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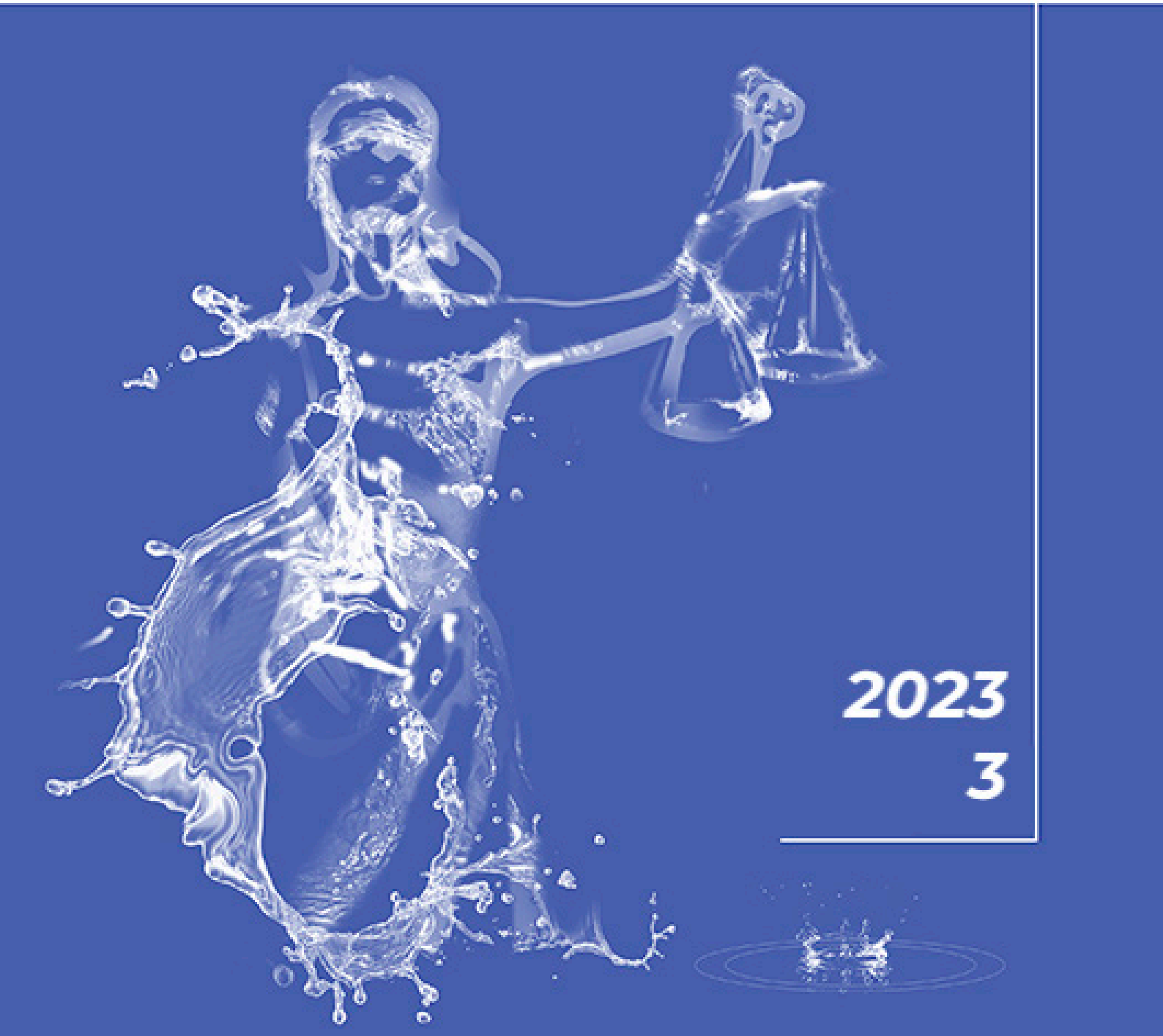

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FOREWORD

On behalf of the Editorial Board, I am delighted to announce the publication of issue No3-2023 of the scientific journal Legal Horizons. The issue is opened by the article **"Methods of funding innovations and sources of investment capital in Ukraine", Al-Hayali Darid** analyzes diverse strategies for funding innovation and provides insights into the numerous approaches, challenges, and viewpoints that should guide entrepreneurs, companies, and policymakers.

The issue continues with the article **"The concept and types of implementation of the international law norms on healthcare in the national legislation"** by **F.E. Huseynova.** The article defines the concept of implementation and characterizes the main ways of implementing international legal norms into national legislation by transformation and incorporation. The author provides examples of implementing international legal norms into the legislation of the Republic of Azerbaijan.

The article **"Biomedical issues necessitating legal regulation of genetics"** is written by **Parvina Ismayilova** adopts a comprehensive approach to explore the legal framework regulating biomedical research in genetic treatment. By delving into international legislation and comparing it with different countries' legal systems, the article sheds light on essential principles of genetic science applied worldwide.

Furthermore, the article **"Jurisdictional immunity of a foreign state under English law"** is written by **Yevgen Popko**. The article examines the current trends in the regulation of relations on granting jurisdictional immunity to a foreign state in the legal systems of foreign countries on the example of Great Britain. The author identifies the basic principles of development of this institution in the UK, their reflection on the rules of English law, and emphasizes the problems associated with the application of state immunity in private law relations.

In the article of **Iryna Sofinska** and **Chen Friedberg "Constitutional amendments: comparative (re)view in contemporary constitutionalism"**. This article sheds light on existing political, legal, and legislative constitutional amending patterns in selected European countries. It primarily focuses on the (un)successful tools, mechanisms, and procedures for amending the Constitution (initiative, drafting, adoption, and implementation of high-stakes political, legal, and legislative decisions by Parliament and approval by the national referendum on constitutional amendments).

The next article in this issue is the paper **"Priority areas of housing for citizens in conditions of war and post-war transformation"** by **Anastasiia Volkova**. The issue of providing citizens with minimal guarantees and ensuring the observance of socio-economic human rights becomes particularly relevant in the context of war and post-war transformation. Rights such as freedom of movement, pension and social security, employment, education, an adequate standard of living, housing, equality, and protection against discrimination have become critically vulnerable.

Finally, in his article **"Legal aspects of sport: a study of the sambo", Assan Zholdasbay** analyses international and national legislation on sambo, examines the activities of international organisations in the field of sambo, and identifies problematic issues in the regulation of sambo in Ukraine and ways to solve them.

On behalf of the Editorial Board, I sincerely thank the authors and readers of Legal Horizons!

Yurii Harust,
Editor-in-Chief

CONTENTS

Al-Hayali Darid (2023). Methods of funding innovations and sources of investment capital in Ukraine 3, 8-10
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METHODS OF FUNDING INNOVATIONS AND SOURCES OF INVESTMENT CAPITAL IN UKRAINE

Al-Hayali Darid,
Institute of international relations
Taras Shevchenko National University
Kyiv, Ukraine
e-mail: druda7@yahoo.com
https://orcid.org/0009-0000-1513-1976

Abstract. In contemporary times, innovations are the primary drivers for economic expansion and social advancement. However, substantial financial barriers frequently follow the journey from inventive ideas to tangible products and services. This article examines diverse strategies for funding innovation and provides insights into the numerous approaches, challenges, and viewpoints that should navigate entrepreneurs, companies, and policymakers.

In modern times, globalization affects all countries regardless of their level of development. Therefore, it is crucial to consider factors that increase a country's competitiveness in the global market. The most significant factor is the innovative activity of enterprises. Therefore, the current stage of the country's economic development is characterized by a high dependence on the scale of scientific research and development, the speed and efficiency of the introduction of new types of products and technologies. Given this, the government and legislative authorities of the leading countries create maximum conditions for promoting scientific research activities. Financial and credit resources are crucial for stabilizing Ukraine's economy, which is currently undergoing innovative transformations. The search for sources for financing and crediting innovations has become a pressing issue and requires thorough research.

The article examines several funding sources, including venture capital, angel investors, and government subsidies. It highlights their importance in promoting innovations, acknowledges their limitations, and outlines some strategies for securing financial support.

Furthermore, the paper analyzes the current condition of Ukraine's financial market, providing an overview of the factors that affect the stability of Ukraine's financial system.

Keywords: innovation, advancement, capital, Industry 4.0, financing, investment, credit, financial infrastructure.

INTRODUCTION

In the field of global development, innovation serves as a catalyst that propels societies towards advancement. Technology has revolutionized various industries, including research, leading to market restructuring and redefining our living environment. of markets and the redefinition of our living environment. The features of innovations are new product development, revolutionary services, and transformative process improvements. It plays a crucial role in driving progress and is considered an essential catalyst for advancement (Freeman & Soete, 2017).

However, the transformation of creative concepts into tangible actions frequently necessitates substantial financial capital injections. This article provides a detailed examination of different methods for financing innovation, including both traditional methods and newer options that have become more popular in recent years. In the ever-changing economic landscape of Ukraine, the drive for innovation is not only a crucial strategy but also a key factor in attaining long-term growth and gaining a competitive advantage in the global market.

Since Ukraine strives to become a frontrunner in technological advancement and economic diversity, it recognizes the crucial significance of a comprehensive analysis of the methods used to finance innovations and the wide range of sources that provide investment funds. This article aims to elucidate the complex web of financial processes that support Ukraine's creative ecosystem, providing insight into the strategies and funding sources that contribute to success in the field of innovation.

In today's economic environment, where innovation is not just important but essential for maintaining resilience, the ways to fund creative ventures significantly influence the direction of technological advancement. The financial structure supporting innovation in Ukraine is marked by numerous internal mechanisms, such as self-funding and equity, as well as external channels, including venture capital, bank loans, and international investments. The architectural diversity observed here is a direct manifestation of the dynamic and ever-changing nature of the financial support mechanisms for innovation (Barrichello, A., Santos, E. G. Dos, & Morano, 2020).

This article delves into the use of such governmental mechanisms as investment tax credits and alternative financing tools, including venture capital, business angels, and crowdsourcing, which go beyond traditional financial instruments. This article is designed to clarify the intricacies of funding innovations within Ukraine's transparent and accessible financial system. This is a crucial step for the country to establish its position firmly in the global innovation ecosystem.

As Ukraine becomes a highly attractive global investment location, it is essential to understand the methods and sources of investment funds. This knowledge is crucial for businesses and entrepreneurs seeking to support their creative efforts and evaluate the wider consequences on the country's economic resilience and flexibility. The aim of this research is a thorough examination of the financial fundamentals driving innovation in Ukraine. This will serve as a basis for making informed and strategic decisions on investment and technological advancement in the country.

Several renowned foreign and domestic researchers have extensively studied the topic of financial backing for the execution of innovative development policy. They are R. Lucas, J. Schumpeter, M. Krupka, E. Denison, B. Twiss, J.M. Keynes, H. Mensha, D. Clark, E. Domar, and others. Such researchers as L.J. Hitman, V. Seminozhenko, D. Stechenko, V. Geets, L. Fedulova, D. Garner, and A. Peresada analyzed the sources for financing innovative activities in their works. Their scientific advancements encompass significant progress in the areas of theory, methodology, and organization of financial support for innovation policy.

This article appears to be a synthesis of literature review, data collection, and analysis. The literature review is designed to examine the existing research on innovation financing and investment capital in Ukraine. This will be achieved by scrutinizing and evaluating major concepts and results. The data collection method would involve obtaining quantitative data on investment trends from reliable sources, such as the State Statistics Service and the National Bank of Ukraine. Conducting surveys and interviews with stakeholders allows for the acquisition of qualitative insights. Examining case studies of prosperous organizations or businesses can provide valuable insights. A market study analyzes the complexities of financial markets in Ukraine, while a regulatory framework analysis assesses the impact of laws and regulations. Comparative analysis involves assessing and comparing the effective models used in other countries. Adhering to ethical principles ensures accuracy and transparency in the research process.

ANALYSIS OF SOURCES FOR FUNDING INNOVATIVE ECONOMIC DEVELOPMENT

Equity can be derived from both external and internal sources. Internal sources of equity consist of net income generated, depreciation, and capital released as a result of quicker turnover of current assets. External sources of equity financing involve partner fees, venture capital funds, business matchings, and over-the-counter issuances.

Foreign capital encompasses several financial resources, such as bank loans, leasing, grants, bonds, franchising, factoring, and funds obtained from the European Union (Wójcik-Mazur, 2012). Hybrid financing can be further categorized according to other unmentioned methods of generating funds (Aftach, 2003).

Banks engage in innovative financing based on the principles of risky funds. This includes partial financing of development and incorporating promising scientific and technical advancements into research enterprises. The ultimate goal is to obtain profits from joint ownership of a patent for bank-financed development. Large companies use rather internal sources to finance investments than external sources (loans from banks and non-banking institutions, budget funds, foreign investments, etc.). Due to the following reasons, large companies are reluctant to involve third-party participants in the implementation of systemic investment projects: deterioration of the financial situation, inability to finance debt service in the future, negative expectations regarding the maintenance of solvent demand, reluctance to disclose commercial information, fear of additional control by regulatory authorities, etc. A special characteristic of countries with weak or "semi-closed" economies is the self-financing of investment and innovative development of companies. However, profit is a result of operational and economic activity, and depreciation deductions are formed in the process of production activity. According to the classification of famous American economists, self-financing is the simplest form of financing. Due to the imperfection of mechanisms of external financing of investment and innovation activities in most companies, internal sources of investment and the mechanism of self-financing are the leading links of the system of investment support for development at the micro level. Funding through unconventional (alternative) tools is also a reserve of innovative development: venture funds, business incubators, business angels, and crowdfunding. Venture capital is a special form of capital. Investors who participate in financing will be the customers of future innovations (co-owners of the newly formed company) if these innovations are successful (Wozniak, 2016).

Self-financing is a feasible approach to funding investments, regardless of their characteristics. Equity is a practical method for funding new projects and modernizing or expanding current businesses. Equity can also be increased by divesting surplus assets or providing assets to external organizations in exchange for income reimbursement. Equity encompasses the inclusion of depreciation charges. Depreciation is an intangible expenditure that does not involve tangible expenses nor does reduce available funds. Therefore, it can be used as a means to support new initiatives. Using surplus resources can be considered a feasible strategy for internally financing innovative initiatives. It is possible to release capital reserves by expediting the turnover of current assets, such as selling off warehouse supplies and applying efficient receivables management procedures. The objective of this technique is to minimize expenses related to transportation and storage. The organization acquires monetary gains that can be utilized to fund pioneering endeavors. These endeavors contribute to the enhancement of economic and financial self-sufficiency. The reliability and availability of the company's external financial resources have improved. Venture capital, a widely recognized method of funding new ventures, is crucial in providing financial assistance for the expansion and advancement of small and medium-sized businesses, particularly those facing difficulties in securing funding through other channels. Venture capital firms obtain funding from investors who seek substantial returns on their investments and are willing to take on a higher level of risk. The primary investors are financial institutions, including well-known corporations. Funds can operate independently or be managed by specialist firms that handle their administration. These organizations are responsible for selecting the industry or market where funds will be allocated and making judgments about potential and current investments. The implementation of new activities necessitates substantial financial inputs and entails a prolonged capital payback time. Hence, the funding obtained from

sources within the country is frequently insufficient, and corporations are motivated to seek other methods of funding innovation.

Bank loans are the most prevalent means of obtaining external funding. Consumers of the investment tax credit can be subjects of entrepreneurial activity, including enterprises of all forms of ownership, which lack their own investment resources to implement innovative programs. Ministers (departments) are entitled to decide on granting loans based on sectoral subordination of enterprises; these ministers, on behalf of the Cabinet of Ministers of Ukraine, act as managers of investment tax credits at the sectoral level.

To obtain an investment tax credit, a credit agreement should be established between the branch ministry (department) and the borrower company. It should be preceded by a comprehensive examination of the effectiveness of the innovation program (business plan) and the presence of conditions that would confirm the real capabilities of the enterprise for the successful implementation of this program. The Cabinet of Ministers of Ukraine when estimating the budget determines the total annual volume of investment tax credit resources. Depending on the state of the economy, it can reach up to 10% of the income tax budget. The tax discount is subsequently distributed among ministries (departments) based on the priority of their innovative activities.

To enhance the efficiency of investment resource utilization, enterprises can receive an investment tax credit for a specific innovative project for up to five years. Granting a longer term does not align with modern requirements for the duration of new technology development; it can lead to the dispersion of state resources, ultimately reducing the effectiveness of innovative investments (Sidenko, 2018).

Leasing is a rapidly developing method for updating a company's fixed assets. It allows the lessee to flexibly solve production tasks through temporary use rather than purchasing expensive equipment that may become obsolete. Leasing is a progressive method of material and technical production support. It provides access to advanced technology and resolves the contradiction between the need to use such technology and its rapid moral obsolescence. This creates conditions for obtaining and developing progressive technology, maintaining it at a high technical level, and ensuring sales for enterprises producing this equipment.

