criminals and disciplinary infractions. By 1792, the inspector committee had devised "Rules Orders and Regulations for the Gaol of the City and County of Philadelphia," alongside "Directions for the Inspectors." A scrutiny of these provisions suggests that the drafters relied upon English legislative frameworks and reformatory house guidelines as their prototype, both in terms of content and arrangement.

The initial implementation of rigorous solitary confinement within the Philadelphia prison was introduced primarily as a punitive measure, aligned with English penal-reformist conventions and the theoretical principles espoused by John Howard. This approach had already taken shape in the workhouses of Northern Europe during the 17th century. The model of prison discipline, wherein the stark isolation of the offender within a solitary cell formed the bedrock of the reformatory regimen, garnered theoretical substantiation in late 18th-century Europe through the writings of Hayway, Bentham, and Paley, as well as practical realization at the Penitentiary House in Gloucester and the Bridewell in Petworth. In the United States, one of the earliest theoretical expositions advocating for the adoption of stringent solitary confinement was encapsulated in Benjamin Rush's 1787 pamphlet. This framework was grounded in the norms of Christian ethics as encapsulated in evangelical teachings, the ideals promulgated by European Enlightenment philosophers and prison reformers, and insights gleaned from the domains of medicine, psychology, and psychiatry.

In 1793, Lownes remarked that the newly established regulations, albeit in effect for a mere two years, had demonstrated their efficacy (Bradford, 1793). These positive developments were precisely the ones emphasized by proponents of the movement advocating for the abolition of the death penalty. They rationalized the impracticability of capital punishment while concurrently showcasing the effectiveness and humanity of the emerging penitentiary system. Notably, the description of the successful experiment at Walnut Street Prison was featured in a pamphlet authored by William Bradford, which advocated for the elimination of the death penalty. Bradford, a lawyer, proposed the tested application of solitary confinement as a humane substitute for the death penalty. This alternative punishment not only safeguarded life but also held the potential for a positive impact on the offender while maintaining an appropriate degree of rigor (Bradford, 1793).

The "An Act for the better preventing of crimes, and for abolishing the punishment of death in certain cases" enacted in 1794 rescinded the imposition of the death penalty for most crimes and introduced imprisonment at hard labour and solitary confinement in the gaol and penitentiary house of Philadelphia. A segment of the overall sentence was designated for rigorous solitary confinement within the penitentiary. This solitary period was mandated to not surpass half of the total sentence and not fall below one-twelfth of its duration.

In his analysis of legal archives, Thorsten Sellin deduced that in practice, judges seldom imposed strict solitary confinement or enforced the minimum duration of such isolation (Sellin, 1953). Shapiro, presenting a tabulated record of sentences encompassing the years 1795 to 1800, observed that judges generally exercised clemency, with the duration of solitary confinement frequently approaching the statutory minimum. It was noted that during their sentence, inmates spent even less time in isolation (Shapiro, 2019), presumably contingent upon compliant behavior and demonstrated reformative efforts. In actuality, the envisaged experiment involving strict solitary confinement within the penitentiary, which possessed a mere 16 solitary cells, was not fully realized. Typically, these cells accommodated disciplinary violators, albeit for only a few days (Rubin, 2013, 2021). The majority of inmates were held within communal cells, albeit segregated based on categories.

The regimen and managerial tenets of Walnut Street Prison exhibited minimal divergence from the English corrective carceral model. These principles were largely adopted from practices within English penitentiaries and the theoretical advancements of European reformist thinkers, aligning with the broader trajectory of penitentiary evolution. The introduction of strict solitary confinement for a portion of the sentence emerged as an experimental practice for individuals convicted of particularly egregious crimes, for which the death penalty had been commuted to imprisonment, partially accompanied by rigorous solitary confinement. While this innovation could be attributed to Pennsylvania, analogous provisions were also present within the regulations of the Gloucester Penitentiary House.

Regarding the potential religious influence as a facet of the corrective regimen within Walnut Street Prison, it is noteworthy that programmatic documents of the Society of Friends, regulatory enactments, external assessments by visitors, and inspector evaluations do not prominently feature a specific focus on the religious impact on inmates. While the Prison Rules did encompass provisions for Sunday services, unrestricted access to preachers from diverse denominations, dissemination of religious literature (even accessible to inmates subjected to strict solitary confinement), and references to Sunday schools, these characteristics were shared across a majority of correctional institutions on both sides of the Atlantic. The directive mandating mandatory attendance of Sunday religious services by all inmates closely paralleled the stipulations articulated within English legislation.

Amidst the crisis encountered by the disciplinary model of Walnut Street Prison, as indicated by Rev. Louis Dwight's report, there existed no mandatory program for religious education. Instead, individual preachers and members of respective religious societies offered all religious guidance and support on benevolent grounds (First Annual Report of the Board of Managers of the Prison Discipline Society, 1827). In this light, the committee of inspectors, some of whom belonged to the Quaker faith, did not give particular attention to the religious welfare of the inmates. However, it is pertinent to acknowledge the existence of such initiatives in other states.

Walnut Street Prison experienced a period of relative success approximately between 1790 and 1805. Thereafter, challenges emerged in production, overcrowding became a pressing concern, funds allocated for inmate maintenance proved insufficient, and incidents of riots and escapes grew more frequent (DePuy, 1951). By 1826, following a visit to the facility, Rev. Dwight characterized it as the most disreputable prison in the United States. Approximately 400 individuals were confined within 16 communal cells, forming an unruly multitude. Notably, elevated expenses and significant mortality rates among inmates were noted, accompanied by the unsettling trend of robbers and thieves being released only to return to prison. Furthermore, educational efforts for inmates were conspicuously absent (First Annual Report of the Board of Managers of the Prison Discipline Society, 1826).

In light of the crisis that befell the Pennsylvania system of prison discipline in the early 19th century, reform advocates increasingly turned to strict solitary confinement as a potential avenue to realize the goal reformation of criminal. This shift, in our interpretation, was more a response to the shortcomings of the extant prison model rather than being markedly influenced by the ideology of the Quakers or any particular religious group. The inability to segregate prisoners within the confines of a burgeoning inmate population, compounded by the cohabitation of state prisons, gaols, and houses of correction within a single penitentiary complex, culminated in negative influences between inmates.

The architectural plan of the old prison, which had been built for general confinement, was also cited as a problem. In 1818, Bishop White, head of the Society, responded to a query from Stephen Lushington concerning the efficacy of solitary confinement. Bishop White highlighted the challenges faced by reformers in implementing such a practice within the constraints of prison overcrowding. Nevertheless, he expressed optimism that the complete realization of solitary confinement could be attained through a novel architectural undertaking that aligned with its foundational principles (Barnes, 1927).

The subsequent progression of the punitive paradigm within state prisons became intertwined with the endeavor to implement the system of solitary confinement in emerging state penitentiaries. This prompts an inquiry

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into the innovation of Pennsylvania's reformers in this context, as well as the influences that guided the selection of the penitentiary discipline model.

Addressing the initial question, it is worth highlighting that throughout late 18th-century Europe, the prevailing trend in correctional facility construction involved the incorporation of individual cells, primarily designated for nocturnal confinement. Notably, between 1816 and 1819, the Millbank Penitentiary embraced a regimen of solitary confinement. Brochures disseminated in England encompassed conventional layouts for novel prisons that adhered to the imperative of segregating inmates within discrete cells.

Despite the wealth of empirical insights amassed by American reformists, the early 19th century saw the former metropolis continuing to serve as a source of inspiration, particularly concerning the architectural dimensions of penitentiaries. Architectural pioneers of the nascent penitentiaries, such as Benjamin Latrobe, William Strickland, and John Haviland, drew from European prison architecture innovations. For instance, John Haviland, the architect responsible for the Eastern State Penitentiary where the Pennsylvania system of prison discipline was realized (partially owing to his spatially efficient design), had previously apprenticed under the English architect James Elmes, who had a vested interest in penal matters.

Consequently, the notion of erecting a prison replete with individual cells in the early 19th century was not an entirely groundbreaking departure. The crux of the challenge lay in formulating the regimen for such solitary confinement. The Commissioners Appointed to Superintend the Erection of the Eastern Penitentiary advocated for a system of strict solitary confinement devoid of labor engagement for inmates, as provided for in the acts of 1818 and 1821 establishing penitentiaries.

Within the echelons of state authorities, including the gubernatorial sphere, no explicit endorsement of a distinct prison discipline model was tendered, thereby permitting the adoption of the Auburn system, a proven approach implemented in a neighboring state. The response from reformers in Philadelphia was swift: Roberts Vaux proffered comprehensive observations on enhancing prison discipline in the city, accompanied by a proposal to convene a commission tasked with crafting amendments to the criminal code and managerial regulations for new penitentiary establishments. This proposal aspired to encompass like-minded individuals, including inspectors of Walnut Street Prison and members of the prison society, thus illustrating the strategic hopes of alignment (Vaux, 1826).

In March of 1826, the legislative assembly granted authorization to the governor to institute the Commissioners on the Penal Code. This commission consisted of three legal practitioners, each devoid of affiliation with the Society of Friends: judges Charles Shaler and Edward King, alongside attorney Thomas J. Wharton. Their primary mandate was to formulate and present to the legislative deputies an optimal framework for prison regimen. Over two years, this commission conducted a thorough examination of professional literature about penitentiary matters, deliberated upon theoretical and practical proposals, scrutinized the experiences of Walnut Street Prison, penitentiaries in other states, and analogous establishments in European nations. A considerable array of statistical data was meticulously analyzed. Inputs from the committee of inspectors of the Western Penitentiary and the commission overseeing the establishment of the Eastern Penitentiary were also incorporated. The focal points of discourse encompassed construction and operational costs, the most suitable regimen for incarceration, and the organization of labor within this context.

In response to an inquiry lodged in August of 1826, the Commissioners Appointed to Superintend the Erection of the Eastern Penitentiary articulated an aspiration that the authorized entities would duly comprehend and acknowledge the underlying intent of reformers and legislators in Pennsylvania. It was underscored that no other state had devised a system akin to this, nor had it constructed penitentiary edifices of such expansive proportions and comprehensive design, thereby providing a setting for the testing of solitary confinement intertwined with spiritual influence. The commission expressed optimism that the impending experiment would be anticipated with enthusiasm by every resident of Pennsylvania, and its successful execution would promptly enhance the state's reputation and renown (Journal of the Senate, 1828).

A point of contention arose concerning the subject of inmate labor activities. A notable portion of the members of the Commissioners Appointed to Superintend the Erection of the Eastern Penitentiary advocated for isolating inmates devoid of engaging them in labor. This stance was rationalized by asserting that organizing productive tasks presented considerable challenges, and its pursuit would divert inmates from contemplation and ethical betterment. Consequently, a protracted duration would be requisite to achieve the desired rehabilitative outcomes, and imprisonment devoid of occupation would exert greater demands upon the individual (Letter, Report, and Documents on the Penal Code, 1828).

The inspectors responsible for the Western Penitentiary espoused a somewhat divergent perspective, influenced by their direct involvement in translating the conceptual framework promulgated by their Eastern counterparts into practical application. The early stages of penitentiary operation witnessed challenges in realizing the envisioned strict solitary confinement regimen. The Western Penitentiary's inspectors exhibited a proclivity toward integrating labor activities within communal workshops. This sentiment was succinctly articulated by Alexander Brackenridge, the Secretary of the Western Penitentiary committee, who ardently supported the imposition of obligatory convict labor. Brackenridge contended that maintaining a cohort of offenders solely supported by public funds, who whiled away their time under the pretense of aspiring to re-enter society as reformed individuals, was impracticable (Journal of the Senate, 1828).

After an exhaustive exploration of the most suitable penitentiary discipline model, the 1828 commission submitted a comprehensive report to the Senate. This report meticulously examined three distinct penitentiary discipline models: solitary confinement without labor, solitary confinement with labor in solitude, and solitary confinement at night, alongside labor executed within communal workshops. The authors meticulously scrutinized the core arguments in favor of complete isolation, including the substantial severity of the punishment through the deprivation of all interpersonal bonds, the preclusion of detrimental interactions among convicts, the favorable influence on the psychological and rehabilitative facets of criminals, the truncated duration of solitary confinement relative to alternative forms of incarceration, and the resultant reduction in associated expenses.

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Conversely, the commissioners counterposed these points with arguments against the inhumanity of such a system, excessive financial outlays, adverse effects on both physical and mental well-being, erosion of vocational skills, and degradation of convicts' social standing. Their inclinations toward the congregate system were palpable within these counterarguments. Consequently, the commission's verdict was foreseeable: given the infeasibility of entirely adopting the Auburn system, discrete elements of it should be incorporated. The Western Penitentiary would be adapted to a regimen of communal labor alongside solitary seclusion during nighttime hours. In Eastern Penitentiary, both of the proposed disciplinary models could be applied (Shaler et al., 1828).

The response exhibited by Philadelphia's prison reform advocates toward the released report was notably unfavorable. The report was construed as an act of disloyalty to Pennsylvania, a state that had rightfully established its standing as a trailblazer in the realm of penitentiary reform. The commission affiliated with the Eastern Penitentiary persisted in their endorsement of the system of solitary confinement devoid of labor. Some members of the prison society, however, adopted a conciliatory standpoint, promoting the idea of amalgamating solitary confinement with labor while maintaining a stringent environment of isolation.

During the period spanning 1828 to 1829, a period coinciding with the deliberations within the Senate and the House of Representatives concerning the preferred penitentiary system, the prison society members earnestly undertook educational endeavors to uphold the practice of strict solitary confinement. Their efforts garnered success as they managed to sway the General Assembly to their side, a feat potentially facilitated by the advanced stages of construction of the Western Penitentiary under the system of solitary confinement, coupled with the near completion of the initial phase of the Eastern Penitentiary. Consequently, on April 23, 1829, the legislative enactment titled "An Act to Reform the Penal laws of this Commonwealth" was passed, formalizing the introduction of the system of "separate or solitary confinement at labor". The system of prison discipline outlined within this legislation for both the Western and Eastern Penitentiaries became universally known as the Pennsylvania penitentiary system.

Despite an array of reports, pamphlets emanating from the penitentiary society, publications, correspondences exchanged by participants in the reform movement, and the Journal of Prison Discipline and Philanthropy, a periodical inaugurated by the society in 1845, no trace of insinuation about the influence of Quaker ideology or its role in the establishment of penitentiaries, prison reforms, or the formulation of the solitary confinement system is discernible. This absence is noteworthy, even as foreign visitors on occasion acknowledged their involvement. François de La Rochefoucauld, in his prominent and widely disseminated European narrative detailing the Walnut Street Prison, acknowledged the Quakers as initiators of the reformation in the punishment paradigm, attributing the creation and efficacious implementation of the novel punitive approach to their concerted endeavors (La Rochefoucauld, 1796). Similarly, Julian Niemcewicz, an acquaintance of Caleb Lownes, spotlighted the active role undertaken by Quakers as transformative agents within the American prison milieu in his survey of American correctional institutions (Niemcewicz, 1818).

Fundamentally, the proposition attributing an exclusive role to Quakers within the penitentiary reform movement found its initial grounding within the European discourse on penal institutions. This assertion can be traced to Gustave de Beaumont and Alexis de Tocqueville, who, in their evaluation of American penitentiary systems in 1833, devoted a segment to the "Influence of the Quakers." Nonetheless, their analysis predominantly revolves around the Quaker impact on the evolution of criminal law reform from the era of William Penn to the eventual abolition of the death penalty in the latter part of the 18th century. Within this context, the authors offer a rather critical appraisal of the Walnut Street Prison experiment, contending that the system failed to garner success anywhere within the United States and did not culminate in the rehabilitation of incarcerated individuals (Beaumont, Tocqueville, 1833).

Within the European domain, the discourse concerning "Quaker" involvement in penitentiary reform gained prominence with the establishment of the Society for the Improvement of Prison Discipline and the Reformation of Juvenile Offenders. This notable entity was substantially composed of Quakers and wielded considerable influence across various European countries.

However, in the United States, the Pennsylvania system, confined largely to a single state due to the concurrent adoption of the congregate system by other states, encountered sustained criticism over numerous years. Notably, it wasn't until 1883 that Eastern state newspapers began responding positively to the regimen and framework of the Eastern Penitentiary, employing evocative headlines such as "The Quaker Prison" and "A Penitentiary run on Quaker principles." Evidently, these headlines reflected the prevailing stereotype that associated Pennsylvania with Quaker principles, thereby offering an explanatory framework for the divergence in penitentiary models across states.