Since most enterprises experience a decrease in state appropriations and the inaccessibility of long-term loans, the company's funds, namely profits and depreciation, have become the primary source for financing innovative activities. These funds maintain about 65-70% of all innovative investments, with profits alone providing financing for 20% of such investments. It is also possible to accumulate significant means for funding innovation and investment projects by getting rid of unnecessary, morally and physically obsolete equipment.

Creative pursuits typically require a high level of education and effective management of creativity. Achieving sustainable economic development in the face of global issues is a time-consuming process, but their success is not consistent. Banks impose strict credit collateral requirements on organizations, which can make it difficult for small and medium-sized enterprises to access funding if they lack sufficient assets. Furthermore, the invention process of requires substantial financial resources. This distribution is associated with high risks, prompting financial institutions to establish elevated interest rates for loans.

However, the elevated interest rate discourages firms from participating in new ventures. Financial institutions exhibit a certain level of reluctance in making a firm commitment to a prolonged suspension of capital despite the potential for ensuring future profits. The loan offered for creative projects resembles a conventional bank loan and can be provided by non-traditional commercial entities or non-bank financial institutions. It is not obligatory to contain interest payments. Leasing is an alternative method of obtaining cash that functions as a long-term kind of finance for different

businesses. The method entails acquiring diverse investment items across several categories through a long-term contractual agreement. This arrangement involves the provider delivering specific assets to the recipient in return for predefined payments. The most notable types of leasing agreements in actual use are revolving, operational, and financial leases. A revolving lease involves selling manufactured capital goods to a leasing company while entering into a lease arrangement for utilizing these products. An operational lease entails using a particular asset for a defined duration, typically shorter than the complete depreciation life of the asset. Financial leasing involves a longer contract that aligns with the duration needed for the complete depreciation of the leased asset's value. Financial leases pertain to capital facilities, which possess a greater intrinsic worth in comparison to operating leasing facilities. Foreign capital encompasses non-repayable financial resources, such as state budget subsidies and funding provided by the European Union. Franchising serves as an alternate means of funding innovations. It is an economic cooperation model that establishes a network of autonomous units; each unit retains ownership control but is closely monitored by the network owner through a coordination agreement. Factoring is an alternative form of financing that allows businesses to receive short-term funding for their operations without incurring additional liabilities. Therefore, this technique is effective for improving liquidity and accelerating cash flow by converting non-liquid assets, such as received services or products, into liquid funds. The outlined process involves transferring receivables to the factoring provider once the contractual agreement between the contractor and the factoring provider has been completed. The factoring agent is obliged to collect payments from the debtor, offer financial support to the creditor, and take on the associated risks. The agent is compensated for providing these services. The company's expenses may exceed its income during the invention and development phase. Under such circumstances, venture capital financing can be used to bridge the cash shortfall. It remains challenging to determine the optimal funding options available for innovative projects. Choosing the appropriate financing method is a subjective decision that depends on the specific circumstances of an organization. This article aims to thoroughly examine and evaluate the accessibility and effectiveness of specific financing channels (Kolodizev, 2009).

The choice of a particular option depends on various factors, including the features of the executed innovation project, the current financial situation, past experience, and the composition of the management team, etc. Diverse funding sources are used in innovative projects at different stages. Sources for funding for innovative projects are categorized according to the particular stage of project development. In order to optimize this procedure, it is crucial to address three stages of an innovation project, such as research and development, implementation, and marketing and sales. The costs and benefits of participating in creative activities can be demonstrated at every stage of the process. Specific sources of funding may be allocated to each individual step. NewConnect (NC) is a stock market platform designed to meet the requirements of dynamic and ambitious companies seeking to make their initial public offering (IPO) on the stock exchange. These companies, despite their desire to enter the primary stock exchange market, fail to meet the strict criteria established by the exchange.

Companies can raise capital by issuing new shares and selling them to external investors. The financing source are also associated with the organization's developmental stage. Loan funds are financial institutions that operate within a specific geographical area. The company offers tailored products and services that are designed to meet the specific needs of enterprises operating within a certain industry. Business angels are individuals who provide direct equity capital to innovative start-up companies with high development potential, in whom they have a purely financial stake. They are venture capitalists who use their own personal financial resources to achieve this objective. These investors represent both established enterprises and individuals who have already

succeeded and hold ample resources to invest in fledgling businesses.

Technological parks provide assistance and consulting services to businesses in the fields of development, technology transfer, and the conversion of scientific research outcomes and projects into technical innovations. The primary objective of technological parks is to offer support and resources to companies throughout all stages of technology advancement and deployment. Although the majority of these organizations do not have an official scientific designation in their names, they are actively engaged in advancing the objectives of technological parks. Their primary focus is to coordinate research activities and efficiently integrate their outcomes into commercial operations. Moreover, these organizations play a crucial role in promoting the establishment and expansion of spin-offs. Firm incubators are a valuable resource for entrepreneurs starting and managing their own businesses. They support the policy goals of promoting entrepreneurship at various levels, including national, regional, and local. Their presence has a significant impact on local communities. This facilitates the advancement and utilization of established business formation models. Within the framework of a well-designed business incubator program, it is feasible to distinguish fundamental services that reduce business operation expenses and additional services that give entrepreneurs a competitive edge (Lundval, 2016).

SOURCES FOR SUPPORTING THE UKRAINIAN FINANCIAL SYSTEM WITHIN THE CONTEXT OF INNOVATIONS

Ukraine's financial system is highly developed and transparent. The National Bank of Ukraine is an autonomous central bank. As of January 1, 2023, Ukraine has a total of 67 banks, 30 of which have foreign capital. Additionally, there were 2,084 non-bank financial organizations in the country. Furthermore, Ukraine is home to 10 stock exchanges. PFTS is the largest among them, accounting for 96% of the overall trading volume of securities transactions in the country. The banking industry holds a dominant position in Ukraine's financial market, although the stock and bond markets are comparatively less developed. The stock and bond market in Ukraine accounted for a mere 3.1% of the country's GDP in 2021. Ukraine's financial industry has a high degree of openness, which makes it possible to merge foreign financial institutions with Ukrainian counterparts or create branches within the country.

The primary investment sources in Ukraine are predominantly derived from the company's internal funds and the state budget (Fig. 1).

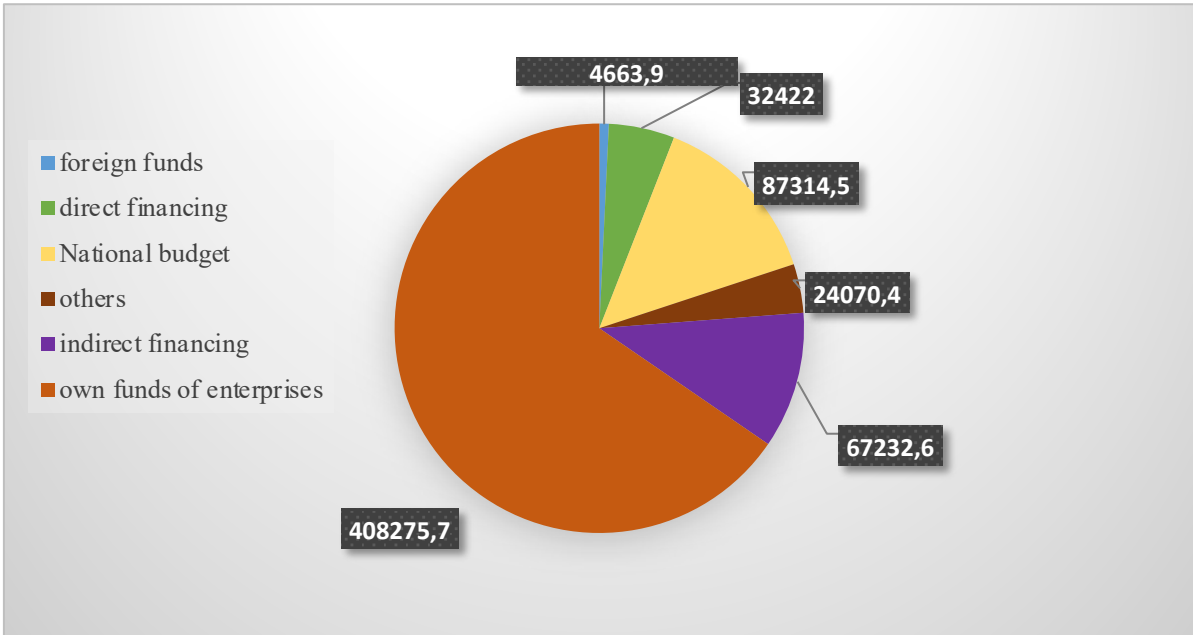

Figure 1. Sources of funding for investment funds

Sources: compiled by the author according to National Bank of Ukraine

Indirect financing is the primary source of funding in Ukraine, with direct financing playing a significant supporting role. Between 2010 and 2021, there was a significant increase in support for indirect investment financing following a temporary dip caused by the crisis in Ukraine. Conversely, the proportion of direct financing in total investment funds showed a tendency to decrease after a brief peak during the crisis.

State institutions play an active role in providing financial support for innovative economic development. For example, the Cabinet of Ministers of Ukraine creates specialized state non-banking innovative financial and credit institutions to support the innovative activities of business entities of various forms of ownership, upon the submission of a specially authorized central executive body in the field of innovative activities.

The innovative financial and credit institution is under the authority of a specially authorized central body of executive power in the field of innovative activity and operates on the basis of the Regulation (Statute) approved by the Cabinet of Ministers of Ukraine. Its funds are formed at the expense of the State Budget of Ukraine, as provided for by the Law on the State Budget of Ukraine for the relevant year, attracted in accordance with the current legislation of domestic and foreign investments of legal entities and individuals, voluntary contributions of legal entities and individuals, from their own or joint financial and economic activities and other sources not prohibited by the legislation of Ukraine.

The financing expenses for international investors in the local market are relatively high. The interest rate on loans from Ukrainian banks stood at 18.5 percent in hryvnias in 2022. Consequently, the majority of foreign enterprises refrain from sourcing funds domestically. Foreign-funded firms receive equal status to local enterprises in terms of financing conditions. Essential information needed for financing encompasses the company's operating license, credit history, tax payment records, project feasibility and risk assessment reports, evaluation of the company's financial position, and assessment of the financing requirements.

Ukraine implemented several reform initiatives following the banking crisis. Amidst the 2008 financial crisis, Ukraine faced the consequences of excessive credit expansion. The country had accumulated a significant volume of mortgage loans in foreign currency and corporate loans, but the legal framework for addressing problem loans remained incomplete. This situation posed challenges for banks in terms of lending and obtaining credit guarantees. Simultaneously, the actions of distressed banks had a lasting and distressing impact on the entire industry until 2014. Subsequently, Ukraine has undergone an arduous process of fiscal and financial reform characterized by the following:

— The National Bank of Ukraine diligently conducted the process of cleansing and rectifying banks as per the request of the International Monetary Fund;

— The National Bank of Ukraine enforced rigorous regulations for overseeing banking activities and removed financially unstable banks from the market;

— The National Bank of Ukraine performed stress tests on a yearly basis as scheduled.

As a result of the reform, the banking sector in Ukraine found an effective method for evaluating credit risks. Furthermore, the structure of the banking industry has been growing, with the capital adequacy ratio and profitability consistently increasing year after year. As depicted in Figure 2, Privat Bank held 35% of individual deposits in September 2022. In February 2020, the combined percentage of corporate deposits and small deposits reached an all-time high of 85.8%. Furthermore, the National Bank implemented a new prudential standard called the liquidity coverage ratio (LCR) to

enhance the accuracy of liquidity evaluation in 2018. In 2019, the ratio of high-quality current assets (HQLA) to liabilities of private banks tripled compared to 2014.

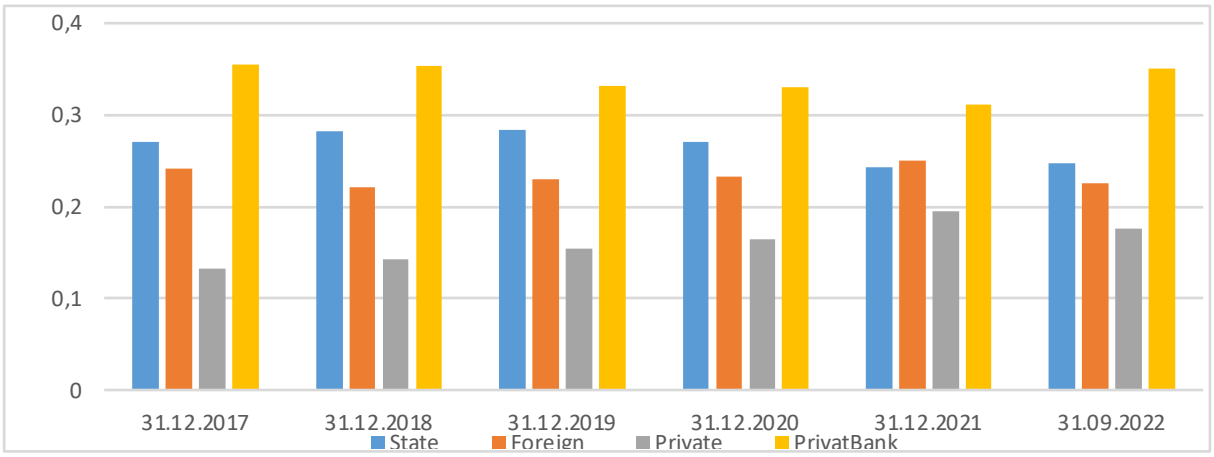

Figure 2. Allocation of net assets as a percentage of the Gross Domestic Product (GDP)

Source: compiled by the author according to the National Bank of Ukraine.

The COVID-19 outbreak has led to a short-term increase in asset quality, adequacy, and profitability risks in Ukraine's banking industry. However, currency risk has remained stable, while liquidity and regulatory risks have decreased.

The economic recession caused by the epidemic and subsequent quarantine measures has had a noticeable effect on the financial well-being of Ukrainian households and companies. The quality of banks' credit portfolios, in turn, is expected to significantly deteriorate, leading to an increase in the loan efficiency ratio within Ukraine's banking sector. As of January 1, 2023, the proportion of non-performing loans (NPL) in the banking sector increased to 38%. The volume of non-performing loans saw a significant rise of UAH 127 billion from March to December 2022, reaching a total of UAH 432 billion. The aggregate loan volume amounted to UAH 1.106 billion, while the amount of problematic loans was UAH 536 billion. Privat Bank had a bad loan coefficient of 81% (Table 3).

Furthermore, the outbreak affected the risk of profitability in the Ukrainian banking sector. Since the beginning of the Russian-Ukrainian war, financial institutions have already acknowledged substantial credit impairments. Loan reserve deductions have exceeded UAH 100 billion, which is over 12% of the banks' loan portfolio as of February 2022. War, economic turmoil, and energy challenges could lead to a 30% decrease in the loan portfolio. Banks maintain their resilience by prompt evaluation of credit risk and appropriate restructuring. Efforts to address non-performing loans (NPLs) are expected to continue after the profound stage of the ongoing crisis. Specifically, banks should re-evaluate their strategies for minimizing NPLs once martial law is concluded or terminated. This relates to the implementation of the Financial Stability Board's strategies to reduce NPLs of state-owned banks.

Table 3. NPL level ratios for the main Ukrainian banks in three quarters of 2023

Bank	Non-Performing Loan Level (NPL)
Privatbank	64,5 %
State banks	75 %
Ukreximbank	43,3 %
Private banks	25 %
Raiffeisen Bank	15,2 %

Source: compiled by the author according to the National Bank of Ukraine.

Although the virus has increased the risks faced by Ukraine's banking system, recent optimization and reform efforts have helped to mitigate the impact of the epidemic on liquidity risk. The liquidity coverage ratio of Ukraine's banking system significantly exceeds the minimum requirement.

The Ukrainian government prioritizes attracting foreign direct investment. In 2014, the President of Ukraine created the National Investment Council as a consultative entity operating under the President's authority. Furthermore, the Ukrainian government established the Investment Promotion Office of Ukraine (UkraineInvest) in 2016 to attract and assist foreign direct investment. The Business Ombudsman was formed in Ukraine in 2015. The goal of this initiative was to facilitate global firms in filing complaints against unfair treatment by state or local authorities, state-owned or controlled enterprises, or their representatives. Foreign investors are subject to Ukrainian legislation in compliance with the obligations of the World Trade Organization (WTO).

Investors argue Ukraine has transformed into a stable and vibrant emerging market, possessing exceptional undervalued assets and skilled human resources, making it an attractive investment avenue. In the 2020 Doing Business report by the World Bank, Ukraine advanced to the 64th position out of 190 countries, marking a further increase of seven places. Over the last decade, the World Bank has recognized Ukraine as the second nation in terms of the rapidity and magnitude of improvement of the business climate. Ukraine received approximately USD 16 billion in foreign direct investment between 2015 and 2019, leading to the establishment of over 100 enterprises and the creation of tens of thousands of high-value jobs. Notable instances include Bayer's seed processing facility in Germany valued at USD 200 million, Cargill's grain terminal in the United States worth USD 150 million, Jabil's second plant in the United States costing USD 16 million, and the relocation of international brands such as General Electric, Ryanair, HEAD, IKEA, H&M, Decathlon, and others to Ukraine (Ukraine-invest, 2022).