In the annals of American historiography during the early 20th century, particularly within comprehensive treatises, educational materials, and encyclopedic compendia, the narrative concerning prison reform's historical trajectory assumed a linear configuration. This exposition traced its origins from the pioneering criminal law reform efforts spearheaded by William Penn, which marked the inaugural Quaker undertaking in this domain, progressing methodically through the chronicles of the Walnut Street Prison to culminate at the juncture of the Eastern Penitentiary. This historiographical schema duly accentuated, at each sequential stage, the seminal and instrumental involvement of Quaker proponents, as conscientiously underscored by the expositors. Manifesting the essence of this thematic literature, a paradigmatic exemplar is discernible in the nomenclature of a notable opus: "Pennsylvania Quakers Establish the Modern Prison System" (Handbook of Correctional Institutions, 1949).

In the 1960s, the Federal Bureau of Prisons initiated a change in the penal paradigm, in particular, the introduction of a rehabilitative model, ostensibly grounded upon precedents entrenched within historical archetypes. It is pertinent to note, however, that the evolution of the carceral establishment, as an institutional apparatus, was oftentimes presented within a conspicuously oversimplified and schematic framework. According to this didactic rendition, the inception of the prison enterprise can be attributed to the Quaker constituency during the latter half of the 18th century. Emanating from this Quaker ethos was the proposition that the efficacious reform of the delinquent could be best achieved through their sequestering within a solitude-laden cell, thereby fostering an environment conducive to contrition to be elicited via introspective contemplation, scriptural study, and devotional supplication. This institution, envisaged as a vessel for fostering penitence, was duly denominated as a penitentiary (Alexander, 1966; District of Columbia Appropriations for Fiscal Year, 1967). Notwithstanding the foregoing limitations, it is noteworthy that this particular narrative template continues to endure in contemporary erudition, persisting both within educational tracts encompassing penological studies and scholarly treatises dedicated to the history of penitentiary systems.

CONCLUSIONS

Notably, neither the reports and reviews of the Philadelphia Society for Alleviating the Miseries of Public Prisons nor the discourses of Pennsylvania's prison reform figures, prominently underscored the pivotal involvement of Quakers in this reformative endeavor. Contrarily, in the European penitentiary discourse, commencing with La Rochefoucauld's 1796 account of the American prison experience, Quakers were recurrently referenced both as proponents of humanizing penal practices (from William Penn's 1682 legislation to the restriction of capital punishment in 1794) and as principal actors of prison reform. Conspicuously, these narratives often converged, presenting a coherent and progressive Quaker movement, despite the temporal chasm spanning 150 years between these occurrences. It has not been taken into consideration that the directions of the Great Law of 1682 for the establishment of prisons and workhouses were not realized and the act was revised in in the early 18th century.

Within the European gaze, Pennsylvania was conceived as a state founded by Quakers, although its population was not mono-denominational by the close of the 18th century. Pivotal to this transformation were members of affluent, established families within Philadelphia's industrial milieu, who actively engaged in philanthropic initiatives, including prison amelioration and penal regimen transformation. This collective impetus led to the formation of the Philadelphia Society for Alleviating the Miseries of Public Prisons, with a noteworthy portion of its active constituents – predominantly adherents of the Society of Friends – assuming pivotal roles within the inspectorate committee of Walnut Street Prison. Consequently, this cohort emerged as emissaries of the reformative impetus in Europe, received visitors, correspondence with British counterparts, and analogous endeavors. This orchestration engendered the perception of Quakers as the architects of the nascent penitentiary paradigm. However, it is imperative to recognize that by the latter 18th century, Pennsylvania's identity was progressively defined by religious pluralism rather than an overt Quaker hegemony. Confidingly, the religious influence on inmates in Philadelphia, during this era, did not markedly surpass that evident within other American or European penal institutions.

The late 19th century in the United States witnessed a prevailing skepticism towards the Pennsylvania system of prison discipline. Nonetheless, the early 20th century saw the germination of research inquiries into its origins, significantly facilitated by the proactive involvement of the Pennsylvania Prison Society, which instigated historical explorations. The works of Barnes and Teeters were published precisely in the initial half of the 20th century. In these scholarly contributions, the historical narrative surrounding the evolution of modern correctional establishments was articulated as a progressive movement instigated by religiously motivated philanthropists, driven by the aspiration to transform inmates into pious Christians and civic-minded individuals. Subsequently, these doctrinal expositions permeated educational textbooks and reference compendia. During the period of change in the concept of penal execution and implementation of the rehabilitation model in the 1960s, these narratives found strategic utility in the advocacy of reform by leaders within the Federal Bureau of Prisons, eventually achieving the status of the sanctioned historical account.

Within contemporary historiography, scholars of the modernist disposition, focusing on the religious substratum underpinning prison reforms, epitomized by the scholarship of Andrew Skotnicki and Svetlana Vasilyeva, have been discernible. In European penological literature (we are not talking about professional historical studies) the narrative of the Quaker establishment of penitentiary systems is also quite persistent.

In contrast, revisionist authors have critically evaluated the benevolent motivations of philanthropists as the sole impetus for penal transformations. These scholars attribute greater significance to shifts in social dynamics, demographic transitions, economic determinants, and the metamorphosis of institutions of power. Prison reforms were not only realized in Quaker or Calvinist states. But even in these, attempts by evangelical Protestants to make religion the centerpiece of a new philosophy and practice of punishment failed, and secular paradigms prevailed.

On the front of ideological foundations, the belief in the reformative potential of isolation was not unique to Quakerism but resonated across diverse Christian doctrines. Correspondingly, advocates of materialistic rehabilitative carceral discourse endeavored to better inmates, viewing them as subjects necessitating tailored "treatment" methodologies, including quarantine (isolation), discipline, physical and mental hygiene, moral influence, and analogous mechanisms. It is within Benjamin Rush's synthesized rehabilitative framework that these convergent impulses found theoretical mooring, thus furnishing the conceptual groundwork for the penitentiary reforms in Pennsylvania.

However, the shaping of the Walnut Street Prison's paradigm of prison discipline was profoundly influenced by English practices of corrective punishment and associated theoretical literature. This corpus of experience exerted a paramount impact that the members of the Philadelphia Society for Alleviating the Miseries of Public Prisons deemed worthy of emulation. The initial introduction of solitary confinement, akin to its instantiation within European houses of correction, was initially imbued with disciplinary intent. Subsequently, when the exigency arose for an alternative to capital punishment, the paradigm of incarceration marked by stringent isolation and devoid of labor engagement found its inception within the precincts of the Walnut Street Prison. This development can be construed as an evolutionary permutation of preceding modes of disciplinary solitary confinement. While innovative, this approach was not bereft of parallels, as comparable methodologies were partially operationalized within British bridewells and penitentiary houses. However, within the confines of the Walnut Street Prison, this trajectory retained the semblance of an experimental venture rather than an institutionally crystallized praxis. Acknowledged by the very protagonists of reform, the rigorous regimen of solitary confinement encountered substantial practical challenges, precipitated by overpopulation, the cohabitation of disparate categories of confinements – state prison, gaol, and houses of correction – within a singular complex, alongside architectural inadequacies that plagued the prison.

The formulation of the emergent penitential paradigm, designated as "separate or solitary confinement at labour," was motivated by the critical juncture encountered by the Walnut Street Prison, coupled with the adverse experiences encountered by the reformists. This developmental trajectory constituted a multifaceted process that resists reduction to the assimilation of specific religious precepts. Informed by both local experiences incorporating the Walnut Street Prison and the Western State Penitentiary and extraterritorial correctional institutions, most notably in New York, the formulation of this model was a nuanced synthesis. This synthesis was enriched by an assimilation of insights from penological theoreticians, empirical analysis of statistical data, and a comprehensive assessment of the merits and demerits intrinsic to assorted modalities of confinement. This assessment encompassed their psychological repercussions upon inmates, economic efficiency, the potency for maintaining discipline, and the provisions for surveillance and control. Crucially, these deliberations extended to transcontinental discourse, wherein interaction with British counterparts assumed significance. Importantly, the doctrine of solitary confinement did not reign as the exclusive and incontrovertible preference; proponents of the Auburn system, previously implemented, also made a compelling presence. For the first time, prison administrators entered the discussion and voiced their views on the appropriateness of a particular system grounded in pragmatic realities rather than strictly theoretical perspectives.

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FEATURES OF THE PRINCIPLE OF NON-DISCRIMINATION IN INTERNATIONAL TRADE AND ECONOMIC LAW

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Abstract. The article is devoted to the research of the features of the non-discrimination principle in international trade and economic law. This principle promotes international cooperation despite any differences in political, economic, and social systems. States could not be put in worse conditions concerning other states, with a difference in socio-economic system or level of development, etc. The principle of non-discrimination in trade and economic law contributes to the process of gradual convergence of economic, political, and legal differences between different social systems. Considering that trade and economic relations are aimed at reducing and eliminating tariff and non-tariff barriers in international trade, creating more transparent and predictable terms of trade, simplifying trade procedures, and counteracting unfair trade practices, the principle of non-discrimination is an integral principle of international trade. The principle of non-discrimination is a special principle of trade and economic law. Detailed attention in the article is given to the historical prerequisites for the development and implementation of the non-discrimination principle in international trade and economic law. The authors analize the features of this principle from the moment of its appearance to the time when it was enshrined in numerous international treaties and when it acquired a custom character. The article defines the modern international legal basis of the principle of non-discrimination. This principle has been classified into two components, namely the most favoured nation principle and the principle of national treatment. The article compares the general and distinctive characteristics of the most favoured nation principle and national treatment. These principles complement and reinforce each other to achieve a common goal, in particular ensuring non-discrimination in trade. However, unlike the most favoured nation principle, the principle of national treatment is applied only after the goods have passed customs control and entered the market of the corresponding state. The authors also analize the practice of the WTO Dispute Settlement Body in the context of violations of the principle of most favoured nation principle and the principle of national treatment.

Keywords: most favored nation principle, national treatment principle, international trade law, international economic law, World Trade Organization, WTO Dispute Settlement Body.

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INTRODUCTION

The aim of the system of international economic relations that emerged after the Second World War was to reconcile the conflicting interests of states and to develop common rules of conduct, enshrined, in particular, in international agreements (Kharchuk, 2010 p. 5). The result is a set of special legal principles that form the basis of international economic law.

Given that the destabilization of world trade usually leads to negative socio-economic consequences and mutual losses of the parties to the conflict (Mazaraki, Goncharova, 2020, p.6), states need to adhere to the principles of international economic law, which are the basis for stable trade and economic relations.

One of the key special principles of international trade and economic law is the principle of non-discrimination. The importance of the principle of non-discrimination formulated in the 1940s as a basis for building a new system of trade and economic relations in the world cannot be overestimated. Even though this principle was known earlier, it affected only a limited number of countries - those that concluded the corresponding, usually bilateral agreements.

Nowadays, the principle of non-discrimination constitutes a corner-stone in different fields of international economic law, notably international trade in goods and services as well as intellectual property and investment protection (Diebold, 2011, p. 831). It should be noted, that the principle of non-discrimination is the foundation on which the entire system of the World Trade Organization is built.

In particular, this principle prohibits discrimination based on differences in socio-economic systems. It promotes non-discriminatory international cooperation regardless of any differences in political, economic, and social systems. This means that no one state, regardless of its belonging to a particular socio-economic system or level of development, should be placed in worse conditions in comparison with other states.

The non-discrimination principle protects the value of concessions granted by countries against future erosion through discrimination (Odio, 2020, p. 7). As a factor opposing protectionism, the principle of non-discrimination contributes to the establishment of de facto equality of opportunity in international trade for the development of competition on equal principles and conditions (Report of the High Commissioner, 2004). The principle of non-discrimination is a means of liberalizing bilateral and multilateral trade relations between states.

METHODOLOGY

The authors used a combination of various general scientific techniques and methods in the article. At the same time, the theoretical and methodological basis of the study is fundamental research, the dialectical method of cognition, a systematic approach to the analysis of the principle of non-discrimination in trade and economic law, the works of scientists, domestic and foreign theory and practice in the field of features of the principle of non-discrimination in trade and economic law.

The methodological basis of this study is a set of general scientific and special legal methods of cognition. Among the general scientific methods,

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the authors used the method of analysis and synthesis, deduction, induction, prediction, modeling, analogy, the method of dialectics, and so on.

Thus, to comprehensively analize the topic of the study, the method of systematic analysis and synthesis was used, which helped to identify the main features of the principle of non-discrimination.

The methodological significance of the dialectical method in the study of the principle of non-discrimination in trade and economic law lies in the fact that it serves as a means of searching for new results, a method of moving from the already known to the still unknown. This means that in the study, not only the transformation of previously created theoretical knowledge takes place, but also the formation of their new modification by systematic addition of new theoretical provisions.

In addition, special legal methods were used in the article: historical-legal, comparative-legal, formal-legal, and others. Using the historical-legal method, the evolution of the principle of non-discrimination in trade and economic law was analyzed. The formal-legal method was used in determining the content of basic concepts, and systematization of material to obtain generalized conclusions within the stated issues. The comparative-legal method helped to identify common and distinctive features of the most favorable principle and the principle of national treatment.

System-structural, complex, and holistic research approaches were also used in the work. Formulation and substantiation of theoretical provisions, proposals, practical recommendations, and conclusions are based on the above methods and approaches.

RESULTS

1. History of the principle of non-discrimination in trade and economic law

The principle of non-discrimination has a long-standing history in international trade relations and it has become a central pillar of modern international economic law (Diebold, 2011, p. 831). At the same time, however, the pivotal role that non-discrimination clauses play in contemporary international trade and investment law, traces back to the 19th and 20th centuries when intensified international treaty practice made such clauses prevalent (Risvas, 2017, p. 81).

World War I marked a decisive change in international economic relations. No doubt, after a period of strong state intervention caused by the war, the idea of free trade seemed to prevail again in the years following 1920. But after a few years of apparent consolidation of the economic situation, the worldwide economic crisis of the early thirties led to a definitive departure from the gold standard and to renewed strong state intervention into this area of international relations (Kewenig, 1967, p. 377).

Trade protectionism, authoritarian tendencies, and international monetary turmoil have played a decisive role in the spread, deepening, and duration of the crisis. It was the impact of the lessons of the Great Depression and the Smoot-Hawley Act of the 1930s, under which tariffs were raised on more than 20 thousand imported goods in the United States, and as a result of which there was a response from other states that raised duties on American goods, which led to a sharp drop trade turnover between the United States and European countries and finally pushed the economy into the Great Depression

(Irwin, 1998, p. 326). These events have largely led to the need to formulate the principle of non-discrimination in international trade.

For the first time, the principle of trade and economic non-discrimination was enshrined in the Atlantic Charter, which the United States and Great Britain signed in August 1941, and in September of the same year, the Soviet Union joined it (Atlantic Charter, 1941). Of the nine paragraphs of the document, two were devoted to trade and economic issues and indicated, respectively, the reduction of trade barriers and global economic cooperation, which implied the creation of a world organization. Based on these points, in particular, the principle of non-discrimination was developed, which after the war formed the basis of the General Agreement on Tariffs and Trade, the predecessor of the World Trade Organization.

Nowadays, the importance of eliminating discrimination is highlighted in the Preamble to the Marrakesh Agreement Establishing the World Trade Organization, 1994 (Marrakesh Agreement Establishing the WTO, 1994), which defines the elimination of discriminatory treatment in international trade relations as one of two means of achieving the objectives of the World Trade Organization. At the same time, it should be noted, that the principle of non-discrimination was designed specifically to prohibit protectionism and to ensure equal treatment of foreign and domestic products (Cottier, 2011, p. 3).

2. Concept and components of the principle of non-discrimination in trade and economic law

An important problem of modern international trade and economic relations is the use of discriminatory trade in foreign economic activity, which is a violation of the basic principles of international trade and economic law. Trade discrimination is related to the existence of discriminatory import barriers, i.e. a higher level of customs duty on goods or services of one country, or their complete prohibition. As a result, there are conflicts between the economic interests of countries, which can even lead to trade wars. Also, sometimes to support national producers and protect the national interests of the state do not allow certain goods into the domestic market, unreasonably raise customs rates, impose quotas, use dumping, embargoes, and so on (Sych, 2012).

That is why modern trade and economic relations should be aimed at reducing and eliminating tariff and non-tariff barriers in international trade, creating more transparent and predictable conditions for trade, simplifying trade-related procedures, and countering unfair trade practices.

At the same time, the realities of international trade relations represent a search for a balance between national economic interests and the global interconnection of the economies of all countries. According to J. Tsanko and Y. Kozynets, the implementation of international trade cooperation between the states is impossible to imagine without the established principles of international cooperation (Tsanko, 2015, p.121). Therefore, today, the principle of non-discrimination is one of the basic principles on which trade relations are built within the framework of the global trade and economic system.

It should be noted that scholars have differing views on the principle of non-discrimination in international trade and economic law. For example, some of them call the principle of non-discrimination the basic structural principle of the GATT. T. Cottier and M. Oesch referred to the most favored nation and national treatment, which are components of the principle of non-discrimination, among the "constitutional principles" of the WTO (Cottier, 2005, p. 346).

V. Vedkal emphasized that the principle of non-discrimination implies the need to create the most equal conditions for free competition, regardless of the country of origin. Thus, no country should make exceptions for another or discriminate against it (Vedkal, 2018, p. 205).

K. Yurchenko noted that the principle of non-discrimination means that all contracting parties - members of the WTO are obliged to provide each other with equally favorable conditions. Therefore, no country should make exceptions for another or discriminate against it (Yurchenko, 2009, p. 61).

The principle of non-discrimination in international trade and economic law is customary and therefore binding. According to O. Vodyanikov, providing for the principle of non-discrimination in the text of the agreement, states can not deviate from the meaning given to it in general international law, i.e. the meaning underlying the legal regime of this principle, which has become customary. Therefore, the recommendatory nature can be discussed only at the stage of concluding the agreement, when the issue of including this principle in the text of the agreement is considered, and from the moment of its establishment in relations between two or more states regime and become mandatory for them (Vodyanikov, 2016, p.26). In WTO practice, non-discrimination in trade is understood as the absence of differential treatment between WTO members (Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain, 2004).

For example, in the dispute "Australia - Measures Affecting Imports of Salmon", the panel pointed to three elements that make up the principle of non-discrimination in trade in the field of sanitary and phytosanitary regulation: 1) the sanitary and phytosanitary measure is a means of discrimination between the territories of members other than another member, the imposing member, or between the territory of the member imposing the measure and the territory of another member; 2) the discrimination is unjustified or arbitrary; 3) similar or identical conditions prevail in the territory of the compared members (Australia – Measures Affecting Importation of Salmon, 1995).

Thus, the principle of non-discrimination, as one of the special principles of international trade and economic law, comes from the principle of the sovereign equality of states in international law. This principle implies that one state is provided in the trade and economic field on the territory of another state with the same conditions, benefits, and advantages that are provided to any other state.

The principle of non-discrimination was specified in the General Agreement on Tariffs and Trade of 1947 and was later inherited by the World Trade Organization through inclusion in the package of the WTO Agreements and embodied directly in the WTO law.

The importance of eliminating discrimination is emphasized in the Preamble of the Marrakesh Agreement Establishing the World Trade Organization, where "the elimination of discriminatory treatment in international trade relations" is defined as one of two means of achieving the goals of the WTO. It means that all contracting parties to the WTO are obliged to provide each other with equally favorable conditions. Therefore, no country should make exceptions for another or discriminate against it (Yurchenko, 2009, p. 61).

Discrimination in international trade is most manifested in two directions

- discrimination between countries and discrimination between national and foreign goods, services, and firms. Accordingly, within the framework of the multilateral system, the non-discriminatory nature of the application of trade policy instruments is ensured based on two essential principles: the principle of most favored treatment and the principle of national treatment.

However, bilateral and multilateral trade agreements tend to deal with two main types of discrimination. The first is the unequal treatment of one country by two different trading parents, when goods, services, sellers, or investors from one country have a less favorable trade regime than similar goods, services, sellers, or investors from another country. This type of discrimination is prohibited by the most favored nation treatment, which requires the country to provide an equally favorable treatment for goods, services, sellers, or investors, regardless of the country of origin.

The second type of discrimination is to provide an unfavorable regime to imported goods and services compared to similar domestic goods and services already on the national market. There can be many forms of such discrimination. The prohibition of this form of discrimination is enshrined in the principle of national treatment, which requires that the regime applied to imported goods be no less favorable than that applied to domestic goods.

3. The most favoured nation principle

The most favoured nation principle is an international custom, guided by which the parties contractually grant each other the most favored nation treatment. This rule allows one party to demand that the state be allowed to claim for itself such benefits that are already established for any third state. The second state is obliged to satisfy such requirements.

Provisions on the most favoured nation principle in some form existed in the treaties of the eleventh century. During the fifteenth and sixteenth centuries, the use of this provision increased as a result of trade expansion, and by the seventeenth century, it was enshrined in most trade agreements, covering the issue of preferences in trade. In the treaties of the eighteenth and nineteenth centuries, this provision was usually conditional - if the first state preferred a third state and received from the latter a certain concession (compensation), the second state could receive the same advantage only by giving the first a similar concession (compensation). Following the signing of a trade treaty between Great Britain and France in 1860, the unconditional form of the most favored nation provision became more popular. It provided that any advantages granted by the first State to a third State shall automatically, without any conditions, extend to the second. By the 1940's, this form was practically the only one used by states. The expediency of applying the unconditional form of the most favored nation provision on customs duties and trade conditions was confirmed in the recommendations developed during the International Economic Conference held under the auspices of the League of Nations in Geneva in 1927. The unconditional form was also supported in the Resolution of the Institute of International Law, adopted at the 40th session in Brussels in 1936. The use of the most favored nation principle continued after the end of World War II (Shemshuchenko, 2012, p. 533).

The most favored nation treatment was enshrined in Article 1 of the GATT. A situation where any benefit or preference for import or export is granted to any country automatically extends to all GATT contracting parties,

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effectively performing a prohibitive function, making it impossible to create individual preferences. This was the key to trade liberalization and the creation of a modern multilateral trading system aimed at maximizing the openness of countries' markets and eliminating discrimination between goods originating in different countries (Kormych, 2012, p. 25). Nowadays, the normative basis for establishing this principle are the provisions of the GATT-1994. The principle of the most favored nation in the field of international trade has become a universal principle; it ties together the vast majority of the member states of the World Trade Organization (Shumilov, 2019, p. 35).

According to the International Court of Justice in the Case Concerning Rights of the Nations of the United States of America in Morocco, the purpose of the most favored nation clause is to establish and maintain at all times conditions of fundamental equality between all States concerned (Case Concerning Rights of the Nations of the USA in Morocco, 1952).

If such a clause is included in the contract, then it aims to equalize the position of the parties, gradually expanding the list of rights that are given to the party. Thus, the parties are aligned in their statuses.

Following the GATT, the WTO can establish the most favorable treatment for customs duties and fees that are imposed on imports and exports, as well as for transfers abroad of payments made for exports and imports. GATT also allows for the most favored nation to establish the rules of regulation and compliance with import and export formalities for all participants. This agreement also defines uniform guarantees for both domestic and foreign-made goods and a rejection of quantitative regulation measures and export subsidy policies.

According to V. Chubarev, the clause containing the most favored nation treatment can be conditional or unconditional (absolute). The stipulated clause shall take effect only when the beneficiary State receives confirmation from the other State of its readiness to provide equivalent benefits or services. However, the unconditional clause takes effect automatically. That is, the difference between these forms of most favored nation treatment is that in the first case, the equality of legal regimes established under this clause is achieved only when the benefits or concessions are actually mutual, which is not formally required in the second (Chubarev, 2009, p.158).

It should be noted, that the principle of the most favored nation is not unconditional. Exceptions are provided from it. In particular, the following exceptions are possible: neighborhood reservation (if there is a common border, the beneficiary receives benefits for its goods, which the beneficiary state provides to a third border state in the area); preferences for developing countries (to equalize their economic development); preferences for landlocked countries; for member countries of customs unions, etc.

At the same time, the following arguments could be highlighted in favor of this principle: the most favored nation makes it possible to multilateralize the mutual reduction of tariffs, which states could agree on bilaterally; the most favored nation allows minimizing the distortion of "market" principles: if the policy pursued by the state puts foreign suppliers on an equal footing, importers and consumers have the opportunity to choose a foreign supplier offering the lowest (or the best combination of various characteristics) price; the most favored nation protects weaker states from discrimination by economically more developed states, does not allow the practice of "ruining a neighbor";

the most favored nation enforces the rules set by multilateral agreements and raises costs if a WTO member country deviates from its obligations (for example, if a country raises a tariff, it is obliged to apply this changed tariff to all WTO members, which increases the political loss from this measure); the most favored nation reduces the costs associated with rule-making, since the development of many bilateral agreements in the negotiation process can turn out to be very costly; in the absence of the most favored nation, states may have an incentive to unite in closed discriminatory international groups.

4. The principle of national treatment

The potential research of WTO national treatment provisions is hard to overestimate: they cover virtually all governmental policies of all Members of the WTO, whether be they taxes, laws, regulations, etc., which affect the conditions for sale and distribution, widely interpreted, of imported products and services (Horn, 2004, p. 40).

According to S. Osyka, the scope of the principle of national treatment includes all “laws, rules and requirements” relating to domestic sales; offers for sale; buyers; transportation; distribution; use of goods; as well as internal taxes and various fees (including direct and indirect). Thus, the scope of the principle of national treatment includes all domestic legislation in terms of the circulation of foreign goods and domestic trade in them, as well as taxation of foreign goods - almost the entire tax sphere (Osyka, 2019, p. 170).

The reason for the existence of the principle of national treatment is the prevention of governments from negatively influencing the possibilities of competition from imported goods in favor of domestic goods. It is believed that the outcome of competition between imported and domestic goods should be determined by market forces, not by government intervention, and through them the theory of comparative advantage. This should guarantee fair competition, and economic efficiency and reduce consumer prices. As a result, general well-being should increase.

The national regime is enshrined in Article 3 GATT is one of the pillars of the WTO system. According to the rule of national treatment, WTO members should not discriminate against imported goods compared to similar domestic ones (except for the collection of import duties). This rule prohibits countries, on the one hand, from taking discriminatory measures against imports and, on the other hand, from compensating for the effect of tariffs through non-tariff instruments (Poedynok, 2011, p. 63).

It should be noted that while the most favoured nation principle applies to all trade policies: both frontier measures and intra-market measures; the principle of national treatment is applied only after the goods have passed customs control and entered the market of the relevant country.

It should be noted that in a number of cases considered by the WTO Dispute Settlement Body, the provision on the principle of national treatment was specified. For example, the Japan-Alcoholic Beverages case (Japan – Taxes on Alcoholic Beverages, 1998) found that a national treatment obligation required WTO members to ensure that imported goods were treated on an equal footing in terms of competitive conditions concerning domestic goods, and it also articulated the general principle that domestic measures should not be applied in such a way to protect domestic production.

In the case of Italy – Discrimination against imported agricultural machinery (Italy – Discrimination Against Imported Agricultural Machinery, 1958), it was formulated that any violation of the obligation to grant national treatment automatically leads to the annulment or reduction of state benefits, which is a violation of article 23 of the GATT 1994, and also clarified the forms that a violation could take.

The US-Gasoline case (U.S. – Gasoline, 1996) found that the national treatment provision of GATT 1994 did not refer to an effect on trade. For this reason, whether imports from other contracting countries were substantial, insignificant, or non-existent, there would still be a breach of national treatment.

DISCUSSION

The principle of non-discrimination operates in two components: the most favored nation principle and the principle of national treatment. These principles - components are complementary in nature and complement and reinforce each other to achieve one goal, inter alia, to ensure non-discrimination in trade.

However, it should be noted that there are the following conceptual differences between them: in scope - the principle of national treatment covers more aspects (domestic taxation, rules of sale, transportation, use of goods in the domestic market, etc.); with the possibility of exceptions - due to the principle of inter alios acta and the very nature of the principle of most favored nation treatment (i.e. clause reserve), special regimes limited to bilateral relations or trade regimes with a limited number of participants cannot be taken into account when determining the most favored nation principle, while the national regime does not provide for such exceptions. Both principles are relative, i.e. they do not establish specific rule but instead refer to existing practice.

The principle of non-discrimination does not apply to all issues in bilateral or multilateral relations but applies only to those issues that relate to the subject of the agreement. Due to the concept of ejusdem generis, which has been recognized in the practice of international and national courts, the national regime applies only to the areas defined in the relevant treaty (Vodyanykov, 2016, p. 35).

CONCLUSION

WTO member countries interact within a non-discriminatory trading system, where each country receives guarantees of fair and consistent treatment of its exports in the markets of other countries, pledging to provide the same conditions for imports to its market.

The basic rules and principles of the WTO are reflected in multilateral trade agreements that affect trade in goods and services, as well as trade aspects of intellectual property rights, dispute resolution and the trade policy review mechanism.

In this context, it should be noted that at the present stage of socio-economic development, the principle of non-discrimination, as a tool to ensure equality in international trade and economic policy, is very important. It is the key principle of international trade and economic law. At the same time, the principle of non-discrimination is the foundation on which the entire WTO system is built, which plays a significant role in the process of economic

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globalization. Although the legal regulation of trade and economic issues is the prerogative of states and states have exclusive powers in this area, it is increasingly eroded by international trade and economic law, which imposes significant restrictions on discrimination against states in trade and economic spheres.

Adherence to the principle of non-discrimination at the appropriate level contributes to increased investment, lower prices, and a wider choice of goods and services available to consumers. In addition, adherence to this principle avoids the chaotic creation of trade barriers.

Summing up, it is worth noting that the obligations of the most favoured nation and national treatment, based on the principle of non-discrimination, are fundamental concepts of WTO law. Their non-compliance has serious consequences, both for the offending state and for all WTO member states. Unfortunately, despite the effective and multilateral implementation of the generally recognized principle of international law within the framework of the WTO, this fact does not exclude the existence of its violations in practice. That is why, the main direction of reforming the international legal mechanism of trade is to improve the legal basis of trade relations, in particular, on the based on the principle of non-discrimination.

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DEVELOPMENT OF THE STATE JURISDICTIONAL IMMUNITY INSTITUTION IN PRIVATE INTERNATIONAL LAW

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Abstract. This article provides a comprehensive analysis of the theoretical and historical legal underpinnings of the establishment and evolution of the concept of state immunity. The study delves into the key trends shaping the development of this institutional framework, elucidates the notion of immunity, and examines its implications within the realm of legal norms. Moreover, it highlights the multifaceted challenges arising from the application of state immunity in private law contexts. The article underscores the role played by customary norms and judicial precedents in shaping this progression. It investigates the origins of absolute state immunity and the emergence of limited immunity, accentuating the dualistic nature of state immunity. This duality stems from the state's simultaneous roles as both a custodian of sovereign authority and an economic entity, alongside a guardian of private interests. The article emphasizes the imperative to enhance domestic legislation and standardize the tenets of private international law in this domain. In addition, this article scrutinizes the theoretical and legal foundations of jurisdictional immunity of states within the purview of private international law and elucidates its methodological tenets. The author scrutinizes the groundwork upon which the jurisdictional immunity of states is established, delineates its conceptual framework and characteristics, and enumerates the principal forms of state immunity. Moreover, the study appraises the primary theories of jurisdictional immunity: absolute immunity and functional (limited) immunity. Special attention is accorded to the legal framework governing the jurisdictional immunity of states on both international and domestic fronts. Essential facets of the concept of jurisdictional immunity of states within international private law interactions are identified.

Furthermore, the article assesses the immunity of the state as an entity governed by private international law and delineates the spectrum of relationships in which the state might engage as a subject of international law. Sovereignty stands as the bedrock upon which immunity is founded. The analysis dissects the core concepts of jurisdictional immunity of states, namely absolute immunity and functional (limited) immunity, elucidating their attributes and codification within international legal instruments and national statutes.

Keywords: state jurisdictional immunity, establishment of state immunity, absolute immunity, limited immunity, legal framework for state immunity

INTRODUCTION

The contemporary complexities surrounding the jurisdictional immunity of states in private law relationships, coupled with the evolving trends in its development within international and domestic legal frameworks, hold significant implications, particularly in the context of the imperative to reform Ukraine's legislation in this domain. The pressing necessity for the legal regulation of interactions between the Ukrainian state and foreign entities within the sphere of civil law relations emerges from the escalating growth of economic ties, the establishment of agreements with private foreign individuals, and Ukraine's active engagement in global and regional integration initiatives, such as its accession to the World Trade Organization and the deepening of relations with the European Union. The exigency for this regulatory framework is underscored by the burgeoning expansion and deepening of international economic, trade, and cultural relations, a phenomenon characterized by the participation of a substantial number of states in international economic discourse. Nevertheless, this evolving landscape of cooperation engenders a host of challenges, primarily associated with the steadfast adherence to the fundamental principles and norms of international law, notably the principle of state immunity, as well as the correlated tenets of sovereign equality among states and the prohibition of interference in internal affairs.