Today, it is recognized that small science-intensive businesses are the most effective in creating new products, technologies, inventions, and patents based on the unit of costs for innovative activity. Small innovative entrepreneurship is a risky field with a traditionally high level of bankruptcy and a lack of financial resources. Therefore, state aid is often the only source of survival for small innovative companies. Loans are crucial for financing scientific, technical, and innovative activities in developed countries. Investment credits and loans include bank loans and leasing. Long-term lending is provided by various financial institutions, including credit banking organizations, insurance companies, non-state pension funds, and investment funds, within the limits of their insurance reserves. Leasing is an effective way to finance innovative activities. It is a type of entrepreneurial activity that involves investing temporarily free funds or funds raised under a financial lease (leasing) contract.

The investment tax credit represents another way to increase financial resources for innovative activities. This credit defers income tax payments for a specified period, allowing businesses to allocate more funds towards implementing innovative programs. The deferred amounts are later compensated through additional tax revenues resulting from the increase in profits generated by the implementation of these programs. Venture financing is one effective mechanism for attracting resources for innovative activities. Venture capital differs from traditional lending as it is mainly invested in an idea, a project with a high level of risk. Funds for venture financing are formed from the contributions of individual investors, corporations, insurance companies, banks, and pension funds. Venture funds are managed by specialized financial and banking institutions (Netson, 2016). Over the last decade, venture businesses in Europe have invested 60 billion ECU in 2,000 private companies. Venture funds primarily focused on marketing, selecting innovative scientific and technical solutions, and financing science. Their end goal is to

produce innovative projects. Independent venture capital firms are actively invested in by pension funds and insurance companies. For example, insurance companies finance 13.6% of venture capital in Great Britain, while this figure riches 32.5% in the Netherlands. Ukraine still lags far behind Western countries in the level of development of the venture capital market. The absence of sustainable growth in its scientific and technical sectors hinders the formation of venture capital relationships. Moreover, the modern economic system in Ukraine comprises contradictory and underdeveloped market institutions.

One of the most problematic issues in improving the mechanism of financing scientific research is the choice of the optimal ratio between basic and program-target funding. Program-targeted funding is used, as a rule, on a competitive basis for scientific and technical programs and individual projects aimed at implementing priority areas of science and technology. This funding ensures the implementation of the most important applied scientific and technical developments, carried out according to the state order, as well as projects carried out within the framework of international scientific and technical cooperation.

CONCLUSION

In the current economic environment, the notion of innovation holds significant importance as a basic catalyst for both social and economic advancement. In the age of Industry 4.0, organizations that effectively promote innovative initiatives, produce novel products and services, and adopt cutting-edge solutions and technologies will be more adept at competing and satisfying the requirements of a swiftly changing market. An increasing number of companies understand the necessity of launching new projects and the subsequent advantages. Innovation implementation within a business has several advantages, such as increased revenue, expanded market share, a competitive edge, and the exploration of untapped market opportunities. Meeting customer needs, customization, diverse range of offerings, procedures, services, or enhancing consumer allegiance are also highly significant. Entrepreneurs should adopt and implement innovative methods in order to guarantee the long-term sustainability and growth of their business. Available funding options encompass debt finance, interest-free foreign capital, and local capital, which can all be applied to start and develop innovative ventures. Financing possibilities are accessible at all stages of the organization's development. The funding is derived from a blend of governmental and private sources. Ukraine provides multiple avenues for obtaining financial support for creative endeavors. These encompass European Union funds used for both operational and framework initiatives. Furthermore, financial resources can be obtained through government initiatives, such as 5-7-9 program. Venture capital and business angel financing can be used, along with the potential for crowdsourcing. Multiple studies prove that equity financing is widely preferred when it comes to financing innovation. Ukrainian businesses possess substantial capacity to develop and market new global solutions, while also actively embracing and applying the concepts of the Industry 4.0 paradigm. There is a potential for the criteria to receive structural funds to be less strict. There exist multiple sources of funding for innovative projects at every stage of enterprise development. Tax credits designed to incentivize research and development have the potential to foster innovative pursuits.

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THE CONCEPT AND TYPES OF IMPLEMENTATION OF THE INTERNATIONAL LAW NORMS ON HEALTHCARE IN THE NATIONAL LEGISLATION

F.E. Huseynova,
Baku State University, Azerbaijan, Baku
https://orcid.org/0000-0003-1647-0472

Abstract. In modern doctrine, there is no single approach to defining the concept and identifying ways to implement international legal norms in domestic legislation. However, many legal scholars agree that by signing international treaties, agreements, and conventions, the states thereby take measures to implement such norms into the domestic legislation. The article defines the concept of implementation and characterizes the main ways of implementing international legal norms into national legislation by transformation and incorporation. The author provides examples of implementing international legal norms into the legislation of the Republic of Azerbaijan. Moreover, the author considers the opinions of legal scholars on the essence of certain methods of implementation and the possibility of their application in relation to the law of the Republic of Azerbaijan. The author also draws attention to the fact that the main implemented elements are procedures, institutions, normative legal acts, principles, values, and legal ideas. In addition, the implementation of international law in the field of healthcare is also one of the important requirements for integration into the globalized world. The implementation of these norms in the field of healthcare is the main form of fulfilling the international obligations of states. Therefore, it is established that the implementation of healthcare legal norms into national legislation is the adaptation of national legal and organizational means to national legislation on healthcare.

Keywords: implementation of international legal norms, incorporation, transformation, reference, reception, law enforcement practice, legislation of the Republic of Azerbaijan.

1.Introduction

The term “implementation” comes from the Latin word “impleo”, which means to carry out and refers to the execution and fulfilment of a task. Proper implementation of international law requires the involvement of domestic legal systems. In particular, the implementation of international law governing human rights, extradition, economic relations, and regional integration is possible only with the participation of the national legislator and the national court (Huseynov, 2002) .

The forms and methods of this participation vary, depending on the state because there is no single norm in international law on this issue. States must comply with international law and fulfill their international obligations at the national level while addressing the interaction between international and national law. In fact, it is an imperative requirement of international law that states comply with the norms of international law and ensure domestic authority.

2. Materials and methods

While analysing healthcare legislation, the latest doctrinal developments made by scientists, like L.H. Huseynov, Fenny A, Yates R, Thompson R, Martens P, McMichael AJ and others, were used. In addition, a set of general and special research methods were taken into account: systematic and theoretical analysis, comparative legal, historical analytical, structural logical, technical methods, etc.

3. Results and discussion

Globalization stipulates the reforms of the national health system, including updates of national laws, mandates and capacities to strengthen broader public health systems. In the field of healthcare, there are many projects designed for implementation of the norms of international law into the national legislation. However, these projects are not being implemented slowly or are not implemented at all also due to the lack of necessary conditions caused by economic and political reasons. In this regard, the problem of reforming the national legislation on healthcare requires solution.

Implementation is the actual fulfilment of international obligations at the domestic level, as well as a special method of incorporating international legal norms into the national legal system. Thus, there are two main methods of implementing the international law norms into the legislation of the Republic of Azerbaijan as follows:

1. Incorporation means that the norms of international law are directly incorporated into national law without any internal act after their binding nature is duly recognized by the state and are applied as norms of national law. Incorporation is formulated as follows: "international law is part of national law".

2. Transformation means that international law is not ipso facto part of national law. Therefore, international law is incorporated into national law through separate legislative acts (i.e., international law is "transformed" into national legislation). Consequently, unless a law was recognized as an international norm in the system of national law, the national court cannot apply this norm. In the UK, the Scandinavian countries, Thailand and a number of other countries, the transformation method is taken as a basis. I would like to note that the incorporation of an international treaty into national law does not mean its direct application. This means that the court cannot directly apply an international treaty to which a state is a party to resolve any case.

In the case law of all countries where international law is declared part of domestic law, the question usually arises whether the relevant international treaty is self-executing or non-self-executing. It provides for clear legal obligations that automatically regulate relations with subjects of national law, as well as creates rights and obligations that can be directly implemented by the courts. In other words, since the norms of self-executing contracts are exhaustive and specific, they can regulate public relations without additional, concretizing norms. For the first time, the criterion of the independence of the execution of international legal norms was formulated by the Supreme Court of the United States in 1829. The decision on judicial execution reflected its essence: an international treaty "is always valid by itself, without resorting to legislative measures".

Clear and complete provisions are essential for international treaties to become self-fulfilling norms. This enables direct implementation within national legislation, without requiring intervention by the national legislator. By delegating the provisions to public authorities, legal entities, and individuals who are parties to the treaty, the implementation process becomes more efficient and effective. According to the Belgian professor David, "the fact that an international norm can be subjected to a procedure for adoption into domestic law does not mean that there is no direct effect". Contracts that are not self-executing require the adoption of certain legislative acts. Thus, treaties that are not self-executing are treaties that require specifying domestic rulemaking in order to be implemented, despite the fact that the state authorizes the application of its rules within the country.

The concept of implementation is firmly rooted in the practice of international law. It can be found in numerous resolutions of the UN General Assembly, decisions of other international organizations in the humanitarian field. If the national legislation contains more advanced positions of legal protection than international norms, they should abandon their national standards with reservations. On the contrary, if national legislation is insufficient in improving accepted international norms, the state must change these norms, improve them, raise the standard of national freedom, and protect

human and civil rights. Despite the fact that this is a new institution of international law, the implementation of international legal norms in the field of healthcare is one of the important requirements for integration into the globalized world. In addition, this is the main form of fulfilling international obligations of states in the field of healthcare.

In a globalized world, health is increasingly viewed as a complex result of environmental, socio-cultural, economic, and institutional determinants. Therefore, it can be considered an important indicator of high-level integration, reflecting the state of the natural and socio-economic environment and its sustainability in the long term (Martens, 2000). International cooperation between various countries of the world is very important for the development of global health policy and corresponding institutions. This will lead to the effective development of global health management to reduce morbidity and promote health because ongoing globalization has a serious impact not only on the global economy, but also on the health of the world population (Pang & Guindon, 2004). This poses a number of important challenges for the healthcare sector that require both national and international responses (Gostin & Taylor, 2008). Traditionally, such international responses have focused on limiting the spread of infectious diseases.

Health research shows that inequalities in access to healthcare are growing both within and between countries. In a globalized world, the development of international and national strategies for public health protection, as well as the application of international standards in the field of public health protection to national legislation is of great importance. As we have already noted, implementation is the actual fulfilment of international obligations in the field of health at the domestic level and the incorporation of international law into the national legal system. At the same time, the implementation of international standards through incorporation presupposes their reflection in national legislation and actual application. In the context of the globalization process, issues of international cooperation and the development of international and national strategies in the field of public health and the application of international standards to national legislation on health protection are of great importance. In these conditions, a comprehensive analysis of the problems associated with the interaction of international documents and national legislation in the field of health protection is quite significant.

The implementation of legal norms of health care into national legislation is a set of national legal and organizational instruments applied by states parties to existing international conventions in the field of health care. Legal norms of healthcare are implemented in the form of international and national legal mechanisms. In order to implement the norms of international law, the international implementation mechanism consists of actions carried out by universal, regional international organizations, specialized agencies and their subsidiary bodies in the relevant field by organizing a certain set of legal and organizational instruments used by subjects of international law at the international and national levels.

The domestic implementation mechanism, on the other hand, is a set of national legal means used to implement the norms of international law and public authorities authorized to fulfil the international obligations of the state. National legal means are the legal mechanism within the domestic legislation used by public authorities to implement obligations arising from international law. It is possible to single out the following national mechanisms that ensure the fulfilment of international obligations:

- normative legal acts of a general nature regulating the relationship between international and domestic law, the execution and termination of international treaties, as well as defining the authorities of government bodies in the implementation of international law;
- national legal acts adopted to ensure the implementation of international obligations arising from specific international agreements;
- law enforcement activities of state bodies related to the implementation of

instructions determined by the norms of international law at the domestic level;

- national law enforcement experience.

The implementation of legal norms of healthcare includes international and national systems with their own structural elements. In many countries of the world, the transformation of the healthcare system is carried out in three directions.

The Alma-Ata Declaration of 1978 played an important role in the development of primary healthcare. The Declaration became a key milestone of the twentieth century in the field of public health and identified primary health care as the key to achieving the goal of "Health for all". The Declaration transformed primary healthcare into the official health policy of all member countries. In addition, it was declared that health is a human right based on the principles of equality and public participation. Other provisions of the Alma-Ata Declaration are as follows:

- involvement of the public in healthcare management;
- integration of several sectors such as education, agriculture, transport, trade, religion, housing, trade and health;
- incorporation of health promotion, disease prevention, and primary healthcare into the domestic legislation.

The introduction of the Alma-Ata Declaration and other international norms related to primary healthcare into the national legislation of states was very relevant as one of the priority issues. For this reason, states must ensure that international standards on primary health care are incorporated into their national legislation and that the obligations are fulfilled. The result of fulfilling these obligations should be beneficial for all spheres of society. Therefore, all state authorities and citizens should cooperate and contribute to the development of primary healthcare as a social movement. This means that the whole society understands the importance of primary healthcare and, by participating in reforming it, improves the health care services. This should be done in the following form:

- the health sector should be accessible to all citizens as provided for by national legislation;
- states should provide necessary primary healthcare facilities, affordable medicines, etc.;
- since healthcare and health promotion are considered important conditional prevention, the state should support citizens in prevention and hygiene issues.
- the government should cooperate with all states in preventing epidemics and observe the rules of health and hygiene in society;
- the government should develop programs that waive the cost of healthcare for lower-income families;
- the state should guarantee equal access to medical services for all people;
- the government should provide access to medical services in remote regions where ethnic minorities groups live.

1) Implementation of the healthcare financing reform

Efficient healthcare financing is crucial for achieving universal health coverage by providing financial protection and equal access to medical services. However, due to the high cost of healthcare services, it is essential to make them accessible to everyone.

Removing these financial barriers is key to achieving universal health coverage (World Health Organisation, 2020). Given the unique context of each country and its starting point in terms of the organization of health financing, it is impossible to simply adopt the experience of other countries in health financing reforms. This can be illustrated by the example of Rwanda and Ghana where the experience of Mutuelle de Santé in Rwanda was adopted to the national health insurance system in Ghana, using different mechanisms, targeting different populations, and offering different services (Makaka, 2012). Moreover, developing countries, including sub-Saharan African countries, have recently initiated reforms aimed at increasing access to health care through various

financing mechanisms, especially social health insurance programs (Fenny, 2018).

Furthermore, the World Health Organization performs four main functions related to healthcare financing, which should be implemented by the national governments:

- increased income (sources of funds, including government budgets, mandatory or voluntary prepaid insurance programs, direct payments and foreign aid),
- consolidation of funds (collection of prepaid funds on behalf of the population),
- purchase of services (payment or allocation of resources to health care providers).

It can be said that the fulfilment of the WHO functions is reflected in the national legislation of states although this does not involve their practical implementation. In many countries, these functions are not performed to the highest standards. However, it is necessary to note that this varies depending on the country. When discussing financing, it is essential to consider the unique circumstances of each country, including those experiencing a financial crisis or a high level of corruption.

2) Further development of digital tools in the healthcare sector

Digital transformation is ongoing in healthcare and is highly relevant. These changes in digital technologies benefit both the society and the healthcare sector. Healthcare systems need to take advantage of digital technologies to develop innovative solutions to improve the delivery of medical care and address other medical issues. The digital transformation of healthcare involves integrating internet and digital technologies with new treatments and best practices to improve healthcare management procedures.

Quality control can also help improve patient well-being and reduce the services cost. Digital technologies significantly impact medical education, providing specialists with innovative ways to treat people. Therefore, digital transformation is an ongoing process that, with the necessary infrastructure and training, can create opportunities in the health sector. In accordance with Regulation of the European Parliament and of the Council of April 29, 2021 No. 2021/694 (EU), which establishes the Digital Europe program of 2015/2240 and repeals Regulation (EU) No. 2021/694, digital transformation is defined as the use of digital technologies to transform various aspects of an organization or industry.

The Global Strategy recognizes that each country has a digital health action plan based on the strategy in its national context. On the way to achieve the Health-related Sustainable Development Goals, countries should adopt digital healthcare in a sustainable way, which respects sovereignty and is consistent with cultural values, the vision and goals of national health policy, as well as health and well-being needs. It can be affirmed that these three mentioned areas are reflected in the national legislation of most subjects of international law. The introduction and development of digital tools in healthcare has already received momentum.

It is necessary to distinguish between international and national levels of application of international legal norms on healthcare. At the international level, the norms are applied both by international bodies (courts, arbitrations, etc.) and by the governments. State authority as a feature of norm application is conditional due to the specifics of the mechanism of adopting international law, the nature of relations between its subjects, and the obligation to execute issued acts. The enforcement of these acts by the state and the application of international law at the international level require deliberate action and cannot be automatic. However, the application of international law lacks strict regulation governing the process, which is a notable characteristic (Konnovo, 2014).

Apart from that, the implementation of sanitary standards in national legislation has contributed to the integration of health systems of states at the international level. For this reason, the WHO supports the efforts of states to implement existing international health standards into national legislation and ensures that they have basic capabilities for monitoring, preparedness and response to threats to public health. The

implementation of these norms into national legislation is a long process, which includes several stages:

- development and strengthening of specific national public health capacities;
- identification of priority areas in healthcare;
- development of national plans for the implementation of international health standards.

National legislation includes a wide range of legal, administrative and other documents that can facilitate the implementation of international norms. Globalisation should support national processes for strengthening health systems, rather than replace them. This requires updating national laws, mandates, and capacities to improve public health systems. This process involves the following components:

- updating the legislation on healthcare to ensure the protection of public health in the Constitution and other national laws and to eliminate new risks and threats;
- establishing a centre for health guidelines, adequate financing of health systems, ensuring public health awareness and allocation of sufficient budget funds to healthcare;
- analysing public health problems, including factors affecting health and preventing negative effects on it, monitoring and developing healthcare programs.

Consequently, in healthcare, states should implement more projects to enforce international legal norms. The slow implementation or lack of such implementation in many states is primarily due to economic and political reasons, as well as insufficient conditions. In this connection, it is essential to resolve this problem in the nearest future.

4.Conclusion

As a result of the analysis, it can be concluded that implementing international legal norms can be divided into two main parts. First, a state can include in its law norms referring to the norms of international law, as a result of which the latter can operate within the country. Secondly, the state can adopt new norms of law, change or cancel existing ones, fulfilling the requirements of international law, adapt them to the specifics of the domestic legal system.

The implementation mechanism consists not only of adopting legal procedures and institutions, but also includes socio-legal phenomena. Thus, during implementation, certain components of another legal culture and legal values are assimilated into the national system. If the implemented norm does not correspond to the values and views existing in the state, then no incorporation, transformation or adaptation will be possible.

Law enforcement practice selects the appropriate legal norm and resolves legal issues through interpretation of international law and national legislation, based on accumulated experience. This is aimed at ensuring the fulfilment of international obligations of the state. The expertise in this area allows to resolve complex legal situations.

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BIOMEDICAL ISSUES NECESSITATING LEGAL REGULATION OF GENETICS

Parvina Fazail Ismayilova,
Baku State University,
Baku, Azerbaijan
e-mail: parvina444@gmail.com
https://orcid.org/0000-0002-2709-3660

Abstract. The article explores the various biomedical issues surrounding genetics that necessitate legal regulation. Genetics is a rapidly advancing field that holds immense potential for revolutionizing healthcare and improving human life. However, with these advancements come ethical and legal concerns that need to be addressed to ensure the responsible and equitable use of genetic technologies.

The article analyzes several medical and genetic technologies that are extensively used in modern medicine. Genealogical analysis, genetic testing, genome editing, screening, genetic therapy, cloning and genetic passports are still not perceived by society unambiguously. The appearance and use of these processes can be said to have a direct impact on the population and the gene pool of the population. The use of each of these medical and genetic methods in research creates moral – ethical and legal problems. As practice shows, international legislation and national jurisdictions of some countries regulate only a small part of this issue, which inevitably leads to ethical and legal dilemmas in society.

One key issue discussed in this article is the protection of individual privacy and the confidentiality of genetic information. With the increasing availability and affordability of genetic testing, individuals are sharing their genetic data with various entities, including healthcare providers, researchers, and direct-to-consumer companies. This raises concerns about who has access to this sensitive information and how it could be used, such as for genetic discrimination or targeted marketing.

Another critical concern highlighted is the potential for genetic discrimination in areas such as employment, insurance, and access to certain services. Employers and insurers may be tempted to use genetic information to make discriminatory decisions, such as denying employment or coverage based on an individual's genetic predispositions. Legal regulations are necessary to protect individuals from such discrimination and ensure equal opportunity for all.

Furthermore, the article delves into the ethical implications of genetic engineering and modifications. The ability to edit or manipulate genes raises questions about the boundaries of natural selection, the potential risks and unintended consequences of genetic modifications, and the need for responsible use of these technologies. Legal regulation is necessary to set guidelines and standards for genetic engineering, specifying what is permissible and what is not. The article discusses the importance of informed consent and transparency when it comes to genetic testing and research. Individuals should have the right to understand the implications and potential risks associated with genetic testing before consenting to it. Furthermore, researchers must adequately inform participants about how their genetic data will be used and ensure their data is protected. Legal regulations play a crucial role in ensuring these principles are upheld.

In conclusion, this article emphasizes the need for legal regulation of genetics to address various biomedical issues. Informed consent, ethical considerations, genetic discrimination prevention, and individual privacy and confidentiality protection are essential components of a responsible and equitable use of genetic technologies. By establishing legal frameworks that govern the field, societies can maximize the benefits of genetics while mitigating potential risks and ensuring fairness for all.

In addition to its comprehensive examination of genetic treatment, this article delves into the legal framework that governs biomedical research in this field. It goes beyond mere discussion of international legislation by conducting a comparative study of different countries' legal systems, providing a profound analysis of the fundamental principles applied across the globe. The importance of addressing these issues in Azerbaijan cannot be overstated, as the country has a notably high percentage of individuals carrying genetic diseases such as thalassemia and hemophilia. This poses a significant risk of future harm to the germline within the Azerbaijani population. Recognizing this, the article emphasizes the urgent need for robust legal regulations in genetics, particularly focusing on the areas where Azerbaijani legislation may have gaps that need to be bridged. It is critical that countries create comprehensive legal frameworks that safeguard their citizens' rights and welfare as genetic research and therapies progress. By examining international legislation and comparing it with the legal systems of various countries, this article provides an extensive analysis that serves as a valuable resource for policymakers and lawmakers in Azerbaijan.

Furthermore, the article highlights the potential consequences of inadequate legal regulation in genetic research. With a specific focus on Azerbaijan, it underscores the pressing need to address and mitigate risks associated with the germline. By doing so, the country can ensure the ethical and responsible application of genetic treatments while safeguarding future generations from potential harm.

In conclusion, this article takes a comprehensive approach to explore the legal framework regulating biomedical research in genetic treatment. By delving into international legislation and comparing it with different countries' legal systems, it sheds light on essential principles applied worldwide. Recognizing the high prevalence of genetic diseases in Azerbaijan, the article underlines the necessity of addressing gaps in the Azerbaijani legislation and emphasizes the importance of protecting the germline to safeguard the well-being of future generations.

Keywords: Medical genetics, confidentiality, genetic test, DNA, legal issues, genealogical analysis, genetic testing, genetic screening, gene therapy, genetic passport, thalassemia.

INTRODUCTION

In recent years, advancements in genetic testing and biomedical research have revolutionized the field of healthcare, offering immense potential for personalized medicine, early disease detection, and improved treatment strategies. However, as these technologies continue to evolve, a critical need arises to address the ethical and legal implications surrounding genetic testing and biomedical research.

In this article, we delve into the complex landscape of ethical considerations and legal regulations that surround the ever-expanding realm of genetic testing and biomedical research. By exploring the ethical principles guiding these practices and examining the legal frameworks that govern their implementation, we seek to shed light on the importance of maintaining rigorous standards that protect individual rights, maintain privacy, and ensure equitable access to these advancements.

Understanding the ethical aspects of genetic testing and biomedical research is vital to navigate the delicate balance between individual autonomy, research integrity, and the broader societal implications. Questions about informed consent, privacy, incidental findings, and the potential for discrimination based on genetic information all highlight the significance of stringent ethical guidelines.

Furthermore, as genetic testing and biomedical research advancements have global implications, it is imperative to examine the legal frameworks surrounding these practices. Laws governing the use of genetic information, protection of personal data, intellectual property rights, and the regulation of clinical trials are just a few areas that

require careful consideration to ensure the welfare of patients, participants, and the public at large.

This article aims to explore the multifaceted challenges posed by the ethical and legal dimensions of genetic testing and biomedical research. Drawing on existing regulations, international guidelines, and case studies, we aim to provide an overview of the current status quo, gaps, and potential solutions to address these complex issues. It presents an in-depth analysis of international legislation and a comparative study of the legislation in various countries, exploring the fundamental principles of legal systems applied worldwide. Moreover, the article addresses biomedical issues that necessitate legal regulation in genetics, with an emphasis on bridging gaps in Azerbaijani legislation. By understanding and addressing the ethical and legal aspects of genetic testing and biomedical research, we can strive towards a future in which these revolutionary advancements are harnessed responsibly and ethically, providing significant benefits to individuals and society as a whole while upholding fundamental human rights. By implementing appropriate regulations, society can harness the potential of genetics while safeguarding individual rights, promoting ethical research practices, and avoiding unethical or unintended consequences.

METHODOLOGY

The author employed the method of deduction to derive specific conclusions and principles from general concepts and laws in genetics and medical law. Additionally, the method of induction was utilized to draw generalizations and formulate hypotheses based on observed patterns and data.

Furthermore, the author used the method of prediction to anticipate potential future developments in the field of genetics and medical law, taking into account current trends and advancements. This allowed them to provide insights and recommendations for appropriate legal regulation. In order to gain a comprehensive understanding of the subject matter, the author employed the method of modeling. By creating simplified representations of complex genetic and legal systems, they were able to simulate various scenarios and evaluate their potential consequences.

The method of analogy was also employed by the authors, as they compared and drew parallels between different biomedical issues and existing legal regulations. This helped to highlight similarities and differences, providing a basis for proposing appropriate legal solutions.

To ensure a comprehensive and balanced analysis, the author utilized the method of dialectics. This involved examining the interplay between different factors and perspectives, as well as addressing contradictions and conflicts that may arise in the context of genetic research and its legal regulation.

Overall, the author's use of these general scientific techniques and methods, combined with a theoretical and methodological basis rooted in fundamental research and various sources of knowledge, allowed for a thorough examination of the Biomedical Issues Necessitating Legal Regulation of Genetics. The application of these methods facilitated the identification of key areas requiring legal attention and provided a solid foundation for the authors' recommendations and conclusions. The article discusses the scientific techniques and methods involved in the field of genetics and highlights the need for legal regulation in this area of research and application.

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. Regulations are required to ensure the accuracy and reliability of genetic tests, protect the privacy and confidentiality of genetic information, and prevent discrimination based on genetic results. Additionally, genetic counseling plays a crucial role in interpreting and conveying complex genetic information to individuals or families, emphasizing the

importance of regulating the qualifications, standards, and ethical considerations for genetic counselors.

The work also employed system-structural, complex, and holistic research approaches, enhancing the quality and comprehensiveness of the findings. These approaches allowed for a thorough examination of various interconnected aspects related to the topic. Theoretical provisions, proposals, practical recommendations, and conclusions were formulated and substantiated using these diverse methods and approaches.

RESULTS

1. Ethical and legal regulation of genetic testing and biomedical research.

One of the developing areas of medical law is the sphere of providing medical genetic services. Modern genetics, especially human genetics, is a rapidly evolving field of scientific knowledge. The rapid progress of medical genetics is constantly followed by the emergence of new moral and legal issues. Conducting genetic testing, genetic screening, obtaining genetically identical copies of living and dead people – cloning and preventing the transmission of hereditary diseases to future generations as a result of reproductive processes require serious scientific research.

Medical genetics is a technological process of obtaining new structures of genetic material by transferring the gene systems created as a result of experiments with molecules of ribonucleic and deoxyribonucleic acids outside the cell using genetic engineering (Panchin A. 2017, p. 32-34). The discovery in 1953 of the physical structure of the DNA molecule can be deemed one of the turning points in the history of biology and genetics science. The Nobel Prize in Physiology or Medicine in 1962 was awarded to James Watson, Francis Crick and Maurice Wilkins for this exceptional discovery. DNA (Deoxyribonucleic acid) is a biopolymer that preserves genetic information for the formation and continuation of vital processes of a living organism and is transferred between generations. All organisms, including some viruses, have DNA.

Medical genetics covers the creation of drugs, micro- and transgenic organisms, plants and viruses, including genetic engineering or biotechnological processes, and more importantly, molecular and cellular genetic research for the treatment of various hereditary diseases. For example, Genetic engineering is the reused method for excluding, changing, crossing and recombining genes in different organisms. Genetic engineering is a scientific field of creating new opportunities for living beings by changing their hereditary characteristics (Mammadov V.Q. 2013, p. 323-328). But more dangerous activity is the modification of human essence by interfering with genes or human cloning. In this sense, the legal regulation of any genetic experiment must be aimed at solving vital problems.

The subject of genetic experiments and genetic testing is to care for the health of unborn children and future generations. However, the advent of genetic testing has raised concerns about the protection of genetic information and the potential for discrimination based on one's genetic makeup. Legal regulation is required to ensure that individuals are protected from discrimination in employment, education, insurance, and other areas, based on their genetic information. Genetic testing and research often involve the collection and analysis of individuals' genetic material. Legal regulations are necessary to ensure that individuals are adequately informed about the potential risks, benefits, and implications of genetic testing or research.

Genetic testing has made it possible to identify dangerous diseases in people and anticipate which ones will develop based on a person's inherited constitution. These medical techniques are now more reasonably priced. For example, Legal and ethical issues surrounding genome editing, particularly the use of the CRISPR-Cas9 system, are important considerations. When editing the human genome, informed consent is essential. Individuals must have a clear understanding of the potential risks, benefits,

and limitations of genome editing technologies. It is crucial to respect their autonomy and ensure that informed decisions are made freely and without coercion. Germline editing involves making changes to the DNA that can be inherited by future generations. This raises ethical questions about the potential long-term effects and unintended consequences of altering the germline.

There is ongoing debate about the appropriateness and implications of modifying human germline cells. Genome editing technologies have the potential to create disparities in access to healthcare based on socioeconomic status. Concerns arise over whether genome editing will primarily benefit those who can afford it, leading to an increased divide between the privileged and the disadvantaged. Also, Genome editing techniques are not always 100% accurate, and off-target effects can occur. Unintended changes to the genome might have unforeseen consequences, causing harm to the individual or future generations. Ensuring the safety and minimizing the risk of off-target effects is a significant challenge. There are concerns that genome editing could be used for non-medical purposes, such as creating «designer babies» with enhanced traits. This raises profound moral and ethical questions about the boundaries of genetic intervention and the potential creation of an «unequal playing field» in society.

Addressing these legal and ethical issues requires a robust framework that balances scientific progress, individual autonomy, safety, and social responsibility. Open and transparent dialogue among scientists, policymakers, ethicists, and the general public is crucial to ensure the responsible and ethical use of genome editing technologies.

Developmental abnormalities in humans can be detected through genetic testing. The information obtained as a result of testing makes it possible to diagnose the existence of genetic disease in the person who manifests the symptoms. The study of genetic characteristics can have very serious consequences in the life of each person. Therefore, learning that one has certain terrible and incurable diseases might cause one to experience severe psychological shocks in the future, change one's perspective on life, and ultimately alter society's perception of oneself (Ismayilova Parvina Baku. 2023. p. 108). The results of genetic testing, unlike other medical data, are predictive in nature and can affect the interests of other family members. Summing up, it is necessary to emphasize that genetic experiments and genetic testing that are developing every year raise serious issues for medicine, public health, and social policy.

Genetic testing and biomedical research are aimed at ensuring the efficiency of genetic diagnosis and treatment. Legal issues in medical genetics are of greater interest, mainly in genealogical analysis, testing, screening, and genetic therapy. The application of each of these methods is related to certain moral and legal issues.

Conducting genetic testing is one of the most important services provided to the population in the present-day world. Genetic testing is conducted based on the person's voluntary consent, and the person can withdraw the consent at any time. Medical personnel must inform the patient about both positive and negative aspects of genetic testing. All information must be confidential and the physician must strictly protect medical secrecy and regardless of the medical test result, he/she must provide all kinds of support to the patient. At the same time, during the testing conducted before having symptoms, the physician must protect the confidentiality of the information he/she receives, give detailed information about the impossibility of determining the age and severity of the disease as a positive result and about the availability of counseling and psychological support programs. Since the testing of minors and potential patients can seriously harm children's rights, WHO advises deferring elective genetic testing of minors until reaching maturity.

Genetic testing ensures the confirmation of the genetic basis of the existing disease. Pre-symptomatic testing covers the testing of a person before symptoms of an inherited, genetic disease manifest themselves. So, some genetic diseases, like Huntington's Disease (HD is an inherited disorder that causes nerve cells (neurons) in

parts of the brain to gradually break down and die. The disease attacks areas of the brain that help to control voluntary (intentional) movement, as well as other areas. People living with HD develop uncontrollable dance-like movements (chorea) and abnormal body postures, as well as problems with behavior, emotion, thinking, and personality) which manifest themselves only after 40 years old.