The conceptualization of state immunity, including its legal nature and justifications, bears profound methodological significance in engendering comprehension of this intricate matter. In the present era, the issue of constraining state immunities remains pertinent not only to Ukraine but extends across the majority of nations globally. A notable example is witnessed in the years 2002-2004 when American courts deliberated upon the issue of appropriating several artworks by the renowned Austrian artist Gustav Klimt from the Austrian National Gallery and their subsequent transfer to a private individual, a citizen of the United States, who laid claim to ownership rights. Analogous situations arose in Germany, where in 2001, a Greek court issued an order for the seizure of German real estate in Athens, including prominent edifices like the Goethe Institute and the German Archaeological Museum. Additional challenges persist around the United Nations Convention on Jurisdictional Immunities of States and Their Property, a treaty adopted in 2004, which awaits ratification by a majority of its signatories, thus impeding its effective implementation

MATERIALS AND METHODS

Scholars such as A.S. Dovgert, O.T. Hirenko, Y. Dzera, Y. Korniychuk, M. Buromenskyi, M. Hnatovskyi, N. Chuchkova, and H. Burkhard, among others, have extensively explored the trajectory of the establishment and evolution of the institution of state immunity.

The present study is grounded in the utilization of civil law methods and techniques. The civil method, as a multifaceted category, encompasses several distinct features:

Legal Equality, Autonomy, and Independence: The essence of legal equality among participants, coupled with their autonomy and independence, underscores that individuals engaged in pertinent legal relationships possess equitable legal avenues to attain and exercise civil rights. This framework empowers them to assume civil obligations and discharge them, devoid of any form of legal subordination or authoritative dependency upon each other.

Volitional Choice: The principle of optionality governs the behavioral latitude of members entwined in civil relationships. This implies that the involved parties retain the prerogative to act in an initiative, unencumbered manner, driven by their interests and objectives.

Judicial Dispute Resolution: The recourse to judicial resolution for the settlement of disagreements among members of civil relationships is a hallmark feature. This highlights the availability of legal mechanisms for the amicable resolution of disputes through the judicial framework.

Property-Compensatory Character of Enforcement Measures: The coercive measures imposed upon defaulting parties bear a distinctive property compensatory nature. In cases where a participant in a legal relationship defaults on their obligations, resulting in the infringement of the rights of other participants or impeding their rightful execution, corrective measures are enacted. These measures, primarily of a pecuniary nature, aim to restore the violated rights, legally safeguarded interests, or the well-being of the aggrieved party.

In essence, the application of civil law methodologies offers a comprehensive framework for understanding the intricacies of state immunity, within which the principles of legal equality, volitional agency, dispute resolution, and property-compensatory measures harmoniously coalesce.

RESULTS AND DISCUSSION

The etymology of the term "immunity" traces its origins to the Latin term "communitas," signifying exemption from certain obligations, inviolability, or autonomy. In the historical legal context, the term "immunity" found use in ancient Rome to denote exemption from taxes or civic duties, including military service. Such exemptions were granted either permanently, as in the case of certain social categories like priests and men above 45 years of age, or for a specified duration, exemplified by the "immunis apparitions" concept, which entailed immunity for lower-ranking staff members. The bestowal of immunity rested with the Senate, and later, with the emperor (Kobrin, 2011).

Contemporary legal scholarship offers diverse interpretations of the term "immunity." In criminal proceedings, it signifies the exemption of individuals from specific procedural obligations. In constitutional law, the term "indemnity" often accompanies "immunity," particularly in the context of parliamentary members. On the international law front, immunity pertains to the absence of jurisdiction of one state's courts over another state. According to the Legal Encyclopedia, "State immunity has evolved as an absolute principle, entailing that foreign states, their entities, and state-owned property enjoy immunity. A foreign state cannot be sued in a foreign court unless it has expressly consented. Property owned by a foreign state cannot be subjected to coercive measures such as seizure, and it cannot be the subject of claims or foreclosure in the enforcement of court or arbitral awards" (Shemshuchenko, 1999).

The immunity of a foreign state, known as jurisdictional immunity, designates the exemption of one state from the jurisdiction of another. This jurisdictional immunity concept aligns with the general understanding of jurisdiction as the exercise of state power emanating from sovereignty – a state's authority to make determinations regarding its actions and the manner thereof (Oxman, as cited in the text).

This immunity of a state as a subject of international law from the jurisdiction of another state forms a crucial principle and firmly established rule in international law. It signifies that a state remains beyond the jurisdiction of another state and does not fall under the purview of any form of foreign authority – be it legislative, executive, or judicial. The underpinning rationale lies in the state's possession of sovereignty and the principle of equality among states. This equality, as evident in ancient Rome, is encapsulated in maxims such as "par in parem pop habet imperium" ("equal over equal has no power") and "par in param nonhabit jurisdiction" ("equal over equal has no jurisdiction"). This pertains to equality among states and not participants in private legal relations. State sovereignty forms the cornerstone of paramount rights and obligations within international relations, ensuring equal footing for all states under international law.

The principle of immunity of a foreign state, although not immutable, possesses a historical trajectory intertwined with the evolution of public and private international law. As noted by foreign scholars, the transition from absolute sovereignty to a limited doctrine that denies immunity to sovereigns engaged in commercial activities is emblematic of this evolution. This change, occurring over the past century, reflects a transition from the doctrine of absolute sovereignty towards the nuanced recognition of immunity in the context of commercial undertakings (Folsom, Gordon, Spanogle, 1996).

Historically, the principle of state jurisdictional immunity finds its roots in the feudal era. As early as the 14th century, the ancient Roman adage "par in parem nonhabit imperium" found resonance in the works of Italian jurist Bartolus. This principle stipulated the equality of states in interactions among supreme political authorities, precluding one state from exercising jurisdiction over another at that level.

The epoch of developed absolutism, characterized by the concentration of state power in the monarch's hands, witnessed the iconic declaration by French King Louis XIV, "The state is me." Notably, the early proponents of diplomatic and sovereign immunity, Hugo Grotius and Alberico Gentili, did not explicitly address the immunities of the state.

In summary, the term "immunity" encompasses an array of historical and contemporary meanings, shaped by diverse interpretations across various legal disciplines. Its historical roots in ancient Rome, its evolution within international and domestic legal contexts, and its association with the principle of state sovereignty highlight its intricate significance within the legal discourse.

The institution of state immunity finds its roots not only within the pinnacle of feudalism known as absolutism but is also associated with the broader era of feudalism. Doctor of Science V. Shamrai elucidates this connection, stating that the emergence of the principle of immunity dates back to the barbarian kingdoms arising from the ruins of the Western Roman Empire and the realm of Charlemagne in the 9th century. Within the context of feudal practice, immunity denoted the authority of a feudal lord to govern his domain as a de facto autonomous ruler. The scope of immunities exhibited certain variations but typically encompassed essential state functions such as tax collection, justice administration, police oversight, and coinage issuance. While feudal lord immunity was formally confirmed through royal charters, it was more an acknowledgment and formal validation rather than a conferred privilege. Feudal immunity underpins the intricate web of relations of personal dependency and service among medieval feudal lords, particularly the distinct dynamics between suzerains and vassals, which defied a monolithic ladder of consistent hierarchical subordination. Consequently, the hierarchical structure of medieval society remained inherently decentralized, with rights and obligations specific to each participant. The feudal realm characterized a society devoid of a unified political denominator. Building upon this premise, Shamrai underscores the conditional nature of considering the states of the feudal era in Europe, given that a notion of a unified state could be asserted only in Germany or Italy from the latter half of the 19th century. Even in France, renowned for its model of royal absolutism and centralization endeavors, genuine unity of state governance and the political system was achieved solely through the revolution in the late 18th century (Shamrai, 2006).

In the Middle Ages and during the zenith of feudal relationships, especially in the era of absolutism where state power was equated with the monarch's persona, and the monarch's possessions were sacrosanct, foreign jurisdiction could not be exercised over the monarch's person or possessions. In the incipient stages of this institution, courts justified the right of foreign states to immunity through international courtesy – comitas gentium (Girenko, 2004). An illustrative instance is the 1668 decision of a Dutch court, often regarded in historiography as one of the earliest judgments on state immunity. This case recognized the immunity of a foreign state when three Spanish warships were detained in a foreign port due to private claims against the Spanish king. The seizure was deemed unlawful, as Spanish warships couldn't be apprehended for debts of the monarch, and it contravened norms of foreign sovereign courtesy.

The portrayal of medieval immunity is vividly presented by Swedish scholar E. Anners in his work "History of European Law." He delineates a defining trait of the feudal system, as manifested in the Frankish state and subsequently disseminated throughout Europe (except Sweden, Norway, and Finland), which entailed the legal immunity of both feudal lords and their officials. This immunity extended to church property as well. Royal officials were barred from setting foot on a feudal lord or vassal's land. They were also precluded from conducting court proceedings, reprisals, and executions on these lands, effectively precluding the fulfillment of their essential duties and services. The lands of feudal lords and their vassals remained exempt from official taxation (Anners, 1994).

As time progressed, court practice increasingly acknowledged international customary law predicated on the principles of state independence and sovereignty as the bedrock of state immunity from foreign jurisdiction. This recognition, whether grounded in courtesy or international customary law, consistently hinged upon the foundation of state independence and sovereignty. Even in the early stages of practice, the autonomy and sovereignty of the state emerged as the paramount rationale for immunity. The 1812 decision of the US Supreme Court, premised on the existence of international custom, emphasized: "This complete equality and absolute independence of sovereigns, and these common interests, inducing them to mutual relations, and the exchange of good offices with each other, have given rise to a species of litigation which proceeds from the assumption that each sovereign refuses

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to exercise a part of that complete, exclusively territorial jurisdiction which is regarded as a property of every state."

The notion that state immunity originates from the personal immunity of a sovereign against the jurisdiction of another state is widely accepted. This viewpoint resonates among domestic and foreign scholars alike. As V. Timashova points out, "the special rule of state immunity, arising from the personal immunity of the sovereign, was first formally formulated in connection with cases on state courts" (Timashova, 2015). Australian scholar Ian Sinclair underscores that the foundations of modern state immunity law can be traced back to early theories of personal immunity of sovereigns or heads of state (Sinclair, 1980). Sompong Sucharitkul from Thailand anchors his perspective on the adage, "The king cannot be a defendant in his courts," referencing the United Kingdom. Given that the king embodied the state, courts, as an extension of the central government, lacked jurisdiction over the sovereign. The courts could merely act on behalf of the sovereign, underlining the immunity of the king. From this immunity of the king, the UK extended analogous immunity to sovereigns of friendly foreign states, which subsequently evolved into the immunity of foreign states and governments. Sucharitkul contends that the doctrine of state immunity in international law derives from the sovereign's immunity against the jurisdiction of courts within his state (Sucharitkul, 1959).

In summation, the concept of state immunity traverses historical epochs and disciplinary boundaries, encapsulating diverse meanings across different legal contexts. Its emergence during the feudal era and its subsequent evolution within the intricate tapestry of international law attest to its profound implications within legal discourse.

The principle of state immunity garnered acknowledgment in the practices of numerous states during the 19th century. E. Korniychuk posits that "the development of the principle of immunity of foreign states in common law states was significantly influenced by the traditional immunity of their sovereign, in conjunction with the rules of international courtesy (comitas gentium). This doctrine was a direct corollary of the constitutional and legal maxim in England that the King could not be sued or prosecuted in his courts. This rule was predicated on the premise that the king personified the state, and since the courts constituted an integral part of the central state power, their jurisdiction could solely extend to the individual on whose behalf they operated, rendering judgments" (Korniychuk, 2019).

The recognition of foreign rulers' sovereignty by analogy with domestic sovereigns' sovereignty found reflection in English case law, particularly the renowned 1820 case concerning the immunities of foreign states and their property, The Prins Frederik. Throughout the 19th and early 20th centuries, decisions in cases linked to state immunity were rendered in favor of reinforcing its underpinning. S. Sucharitkul, the inaugural Rapporteur of the UN International Law Commission on Jurisdictional Immunity of States and Their Property, references Lord Atkin's verdict in the eminent 1938 case "The Cristina," which underscored the application of international law principles governing state immunity. Lord Atkin elucidated, "The foundation for setting aside the court order and the vessel's arrest are two international legal provisions, mirrored in our domestic law and firmly established. Firstly, courts of a nation must not summon a foreign sovereign to their tribunal, effectively refraining from including it in proceedings, irrespective of whether they pertain to the sovereign's person or claims involving specific property or compensation for damages. Secondly, during proceedings, whether or not the foreign sovereign is a party, seizing or detaining his property, assets under his ownership or disposal, is proscribed."

Beyond the mentioned instances, notable court decisions encompass state immunity, such as the 1812 ruling of the US Supreme Court in The Schooner Exchange v. M`Faddon, which alluded to the presence of an international customary practice: "This complete equality and absolute independence of sovereigns, and these common interests, inducing them to mutual relations, and to exchange good offices with each other, have given rise to a variety of cases which proceed from the fact that each sovereign refuses to exercise a part of that complete, exclusively territorial jurisdiction which is regarded as a property of every State." Other court cases on state immunity include The Prins Frederik, 1820 (England), Blanchet c. Gouvernement d'Haïti, 1827 (France), De Haber v. The Queen of Portugal, 1851 (England), The Parlement Belge, 1880 (England), Kawananakao v. Polyblank, 1907 (USA), and The Cristina, 1938 (England). In the De Haber v. The Queen of Portugal case, it was explicitly noted that "summoning a foreign monarch to a domestic court in respect of any complaint against him in his public capacity is contrary to international law." In the case of The Parlement Belge, it was stated that "prosecuting a foreign state in court would be an insult to the 'royal dignity.'" Similarly, The Cristina case emphasized that "...the courts of the country should not bring a foreign sovereign to court ... that is, make it a party to the proceedings..." (Korniychuk E., 2007), among others.

The jurisprudential landscape of 19th-century European states and the United States reaffirms the customary character of international norms about state immunity and the prevalence of the doctrine of state immunity, rooted in state sovereignty. This dominance was notable, except in cases of the Scandinavian countries and the Netherlands, where their rulers and governments fell within the purview of national court jurisdiction (Phillimore G. G., 1925).

The rationale behind state immunity can be traced to the imperative of preserving official relations between sovereign states and facilitating interactions on each other's territories, particularly through permanent diplomatic missions and delegations. Consequently, state immunity was initially absolute in scope, encompassing all activities of a foreign state and its property. However, as states extended their involvement in private law domains such as trade, procurement of goods and services, and real estate transactions, a shift occurred. This led to the emergence of the concept of limited immunity in the late 19th century, which is now widely acknowledged. Under this framework, immunity is confined solely to situations where a state exercises sovereign authority, i.e., activities conducted under jure imperii. In contrast, in legal relationships of a commercial nature (jure questions), the state does not enjoy immunity, as legal entities and individuals engaging in such interactions with a foreign state must retain legal protection.

Professor Denysov aptly underscores that "the 1963 decision of the Federal Constitutional Court of Germany underscores that immunity hinges on how the foreign state operates: whether in the exercise of its sovereign authority or akin to a private individual, that is, within the realm of private law.

Even states that did not extend judicial immunity to foreign private individuals still granted them immunity from execution, grounded in the principle of state independence (as seen in the practices of Spain, and France, among others). This trend signaled a departure from absolute immunity towards a more pragmatic restrictive practice, wherein actions carried out by a state as a sovereign power were exempted from local court proceedings, while those linked to its non-sovereign activities were retained" (Denysov, 2011).

The dawn of the 20th century ushered in shifts as efforts were invested in regulating state immunity through interstate agreements. As countries expanded their engagement in trade and economic activities, particularly with private law subjects of other states, the notion of absolute immunity began to give way to the emergence of functional immunity. This paradigm gained prominence among most states. The 20th century witnessed the establishment of state legislation, bilateral and multilateral treaties, and the evolution of international legal doctrine regarding state immunity, shaped by judicial practices.

Various informal endeavors also transpired in this regard, with E.V. Korniychuk highlighting "the Harvard research project, three resolutions of the Institute of International Law, and the draft Montreal Convention developed in 1982 and revised in 1994 by the International Law Association" (Korniychuk, 2019). The Harvard Project, released in 1932, featured Philip Jessup's report titled "The Competence of Courts concerning Foreign States," which examined diverse judicial practices across over thirty countries. The report advocated for the limited (functional) concept of state immunity.