There are several levels of genetic testing in medical genetics: Discussion of genetic problems, consultation with a geneticist, giving consent for testing, collecting samples from the human body, genetic analysis – examining DNA or chromosomes, examining DNA, examining mutations, interpreting results, and finally, the consultation of the geneticist again. As was mentioned above, the legal requirement during all these processes is that the privacy, dignity and individuality of the person must be protected, which is consistent with the no harm or accountability principle.

Another direction of testing in genetics is applied in the case of determining the genetic predisposition to the disease. This testing is specifically aimed at assessing the possible development of the disease and for preventive treatment or prevention. At this point, the physician has to go over with the patient the various testing options and provide comprehensive details regarding the onset of the illness and ways to avoid it. Genetic predisposition to disease testing provides information on the multifactorial disorder in a person, confirmation of the genetic nature of the disease. For instance, if a person has mutations in both the BRCA1 and BRCA2 genes, the likelihood of developing breast cancer after the age of 50 is 20% in the second instance and 40% in the first. WHO recommends conducting multifactorial disease testing willfully and if the test results will help to effectively treat and prevent the disease.

One more direction of the genetic tests is related to the tests that determine the genetic carrier. Even if a person is not symptomatically sick, he/she can be a disease carrier (e.g., Beta-Thalassemia) genetically, and the test is also applied for this case.

Currently, there are more than 10.000 genetic diseases and genetic disorders known to exist in the world. Many of them are related to a specific gene mutation: for example, Down's syndrome (caused by a copy of chromosome 21), Hemophilia disease (widespread in Absheron Peninsula, Azerbaijan) is a genetic disorder of blood coagulation. According to the disease, men are infected, and women (mothers) act as genetic carriers of the disease.

Another type of blood disease - Thalassemia is a hereditary blood disease characterized by impaired hemoglobin synthesis and chronic anemia as a result of a genetic defect. On average, 8 percent of Azerbaijanis are carriers of thalassemia (according to 2016). This indicator is high compared to neighboring countries. One of the ways to prevent the spread of this disease is to undergo by couples a medical examination before getting married (Ismayilova Parvina Baku. 2023. p. 109).

In Azerbaijan, significant efforts have been made to address the rising percentage of genetic blood diseases and protect the rights of individuals living with this. Recognizing the importance of prevention and treatment, various laws and regulations have been adopted to combat genetic blood disorders, particularly thalassemia. One influential initiative in this regard is the «For Life Without Thalassemia» state program, which was launched in 2005 by the First Vice-President of Azerbaijan and the President of the Heydar Aliyev Foundation, Mrs. Mehriban Aliyeva. The program seeks to raise awareness about thalassemia and take proactive steps to prevent its occurrence. One key measure introduced through this program is the mandatory medical examination for couples planning to get married. This examination, which also includes tests for other diseases such as HIV/AIDS and syphilis, aims to identify any genetic blood disorders that may be present in the couple.

Furthermore, the legislative framework supporting the care of individuals suffering from genetic blood disorders, including hemophilia and thalassemia, is well-defined in Azerbaijan. The Law of the Republic of Azerbaijan «On State Care for Persons Suffering

from Hemophilia and Thalassemia Genetic Blood Disorders,» enacted in 2015, focuses on organizing and providing state care for individuals with these conditions. It also deals with matters concerning the prevention, diagnosis, and treatment of genetic blood diseases, including thalassemia. This law establishes the foundation for healthcare services in the country, outlining the responsibilities of relevant authorities and institutions. In addition to legal measures, Azerbaijan implements policies and regulations on genetic screening for thalassemia. These policies guide the procedures and standards for identifying carriers and individuals affected by thalassemia. They also ensure that these individuals have access to healthcare services and support, guaranteeing their rights and well-being. The policy framework extends to the Thalassemia Center, which plays a crucial role in providing appropriate medical care to individuals with thalassemia. This includes access to vital treatments such as medications, blood transfusions, and iron chelation therapy. Importantly, individuals living with thalassemia are also protected by disability rights laws in Azerbaijan. These laws safeguard their rights and ensure equal opportunities for them to participate in society. By upholding disability rights, Azerbaijan aims to improve the quality of life and well-being of individuals affected by thalassemia.

Through these various measures, Azerbaijan has demonstrated its commitment to addressing genetic blood disorders, with a particular focus on thalassemia. By implementing proactive policies, regulations, and support systems, the country has made significant strides in preventing and managing genetic blood diseases, while safeguarding the rights and welfare of individuals living with these conditions.

Genetic screening is one of the biomedical research that is important in terms of the protection of human rights in medical law. Genetic screening is a medical genetic diagnosis that covers mass genetic examination of people. In this case, it is intended to solve issues such as hereditary pathologies, the sex of the child in the embryonic stage, the sex of the child during artificial insemination, and prenatal diagnosis of the fertilized child. Heredity is a combination of several internal (genotype) and external (phenotype) characteristics, long before the child is visible through an ultrasound device, even during fertilization (Ismayilova P. 2023. p. 114-115).

Hereditary diseases are the result of defective changes (mutations) in the structure of the genetic apparatus of the cell. Genetic changes do not manifest themselves in any way in the parents of the fetus but can cause serious hereditary diseases in future generations. Many of these issues can be identified during prenatal examination (diagnosis). «Perinatal» («prenatal») means «before birth» and covers the entire period of pregnancy. Of course, this diagnostic operation makes it possible to prevent several serious diseases while the child is still in the mother's womb, but on the other hand, it allows people to carry out legally and ethically incorrect procedures. For example, choosing the child's sex is possible as a result of prenatal and preimplantation diagnostics. Choosing fetuses and embryos is a violation of the fundamental personal rights of the person born and leads to a violation of the sex ratio in society in the future. Due to becoming the major problem of the world today, Oviedo Convention adopted by the Council of Europe in 1997 (Article 14) prohibits choosing a future child's sex without any reason provided for by national legislation.

In general, it is known that during the application of the genetic screening program in the world, it is possible to have a moral and ethical conflict in relations. The principle of confidentiality underlying this conflict in the field of medicine and the obligation of warning to prevent the occurrence of serious illness conflict with each other (Ismayilova P. 2023. p. 114). Specific issues arise when the medical and genetic testing procedure causes the risk of harm. For example, the diagnosis of some hereditary diseases of the fetus can be made thanks to amniocentesis in a mother's womb. It relates to the risk of accidental termination of pregnancy. If there are medical and genetic indicators that confirm that the child is likely to be born with a genetic pathology, the physician may take this risk (the risk of miscarriage) into consideration. However, if a healthy woman

who does not have appropriate indicators and has a low risk of hereditary pathology personally requests amniocentesis and examination of the fetus, then a serious moral problem arises. Although the unborn child is not protected by law, morally he/she has the right to live, and in this case, his/her interests and also risks must be taken into consideration.

Population genetic screening is conducted only to identify gene carriers of severe hereditary diseases. One of the classic examples of the neonatal screening program is the identification of the hereditary disease phenylketonuria (PKU) in newborns. This disease is a severe hereditary disease that damages the head and spinal cord and, if left untreated, can lead to mental retardation, short stature, cataracts and other serious problems, and an untreated child will become disabled when he/she grows up. Timely diagnosis of genetic defects and the application of a special diet excluding phenylalanine, as well as the combined use of psychological correction therapy and social adaptation methods allow to obtain a positive result in many cases.

Phenylketonuria screening test – known in Azerbaijani medical society as «Ankle analysis», this screening test varies from country to country. In many countries, this screening test is compulsory and free of charge at the state level, to protect the future gene pool. In Azerbaijan, this screening is payable and not compulsory. Because the screening test itself is expensive for middle- and low-income families, parents usually refuse to conduct it. As a result of the development of biotechnology, the simplicity and relative reliability of the screening test method for PKU detection allowed its wide application in medicine.

The problem is that there are no statistics in this field in Azerbaijan. The necessary measures were not taken by the competent state authorities in this field within the framework of the «State Program for Improving the Maternal and Child Health for 2014-2022.» According to the State Statistics Committee, 122.846 babies were born in Azerbaijan in 2022. According to the State Agency for Compulsory Medical Insurance, within the framework of the «Action Plan for the Implementation of the Strategy for Children for 2020-2025», to detect congenital and hereditary diseases among newborns, since May 2022, 700 children have undergone neonatal screening tests in state medical institutions. As a result of screening tests, phenylketonuria was not detected in the children who underwent testing.

This confirms once again that the phenylketonuria screening, which is one of the necessary elements for gene pool protection, and the collection of statistical data in the country is not at the desired level. So, in the statistics of the world countries, the numbers differ between 1:2,500 (in Türkiye), 1:15,000 (in the USA) and 1:200,000 (in Finland). Note that this hereditary disease is more common in children of inbreeding families. Given that this tradition is widespread in Azerbaijan, the number of diseases in the country is not an exception.

The development of modern technologies allows us to determine the risks of this disease even before the child is fertilized in the mother's womb if both parents undergo genetic testing. However, screening for phenylketonuria must be compulsory after birth. So, there is legislative practice in this regard in the world countries. For example, in Russia, this procedure is a compulsory analysis included in neonatal screening. In Russia, for 15 years now, babies have been examined for five hereditary diseases for free at the maternity hospital immediately after birth.

During this period, more than 20 million children have passed such screening, and about 15,000 people have been diagnosed with this disease. Article 44 of the 2011 Law of Russia «On Protection of Population Health» states that neonatal screening for phenylketonuria, which is one of the developing diseases that pose a serious threat to human life and health, is provided at the expense of state funding. The same legislative practice is observed in one of the developed countries of Europe – Portugal.

According to the legislation of the Republic of Azerbaijan, the highest objective

of the state is to ensure people's rights and liberties (Article 12 of the Constitution of the Republic of Azerbaijan). In particular, in the concept of National Security of the Republic of Azerbaijan, in Law «On Protection of Population Health» (Articles 1 and 2), the state guarantee of human and civil rights..., the implementation of preventive measures for population health protection and other provisions include neonatal screening test for phenylketonuria which is one of the diseases that threaten people's health from the day of birth. Taking into consideration the practice of the world countries, the concept of neonatal screening, the list of diseases and their classification system must be established by additions to the Law «On Protection of Population Health» or by a separate legislative act. Screening for diseases that pose a threat to human health from birth can also be conducted by regulating our legislation according to the WHO a short guide on «Screening programmes: Increase effectiveness, maximize benefits and minimize harm» (Copenhagen, 2020; Sushko, 2003,).

In the end, taking into consideration the supreme goal of the state and the protection of the country's gene pool (Article 16.1 of the Constitution of the Republic of Azerbaijan), the analysis and prevention of progressive diseases that pose a serious threat to human life from birth must be ensured either mandatorily or at expense of the state or by including it in the legislation on Compulsory Medical Insurance.

2. Ethical and Legal Aspects of Gene Therapy

Gene Therapy involves the modification of an individual's genetic material to treat or prevent genetic diseases. While it holds great potential for the treatment of various genetic disorders, several ethical and legal aspects need to be considered:

1. Informed consent: Proper informed consent is crucial when conducting gene therapy. Individuals should be fully informed about the risks, benefits, and potential outcomes of the treatment before giving their consent.

2. Privacy and confidentiality: The genetic information obtained during gene therapy carries sensitive personal information. It is important to ensure strict privacy and confidentiality to protect the individual's genetic data from misuse.

3. Access and equity: Gene therapy is a groundbreaking medical intervention that has the potential to significantly improve quality of life. However, ensuring equitable access to therapy for all individuals, regardless of economic status or geographical location, is essential to prevent further disparities in healthcare.

4. Human enhancement: While gene therapy is primarily aimed at treating diseases, the ability to modify one's genetic makeup also raises concerns about the potential for human enhancement. Ethical considerations need to be taken into account to prevent the misuse of gene therapy for non-medical purposes.

5. Long-term effects and safety: Gene therapy is still a developing field, and its long-term effects are not fully understood. A thorough evaluation of safety and efficacy is essential to minimize potential risks to patients.

On the legal front, several regulatory and legal considerations govern gene therapy:

1. Regulatory approval: Gene therapy is regulated by government agencies and must undergo rigorous testing and approvals before being made available to the public. These regulations aim to ensure the safety and efficacy of the treatments.

2. Intellectual property: Gene therapies are the subject of intellectual property rights, including patents. This raises ethical concerns about access to and affordability of these treatments, as well as the potential for monopolies hindering innovation.

3. Liability and accountability: In the event of any adverse effects or harm resulting from gene therapy, legal frameworks and liability systems determine who is accountable and what compensation should be provided.

4. Genetic discrimination: There are legal provisions in many countries that prohibit genetic discrimination, ensuring that individuals are not discriminated against based on their genetic information when it comes to employment, insurance, or other services.

5. Regulatory oversight and monitoring: Gene therapy research and treatments

are closely monitored by regulatory bodies to ensure compliance with ethical and legal standards. This oversight helps maintain public trust and prevents unethical practices.

Overall, gene therapy offers great promise in the field of medicine, but close attention must be paid to ethical and legal considerations. Ensuring informed consent, privacy protection, equitable access, and regulatory oversight are crucial to harness the potential of gene therapy responsibly and ethically.

Gene therapy is one of the newest areas of medical development. This method, which has been applied to hundreds of patients so far, has given quite good results in many cases. Even while gene therapy (Ismayilova P. 2023, p. 117) is thought to be a more promising treatment for monogenic genetic disorders, there are still a number of legal concerns. Thus, it is likely that the introduction of genetic material containing a normally functioning gene into the body will have a decisive therapeutic effect. Currently, there is uncertainty about the effectiveness of gene therapy, as well as the possible negative consequences of transferring genetic material into the patient's body. That is why, for example, testing of gene therapy methods in human germ cells is prohibited in the world. This prevents the transmission and spread of potentially negative genetic changes to future generations. However, note that germ cells are not isolated from the body.

Consequently, there remains the possibility of influencing them by carriers of genetic material during gene therapy of somatic cells. To obtain permission to conduct gene therapy clinical trials, the following conditions must be met:

1) During experiments on animals, it must be proven in advance that the necessary gene can be transferred to suitable nuclear cells and have an active function there for a long time;

2) It is necessary to make sure that the gene transferred to the new environment will maintain its effectiveness;

3) It must be fully guaranteed that the transferred gene will not cause negative consequences in the body (Ismayilova P. 2023. p.117).

As much as personal specificity (individuality) manifests itself as a genetic issue, its protection is as much an issue of Medical law. In this sense, the concept of genetic passportization was created. A genetic passport is a confirmation of information about individual genetic characteristics that distinguish a person from others among citizens. A genetic passport is the result of genetic dactyloscopy (or DNA-dactyloscopy). This type of passport can be referred to as a forensic passport because it determines the unique sequence of nucleotides of a person's DNA. In some cases (investigation of crimes, determination of paternity, identification of human remains, etc.), it enables identification of a person. Moreover, a genetic passport is the profiling of the human genome through biomaterial (saliva and blood) (Cardiological Journal, 2018, p. 85-87).

From a bioethical and legal point of view, the «gold standard» of genetic material donation (without which it is impossible to create a genetic passport) is voluntary informed consent. «Voluntary» means conscious, free, independent and uncoerced consent. «Informed» means that the citizen consciously gives consent based on reliable and detailed information presented to the subject of consent in an understandable form based on the biomedical experiment presented by the physician or organizers.

Detailed information on giving genetic material to a biobank must help the citizen to make an independent decision, and he/she must also give consent for the use of biomaterial in scientific research. The use of diagnostic methods based on the analysis of genetic markers makes it possible to conduct early diagnosis of pathology and diseases that do not manifest in a person and to ensure adequate therapy on time. The effect of drug treatment depends mainly on the individual genetic characteristics of the patient. Thanks to gene diagnostics, it is possible to reduce the time spent on choosing drugs and determining their dosage several times.

The creation of a genetic passport will make it possible to obtain an individual approach to the treatment of a person. However, the main risk when obtaining personal

(genetic) and especially medical information is the protection of personal information and confidentiality. Genetic information is highly personal and sensitive. Legal regulations are needed to protect individuals' privacy and confidentiality concerning their genetic information, including how it is collected, stored, accessed, and shared. The discovery and development of genetic tests, therapies, and technologies raise questions about the ownership and control of genetic material and associated technologies. Legal regulation is essential to ensure that property rights are granted in a manner that promotes innovation, fair access, and ethical considerations.

So, the ethical and legal side of the matter requires confidential and comprehensive protection of data. UNESCO 1997 «Declaration on the Human Genome and Human Rights» states that everyone has a right to respect for their dignity and rights regardless of their genetic characteristics; that dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity".

The main ethical, legal and social implications of the Human Genome Project are privacy and confidentiality, genetic testing, education, reproductive issues, psychological impact and stigmatization, standards and quality control, commercialization, conceptual and philosophical implications.

Legal regulation is essential to address the potential resurgence of eugenic relations through the use of genetic passports, as it empowers the state to stipulate specific requirements for individuals with genetic issues, such as their ability to live, work, and have children. However, note that there are many positive aspects of the application of genetic passports. States also protect their biological security by applying passports.

In such a way, countries, where hereditary blood diseases are common (Azerbaijan, Turkiye, etc.) can prevent the disease from developing. Thus, 1) the creation of a genetic passport will make it possible to obtain an individual approach to the treatment of a person; 2) genetic passportization, as a new field in medical law, will provide a preventive regulatory function in the fight against various serious diseases.

CONCLUSİON

Genetic research and the use of genetic technologies have revolutionized the field of medicine, offering unprecedented opportunities to understand, diagnose, and potentially treat a wide range of diseases. However, these advancements also bring with them a myriad of ethical considerations that must be addressed through legal regulations. Consent is a critical issue in genetic research, as it involves the use of an individual's genetic material, which is inherently personal and private. Therefore, strict guidelines must be established to ensure that individuals understand the implications and potential risks of participating in genetic research and can give informed consent.

Another ethical concern is the potential harm that could be caused by genetic interventions. While gene editing and manipulation technologies hold immense promise, there is also the potential for unintended consequences and long-term effects that may be harmful to individuals and even future generations. Therefore, legal regulations are needed to establish rigorous safety standards and oversight mechanisms to ensure that genetic interventions are conducted responsibly and ethically.

Additionally, the use of vulnerable populations in genetic research raises significant ethical concerns. Minority groups, individuals with disabilities, and socioeconomically disadvantaged individuals should be protected from exploitation and harm. Legal regulations must outline safeguards and ensure that these populations are not disproportionately targeted or subjected to unjust treatment in genetic research. Conflicts of interest also need to be addressed in genetic research. As the field continues to grow, there is a risk of commercial or financial interests influencing research findings or dictating the direction of research. Legal regulations should establish guidelines to minimize conflicts of interest and ensure that genetic research is conducted with the best interests of individuals and society in mind.

Advances in genetics, such as gene editing and manipulation technologies, have also sparked debates about the personhood and rights of individuals whose material is altered. Legal regulation is necessary to define and protect the rights and interests of individuals and to establish ethical boundaries for genetic interventions. This includes issues such as ownership and control over genetic information, privacy concerns, and ensuring equal access to genetic technologies.

In Azerbaijan, there is a pressing need to address these ethical considerations and establish legal regulations in the field of genetics. The article emphasizes the importance of carrying out genetic screening and defining a list of diseases that pose a serious threat to human life. These diseases should be included in the compulsory form of state insurance or regulated under the framework of Compulsory Medical Insurance. This would ensure that individuals have access to necessary genetic testing and interventions without discrimination or financial burden.

Moreover, gene therapy, as one of the newest directions of medical development, requires legal regulation to ensure its safe and ethical use. Proposals have been put forward for the implementation of genetic passports, which would provide an individualized approach to treatment based on an individual's genetic profile. This would allow for more targeted and effective healthcare interventions. Furthermore, genetic passports could serve as a preventive tool, enabling regulation in the fight against various serious diseases by identifying individuals who may be at risk and providing proactive measures to prevent the onset of these conditions.

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JURISDICTIONAL IMMUNITY OF A FOREIGN STATE UNDER ENGLISH LAW

Yevgen Popko,
Institute of International Relations
Taras Shevchenko National University of Kyiv
Kyiv, Ukraine
e-mail: yevgenpopko@gmail.com
https://orcid.org/0000-0002-7417-7584

Abstract. The article examines the current trends in the legal regulation of relations on granting jurisdictional immunity to a foreign state in the legal systems of foreign countries in the example of Great Britain. The author identifies the basic principles of development of this institution in the UK, their reflection on the rules of English law, and emphasizes the existence of problems associated with the application of state immunity in private law relations. The author substantiates the expediency of analyzing the most optimal legal positions reflected in UK legislation and tested in world practice. The author analyzes in detail the UK State Immunity Act 1978 and shows the role of case law in this process. The author analyzes the origins of limited immunity in the UK and provides a comparative description of English law and American law.

The paper looks at the methodological underpinnings of England's jurisdictional immunity in private international law and its theoretical and legal underpinnings. The author identifies the primary categories of state immunity, describes the idea and its features, and examines the underlying factors that led to developing a state's jurisdictional immunity. The two primary theories of state jurisdictional immunity under English law — absolute immunity and functional (limited) immunity — are examined by the author. The author gives particular consideration to the legal framework governing the State's jurisdictional immunity at the international and national levels. The author outlines the key elements of England's jurisdictional immunity doctrine about foreign private law contacts.

The scope of relationships in which the state may act as a subject of international law is defined by the author, who also looks at the immunity of the state as a subject of private international law. The State's sovereignty is seen as the foundation for immunity. The fundamental ideas of jurisdictional immunity in England are examined by the author, including absolute immunity and functional (limited) immunity, as well as how they are reflected in both national and international legal frameworks.

Keywords: immunity of a foreign state, concept of limited immunity, legal regulation of state immunity, commercial activity, property immunity

INTRODUCTION

The scope of the State's participation in both public law and private law relations complicated by a foreign element has been growing recently. The scope of these relations is quite extensive, and they are developing under the influence of one of the cornerstone institutions of private international law - the institution of State immunity. In this regard, it should be noted that recently there has been an increase in lawsuits against states not only for damages, in connection with commercial activities, and labor contracts, but also in connection with human rights violations by these states, for example, the use of torture, illegal imprisonment, nationalization.

MATERIALS AND METHODS

The study's methodological foundation consists of both special and general scientific methods, mainly formal-legal, comparative-legal, and historical-legal

approaches. The latter include the dialectical, system-structural approach, methods of induction, and deduction. The primary research methodology involves the analysis of formal-legal and historical methods. This approach is used to investigate current trends in the development of a foreign state's jurisdictional immunity under English law, as well as conceptual approaches to the fundamental principles of this institution's development and their manifestation in legal regulations.

RESULTS

With the adoption of the State Immunity Act of 1978, the United Kingdom enshrined at the legislative level the immunity of a foreign state, which provides for numerous cases related to the implementation of private legal relations, i.e., limited immunity of a foreign state. The adoption of this Law facilitated the adoption of similar laws by other states (not only the countries of the British Commonwealth), which was an important step in the development of the institution of jurisdictional immunity in private international law.

The Montreal Convention, which was drafted and ratified at the 1982 International Law Association Conference in Montreal took into consideration British law. With a few minor exceptions (the state had the burden of proof that it had judicial immunity, for example), the draft Convention mostly followed the form and content of the UK Immunities Act, limiting the application of the general rule of immunity to acts by which a state exercises its sovereign power. in 1994. This draft was approved with minor modifications by the International Law Association during a conference in Buenos Aires.

DISCUSSION

The issue of state immunity in civil law relations is one of the most pressing in private international law. The application of immunity is generally recognized in modern international legal practice. However, there is currently no consensus on the scope and application of this principle. Given the current political development of international relations and private international law, as demonstrated by a number of situations, including court cases about private law relations at the international level, the study of the legal nature of States' jurisdictional immunity in international private law relations is pertinent.

Issues related to the assessment of trends in the development of State immunity in private international law are relevant due to legal situations that constantly arise for both Ukraine and other States of the international community. A new trend in the development of the concept of limited state immunity is, for example, the denial of immunity to a foreign state in claims arising from the exercise of sovereign power by that state if human rights have been violated in the course of such exercise (e.g., the judgments in Flatow v. Republic of Iran 1998, Republic of Austria v. Altmann in 2004).

The relevance of the study is also emphasized by the fact that at present our country has no law on the immunity of foreign states in Ukraine (so far there is only a draft law), including in private law relations. The Ukrainian Cabinet of Ministers drafted the «On Jurisdictional Immunities and Liability of Foreign States» Draft Law (Reg. No. 2380 of March 16, 2015) and presented it to the Verkhovna Rada of Ukraine. For the national lawmaker, the urgency and complexity of the foreign state immunity issue are highlighted by the fact that the law has not yet been adopted. Due to the mutual effect of court rulings from other states and the development of the doctrine of private international law, the question of scientific investigation of the problem is also pertinent.

The development of state immunity in the legal positions of foreign countries, its legal nature, and its legal justification are of great methodological importance for its understanding. The study of the UK's experience in this regard is relevant given the impact of its legal position not only on the states of the Anglo-American legal system, but also on the legal systems of the world in general, and requires not only study but

also, perhaps, imitation.

Content. The concept of immunity in international law refers to a foreign state's lack of jurisdiction over the courts of another state. According to Professor V.N. Denisov, «a state's immunity has evolved into an absolute principle.» Foreign governments, their bodies, and their property should all be granted immunity. A foreign state must give its express consent before it can be brought as a defendant in a foreign state court. A foreign state's property cannot be the target of a claim or foreclosure in the process of enforcing a court order or arbitral award, nor can it be subject to coercive measures (seizure, etc.).

The notions of absolute state immunity and limited state immunity are the two basic ideas that are present in the laws of many nations. The foundation of the doctrine of absolute state immunity is the idea that a state is always immune from being subject to the jurisdiction of a court in another state without its consent, regardless of the legal actions it takes, whether as a sovereign or a private entity. The concept of absolute state immunity, which covers all areas of state activity with very few exceptions, has been applied by international law since its inception. «Since states are independent and legally equal, no state has the right to exercise jurisdiction over another state without the consent of the other; in particular, the courts of one state have no right to refer another state to their jurisdiction,» said Professor Peter Malanchuk of Erasmus University (Netherlands). Historically, the ruler of a state has been identified with the state, and even today the head of another state enjoys full immunity even in respect of his actions as a private person.» The granting of immunity to foreign states was largely due to the existence of relevant national legislation and the early practice of English and American courts. This doctrine has been dominant for a long time, but in the modern world, international private law relations are dominated by the doctrine of limited state immunity, which is enshrined in international instruments, national legislation, and judicial practice.

Due to the growing number of cases of countries participating in international private legal relations, laws were adopted in many foreign countries at the end of the 20th century to limit the immunity of a foreign state (Australia, Argentina, Belgium, Canada, Denmark, Greece, Italy, Japan, Norway, Pakistan, the United Kingdom, the United States, etc.). This led to the development of the doctrine of limited state immunity.

The emergence of the theory of limited immunity was a response to the activation of the state's participation in private legal relations on an equal footing with legal entities and individuals. However, the state, as a special kind of entity, was above the ordinary judicial procedure: it could not be sued, and its property could not be used as collateral for its participation in civil circulation. For private individuals, this state of affairs meant a de facto denial of judicial protection of their rights. Initially, the national legislation of many states allowed for claims arising from contracts and torts to be brought against states in their courts. In the United States, since 1863, the state could be sued for breach of contract. The US Tort Claims Act of 1946 abolished immunity from liability for torts; in the UK, the Tort Claims Act of 1947 established state tort liability. Moreover, many states began to waive immunity themselves if the state's contracting with private parties was in the public interest.

The concept of the origin of state immunity from the personal immunity of the sovereign from the jurisdiction of another state is generally recognized. This view is shared by both domestic and foreign scholars. Among domestic scholars, we will cite the point of view of E.V. Korniychuk, who writes: «In the common law states, in addition to the rules of international courtesy (comity gentium), the development of the principle of immunity of foreign states was largely influenced by the traditional immunity of their sovereign». A similar point of view is expressed by V.M. Timashova: «the special rule of state immunity, which arose from the personal immunity of the sovereign, was first formulated as such, in its «pure form», in connection with the consideration of cases on state courts». Australian scholar Ian Sinclair argues that if one wishes to look into the

roots of modern state immunity law, one will find that its origins lie in early theories of personal immunity of sovereigns or heads of state. The views of Sompong Sucharitkul (Thailand) are based on the formula: «The king cannot be a defendant in his courts», referring to the United Kingdom. Since the king personified the state, the courts, which were part of the central government, could not exercise jurisdiction over the sovereign, on whose behalf they could only act. The UK gave friendly foreign states' sovereigns the same level of immunity based on the king's immunity, which subsequently became the immunity of foreign governments and states. The scientist contends that the sovereign's immunity from the jurisdiction of his own state's courts is the source of the theory of state immunity in international law.

In English law, the concept of absolute immunity was established in the Middle Ages, which allowed foreign states to enjoy immunity concerning all their actions, including in the commercial sphere. As P. Malanchuk notes, «It is a remarkable fact that the world of Anglo-Saxon law held on to the old theory of absolute sovereignty much longer than many continental countries».

In England, as early as the Middle Ages, a customary rule was established in constitutional and legal relations, according to which the king could not be sued or prosecuted in his courts. English common law justified this rule by the fact that the king was the sovereign and personified the state, and the courts were part of the central state power and could not exercise their jurisdiction over the person on whose behalf they acted and in whose name they made their decisions. Along with power, the property of the state was inextricably linked to the person of the sovereign. Accordingly, in property relations related to the property of a foreign monarch, another sovereign could not exercise its jurisdiction.

The prominent English lawyer A. Dicey wrote that English courts do not have jurisdiction to consider or take procedural actions against a foreign state, coercive measures cannot be applied to the property of a foreign state, even if it is a matter of trade, and the property of the state is held by a third party who does not enjoy immunity. The principle of absolute immunity was broadly interpreted in the judgment in the case of A.M. Luther v. James Sagor (1921), which stated that no English court can verify whether a particular product belongs to a foreign state if an official representative of that state has made a statement about its ownership.

An important provision of the theory of absolute immunity is that the property of a foreign state cannot be subject to coercive measures (interim relief and enforcement of a court decision). Enforcement of a court judgment rendered in a proceeding to which the state has consented is possible only based on the goodwill of the state. Thus, back in 1938, in the famous case of the steamer «The Cristina», the House of Lords of the English Parliament noted that the steamer, which was transferred to the Spanish government by decree, enjoyed judicial immunity and could not be detained or arrested.

In the early twentieth century, decisions were made in cases related to the immunity of states in favor of its support. S. Sucharitkul, First Rapporteur of the UN International Law Commission on Jurisdictional Immunity of States and Their Property, cites Lord Atkin's decision in The Cristina case based on international law governing the immunity of states. «The basis for the application to set aside the court order and arrest the vessel are two international legal provisions that are reflected in our domestic law and seem to me to be well-established and indisputable. The first is that the courts of a country should not bring a foreign sovereign to court, i.e. they should not, by their procedural means, make it a party to the proceedings, regardless of whether they concern its person or claims to obtain certain property or compensation for damage from it. The second is that they should not, in the course of the proceedings, whether or not the foreign sovereign is a party to them, seize or detain property belonging to him or which he owns or disposes of».

The situation began to change after 1947 in connection with the adoption of the

Crown Proceedings Act in England, and the courts began to use the relevant logic not to grant immunity, but to deny it. Thus, in 1958, in the decision in the case of Rahimtoola v. Nizam of Hyderabad, a well-known judge, former Lord Keeper of the Court Records, Lord Denning, noted the following: «In all civilized countries, including England with the enactment of the Limitation of Suits Against the Crown Act 1947, there is a progressive trend towards recognizing the possibility of suing a sovereign in its courts. Foreign sovereigns should be no different. There is no reason why we should grant departments or agencies of foreign governments immunity that we do not grant to our own.»

Similar changes can be observed in the doctrine of English law. The 1951 edition of the British Yearbook of International Law published an article on state immunity by a well-known English scholar and international lawyer, Hersch Lauterpacht. Lauterpacht was a member of an interdepartmental committee that prepared a report for the English Parliament when discussing the issue of state immunity. In his article, the scientist advocated the abolition of foreign states' immunity before national courts, except when it is enjoyed by the state of the court. His strongest argument was that the protection of individual rights and justice requires the defeat of immunity. Only certain carefully limited areas of state activity should remain untouchable.

The state that enacted the Foreign Sovereign Immunities Act on October 21, 1976 — which is still in effect today — was among the first to reject the idea of the US having absolute immunity. The European Convention on State Immunity, also known as the Basel Convention, was created by a group of governmental experts within the Council of Europe, led by the European Committee on Legal Cooperation, and it was made available for member states to sign in May 1972. The following states were parties to the Convention as of January 1, 2006: Austria, Belgium, Cyprus, Germany, Great Britain, Luxembourg, the Netherlands, Switzerland, and the United Kingdom. The Convention came into effect on June 11, 1976. The purpose of the Convention was not only to regulate the issue of jurisdictional immunity but also to regulate the recognition and enforcement of judgments rendered against a foreign state. The Convention is based on the principle of limited immunity of states and defines cases when a foreign state does not enjoy immunity by the activities it conducts or the agreement it has concluded. The Basel Convention gave grounds for the adoption of national special laws containing provisions on the immunity of states and their property since the mid-1970s.

The international reality largely led to the adoption by the British Parliament of the State Immunity Act on July 20, 1978 (entered into force by order of the Lord Chancellor on November 22, 1981), as there was an urgent need to bring the domestic legislation of the United Kingdom in line with the new norms of international law. Furthermore, at that time, the Foreign Sovereign Immunities Act of 1976 explicitly codified the concept of limited immunity in U.S. law. A thorough, comprehensive legal reform was required, and this could only be accomplished by legislation. It was necessary to define and establish precisely the boundaries of foreign states' immunity from judicial jurisdiction, not only regarding commercial disputes but also about labor relations, torts, and intellectual property.