The Institute of International Law initially drafted the "International Rules on the Jurisdiction of Courts in Proceedings against Sovereign States or Heads of State of Foreign Countries," adopted by its plenary session in 1891. Subsequently, the "Resolution on the Immunity of Foreign States from Jurisdiction and Judicial Execution" was passed on April 30, 1954. Further elucidation on certain aspects of state immunity concerning jurisdiction and judicial execution was provided in a resolution on September 2, 1991. The Institute of International Law also formulated the "Resolution on Immunities of Heads of State and Heads of Government (Verhoeven, 2001)" in 2001. The Institute acknowledged both absolute and limited state immunity, while consistently asserting that enforcing court judgments at the expense of non-commercial state property is impermissible.

The draft Montreal Convention emerged from the International Law Association's conference in Montreal in 1982. It restricted the application of the general immunity principle to acts through which a state exercises its sovereign authority, incorporating exceptions stipulated in the United Kingdom's Immunities of States Act. The draft aligned broadly with the structure and content of this legislative act, with minor deviations (for instance, requiring the state to substantiate its judicial immunity claim). In 1994, the International Law Association ratified this draft with minor modifications during a conference in Buenos Aires

Numerous endeavors to systematize the principles governing case law within the realm of state immunity culminated in success with the establishment of an international unification convention in 1926. The inaugural International Convention for the Unification of Certain Rules About the Immunity of State-Owned Vessels was formally adopted in Brussels on

April 10, 1926, and became available for signature. The Brussels Convention remains operational among select states. Over time, the Convention, along with its associated Protocol ratified on May 24, 1934, garnered endorsement from nations such as Brazil, Belgium, Chile, Germany, Holland, Italy, Mexico, Norway, Portugal, Sweden, and the Netherlands before the outbreak of World War II. In 1951, Greece joined the accord, followed by France in 1955.

The Brussels Convention aligns the treatment of state-owned merchant ships and affiliated cargo, belonging to signatory states, with that of merchant vessels and cargo owned by legal entities and individuals. The Convention permits the apprehension of state-owned merchant ships and their subsequent seizure. To determine vessels exempt from the purview of the 1926 Brussels Convention, it employs two methodologies (Article 3): firstly, it establishes a broad criterion centered around the non-commercial service nature of state-owned merchant ships; secondly, it enumerates an inventory of vessel categories excluded from its scope. This roster encompasses military, patrol, sanitary, auxiliary, supply ships, and state yachts. These maritime entities were exempt from the prospects of confiscation, detention, or arrest. The Protocol of May 24, 1934, supplemented the Brussels Convention, addressing certain inconsistencies and gaps inherent within it. Notably, the Protocol (Article 1) conferred immunity upon ships chartered by a state exclusively for government-related non-commercial endeavors.

In the words of O. Borshchevska, the Brussels Convention implies that "absolute state immunity encompasses the prerogative of a state to fully exercise its sovereignty, encompassing all state institutions and property holdings. Given this articulation, absolute state immunity does not foster the advancement of economic relations between states, as it curtails the ability of states to seek judicial safeguarding of their property interests. Consequently, when entering into agreements, states must incorporate terms of reciprocity or potential countermeasures, thereby safeguarding their entitlements. Accordingly, the predominant policy trajectory of many states has shifted toward embracing functional (limited) state immunity. The fundamental tenet of such immunity primarily stems from the provision that when a state functions as a sovereign entity, as a participant in international law, it invariably possesses absolute immunity. Conversely, if a state acts akin to a private entity within the ambit of private international law and foreign economic law, engaging in commercial undertakings, it forfeits absolute immunity. In such instances, it assumes functional (limited) sovereignty" (Borshchevska, 2021).

Substantive progress in harmonizing legal norms within the domain of state immunity was notably advanced by European nations on May 16, 1972, through the adoption of the European Convention on Immunity of States (European Convention on the Immunity of States, 1972). This treaty was further supplemented by a Protocol that came into effect on May 22, 1985, and found adherence from Austria, Belgium, Cyprus, Luxembourg, the Netherlands, Germany, and Switzerland. The European Convention of 1972 codified the theory of limited immunity into legal practice, mirroring a parallel trend of enacting national legislation concerning state immunity, with the United States State Immunity Act of 1978 as its pioneering manifestation.

The overarching objective of the European Convention of 1972 revolves around addressing the jurisdictional immunity of states and encompasses several distinctive features. It governs matters concerning the recognition and enforcement of judgments rendered against foreign states. However, the Convention does not extend to scenarios involving social security, nuclear damage compensation, customs obligations, tax or criminal penalties, or proceedings tied to the management of state-owned ships. By the European Convention on the Immunity of States, a foreign state relinquishes immunity under two circumstances: firstly, upon the explicit waiver of immunity; secondly, when its activities or transactions align with the categories wherein immunity is not conferred. The Convention (Articles 1-3) outlines modalities for the relinquishment of immunity by a foreign state. Such relinquishment may manifest as 1) a direct, explicit form; and 2) an indirect, implied form. The former form may take shape through a) an international treaty; b) an unambiguous stipulation within a documented contract; or c) a distinct consent provided after the commencement of the dispute. The Convention also delineates avenues for indirect immunity waiver, which encompass a) the initiation of claims or involvement in legal proceedings within a court of another participating state; b) the initiation of a primary claim within a court of another participating state (entailing the non-recognition of immunity concerning a counterclaim); c) the initiation of a counterclaim within a court of another participating state; d) the implementation of measures by a foreign state pertinent to the substance of the proceedings.

The Convention specifies that the judicial immunity of a foreign state (subject to specific criteria) is not conferred in proceedings associated with employment contracts; obligations arising from contracts intended for fulfillment within the territory of the forum state; the state's participation in corporations and other legal entities headquartered within the forum state; industrial, commercial, and financial activities undertaken by the state through its agencies or institutions; proceedings involving patents, industrial designs, and trademarks.

The Convention delineates a distinction between judicial immunity and immunity about provisional measures and executive actions. It is thus evident that the relinquishment of judicial immunity by a foreign state does not imply a simultaneous relinquishment of immunity concerning provisional measures and enforcement activities. Article 23 stipulates that provisional measures or enforcement actions cannot be taken against the property of another State Party unless explicit written consent has been obtained from that state for each instance in which such measures are to be applied. This implies that an interested party is not entitled to petition for the attachment or enforcement of property belonging to the respondent state through the courts of the jurisdiction in which the property is situated.

The subsequent stage in the evolution of the institution of immunity and the unification of norms in the domain of state immunities was marked by the inception of the UN Convention on Jurisdictional Immunities of States and Their Property. This convention was adopted through Resolution No. 59/38 on December 2, 2004 (UN General Assembly Resolution, 2004) during the 59th session of the UN General Assembly. Its formulation followed years of comprehensive effort, with the UN International Law Commission having included the matter of jurisdictional immunities of states and their property in its agenda during its inaugural session. The establishment of a Working Group in 1978 paved the way for the development of draft articles titled "On Jurisdictional Immunities of States and Their Property" in 1991. This draft underwent finalization through the collaboration of several dedicated working groups. The discourse surrounding the discord between proponents of absolute state immunity and those advocating a restrictive approach to state immunity proved challenging. While the recognition of immunity was widely prevalent within international legal practice, a unanimous understanding regarding the scope and application of this principle remained elusive. States that had already enacted legislation in this sphere sought to ensure that their laws did not fundamentally conflict with the new convention, thereby avoiding the need for substantial alignment with international standards. The culmination of 27 years of exertion by the International Law Commission, the UN Sixth Committee, and the Ad Hoc Committee materialized in the adoption of the Convention on Jurisdictional Immunities of States and Their Property, receiving the endorsement of UN General Assembly Resolution 59/38 on December 2, 2004.

In the early 21st century, especially within the context of globalization, the realm of state involvement in both public and private legal relations marked by foreign elements has become considerably intricate. The state, in its role as a sovereign entity, inherently enjoys immunity. However, when the state partakes in activities akin to those of a private entity (such as foreign trade operations or commercial endeavors), its immunity becomes subject to limitations.

Controversies on state immunity, its organs, and its representatives remain unresolved. One example is the divergence of views regarding the application of immunity in the context of counterclaims, which may be subject to the general principles of judicial immunity for the state. An alternative perspective posits that consent from the state that initiated the claim is implied for the court's jurisdiction over counterclaims stemming from the same legal relationships or facts as the principal claim. This interpretation is evident in the provisions of multilateral international treaties such as the Vienna Convention on Diplomatic Relations of April 18, 1961 (Articles 31, 32), as well as other conventions concerning diplomatic law, such as the European Convention on the Immunity of States of 1972 (Article 1). Notably, Article 32, Paragraph 3 of the Vienna Convention states that the initiation of proceedings by a diplomatic agent or an individual enjoying immunity from jurisdiction under Article 37 of the Convention results in the forfeiture of the right to assert immunity from jurisdiction concerning counterclaims directly linked to the main action. Article 31 of the same Convention outlines that a diplomatic agent only benefits from immunity from civil jurisdiction concerning property or circumstances where they act on behalf of the accrediting state. The European Convention on the Immunity of States of 1972, Article 1, Paragraph 2, stipulates that a contracting state is precluded from invoking immunity from jurisdiction within the courts of another contracting state concerning a counterclaim founded on the legal relationships or facts underlying the principal claim.

Presently, the foundational framework governing the institution of jurisdictional immunity of states rests upon international legal treaties and domestic legislation. In some nations, judicial precedents serve as a substantive legal source, while in others, functional immunity finds its basis in judicial practices. Notably, Greece, Denmark, Italy, Norway, Finland, France, and Switzerland are among those countries where judicial practice holds significance as a source of law. Concerning the establishment of a universal convention aimed at regulating matters of state immunity, existing protocols necessitate refinement and finalization.

CONCLUSIONS

The evolution of the jurisdictional immunity of the State underscores the imperative of maintaining equilibrium between private and public legal interests through a well-defined legislative demarcation between the domain of sovereign actions of the State (actions conducted de jure imperii) and its non-sovereign actions (actions conducted de jure questions). Nevertheless, even when categorizing state actions as de jure imperii, it is essential to prioritize human rights and refrain from extending the scope of immunity, particularly in instances of civil litigations arising from human rights transgressions, such as cases involving torture, as well as the execution of judgments on such litigations.

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LEGAL REGULATION OF OTHER FORMS OF DIRECT DEMOCRACY IN THE REPUBLIC OF AZERBAIJAN: CURRENT SITUATION, PROBLEMS AND SOLUTIONS

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Abstract. Freedom of assembly has several historical roots. In early times, freedom of assembly was closely linked with the right to petition, that is, the self-interest of citizens and the public good were directed against the monarch. In consultative forms of direct democracy, the use of individual institutions of freedom of assembly in public and political processes is very important. Thus, for people to be able to exercise their public rights, they can effectively influence political power through the institution of freedom of assembly, in a consultative form. This is one of the main means of balancing the activities of political power.

The freedom of assembly is guaranteed by legal guarantees and corresponding restrictions of the Constitution and international agreements. The main goal of the state is to take appropriate measures for peaceful and free assembly without weapons. The principle of equality cannot be violated in the exercise of this right to freedom. “Assembly” means a temporary gathering of several people in public places for political purposes, which may take the form of public events, rallies, pickets, tent cities, demonstrations, street processions, etc.

A person or a group of persons organizing various forms of freedom of free assembly must receive official approval in advance from the executive authority or notify them about the relevant measure. The warning should be justified by the organizers and its purpose should be explained. In holding these mass events, the will of the people should be accepted as the main factor, and the requirements of the law should be strictly followed. The development dynamics of consultative forms of democracy directly depend on the level of democratic statehood of those democratic states. One of the main factors here is the presence of civil solidarity and the state’s liberal legislative system.

In the application of the freedom of free assembly, the expression of opinion and will of the people and a part of it, as one of the means of influencing the political power, these processes take place in the same direction as the process of democratic development of the state. These political institutions are one of the people’s opportunities to control democratic processes and develop them continuously.

Keywords: freedom of assembly, direct democracy, manifestation, rally, street procession, demonstration, picketing, public opinion poll, public hearings, tent city, meetings, sit-ins, strikes, rallies, events or protests, both offline and online, civil society.

INTRODUCTION

Only during the French Revolution did the assembly become a form of direct expression of the democratic will of the people directed against the existing state, which was guaranteed by the Constitution of 1791 (The Constitution of 1791). These rights and freedoms are enshrined in Article 20 of the Universal Declaration of Human Rights adopted by Resolution 217 A (III) of the UN General Assembly of December 10, 1948 (Universal Declaration of Human Rights, 1948). Article 11 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms of 4.XI.1950 (European Convention on Human Rights, 1950); articles 21 and 22 of the International Covenant on Civil and Political Rights, adopted by resolution No. 2200 A (XXI) of the UN General Assembly of December 16, 1966 (International Covenant on Civil and Political Rights, 1966); /C 326/02. Article 12 of the Charter of Fundamental Rights of the European Union of December 18, 2000 (Charter of Fundamental Rights of the European Union, 2000); in the context of national legislation - in Articles 47 and 49 of the Constitution of the Republic of Azerbaijan; In the Law of the Republic of Azerbaijan "On Freedom of Free Assembly" dated November 13, 1998 No. 537-IQ (The Law of the Republic of Azerbaijan on Freedom of Assembly, 1998); and other normative legal acts. Among direct democratic institutions, consultative democracy is a relatively new institution in the practice of Azerbaijan, therefore, despite the consolidation of the relevant norms on freedom of assembly in the former Constitutions of the USSR, the practical application of these rights and freedoms was a serious problem. Only after the implementation of the propaganda program in the USSR, picketing was first adopted as a form of demonstration by the decision of the Plenum of the Supreme Court of the USSR dated July 28, 1988 No. 4 "On the rules for conducting and organizing marches and demonstrations in the USSR". However, mass meetings in the USSR never took shape as a practical institution.

As a consistent result of this process, after the independence of the Republic of Azerbaijan, consultative democracy from the category of political rights in the Constitution provided forms of institutions not only at the constitutional but also at the legislative level. However, for a comparative analysis, it is necessary first of all to turn to European experience in this area. Freedom of peaceful assembly began its main expansion in Europe in the 50s and 1960s. Not only that potential activism regarding the freedom of peaceful assembly not matured in Europe, but also in FRG, even the Constitutional Court of Germany (BverfGE-69, 315, 343) adopted the second "classical" decision of a consultative-democratic nature called Brockdorff later (Tschentscher, Axel (2022). Although the debate about freedom of peaceful assembly in Europe was at a very low level in the first decades of the previous period, since the 1970s, the construction of nuclear power plants, the deployment of long-range missiles, and the expansion of airports in Europe have become the focus of heated debate. However, the compensating role of the media in the dynamics of the development of freedom of assembly in Europe is indisputable, since the main place in the popularization of this activity was occupied by modern media and social networks. Today, freedom of free assembly is considered one of the fundamental and dynamic rights and freedoms, including at the stage of "mass communications". This institution not only helps the consistent realization of the rights of minorities and the political will of the opposition but also, in other words, plays a "valve function" in integrating the spectrum of ideas and words of the distorted minority. and the minority (more precisely, the meeting participants (Höfling, Friauf. 2021: 12).

MATERİALS AND METHODS

However, the position of the extreme right was not accompanied by any significant developments regarding freedom of assembly. From the precedent experience of the Constitutional Courts of several European countries and the ECHR, it can be concluded that several parties and groups that have chosen an unconstitutional position, but whose activities have not been abolished, can violate the law by approaching the necessary publicity from an inflammatory position that cannot be prevented, buying and canceling this activity is required. The second interesting wave of freedom of assembly occurred as a result of reforms in the de facto federal states, which transferred the power to regulate freedom of assembly from the federal government to the states. This has been accompanied by the enforcement of strict rules on freedom of assembly in some states. But the problem is that. in practice, due to the unified case law, the constitutional courts of several states cannot make serious decisions (Scheidler, Alfred. 2008: 151-153). They occur when, in the course of a free assembly, demands, and programs are flexibly changed by political actors and replaced by other political demands.