With the adoption of the State Immunity Act, the process of implementing the European Convention into British law began. The UK is beginning to introduce the doctrine of limited immunity, according to which a foreign state may be held liable in British courts for certain actions, usually of a commercial nature. However, difficulties arise due to the case law on which English law is based, as there are conflicts between old and new precedents.

In characterizing the UK Foreign Sovereign Immunities Act 1978, it is worth noting some peculiarities of UK law. The English legal system, based on the principles of common law, operates in England, Wales, and Northern Ireland, while the legal system used in Scotland is based on continental principles with elements of English common law (mixed legal system), which makes it somewhat difficult to apply legal

norms uniformly throughout the UK. The English common law system has long been shaped by judges, «English lawyers formulate the rules and principles necessary when referring to precedents - the doctrine of precedent. It is based on the so-called «stare decisis» principle of binding precedents of higher courts on lower courts. At the same time, the doctrine contains a number of provisions that allow judges to create new rules of law and change old ones, avoiding strict adherence to the stare decisis principle. Precedent, as a source of law, dominated until the doctrine of parliamentary supremacy was established. However, there is no hierarchy of sources in UK law, all of them (acts of parliament or statutory law, precedents, acts of delegated legislation, and legal customs) have equal legal force.

In the State Immunity Act 1978, the legislator adopted the structure of the European Convention on Immunity of States of 1972 (three parts, entitled: «Procedure of Prosecution by or against a State in the United Kingdom» (Part 1), «Proceedings against the United Kingdom in States Parties to the Convention» (Part 2), the third - «Miscellaneous and Additional Provisions» (Part 3)) and went on to list the cases of exceptions to which state immunity does not apply. The Preamble of the English law defines the content and objectives: «An Act to make further provision concerning proceedings in the United Kingdom by or against other States; to provide for the effectiveness of judgments rendered against the United Kingdom in the courts of States Parties to the European Convention on State Immunity; to make further provision about the immunities and privileges of Heads of State; and for connected purposes».

As in American law, the UK Act of 1978 provides a list of exceptions to the general rule of state immunities (part 1). Further, the Law defines the procedure for initiating proceedings against a state; a separate provision concerns the application of the relevant terminology in Scotland, whose legal system, as already noted, has its peculiarities. Additional provisions to Part 1 of the Law clarify certain issues of its application.

Part 2, «Judicial proceedings against the United Kingdom in the Convention States,» of the 1978 Act regulates relations relating to the enforcement of judgments obtained in the courts of the countries party to the European Convention on State Immunities of 1972 against the United Kingdom. The UK's ratification of the European Convention on State Immunities of 1972 largely determined the content of this part.

Part 3, Miscellaneous and Supplementary Provisions, regulates the procedure for giving effect to the 1978 Act, in particular its operation in Northern Ireland. The provisions of this part apply to heads of government, heads of state, and other entities that enjoy privileges and immunities under international law. It is noted that the provisions of the Law (§ 23) do not have retroactive effect, i.e. they do not apply to proceedings in cases that arose before it entered into force. British law does not contain a separate article on the definition of terms, which distinguishes it from American law, instead, the meaning of some of them is explained immediately in the text after their first mention or in additional provisions (for example, this applies to «commercial transactions», «dependent territories», etc.)

Similar to the US Foreign Sovereign Immunities Act of 1976, the UK Act begins by establishing a general rule on state immunity from jurisdiction, which is formulated in Art. 1: «A state shall be immune from the jurisdiction of the courts of Great Britain except as provided in this Part of this Act. The court shall apply this rule of immunity even if the state fails to appear in court».

The list of cases of exceptions to the principle of immunity in which a state cannot invoke its immunity from the jurisdiction of courts differs from the cases listed in the 1976 US Foreign Sovereign Immunities Act. The American law establishes general exceptions to state immunity that foreign states enjoy unconditionally. These exceptions are based on the commercial activities of a foreign state that has a connection with the United States. First, it is a waiver of immunity by a foreign state, directly or indirectly. In other words, a foreign state does not enjoy immunity from the jurisdiction of the

US and state courts if it has waived immunity or has taken actions that indicate this, such as participating in court proceedings or filing a counterclaim. Secondly, when a foreign state conducts commercial activities in the United States or activities outside the United States that have a direct impact on the United States. Third, when a foreign state «performs an act outside the territory of the United States in connection with commercial activity and that act has a direct effect in the United States,» the scenario is brought about. Therefore, under the Act, a foreign state may be held accountable if it conducts business anywhere and that activity has a «direct effect» on this nation. Regarding property used for commercial (trade) purposes, a foreign state is not immune from enforcement actions under the laws of the United States, the United Kingdom, Canada, Australia, etc.

The 1978 UK law provides a wider list of exceptions to the principle of state immunity, in particular, they are possible when «the state has consented in advance in writing, or later orally in the course of the proceedings, to the exercise of jurisdiction over it» (Article 2). Like the immunity laws of other states, English law provides that a foreign state does not enjoy immunity if it has voluntarily submitted to the jurisdiction of a foreign court. Such submission is made by way of a waiver of immunity in the form of an agreement. The Law (Art. 2(2)) provides for two types of agreements on waiver of immunity: a) an agreement on waiver of immunity in respect of an existing dispute; and b) a preliminary agreement. According to Article 2(6), the subordination of the state to the jurisdiction of a foreign court also applies to appeals that may be filed by the parties to the proceedings. However, this rule does not apply to a counterclaim that may be filed against a foreign state.

The Act sets out in detail the cases of exception to state immunity related to commercial activities or obligations that are to be performed in the UK under a contract. It follows from the Law that to determine the commercial nature of contracts concluded by the state, it is necessary to take into account their nature, including in some cases the purpose. The Law (Art. 3(3)) defines the term «commercial transaction» as: any contract for the supply of goods or services; any loan or other financing transaction, and any guarantee or indemnity in respect of any such transaction or any other financial obligation; or any other transaction or activity (commercial, industrial, financial, professional or other similar nature) in which the State enters into or participates in other than in the exercise of its sovereign powers.

As in the United States, a foreign state will not be able to obtain recognition of its immunity simply by asserting that the damage is of a public law nature. The 1978 Law contains both an express exception to the immunity of a foreign state that caused the damage (Article 5) and an implied or assumed exception, specified in the rule on commercial activities and immunity (Article 3(c)). According to this provision, it is possible to limit the immunity of a foreign state in case of a commercial tort (for example, defamation in connection with commercial activities. According to Article 5, a foreign state does not enjoy immunity in respect of legal proceedings relating to death or personal injury (clause a) or damage to or loss of property (clause b) resulting from an act or omission that occurred in the UK. As in the United States, a foreign state will not be able to obtain recognition of its immunity simply by arguing that the damage is of a public law nature. Purely economic damage, as well as damage to a person not related to physical harm and suffering, are not covered by this exception. However, this exception may be applied if the non-pecuniary damage resulted in physical harm to a person.

A state is not entitled to invoke immunity if it has initiated proceedings, actively participated in the proceedings, or taken any other action related to the trial (Article 2(3)). There is a reservation to this provision, according to which a state cannot be considered to have submitted to the jurisdiction of a foreign court if it has intervened or taken other actions only to claim its immunities. Another caveat provides that intervention

is not considered a waiver of immunity if the state learns of the existence of grounds for invoking immunity after intervention, or when the state asserts property claims, provided that it would have enjoyed immunity if the action had been brought against it on those grounds. Thus, the mere fact that a foreign state appears in a UK court to claim immunity does not automatically recognize the jurisdiction of the UK courts.

According to Article 4 of the 1978 Law, immunity is not granted to a state in respect of disputes related to labor relations. The general rule is that immunity is not granted to a foreign state if the employment contract was concluded in the territory of the forum state. This rule does not apply if, at the time of the initiation of the proceedings, the individual (employee) is a citizen of the employer's state (clause 2). In addition, the courts are not authorized to consider a labor dispute involving a foreign state if, at the time of the conclusion of the employment agreement, the individual was not a citizen of the country of the court or the parties agreed otherwise in the employment agreement. In addition, the Law stipulates that immunity is not granted to a foreign state if the individual performed work for an institution, agency, or other branch of that foreign state in the territory of the forum state and if such institution, agency, or branch was established to perform the functions of a trade mission and the employee had permanent residence in the territory of the forum state at the time of the contract. The Law (clause 3) also provides that immunity is not granted if the law requires that the case be heard in their court.

Pursuant to Article 6 of the 1978 Act, a foreign state does not enjoy immunity in disputes relating to the ownership of real estate located in the United Kingdom and transferred by gift or inheritance, as well as in respect of obligations arising from such ownership and use of real estate. In the UK, a foreign state is not granted immunity from enforcement actions in respect of property used for commercial purposes.

The special categories of property to which immunity always applies are the property of foreign diplomatic missions, the head of state, government, governmental unit, central bank of a foreign state, and the property of a legal entity associated with the exercise of sovereign power by a foreign state. The regulations establish immunity from interim measures for funds used to support the functions of the central bank. The immunity may be granted even if the funds were used for commercial purposes if it is proved that at the same time, such use ensured the functions of the central bank of a foreign state.

According to Article 7 of the 1978 Act, a foreign state does not enjoy immunity in disputes relating to the use of intellectual property (patents, trademarks, or industrial designs) owned by a foreign state and registered or protected in the UK.

The Law (Art. 8) also regulates corporate relations, according to this a foreign state does not enjoy immunity in disputes related to membership in companies established following the laws of the forum state or controlled from the territory of the forum state. The immunity is granted in cases where a dispute arises between the governing bodies of a legal entity and a state party to the legal entity. The provisions of Article 8(2) provide that the provision on the absence of immunity for a foreign state in corporate disputes does not apply if the parties have reached a written agreement to the contrary.

The 1978 Law enshrines the territorial principle of foreign state immunity. The act or omission that caused the damage must have occurred on the territory of that state. However, the English law only fixes torts (acts or omissions) and does not mention the need for harmful consequences to occur on the territory of the forum state.

The issue of resolving the situation with a tort that occurred outside the state arises. In this regard, the well-known case of Al-Adsani v. Government of Kuwait and Others is illustrative. A lawsuit for compensation for physical and mental suffering was filed by a British citizen against Kuwait and three individuals. The Court (High Court, Queen's Bench Division) recognized Kuwait's immunity in respect of actions (according to Al-Adsani) that took place in England, justifying its decision to deny immunity not by

reference to the public nature of the acts, but simply by recognizing the circumstances of the case as unproven. As for the actions that took place in Kuwait (torture, abuse), they were obvious to the court as an international crime. They are also recognized as such by English law, but the court emphasized that the issue of immunity in light of the 1978 Act, which contains a formulated tort rule, does not yet allow for the denial of immunity in the event of harm outside the UK. In the European Court of Human Rights, the Al-Adsani case was continued in 2001, but although not unanimously, but by a majority vote, the Court confirmed the existence of the principle of state immunity in international law and also ruled that limiting the right to a fair trial by granting jurisdictional immunity to foreign states pursues the aim of maintaining good interstate relations and is proportionate to that aim. Accordingly, the denial of access to justice in such cases, in the Court's opinion, does not lead to a violation of Article 6 ECHR.

A state's consent to the application of foreign law to a transaction involving its participation is not considered a waiver of immunity. A similar provision is enshrined in the UK law in Article 2(2).

The participation of the state in international commercial circulation by entering into contractual legal relations with foreign investors raises some other issues related to the scope of state immunity. For example, agreements concluded between the state, on the one hand, and a foreign investor, on the other, often contain arbitration clauses. This is due to the fact that the state does not want to submit disputes involving its participation to a foreign court, and the foreign investor does not want to consider possible disputes within the jurisdiction of the host state. It should also be borne in mind that international commercial arbitration is an alternative method of dispute resolution, i.e. its competence arises not under law, but by the will (agreement) of the parties, which ensures the impartiality and neutrality of the arbitral dispute resolution. Thus, the inclusion of an arbitration clause in a contract concluded between the state and a foreign investor reflects and secures the interests of both parties to the transaction. Following the generally recognized principle of international law, a state, being a party to an arbitration agreement, is bound by its provisions regarding the arbitration of a dispute. It should also be noted that most national laws do not restrict the state's right to enter into arbitration agreements. The possibility of the state entering into an arbitration agreement is recognized in the legislation of the United Kingdom, Switzerland, Sweden, Italy, and Germany.

The theory of the so-called permissible waiver of immunity as a result of the conclusion of an arbitration clause by a state is also supported by the national legislation of some states. Concerning the arbitration agreement, § 9 of the 1978 Law provides that the conclusion of a written arbitration agreement by a state means a waiver of immunity to the possible review of the arbitral award by the competent judicial authorities of a foreign state, as well as a waiver of immunity from enforcement of the award (para. 1). This provision of the Law does not apply in cases where the parties to the arbitration agreement have agreed otherwise and where the parties to the arbitration agreement are states (clause 2).

In English law, there is a general rule that a foreign state does not enjoy immunity in respect of maritime disputes, in particular, this applies to property claims against state-owned vessels and claims related to the enforcement of claims against such vessels. The caveat to this rule is that the state has the right to use ships for commercial (trade) purposes (Article 10 of the 1978 Law).

The Law (Article 13) contains provisions according to which the property of a foreign state enjoys immunity from interim and enforcement measures, except in certain cases, such as where the state consents to it or the property is used for commercial purposes. The law provides that any property of a foreign state used for commercial purposes and located in the UK may be subject to enforcement measures, regardless of whether it is related to the underlying claim (Article 13(4)).

Article 14, paragraph 1, defines the concept of «state» and what bodies fall under the definition of «state and its various governing bodies», refers to the government of a foreign state as the state itself, and defines the legal status of foreign heads of state. The provisions of the same article provide for the possibility of extending immunity to a federal subject by proclamation of a Crown decree in parliament, in the absence of which federal subjects are not entitled to invoke immunity.

The Law contains provisions on the determination of the body competent to establish whether the state has the right to enjoy immunity in each particular case, which is particularly important in applying the concept of limited immunity. In most countries that have laws on state immunity, this function is performed by the court, which is also provided for by the UN Convention on Jurisdictional Immunities of States and Their Property of December 2, 2004. At the same time, in this area, UK law gives greater importance to the conclusions of executive authorities. According to Art. 21 of the 1978 Act, the competence of executive authorities includes the provision of conclusions (certificates) in the following cases: a) when a party to the proceedings is recognized as a state; b) when a person is the head of a foreign state, head of its diplomatic mission, head of a foreign state authority, i.e. whether such person is authorized to act on behalf of a foreign state. Such certificates of executive bodies are «crucial» for the court, although this, according to the English researcher M. Sornarayah, contradicts Article 6.1 of the European Convention on Human Rights.

The UK has a practice of issuing certificates to the court on the existence of immunity of a foreign state in a particular case by the Ministry of Foreign Affairs. In particular, in the case of Trawnik v. Ministry of Defense (1984), the Ministry of Foreign Affairs of the United Kingdom, under Article 21 of the 1978 Act, issued an opinion on whether West Berlin could be considered a sovereign state within the meaning of the UK Law. In this case, the court considered a complaint by residents of West Berlin against the actions of the Allied military command, in particular the British military commandant. Taking into account the opinion of the British Foreign Office, the court found that the actions of the military command that were the subject of the complaint were committed by it as the authority of West Berlin, and therefore, the military commandant in this case has the right to invoke immunity.

The UK law also contains rules governing the procedural issues of consideration of cases in the English courts, in particular, the procedure for filing a statement of claim, and establishes the obligation of the defendant state to appear before the court within two months from the date of receipt of the document through the UK Foreign Office.

The 1978 Act does not exclude the possibility of recourse to English common law both in respect of state actions that occurred before it entered into force (i.e., it does not have retroactive effect) and in respect of matters to which the Act does not apply (Article 16). Thus, for example, the exceptions to the immunity of a foreign state established by the Act cannot be applied to actions taken by the armed forces of a foreign state located in the UK.

Part 2 of the Judicial Proceedings Against the United Kingdom in the Convention States Act 1978 regulates relations relating to the enforcement of judgments obtained against the United Kingdom in the courts of the countries party to the European Convention on State Immunities 1972. It provides for cases where the court is not obliged to enforce the judgment, in particular, if it is contrary to public policy or the procedure for notification of proceedings described earlier has been violated. Other exceptions to the enforcement of judgments are cases where a judgment has already been rendered in another contracting state in the same case between the same parties where hearings are ongoing that began earlier, or where the court did not have jurisdiction to render the judgment or applied an incorrect law.

It should be noted that the UK State Immunity Act 1978 does not contain a special exception to the immunity of a state responsible for torture, blackmail, restriction of

human liberty, etc. However, the Act contains a general exception to the judicial immunity of a foreign delinquent state, which can be used by a person whose fundamental rights have been violated by a foreign state. The territorial principle of foreign state immunity, as defined in the Law, stipulates that the actions (inaction) that caused the damage must take place on the territory of that state, i.e. it only covers torts and does not say anything about the occurrence of harmful consequences on the territory of the court state.