RESULTS AND DISCUSSION

"Freedom of free assembly" and "guarantor of freedom of assembly" in the CIS and other post-Soviet countries' constitutions. Thus, the term "freedom of assembly" is used to define the right to organize and participate in public events in half of the constitutions of post-Soviet countries. For example, the Constitution of the Republic of Azerbaijan (Article 49), Article 39 of the Constitution of Ukraine from 1996 (Constitution of Ukraine, 1996), the Constitution of Moldova (Article 40) has "freedom of assembly", the Constitutions of Latvia (Article 103) (The Constitution of the Republic of Latvia, 2014), Belarus (Article 35) (Constitution of the Republic of Belarus, 1994), Turkmenistan (Article 43) (The Constitution of Turkmenistan, 2016), Kyrgyzstan (Article 34) (The Constitution of the Kyrgyz Republic, 2021) and declared as "guarantees of freedom of assembly" in legislative acts. The constitutions of Kazakhstan, the Russian Federation, Ukraine, Estonia, Tajikistan, and Uzbekistan establish norms that express only general political rights, including freedom of assembly, which is similar to the style of the constitutions of many states. We believe that the Constitutions, specifying the constituent elements by indicating the name of the norm, show a more correct format, so that the criteria for understanding political freedom are more specific and concise since the documents adopted by the majority of international and regional organizations include "peaceful assembly" or "free assembly of the minority". For example, "freedom of peaceful assembly".

Freedom of assembly as a consultative democracy is provided for in Article 49 of the Constitution of the Republic of Azerbaijan. In part I of article 49 "Everyone has the right to freely assemble with others" and in part II "Everyone has the right to peaceful, unarmed meetings, meetings, meetings with other persons, provided that they do not violate public order or public morality, with prior notification of the relevant state authorities, have the right to hold rallies, demonstrations, street processions, pickets (The Law of the Republic of Azerbaijan on freedom of assembly, 1998)". In Article 32 of the Constitution of the Russian Federation, freedom of assembly is formulated more succinctly: "Citizens of the Russian Federation have the right to peaceful, unarmed assemblies, meetings, rallies and demonstrations, street processions and pickets." According to Article 8, Part I of the FRG, "all Germans have the right to peaceful and unarmed assembly without prior notice or permission." In Part II, "an outdoor assembly may be restricted by law or the Basic Law." This provision demonstrates an almost appropriate modification in Article 47 of the Estonian Constitution: "Everyone has the right to peaceful assembly and assembly without prior consent" (The Constitution (Basic Law) of the Republic of Estonia, 2015-2023). We believe that the Basic Law of FRG has identified more favorable and easily implemented opportunities for citizens regarding freedom of assembly. In the French Constitution, to establish "rights and freedoms" at the constitutional level, mainly articles 4.5.10, 11 of the "Declaration of the Rights of Man and the Citizen" on August 26, 1789, and other acts as an annex to the French Constitution of 1958 and other regulated acts. The fact is that freedom of assembly is one of the fundamental political rights. These rights and freedoms are taken into account in international universal and regional documents, as well as in national legislation at the constitutional level; on the other hand, freedom of assembly, compared to the two main forms of direct democracy, "elections and referendum", freedom of assembly can require citizens to express their views and intellectual judgments in the context of the public power of the people, as well as to take serious and immediate measures (Blankenagel A., Levin I. G. 2013: 55). Dr. Herzog, who led the development of the Charter of Fundamental Rights of the European Union in 1999-2000, mixed all the provisions and built an almost unified mechanism. In the end, he concluded that the right to freedom of assembly is the right to assemble, formed by the trade union, which acts as the driving force for this activity in the process of organizing public associations and political parties. Brian Berkusson confirms this position and shows that, even though Article 12 of the Charter contains broad and controversial questions about the right to freely associate with colleagues, these rights do not bring full clarity to the norm (Bercusson, B. 2006: 145).

Article 49 of the Constitution of the Republic of Azerbaijan guarantees that everyone should be able to enjoy the freedom of peaceful assembly. Thus, the current law "On freedom of assembly" should be interpreted in terms of this "constitutional presumption" in favor of freedom of public assembly. The right to peaceful assembly should not be subject to unnecessary restrictions either directly or indirectly (Guidelines for the Implementation of the Law on Freedom of Assembly of the Republic of Azerbaijan, 2008-2023). According to the decision of the Plenum of the Constitutional Court of the Azerbaijan Republic on the interpretation of Article 49 of the Constitution of the Azerbaijan Republic dated October 21, 2005, the Plenum of the Constitutional Court of the Azerbaijan Republic concludes that "part two of Article 12, part two of Article 24 of the Constitution of the Azerbaijan Republic, part two of Article 71, part two of Article 72, Article 155, Article 3 of the Constitutional Law "On the Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan" and Article 11 of the Convention for the Protection of Human

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Rights and Fundamental Freedoms In terms of the provisions of Part II, the right to freedom of assembly, provided for in Article 49 of the Constitution The Republic of Azerbaijan may impose restrictions necessary in a democratic society and established by law." At the same time, the Constitutional Court of the Republic of Azerbaijan, guided by Part IV of Article 130 of the Constitution of the Republic of Azerbaijan, Articles 52, 62, 63, 65-67, and 69 of the Law "On the Constitutional Court", the Plenum of the Constitutional Court of the Republic of Azerbaijan decides, based on the above normative components, that the limits of a citizen's freedom may be limited by the relevant legislation (Constitutional Court of the Republic of Azerbaijan, 21 October 2005). This shows that in most post-Soviet states, judicial practice defended in its decisions the relative nature of freedom of assembly.

However, to be able to characterize the constructive significance of free assembly, it is necessary first of all to pay attention to the activities in the field of public assemblies and the principles that are considered basic in regulating these relations. In the OSCE 2007 Guidelines for Freedom of Assembly; There are 6 basic principles of freedom of free and peaceful assembly: 1) presumption in favor of holding assemblies; 2) obligations of the state to protect peaceful assemblies; 3) legalism; 4) non-compliance with the conditions; 5) the necessary administrative regulation, transparency of the decision-making process and the possibility of going to court; 6) prevention of separate elections (Guidelines on Freedom of Peaceful Assembly, 2007)Since any of the institutions of consultative democracy at the level of political rights is considered freedom of assembly, political pluralism and freedom of assembly allow citizens to express their political positions, opinions of a political, economic, social, cultural and political public nature. express their objections to the course of processes, especially against the political strategy of the state that does not satisfy a certain group of the population, against the long-term plan and program, management and decisions made, as well as boycott decisions made by the state or criticize state power at various political and legal levels. Freedom of peaceful assembly implies that the political activity of citizens is realized in three main directions; 1) political parties, using critical moments (political, economic, social crisis, etc.) to mobilize citizens of opposition political parties and blocs against political power by various protest actions and types; 2) certain specific social groups protesting against the decisions made against their rights, freedoms and interests or seeking to make decisions that directly satisfy their interests (for example, students, socially disadvantaged groups of the population, etc.); 3) a single or individual protest action, which can be personal, political, economic, social and cultural for various reasons (Volker, Epping. 2021: 14).

In the development of civil society, the types of free and peaceful assemblies play an important role as one of the factors influencing the maturation of the political activity of citizens. Freedom of thought and speech is at the heart of the organizational and political transformation of freedom of assembly. It is at the combination of both elements that a sharp political explosion occurs. To implement the freedom of assembly of citizens in international practice, as a rule, such institutions as manifestation, assembly, rallies, street processions, demonstrations, picketing, public polls, public hearings, tent cities, etc. are used. In practice, the use of types of meetings has a direct impact on the political consciousness and education of those joining the action, the development of political cohesion, cohesion, national will, and ideological ideology, as well as the ability to accurately exercise their powers and obligations to political power and perform the function of public control. November 13, 1998; under Part I of Article 1 of the Law on Freedom of Assembly of 2008: “The freedom of everyone to freely assemble with others is guaranteed by the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan has acceded. party. The exercise and restriction of this freedom shall be determined by this Law.” In Part II, “The State shall ensure the exercise of freedom of assembly and shall take appropriate measures about peaceful and unarmed assemblies organized under this Law.” From this we can conclude that the basic model of freedom of assembly in the Republic of Azerbaijan is guided by the provisions and principles arising from international norms, that is, the basic model includes the possibility for citizens to use consultative democratic institutions by expressing ideas and opinions in a peaceful and unarmed manner. A peaceful and unarmed assembly means that citizens can gather (in the open air under the open sky, Art. 8 of the Basic Law for the Federal Republic of Germany), without the use of knives and firearms, without violating public order, the requirements of the Constitution and laws, as well as the safety and order of others.

The mention of international treaties in Article 1 of the Law “On Freedom of Assembly” characterizes the adherence of the Republic of Azerbaijan to international obligations and the content of harmonizing the provisions arising from these documents into the law. Thus, these sources are the basis of consultative democracy in the Republic of Azerbaijan. Article 20 of the Universal Declaration of Human Rights of the UN General Assembly of December 10, 1948 states that “Everyone has the right to peaceful assembly and association.” And in the 2nd part “No one can be forced to join any association” (Constitutional Court of the Republic of Azerbaijan, 21 October 2005). According to Article 11 of the European Convention on Human Rights of 1950: “1. Everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form and join trade unions for the protection of their interests.” - “2. No restrictions may be placed on the exercise of these rights other than such as are prescribed by law and are necessary for a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others” (European Convention on Human Rights, Protocols, 2021). Article 21 of the UN International Covenant on Civil and Political Rights of December 16, 1966 states: “The right to peaceful assembly is recognized. No restrictions may be imposed on the exercise of this right, except for the restrictions that are established under the law and are necessary in the interests of the security of the state and society in a democratic society, public order, the health and morals of the population, or the protection of the rights and freedoms of others” (German Institute for Human Rights//International Covenant on Civil and Political Rights of December 19, 1966-2021). Article 12 of the Charter of Fundamental Rights of the European Union of 18 December 2000 states, that “1. Everyone has the right to freedom of peaceful assembly and freedom of association with others at all levels, especially in political, trade union and public life, which includes the right of everyone to form and join trade unions with others for the protection of their interests.” “2. Parties operating at the level of the European Union influence the expression of the

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political will of the citizens of the Union" (Charter of Fundamental Rights of the European Union - European Parliament (2000/C 364/01), 2022). From the provisions of these documents, one can conclude that the freedom of free assembly meaningfully retained the priority of the political rights of citizens, provided that they do not cause damage to the rights and inviolability of others. However, in the Charter of the European Union, these provisions were generalized and characterized as a single constituent element with freedom of assembly, trade unions, associations, public associations, as well as the activities of political parties.

During a free assembly, participants can be held administratively and criminally liable if they act contrary to the requirements of the law, violate the rules, and commit criminal acts. Therefore, for violating the rules of free assembly, appropriate sanctions are provided for both the Administrative Mistakes and the Criminal Code.

In our opinion, the limit of the fine provided for in Part 1 of Art. 169 of the Criminal Code above. We believe that the fine may be lower or higher if the purpose of the meeting and the people gathered at it is to cause special chaos and public unrest (for example, do not run over someone else's car and do not set it on fire). This means that the fine can be higher or lower than the amount of 5000-8000. Therefore, we propose that the size of the fine and its limit be determined by the judge based on facts and evidence in the course of direct trial. This practice is similar in most European countries. As for the other type of punishment, the criminal legislation showed a fairly high level of humanism in parts 1 and 2 of Article 169, since the legislation of most European countries sets a higher limit of punishment than the sanction of the Criminal Code of the Republic of Azerbaijan. we'll talk about that a little later. In addition, by the law, Article 180 of the Code of Administrative Offenses of the Republic of Azerbaijan provides for a fine for individuals, officials, and legal entities "for obstructing the holding of meetings, rallies, demonstrations, street processions, and pickets." It can be concluded that the expression "do not interfere" with the assembly process in the disposition of this article is a fairly general category. Thus, obstruction of any of these institutions may mean a smaller or larger amount, depending on the severity of the administrative offense committed. Therefore, we believe that adding the phrase "and depending on the amount of damage" to the provision of Article 180 of the Criminal Code of the Republic of Azerbaijan can establish a more accurate assessment.

One of the factors in the implementation of people's power is mass events that can be held both in the sphere of state and local self-government. Institutions covered by freedom of assembly are divided by size and penetration. These are voting institutions, public hearings, as well as consultative referendums, which were discussed in the previous paragraphs. In the legal literature, the following types of elements of a free meeting of a consultative democracy differ in form and function: 1) a rally - as a rule, is of a socio-political nature. This is a mass action directed against the state or an existing socio-political problem, for the people to exercise freedom of speech and opinion, to express public opinion, to resolve political, economic, socio-cultural relations and existing problems; 2) demonstration - here citizens demonstrate their objections and demands, their mood in expressing public opinion and opinion with the help of various posters, hangers, transparencies, boards, slogans, and other means; 3) street procession - in this case, the protesters are a form

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of mass public protest and a manifestation of solidarity to form ideas and opinions among outsiders along the route established in the respective place of residence and join support; 4) picket - a form of expression of public opinion and position by one or more citizens of a static nature, without the use of loudspeakers, using posters, transparencies, hangers and other visual means. In public meetings, it is mandatory to provide information for the use of other types, except for picketing, so that if the holding of events interferes with the course of public life, the normal life of people, health, recreation, and safety, as well as public transport, the relevant executive authorities may prohibit or reschedule the meeting, they may leave or move to another location.

Public events can be classified according to the following features: 1) according to the forms of public authority; at the level of the state and local government; 2) according to the respective territorial designation; at the national, regional, and local levels; 3) according to the degree of stability; short-term and long-term; 4) by subject; political, economic, social and cultural protests highlighting the country's domestic and foreign policy strategy; 5) by subject composition; students, youth, women, war veterans, veterans, political parties, public organizations, residents of various settlements; 6) according to the forms of implementation; expression of subjective will, expression of direct democratic public opinion of a consultative nature, expression of public opinion and opinion arising from current events; 7) depending on the presence of legal grounds; legal and illegal meetings; 8) by venues; outdoors and indoors (Hufen, Friedhelm, 2009: 495).

It should be noted that in 2005 several additions and amendments were made to the law "On Free Assemblies", due to which the content of issues in several norms was clarified. The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights regularly reviewed the activities of citizens in holding peaceful assemblies at the request of the Republic of Azerbaijan and in 2007 assessed the changes and additions and issued an opinion. The OSCE Office for Democratic Institutions and Human Rights and the OSCE Baku Office have agreed that they will provide the necessary assistance to the relevant state bodies in the process of developing guidelines for the implementation of the Law on Freedom of Assembly. The correct application of the Law on Freedom of Assembly is of particular importance during election campaigns, which is why the European Court of Human Rights (ECtHR) has repeatedly called on "public authorities to take appropriate measures related to the legality of demonstrations to ensure the peaceful conduct of demonstrations and the safety of all citizens the "duty to see" is based on the idea (Guidelines for the Implementation of the Law on Freedom of Assembly of the Republic of Azerbaijan; 2008-2023)

By Article 513 of the Code of Administrative Offenses of the Republic of Azerbaijan, the legislation provides for various administrative penalties under parts I and II of the norm for violation of the rules for organizing and holding free meetings. Thus, in article 513.1 of the law, the fine provided for violation of the rules established by law for organizing and holding a free assembly by a meeting participant is from 1,500 to 3,000 manats, for individuals - from 3,000 to 6,000 manats. manats on officials, and on legal entities a fine for fifteen thousand to thirty thousand manats is imposed. "or, depending on the circumstances of the case, taking into account the personality of the offender, public works from two hundred to two hundred and forty hours or administrative arrest for a term of up to two months are applied." Article 513.2 toughens the penalty for participation in an assembly not organized according to the law. Thus, a fine is provided in the amount of three hundred to six hundred manats, "or, depending on the circumstances of the case, taking into account the personality of the offender, from one hundred and sixty hours to two hundred hours of community service." or administrative arrest for up to two months. We believe that in this norm, the sanction is more severe, applied not only to the violation by the organizer of the rules for holding an assembly but also to participation in unorganized types of free assemblies. In both cases, the sanction provided for in Article 20.2 of the Law on Administrative Offenses of the Russian Federation is a lighter fine and limit of punishment compared to the sanctions provided for by the Criminal Code of the Russian Federation, as long as the Russian Federation is a sufficiently large country compared to the Russian Federation, and here the number of violations of the law in the field of freedom of assembly includes conflicts, which may be accompanied by more frequent and more severe consequences in the Russian Federation per population (The Criminal Code of the Russian Federation, № 63-FZ of June 13, 1996; 2022) It can be said that these sanctions also determine a lighter administrative penalty in the Law of the Republic of Kazakhstan on administrative offenses. For example, for violating the rules of a meeting, administrative arrest for ten days is applied (Article 288) (The Code of the Republic of Kazakhstan On Administrative Violations, 1995-2023). We believe that in the context of organizing and holding meetings, violations of the rights, as well as corresponding violations of participants in public meetings, can be identified, for which the organizer cannot be directly responsible. The OSCE Office for Democratic Institutions and Human Rights defines the following "protection from others" criteria: "This positive obligation protects participants in a peaceful assembly from any person or group (saboteurs and others) who seek to disrupt or prevent it in any way, including demonstrators) requires protection" (Venice Commission: Council of Europe (revised July 2014); 2014-2019). Indeed, "the duty of the state concerned to protect a peaceful assembly is of great importance to those holding or attempting to hold a relevant assembly to support any non-mass opinion, as this may increase the likelihood of a violent confrontation." (Venice Commission: Council of Europe (revised 2014-2019). This issue is clearly stated in Art. 488 part 2 of the Law of the Republic of Kazakhstan on administrative offenses, or rather, the participant may be fined according to the indicator of twenty-month reporting or subjected to administrative arrest for ten days (The Code of the Republic of Kazakhstan On Administrative Violations; 1995-2023) However, under Article 212.1 of the Criminal Code of the Russian Federation, the amendments introduced in 2014 provide for tougher sanctions, as they provide for a fine of one million rubles and imprisonment for a period of 3 to 5 years for those who repeatedly violate the rules of a peaceful assembly (The Criminal Code of the Russian Federation, № 63-FZ of June 13, 1996-2022). In our opinion, this sanction is more severe than the legislation of the Republic of Azerbaijan, since this factor is provided for in the legislation of the Russian Federation only for repeated violation of the rules of an assembly.

It is known from the legislation of the Republic of Azerbaijan that, according to Article 169.1 of the Cabinet of Ministers of the Republic of Azerbaijan, the freedom of public meetings is only the organization, holding and participation in meetings in cases prohibited by law (hence, it applies to an entity performing any action considered contrary to the law); Article 169.2, as an aggravating circumstance of the participants, the use of firearms and cold weapons, explosives and devices, as well as the wearing of substances and objects that do not pose a danger to the life and health of third parties, that is, the same sanction for everyone, regardless of the subject composition of the participants, however, in Article 513.1 of the The Code of the Azerbaijan Republic On administrative violations, the main criterion is that, despite the application of administrative fines and penalties for violation of the rules of the organizer of mass events, the possibility of violation of the rules of peaceful assemblies by other participants is not provided, since this is provided for by the legislation of a number of states, including liability participants is established by a separate paragraph of the legislation of Kazakhstan. In our opinion, the types of consultative democracy, considered as one of the types of constitutional and legal guarantees, may have a special biased approach of the participants in public meetings, which in no case can be identified with the political will of the organizer, and such cases are individual, i.e. subjective character. Therefore, we consider it expedient to add to Article 513.1 of The Code of the Azerbaijan Republic On administrative violations the words "participant who committed an administrative offense" and "other participants in the meeting". However, it is clear from the description of Article 513.2 that participation in the organization of illegal assemblies, contrary to the rules established by the legislation of the Republic of Azerbaijan, as follows from the disposition, implies the direct participation of both the organizer of the assembly and the participants, which does not have a balance in the legal balance of the norm. Article 180 of the Code of the Azerbaijan Republic On Administrative Violations, defines only administrative fines for external entities, individuals, officials, and legal entities that violate the rules of free assembly. We consider it necessary to apply administrative detention to this category of persons, since this case may be important in preventing administrative errors as an alternative method of punishment. We are talking about a violation of deliberative democratic rights, which is one of the urgent forms of constitutional and legal protection of citizens.

In our opinion, both in the Code On Administrative Violations and in the Criminal Code of the Republic of Azerbaijan, the sanction, including an administrative fine and the limit of punishment, for committing administrative and criminal actions during the use of types of public meetings should be carefully evaluated; 1) the use by citizens of the institutions of public will and deliberative opinion and freedom of speech. This means that the rally participants are not criminals and shows the public will solve socio-political, economic, and social problems in the country; 2) Since the public goal is not always individual, but collective, the implementation of collective requirements and interests shows a deliberative public position. Thus, the formation of criminal elements and intentions in these interest groups is maximally excluded; 3) the subjective goal is important, positive (financial), and negative (administrative offense and criminal actions). Thus, the subjective goal in the implementation of direct democratic measures is the abuse of the relevant types of gatherings (socio-political confusion, destruction, arson, damage to private and state property, robberies, barricades, robberies, causing grievous harm by hiding in the crowd, etc.) consists of actions and inactions, accompanied by criminal desires and desires (p. 2; 7) (United Nations, International Covenant on Civil and Political Rights, 17 September 2020). Since freedom of assembly is a peaceful public phenomenon, any action against the law must be carefully investigated by the legislature and the judiciary. The fact is that the subjective position of the protesting crowd, whose demands are not met and suppressed, is not the same as that of those who came to the rally with criminal ambitions. This means that violations of rights and criminal acts committed by citizens who are unable to achieve their political goals, and during mass protests, should be qualified as mitigating circumstances since the public goal and motivation are aimed at a political goal, so the participants of the action do not think about objective factors, as long as they are publicly considered the driving forces of the assembly (p. 36) (United Nations, International Covenant on Civil and Political Rights, 17 September 2020; Council of Europe, Venice Commission). In modern times, the electronic registration of democracy in the Republic of Azerbaijan, and the development of computer technologies allow citizens, voters, as well as state and municipal bodies to directly use the constitutional guarantees of democratic institutions. The goal is for the dynamic development of civil society to directly influence both constitutional guarantees and democratically

One of the important issues is the clarification of the legal mechanism for picketing by a person alone or jointly with other persons during mass events. According to Part V of Article 9 of the Law of the Republic of Azerbaijan "On freedom of assembly", "the number of pickets should not exceed 50 people". It is also necessary to determine the minimum and maximum number of participants. If only one person came to the picket, then he does not need to obtain special permission, because the minimum limit for picketing alone in the Republic of Azerbaijan is not defined, and when we talk about a mass event or rally, we are talking about a gathering of two or more people. For example, in Spain, a minimum of 20 participants is required to hold a public event (Council of Europe, Venice Commission, 826/2015 - 22/03/2021). This rule is the minimum limit of 3 people in the state of Schleswig-Holstein of the Federal Republic of Germany (State case law database, Schleswig-Holstein, 2023). From this, we can assume that the minimum number of participants in the picket, according to the legislation of the Republic of Azerbaijan, includes two or more people.

In public meetings, it is mandatory to provide information for the use of other types, except for picketing, so that if the holding of events interferes with the course of public life, the normal life of people, health, recreation, and safety, as well as public transport, the relevant executive authorities may prohibit or reschedule the meeting, they may leave or move to another location.

There are 3 steps to consider for public meetings. 1) the stage of preparation for mass events; the rights and powers of the participants of the event, the place and time of the event and informing the relevant state bodies, taking all organizational and preventive measures for holding rallies; outreach and educational activities among the participants of the meeting. 2) The subject composition of the meetings, the organization, the mechanism for conducting and holding such meetings; on the holding by the organizers and participants of the events of the general event under the program, on the performance by state bodies of the necessary functions, as well as on the strict observance by the subjects of their rights, duties, and responsibilities. 3) the result obtained at a public event; Appeal to the necessary authorities for the filing and implementation of joint applications, decisions, and requirements (Hufen, Friedhelm, 2009: 508-509).

One of the most important issues in holding public events is the coordination of decisions and appeals made as a result of the implementation of consultative-democratic institutions with state bodies, otherwise, there is no point in holding public events. In several European countries, appeals received as a result of a rally are addressed directly to the government and are sometimes discussed by commissions. (for example, France). We consider it important to take into account this provision in the law "On freedom of assembly" since it serves to coordinate socio-political issues between the government and the people with civil society, to put them on the road or find a consultative solution. Because consultative democracy is one of the basic constitutional political freedoms of citizens. Although the legal mechanism of the institutions of deliberative democracy used in the post-Soviet space is defined in the constitution and legislative acts, there are still several problems in the systematic holding of public meetings under the standards. In many cases, as a rule, artificial barriers to events, unjustified detentions by the police, beatings, threats, actions, and inactions leading to the dissolution of the meeting, etc. Cases like this are practical. It can be said that such a specific approach exists not only in certain cases in Europe but also in all post-Soviet states. Serious coercive and repressive actions against mass events lead to the disruption of political relations between society and the state and directly to the weakening of public power, and after certain periods to the degradation of the activities of these institutions, i.e. the isolation of the active activity of the people in political processes. The only way to solve this problem is for the state to strictly enforce the law in the process of holding mass events and not allow artificial restrictions (for example, police brutality, disruption of mass events programs, expulsion of demonstrators, beatings and tearing slogans, banners and signs that create open demands and political resonance breaking or taking from hands, etc.). we think so. Public meetings are an opportunity for citizens to exercise their constitutional political rights in the process of forming a civil society, which is considered one of the important indicators of the dynamics of the development of the state in the performance of democratic political functions. In our opinion, the implementation of the institutions of consultative democracy in the exercise of public power is as follows.

CONCLUSION

From this point of view, based on the content of the text studied above, we can come to the following conclusions about the constitutional guarantees of freedom of assembly in the Republic of Azerbaijan.

1) "Freedom of free assembly" is important as one of the forms of ensuring the political rights of citizens in the constitutional and legal context. Therefore, the types of mass meetings and the rules for their conduct require further improvement in the legislation.

2) It is advisable to change several parameters, including the disposition of Article 180 of the Code of the Azerbaijan Republic On administrative violations. So, this practice is used in most European countries. The fact is that free meetings have a collective and individual character. At the same time, the number of persons who have committed administrative offenses may be

different, as well as the administrative offenses committed by them may have different consequences. That is, the amount of the fine can be less or more. However, the imposition of a fine in the prescribed amount for obstructing the conduct of events by individuals, officials, and legal entities should be considered a direct violation of the constitutional political rights of citizens participating in events;

3) In Article 513.1 of the Code of the Azerbaijan Republic On administrative violations, it is advisable to add the words organizer and "other participants in the meeting" who have committed an administrative offense. Thus, in this context, an administrative offense can be committed by both the organizer and the participants. Therefore, we consider it important to accurately determine the content of the violation.

4) Clashes during public events, both with the police and as a result of a conflict of public interests and demands, and their consequences should be considered as mitigating circumstances. Because the violations of the law that occur in this area are objectively and subjectively not committed intentionally (for now, it is necessary to find out the position of the person and political demands.

5) For registration of public decisions taken as a result of holding public meetings, it is important to send them to the relevant state authorities and take adequate measures

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ADMINISTRATIVE PROCEEDINGS AND ITS NATURE

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Abstract. Administrative law is a branch of law that deals with management in contrast to other areas of law. Publicly important administrative activity or administrative management is the main function of the state. While legislative and judicial functions are performed from time to time, administrative action is performed at all times. Management arises in the process of social activity of people and regulates social relations arising from that process. Management consists of activities with organizational content. The concepts of administration, administrative proceedings, and administrative management are used in the theory. Administrative proceedings are activities carried out within the procedural rules established by this Law by the relevant administrative bodies based on the application of natural or legal persons or the initiative of the administrative bodies on the adoption, implementation, change or, cancellation of an administrative act, as well as on the consideration of administrative complaints. it is understood. Although the concept and characteristics of administrative proceedings are provided for in the law, it is possible to discover gaps in the activity of administrative bodies in practice. In this area, the adoption of the Law “On Administrative Proceedings” should be considered as an expression of the necessity of solving the problems arising during the relations between the state and citizens. The adoption of that Law is aimed at the perfect regulation of legal rules and, most importantly, at determining legal beginnings and guidelines for all administrative law. The goal of the legislator is to ensure uniformity of law in this area by adopting a law common to all state bodies. Some provisions, for example, the principles of the rule of law in administrative proceedings, were defined for the first time at the level of a single law. The principles of the legal state constitute the core of modern society. Without observing these principles, it is impossible to achieve neither the economic development of the state nor the general well-being of people.

On the other hand, this Law serves to simplify and rationalize administrative proceedings. The main importance of the law is undoubtedly expressed in the strengthening of the position of the citizens whose rights are precisely and determined in the administrative proceedings. The citizen can now be sure that his rights established in that Law should be ensured to a minimum extent in his relations with state administrative bodies in any field.

Keywords: administrative law, administrative proceedings, administrative body

INTRODUCTION

Administrative law is the by-product of the growing socio-economic functions of the State and the increased powers of the governmet. Administrative

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law has become very necessary in developed society, and the relationship between the administrative authorities and the people have become very complex. To regulate these complex, relations, some law is necessary, which may bring about regularity and certainty and may check at the same time the misuse of powers vested in the administration. With the growth of society, its complexity increased thereby presenting new challenges to the administration we can appraise of the same only when we make a comparative study of the duties of the administration in ancient times with that of the modern times. In the ancient society, the functions of the state were very few the prominent among them being protection from foreign invasion, levying of Taxes and maintenance of internal peace & order. It does not mean, however, that there was no administrative law before the 20th century. Administration itself is concomitant of organized Administration. In modern society, the functions of the state are manifold, In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity that is free from direct or indirect interference by the state. Along with duties, and powers the state has to shoulder new responsibilities. The growth in the range of responsibilities of the state thus ushered in an administrative age and an era of Administrative law.

The purpose of writing this article is to consider the problems that arise during the regulation of relations between the citizen and the state administrative body. Relations between a citizen and a state body are defined as imperative relations, not equal relations, unlike civil law relations. For this reason, we can detect several problems during the formation of these relations, as the powers of the state body are more imperative than those of the citizen. In this regard, first of all, the concept of administrative proceedings should be considered and its true essence should be investigated.

MATERIALS AND METHODS

In theory, administrative proceeding is a comprehensive term and defies exact definition. The administrative process is a by-product of the intensive form of government and is traditionally exercised by three different organs of the State. They have their classification of governmental powers and also combine into one all the powers. Therefore, there is general agreement among scholars on administrative law that any attempt to classify administrative functions or any conceptual basis is not only impossible but also useless.

The term “administration” in English, “администрация” in Russian, and generally translated as “administration” in Azerbaijani is used in two senses, such as state and social management. Administration (department) refers to certain types of state bodies and institutions, the legislation on them (Law on Administrative Proceedings) uses the term “administrative bodies”. So in an organic sense; means the same as the terms “administration”, “administrative body” or “managing body” (Mehdiyev, 2010: 5).

In this sense, administrative activity is mainly performed by governing bodies, but it can also define some work and activities in some rare cases, in legislative and legislative bodies. Legislatures are not only engaged in legislative activities; For example, the accounting operations of the parliament, the management of the people controlled by the parliament, and the removal of the territorial division of the administration. Although this type of activity,

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which is not essentially included in the legislative function of the Constitution (general rule), is performed by the parliament, it is included in the administrative function. The existence of an administrative justice system allows the courts to supervise disputes arising from such activities. Judicial authorities may also have cases that are not included in the scope of judicial functions (related to court staff) and may issue certain administrative acts.

Legislators throughout the nation have seen fit to entrust administrative determinations to almost every conceivable type of administrative body, particularly during the last fifty years. Executive officials have been loaded with duties ranging from questions of changes in personnel within their staff to matters affecting the life and health of the general public. Boards and commissions of all sizes have sprung up like mushrooms. These agencies have been utilized not only to formulate rules and regulations, but to investigate, prosecute, and adjudicate claims. Thus the scope ranges from settling claims of the immediate parties involved, to affecting the rights of the entire consuming public, and from dealing with completed events to establishing a course of future conduct (H. Seefeld, 1940: 16).

According to our legislation administrative proceeding activities are carried out by the relevant administrative bodies on the basis of the application of individuals or legal entities or on the initiative of administrative bodies on the adoption, execution, change or annulment of administrative acts, as well as consideration of administrative complaints within the procedural rules established by Law.

Administrative agencies make individual decisions affecting citizens‘ lives and they set general policies affecting an entire economy through they are usually headed by officials who are neither elected nor directly accountable to the public.

Agencies may be defined as governmental entities, although they affect the rights and duties of persons are neither courts nor legislatures. For one thing, indeed agencies are not located within the legislative or judicial organ of the government. Although they are within the executive branch, most of them are not mainly accountable to the executive branch. The term executive branch of government is used either to refer to the president (e.g. in the U.S.), or the prime minister and the council of ministers (e.g. Ethiopia). This definition lacks some precision. A government entity outside of the judiciary or the legislature does not necessarily qualify as an administrative agency. This does not mean that the legislature for some public policy reasons may not opt for a wider inclusive approach in determining which agency may properly be called an agency. The American Administrative Procedure Act adopts this and defines agency as any U.S. governmental authority that does not include Congress, the courts, the government of the District of Columbia, the government of any territory or possession, courts martial, or military authority. In this definition, the reference to ―authority signifies a restriction on the scope of government entities that may be properly called as agency. Authority refers to the power to make a binding decision. Therefore, only entities with such power constitute an agency. Similarly, the Black‘s Law dictionary defines agency as a governmental body with the authority to implement and administer particular legislation. Generally, it can be said that the authority or power of the entity is a common denominator for a precise definition of an agency (Yohannes, 2009: 70).

The Law of the Republic of Azerbaijan "On Administrative Proceedings" is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The principle of the rule of law includes the implementation of the activities of administrative bodies under the legislation and the prevention of citizens from their illegal actions.

Our legislation states that the administrative body is a relevant executive authority of the Azerbaijan Republic, their local (structural) and other bodies, municipalities, as well as any natural or legal person authorized by law to adopt an administrative act.

Administrative law is included in the field of public law and regulates relations between the state and its citizens. Administrative law is a set of rules and principles that regulate how the executive state bodies and other bodies established by law or authorized by law should behave when performing their functions. It ensures that government actions are authorized and that laws are administered fairly and reasonably. Administrative law also includes the power of superior courts to review how departments and agencies exercise their powers and the remedies that courts can provide when departments act outside their authority.

In the science of administrative law, administrative proceedings are understood as activities that include the rules for reviewing citizens' appeals and adopting administrative acts that create or cancel rights for them. The concept of administrative proceedings is concretely reflected in the legislation. According to Article 2.0.6 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", administrative proceedings are based on the application of natural or legal persons or on the initiative of administrative bodies on the adoption, execution, modification or cancellation of an administrative act, as well as on the consideration of administrative complaints. It is an activity carried out by the relevant administrative bodies within the procedural rules established by this Law.

The Law of the Republic of Azerbaijan "On Administrative Proceedings" is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The establishment of general relations (subordination relations) between the administrative body and the citizen makes the provision of human rights and freedoms a must. This is since the administrative body should not interfere with the rights and freedoms of citizens protected by law by abusing their duties and powers. Ensuring human rights and freedoms has been accepted as the main principle of every legal state. For this reason, we cannot talk about the economic development of any state and the welfare of people by avoiding this principle. The principle of the rule of law includes the implementation of the activities of administrative bodies in accordance with the legislation and the prevention of citizens from their illegal actions.

Article 2 of the Law "On Administrative Proceedings" defines some concepts. There is the concept of "administrative action", which was used somewhere in the same sense as "administrative action". However, the administrative procedure in this Law has a relatively narrower meaning. According to Article 2 of the Law, administrative action is the adoption - execution - change - cancellation of an administrative act based on the request of interested persons or the initiative of administrative bodies, as well as the activity carried out in connection with administrative complaints. The definition is not restrictive and does not generally reveal the ingredients. However, the following characteristics of administrative activity, i.e. management function, can be indicated:

- administrative activities, as a rule, are carried out by state management bodies;
- the subject of administrative activity is "public service";
- the purpose of administrative activity is always "public interest and profit" (public interest");
- means of administrative activity are administrative-legal acts and actions;
- administrative activity recognizes the authority of administrative bodies (administration) to use "state hegemony and power";
- administrative activity, as a rule, which is the field of common law the rules of administrative law must be applied (Mehdiyev, 2010: 23).

The subject of the administrative proceedings is the administrative legal issue determined by the relevant decision in a specific case by the application, in cases where it arises from the duty of the administrative body (Karimov, 2006: 79).

RESULTS AND DISCUSSION

There are 3 grounds for initiating administration: application of an individual or legal entity, initiative of the administrative body or the obligation of the administrative body to adopt an administrative act in cases provided by law, administrative complaint in case of appeal against the administrative act.

The administrative body must accept the application submitted by the applicant in person or by mail and register it on the same day. The administrative body shall be obliged to issue or send a reference to the applicant on the registration date and number of the application no later than three days from the date of receipt of the application. The administrative body is obliged to accept the petition and attach it to the proceedings.

One of the grounds for the initiation of administrative proceedings is the application of a citizen or an interested person. The duration of the administrative procedure is calculated from the date of registration of the application. The initiation of administrative proceedings on the initiative of the administrative bodies, which is another basis, is understood as the appropriate action of the official of the administrative body. It can often be called a preparatory action. At this time, the administrative body is not required to adopt an administrative act on the initiation of administrative proceedings. The reason for this is to prevent the prolongation of the activity of the administrative body and to ensure the faster implementation of the citizen's rights. The performance of certain formal actions within the powers of the administrative body is considered the basis for the initiation of administrative proceedings, and the duration of the administrative proceedings is calculated from that day.

If the applicant fails to submit the documents or information required by law and other normative legal acts necessary for the resolution of the case, the administrative body may require the submission of additional documents or information. The administrative body may not require the applicant to obtain documents or information necessary for administrative proceedings and at the disposal of another administrative body. Documents or information necessary for administrative proceedings and at the disposal of another administrative body shall be obtained by the administrative body itself. The fact that the administrative body requires the applicant to obtain these documents or information shall give rise to administrative liability under the Code of Administrative Offenses of the Republic of Azerbaijan. The administrative body may not request from the applicant any other documents or information other than those provided for in the legislation of the Republic of Azerbaijan. Unless otherwise provided by law, the period set by the administrative body for the submission of additional documents or information shall not exceed 15 days. Unless otherwise provided by law, the period for consideration of the application shall be suspended if additional documents or information are not submitted to the administrative body. The period is resumed from the moment of submission of additional documents or information to the administrative body.

An interested person has the right to be represented by a lawyer in administrative proceedings and to use the assistance of a lawyer. Lawyers acting following the legislation of the Republic of Azerbaijan may participate in administrative proceedings as advocates. Unless otherwise provided by the legislation of the Azerbaijan Republic, expenses related to administrative proceedings shall be reimbursed by the relevant administrative body. Unless otherwise provided by the legislation of the Azerbaijan Republic, the expenses incurred by the interested person or his / her representative in connection with the administrative proceedings, as well as the representation fee shall be paid at the expense of the interested person. In cases where an administrative complaint is upheld, the costs of the proceedings shall be reimbursed by the relevant administrative body.

An interested person participating in the administrative proceedings who does not have a permanent residence in the Azerbaijan Republic must appoint an authorized person registered at the place of residence in the Azerbaijan Republic within three days from the date of notification of the administrative body. The administrative body shall be obliged to send all the documents intended for the interested person to that commissioner.

During the administrative proceedings, the administrative body may, at the request of interested persons or on its initiative, involve an expert or specialist to explain the facts of the case. The administrative body shall decide on the appointment of an expert examination and shall determine the scope of questions (subject of expert examination) in which the expert opinion is required. Interested persons have the right to submit additional questions to be investigated during the examination and additional documents related to these questions to the administrative body. The administrative body is obliged to justify the rejection of the questions submitted by the interested persons. The examination shall be carried out by experts of forensic examinations or private forensic experts or specialists based on a decision of an administrative body or a contract concluded with interested persons.

The administrative body shall independently collect and take into account the evidence deemed useful and necessary for the determination of the facts of the case. During the administrative proceedings, the administrative body may use documents, explanations of the parties and third parties involved in the case, testimony of witnesses, relevant examinations, expert opinions, and other evidence relevant to the proper resolution of the case.

Based on the above-mentioned concept, we should consider a number of features of administrative proceedings. The first feature of administrative proceedings is one of 2 grounds for its initiation and implementation: a) Application of natural or legal persons and b) Self-initiative of administrative bodies. One of the grounds for the initiation of administrative proceedings is the application of a citizen or an interested person. The duration of the administrative procedure is calculated from the date of registration of the application. The initiation of administrative proceedings on the initiative of the administrative bodies, which is another basis, is understood as the taking of relevant actions by the official of the administrative body. It can often be called a preparatory action. At this time, the administrative body is not required to adopt an administrative act on the initiation of administrative proceedings. The reason for this is to prevent the prolongation of the activity of the administrative body and to ensure the faster implementation of the citizen's rights. The performance of certain formal actions within the powers of the administrative body is considered the basis for the initiation of administrative proceedings, and the duration of the administrative proceedings is calculated from that day.

The second feature of administrative proceedings is that it is carried out only by administrative bodies. According to Article 2.0.1 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", the administrative body is the relevant executive power bodies of the Republic of Azerbaijan, their local (structural) and other institutions, municipalities, as well as any physical or legal entity authorized to adopt an administrative act according to the law. is a person. The list of administrative bodies was approved according to the decision of the Cabinet of Ministers No. 136 dated August 28, 2007, on the approval of the "Classification of Administrative Bodies". According to the Decree No. 345 of the President of the Republic of Azerbaijan dated December 28, 2005, on the application of the Law of the Republic of Azerbaijan "On Administrative Proceedings", the powers of the relevant executive authorities provided for in Article 2.0.1 of that Law are transferred to the Cabinet of Ministers of the Republic of Azerbaijan, central and local executive power. bodies perform. Natural or legal entities authorized to adopt an administrative act are determined by legislation. Although on the one hand, there are participants of the civil circulation with this subject, on the other hand, they are the persons authorized to adopt an administrative act. It is possible to assess the status of legislative and judicial authorities as administrative bodies, which is reflected in the administrative management of those bodies. Thus, the act adopted by the chairman of the court regarding the division of work is considered an administrative act.

In addition to clarifying the concept of an administrative body, a number of its features should also be reviewed. First of all, an administrative body cannot be defined as a political body. Accepting some state bodies as political bodies is not excluded. Those bodies are considered the subject of constitutional law, not administrative law. At this time, a number of signs should be taken into account for the management body to be accepted as the subject of administrative proceedings. The administrative body should have relative organizational independence. This means that the administrative body is responsible for its decision, action or inaction. Another feature of the administrative body is that its activities are directed abroad. In other words, its activity should be considered not the internal activity of that body, but the external activity.

The second feature is that the administrative body carries out not internal but external activities. The activity of the administrative body is related to the fact that it affects the rights and interests of citizens in one way or another while adopting any administrative act or performing any administrative action. Thus, the decisions he makes regarding his internal activities are related to the organization of his activities within himself. For example, structural change in any Ministry. Here, there can be no talk of relations arising from administrative proceedings. Relationships related to administrative proceedings are formed if the decision taken by the administrative body creates rights for any citizen or restricts his rights. For example, assigning a labor pension to a citizen, or refusing to issue a license to a citizen.

Another feature of the administrative body is that it has relative independence. One of the indicators that administrative bodies are carriers of public interests and subjects of public law is their discretionary powers. According to the legislation in force, discretionary powers are the granting by law to an administrative body or an official of the right to choose one of the possible legal decisions (Aliyev, 2016: 433).

In Anglo-Saxon countries, the control of courts over administrative bodies is considered more ineffective. There are several reasons for this:

Nature of the court- Judges, when making a decision, first rely on precedents related to cases similar to that dispute. For this reason, the court is viewed not as a policy-making institution, but as a means of dispute resolution.

Delay of knowledge or experience in this field - judicial practice in the field of administrative law has come a long way throughout history. We can see this if we consider various cases. Thus, in 1986-1987, more than 70 percent of the decisions of the US Supreme Court were decisions made in favor of administrative bodies. Later, this practice began to change. That is, the experience of the courts in this area is formed later.

Passive decision-making - If we look at the case of Clinton v. New York, even if the US Supreme Court wants to make an unconstitutional decision in the mentioned case, it was stated that it will be possible after the relevant Act of Congress is amended. As it can be seen, the judicial norm plays a passive role in creative activity.

Limitation of judicial power- Although the court may have to wait before making a decision, it may sometimes face a number of institutional limitations in the implementation of the decisions made (J.Cann, 2006: 112).

The exercise of discretionary powers by administrative bodies is one of the main principles of administrative proceedings. According to Article 14 of the Law of the Republic of Azerbaijan “On Administrative Proceedings”, the administrative body is obliged to exercise its discretionary powers within the

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limits established by the law (within the powers granted to it by the law). Decisions made based on discretionary powers must be consistent with the purpose of those powers. During the exercise of discretionary powers, decisions aimed at unreasonably restricting the rights and freedoms of individuals or legal entities cannot be made.

Unfortunately, the concept of agency discretion is one of the least studied and most poorly understood aspects of administrative law. It is so little analyzed that it is frequently referred to as “the hidden component” of administrative law. The first step is realizing that the vast majority of agency decisions are never reviewed by either the courts or the legislature. Other parts of the executive branch, such as the president, governor, or attorney general, occasionally get involved with agency action, but for the most part, agencies function on their own, often with only sporadic outside scrutiny and accountability (F. Fox, 2000: 5).

Another feature of the administrative procedure is the actions included in the activity of the administrative body in its implementation. This includes the adoption of an administrative act, the execution of an administrative act, the modification or cancellation of an administrative act, and the consideration of administrative complaints.

The last feature of administrative proceedings is that it is an activity carried out within the procedural rules established by the Law of the Republic of Azerbaijan “On Administrative Proceedings”.

The Law of the Republic of Azerbaijan “On Administrative Proceedings” is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The establishment of general relations (subordination relations) between the administrative body and the citizen makes the provision of human rights and freedoms a must. This is due to the fact that the administrative body should not interfere with the rights and freedoms of citizens protected by law by abusing their duties and powers. Ensuring human rights and freedoms has been accepted as the main principle of every legal state. For this reason, we cannot talk about the economic development of any state and the welfare of people by avoiding this principle. The principle of the rule of law includes the implementation of the activities of administrative bodies in accordance with the legislation and the prevention of citizens from their illegal actions.

Administrative proceedings by administrative bodies are carried out on the basis of certain principles. In legislation, the principles of administrative action are divided into two classifications: General and procedural principles. General principles include the rule of law, the rule of law, equality, the protection of the right to trust, the exercise of discretionary powers, the prohibition of abuse of formal requirements, the prohibition of waiver of the application of the law, the principle of the least, and the presumption of credibility. Procedural principles include the right to appeal to the administrative body, the participation of interested parties in administrative proceedings, impartiality in the consideration of the case, the provision of advice and necessary information by administrative bodies, the objective investigation of the circumstances of the case, the right to get acquainted with the materials of administrative proceedings, the language in which the administrative proceedings are conducted, the content of which is protected by law the principle of ensuring the confidentiality of confidential documents or information is applied.

Administrative law is founded on six fundamental principles:

1. Decision-makers who exercise powers granted by statute ("administrators") must stay within their legal authority or jurisdiction.

2. Administrators must reasonably exercise their judgment when they have discretion in making decisions.

3. Administrators must follow fair procedures when making decisions that affect a person's rights or interests. This principle is known as "procedural fairness" or, in some cases, "natural justice." Procedural fairness protects the rights and interests of persons affected by a decision by providing for

- the right of persons to be given notice of intended decisions that may affect them and the right to be heard before such decisions are put into effect; and
- the right to an impartial decision-maker.

4. A person to whom the legislature has delegated authority to carry out a function may not delegate it to someone else. There are some exceptions to this principle, which is known as the "rule against subdelegation" and which is important but less central to administrative law than the first three principles.

5. To be valid, subordinate (or delegated) legislation must conform to the statute under which it is passed. In other words, regulations and by-laws must be consistent with the objectives of their enabling statutes and the scope of the regulatory powers set out in those statutes. This is an important check on the power of the executive branch of government to make laws that are not subject to review by the legislature.

6. If decision-makers violate any of the above principles, the superior courts have the inherent power to intervene to rectify this failure. This intervention is called "judicial review." It is an important mechanism for preventing abuse of executive power because it is available even when the legislature has made no provision for an appeal of executive action. As well, any law that a legislature passes to prevent judicial review is unconstitutional and therefore invalid (Nastasi, 2020: 50).

CONCLUSION

It is possible to consider the concept of administrative proceedings both theoretically and practically. At this time, although we find that the administrative bodies operate per the law, in some cases we come across cases of abuse of the law. The reason for this can be seen in the predominance of dispositive norms in the law and the fact that the powers of administrative bodies are not contained more precisely. For this reason, the improvement of legislative acts and the creation of a control mechanism for administrative bodies when carrying out administrative proceedings can prevent such cases.

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