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CONSTITUTIONAL AMENDMENTS: COMPARATIVE (RE)VIEW IN CONTEMPORARY CONSTITUTIONALISM[1]

Iryna Sofinska,
Institute of Law, Psychology and Innovative Education,
Lviv Polytechnic National University, Ukraine
https://orcid.org/0000-0002-3853-7626
email: iryna.d.sofinska@lpnu.ua

Chen Friedberg,
Ariel University, Israel
https://orcid.org/0000-0001-9552-1084
email: chen.friedberg@gmail.com

Abstract. This article subsequently sheds light on existing political, legal, and legislative constitutional amending patterns in selected European countries. It primarily focuses on the (un)successful tools, mechanisms, and procedures for amending the Constitution (initiative, drafting, adoption, and implementation of high-stakes political, legal, and legislative decisions by Parliament and approval by the national referendum on constitutional amendments). We follow a thematic and methodological framework based on theoretical exploration and conceptualization of 'eternal' clauses (unamendable constitutional provisions). The article also provides a thorough analysis of differences in the constitutional amendment procedure in selected countries (Italy, Poland, and Ukraine) during a declared 'state of emergency' or other extraordinary regimes. Furthermore, it examines the outcomes of constitutional referendums aimed at modifying or altering the Constitution.

This research aims to investigate whether the process of constitutional amendment (modification, alteration, abolishment, or supplement) depends on the form of government of a particular country. Or does it depend on the level of entrenchment of its Constitution? Is it simply an actual (successful) mechanism and a faultless primary political tool used by the pro-government ruling majority (or sometimes the parliamentary opposition) to 'win a game' or to be a real game-changer following the demand of citizenry? Properly conducted constitutional amendments can provide room for public and institutional debate, contribute to the Constitution's legitimacy, and develop and consolidate democratic constitutional traditions over time. This can be achieved by ensuring that the instruments, rules, mechanisms, and procedures on constitutional change (alteration, modification, abolishment) are open to interpretation and controversy. On the contrary, if applied in a rush or without proper democracy-based discourse (and civic society support), this may undermine in-country political stability and, eventually, the Constitution's legitimacy.

It is probable that the end of the war in Ukraine, ongoing since 2014, and the full-scale invasion by Russia on February 24, 2022, will lead to a paradigm shift in constitutionalism. New constitutions may be adopted or existing ones revised to reflect the post-war world order, core values, and the level of development of the state and society where the rule of law prevails.

Keywords: constitutional amendment, 'eternity' clauses, unamendable constitutional provisions, constitutional referendum.

INTRODUCTION

After full-scale Russia's aggression against Ukraine on February 24, 2022,

1 Elaborated on behalf of *Emergency Fellowships for Ukrainian Researchers 2022* at the Ariel University (Israel).

discussions on the 'eternal' clauses enshrined in the Constitution of Ukraine (1996) severely intensified among academicians and civic society. Specifically, after the declared state of emergency, there was an installed ban on making amendments (alterations) to the existing Constitution of Ukraine (1996).

The Constitution is an essential element of the legal system, political regime, and social life; even though the Constitution combines power with justice, supporting democracy, human rights, and the rule of law, it limits the arbitrariness of power (Grimm, 2011; Lutz, 2006). The present article addresses the issue of constitutional amendments during a declared state of emergency or other extraordinary regime. Specifically, it seeks to find out whether constitutional amendment (modification, alteration, abolishment, or supplement) depends on the form of government of a particular country and the level of entrenchment of its Constitution (Lutz, 1994). If this is the case, what is the essential difference between the amendment procedure in ordinary life and under a state of emergency or other similar dangerous situations? To go beyond this much-debated and still fruitful question, we decided to make a descriptive overview in the geographical, political, and legal breadth by picking up three European countries, namely Italy, Poland, and Ukraine. Despite their differences, they share common institutional characteristics that enable us to make comparisons. All three countries are unitary and thus have more straightforward procedural requirements to amend the Constitution. They gained independence as sovereign democratic republics and drafted their current codified post-war constitutions (Italy 1947, Ukraine 1996, Poland 1997) as amended recently.

The process of amending the constitution should be 'slow and gradual' to allow parliamentary opposition to resist the subsequent constitutional changes initiated by the pro-government parliamentary majority (in the form of modification, alteration, abolishment, or supplement). The constitutional amendment procedure in countries compared is 'rigid' following the number of successive stages of its implementation and legal entities and allowing the parliamentary opposition to control its course (Kovalchuk, Sofinska, 2022). The intention to require a supermajority in Parliament (both chambers) to amend the country's Constitution aims to provide a consensus in mutual ruling majority and opposition relations. Suppose a simple majority is needed to amend the Constitution. This process could be risky since it becomes a perfect primary political tool for the pro-government ruling majority. To finalize the constitutional amending as a politically inspired and legally (legislatively) based toolkit in countries compared, we highlight separately four focal points: diversity of constitutional amendment procedure, 'eternity' clauses enshrined in the Constitution, constitutional amending under a 'state of emergency' or other extraordinary regimes, constitutional referendum if needed (Dudek, 2022).

Political, economic (financial), and social factors are the main drivers for the constitutional amendment process (Roberts, 2009). The possibility to amend the Constitution is essential to guarantee the rule of law and democracy and protect human rights on behalf of the citizenry. This article discusses the partial revision of a constitution through procedures such as changing, modifying, altering, and supplementing, as prescribed in the body of the Constitution. The process of amending the Constitution being examined in this article involves more than just format and availability. It is also about legally based cooperation between the government and citizens via civil society instruments to promote essential changes in the country. This study tries to underpin the amending power and its limits (starting from the initiative, drafting, and finally, adoption) in the countries compared in light of (un)expected political, economic, and social transformations (accession to the EU, ratification of the Rome Statute, composition, and power of the government, nation-state determination, etc.).

Further, we define a good balance between constitutional rigidity and flexibility and between permanence and adaptability to the political and social demands at every constitutional government's heart (Holmes & Sunstein, 1995). It is important to

note that this article does not intend to advocate for the only possible way to amend the Constitution or the Constitution amendment formula that democratic countries should adopt (Ginsburg & Melton, 2014). Moreover, it analyzes successful case studies and failures in constitution-amending.

Finally, this article provides a valuable opportunity to gain insight into the understudied aspects of constitutional amending in European countries through the analysis of relevant recent literature, the behavior of political actors (progressive relations between the President, Parliament, and constitutional review body), and the perspective of experts (academicians and practitioners).

MATERIALS AND METHODS

This article introduces the formal constitutional framework, which provides room for a constitutional amendment toolkit in selected countries following president-government relations, president-parliament relations, and relations between the President, parliament, and judiciary (constitutional review bodies). From a purely methodological perspective, it leverages different scientific methods of analysis (data analysis, legal comparison) and empirical approaches (qualitative case studies). Regardless of the generally applied scientific research methods (analysis, analogy, generalization, synthesis, and prognosis) in this article, we use other specific methods (data analysis, comparative, and statistical) to emphasize the real impact of the constitutional amendment on the development of constitutionalism and its core principles such as the rule of law and democracy (Balaj, 2018). All these methods help us to describe the precondition, mechanism, procedure, and outcomes of constitutional amending thematically, chronologically, and across Europe in countries compared.

In this article, we use philosophical approaches, precisely the axiological method, to highlight the specificity, relevance, and importance of the researched segment of constitutionalism for every democratic state. The system analysis method permitted us to determine the similarities between 'eternity' clauses in the Constitution, traditional constitutional amending, and amending under a state of emergency or other extraordinary regimes. The historical and legal approaches made it possible to study distinguishing features of constitutional amending to promote democracy and the rule of law, to provide a historical, political, and legal background of this process (mechanism). The sociological method helps to demonstrate a clear vision and precise mission of the public authorities (pro-governmental parliamentary majority and opposition) to use constitutional amending as a 'game-changer' in a win-win strategy.

The process of amending the constitution in many countries is challenging; it causes fear and alarm in political hierarchies. Reengineering the Constitution requires a more complex procedure (absolute majority, few readings, a constitutional referendum, resolution of the constitutional review body, etc.) to make a fundamental claim – to adopt it (simple majority voting by default) (Constitutient Assemblies, 2018). As mentioned by the Venice Commission (2001),

"a constitutional referendum may be required by the text of the constitution, which provides that specific texts are automatically submitted to referendum after their adoption by Parliament (mandatory referendum) and take place following a popular initiative:

- either a section of the electorate puts forward a text which is then submitted to popular vote,
- or a section of the electorate requests that a text adopted by Parliament be submitted to popular vote;

be called by an authority such as Parliament itself or a specific number of members of Parliament; the Head of State or the government; one or several territorial Entities" (Guidelines, 2001).

The constitutional amendments prove the desire to achieve broad consensus,

respect different social values, and prioritize long-term public interest when adopting the Constitution; thus, it shows a consensus-oriented background in constitution-making (Fruhstorfer & Hein, 2021). When it comes to amending the constitution, the primary determinant should be clear political tendency. This article emphasizes a data-driven approach to show that populism rather than nation-centered ideas prevailed in constitutional amendments. The second specific method used in this article is comparative. Using it, we compare constitutional amendments (i.e., constitutional, legislative requirements, process, and outcomes) in Italy, Poland, and Ukraine. Among the compared countries, Italy is a founding member of the European Union (1951), while Poland participated in the EU enlargement to the East and South in 2004. Ukraine is on the way to joining the EU following the recommendation of the EU Commission to open accession negotiations regarding ongoing reform efforts, declared recently (November 8, 2023).

Thus, we used all the necessary research methods to demonstrate that constitutional amending (precondition, procedure, outcomes) is at the crossroads of constitutionalism, the rule of law, populism, and democracy. The study of constitutional amendments, both formal and informal, and their compliance with explicit or implied constitutional rules in selected countries has generated interest in understanding how constitutional changes, such as alteration, modification, or abolishment, occur. The role of 'eternity' clauses and constitutional referendums as essential measures to secure desired or undesired constitutional amendments has also been examined.

Results and Discussion

1. Constitutional amendment procedure and measures to secure it

In this article, we additionally focus on practices and rules for amending the constitution in countries compared. The mechanisms and procedures for amending the constitution in the countries compared are diverse. Indeed, in all cases, the initiative for amending the constitution stems from the governmental institutions (Parliament, government, President). However, the process of amending varies between them. In Italy, an absolute majority in both chambers is required for amending the constitution; if this is the case, a constitutional referendum should be conducted. However, if the amendment passes in a qualified majority, there is no need for a referendum. In Poland, a qualified majority in Sejm (lower chamber) and an absolute majority in Senate (upper chamber) is necessary for amending the constitution. Also, a confirmatory referendum is required as a genuine reinforced procedure for amending constitutional provisions to enjoy special protection. However, the constitution (parts or articles) cannot be suspended or changed by emergency regulations. Making amendments to the constitution is forbidden in Poland and Ukraine under a declared state of emergency.

	Italy (1947)	Poland (1997)	Ukraine (1996)

Ordinary constitutional amendment procedure	Art. 138: - adopted by each House after two successive debates at intervals of not less than three months; - approved by an absolute majority of the members of each House in the second voting; - submitted to a popular referendum (request is made by ⅕ of the members of a House or 500 000 voters or five Regional Councils) - A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of ⅔ of the members.	Art. 235: - submitted by the following: at least ⅕ of the statutory number of Deputies; the Senate; or the President of the Republic; - adopted by the Sejm and, thereafter, adopted in the same wording by the Senate. - adopted by the Sejm by a majority of at least ⅔ of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators. - amending the provisions of Chapters I, II or XII → the holding of a confirmatory referendum.	Art. 154: submitted to the Verkhovna Rada of Ukraine, by the President of Ukraine, or by no less than ⅓ of the constitutional composition of the Verkhovna Rada of Ukraine. Art. 155: except of Chapters I, III and XIII previously adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine + if at the next regular session of the Verkhovna Rada of Ukraine + no less than ⅔ of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favor. Art. 156: amendments to Chapters I, III and XIII are submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than two-thirds of members of Parliament + adopted by no less than ⅔ of the constitutional composition of the Verkhovna Rada of Ukraine + approved by an All-Ukrainian referendum designated by the President of Ukraine → repeat submission on one and the same issue is possible only to the Verkhovna Rada of Ukraine of the next convocation. Art. 158: considered by the Verkhovna Rada of Ukraine and not adopted, may be submitted to the Verkhovna Rada of Ukraine no sooner than one year after' Art. 159: after an opinion of the Constitutional Court of Ukraine on the conformity with the Constitution.
'Eternity' clauses in the Constitution	Art. 139: 'The form of Republic shall not be a matter for constitutional amendment.'	No provision	Art. 157: 'The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizens' rights and freedoms, or if they are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine.'

Prohibition of amending the constitution under extraordinary regime	No provision	Art. 228(6): 'During a period of introduction of extraordinary measures, the following shall not be subject to change: the Constitution [...]'	Art. 157(2): 'The Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency.'
Constitutional referendum	Art. 138: 'A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of ⅔ of the members'	Art. 235(6): provisions Chapters I, II or XII → a confirmatory referendum + majority of voting in favor.	Art. 156(1): amendments to Chapter I, III, XIII are submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than ⅔ of the constitutional composition of the Verkhovna Rada of Ukraine + adopted by no less than ⅔ of the constitutional composition of the Verkhovna Rada of Ukraine + approved by an All-Ukrainian referendum designated by the President of Ukraine.

The Italian Constitution, for example, has been amended fifteen times since its adoption in 1947. The relevant changes, in particular, include those related to the powers of the Constitutional Court, the procedure of judges' appointment and their term of office (1953, 1967, and 1989), the procedure of determining the quantitative composition of the chambers of the Parliament (1963), expanding the immunity of members of Parliament (1993), organization of power at the regional level, in particular, direct elections of heads of provincial juntas (1999), formation of a foreign electoral district and parliamentary representation of relevant citizens (2000 and 2001), ensuring equality of men and women in holding elected offices positions (2003) and the principle of balancing state and local budgets (2012).

The Constitution of Italy (1947) underwent its most extensive revision (amendment) in August 2001, when the content of ten articles was corrected and five others were canceled. These constitutional amendments caused the expansion of the powers of the authorities formed in the regions and contributed to the deepening of decentralization. At the same time, the politicians raised the issue of comprehensive constitutional reform. To solve this particular issue, in the '80s and '90s of the last century, a parliamentary commission was formed three times with the exceptional task of revising the Constitution of Italy, but again, concerning the organization of power. In 1993 and 1997, such a commission was formed even following specially adopted constitutional laws. However, the corresponding efforts yielded a partial result due to the lack of consensus among the parliamentary political forces on crucial issues of power formation in the country.

Further amendments to the Constitution of Italy have been debated and adopted by the Parliament (by absolute majority vote). However, 61.32% of voters in the constitutional referendum held on 25-26 June 2006 rejected a significant reform bill approved by both chambers of the Parliament on November 17, 2005. Notwithstanding its provisions being diluted in time, the unsuccessful attempt to revise Part II of the Constitution of Italy appeared to have been abandoned or postponed. Nevertheless, it was not until 2014 that Matteo Renzi's government resumed parts of the Constitution of Italy on bicameralism in a somewhat different draft.

Eventually, the application of a constitutional referendum (in the case of Italy) is prescribed in the Constitution (Art. 138 para. 2). Only four constitutional referendums have ever been held in Italy since the abolishment of the monarchy, and the republic, in contrast, was introduced. In 2001 (64.21%) and 2020 (69.96%), both amendments were adopted by Parliament (absolute majority vote) and subsequently approved by a constitutional referendum. The latter was postponed for six months because of the

COVID-19 pandemic (Di Spataro, 2020). The government of Italy, presided by Giuseppe Conte, adopted (officially declared) a statutory state of emergency on January 31, 2020, for the next six months; based on Art. 24 of the Civil Protection Code, it did not involve the Parliament (Civitarese Matteucci, S. and others, 2021). In contrast, both suggested constitutional amendments were rejected by referendum in 2006 (38.71%) and 2016 (40.88%). The latter prompted the resignation of the acting Prime Minister, Matteo Renzi; subsequently, it was confirmed in the abovementioned postponed constitutional referendum in 2020, initially advocated by the 5 Stars Movement (part of the governing coalition in Italy in those days that came into power after the procedure for the constitutional amendments had already begun).

The democratic post-communist Constitution of the Republic of Poland (1997) was adopted by the National Assembly (the combined chambers of the Sejm and Senate); it was subsequently confirmed by a constitutional referendum on May 25 (53.5%), and the Supreme Court ruled that the Constitution could be introduced on July 15, 1997. Finally, it entered into legal force on October 17, 1997. Despite detailed defined constitutional amending and plenty of attempts to amend the Constitution of Poland (1997), initiated by a pro-governmental majority, opposition in the Parliament, and the head of state, it has remained almost unchanged: it was successfully amended only twice (in 2006 and 2009 respectively) (Brunclík, M. and others, 2023). In September 2006, minor amendments were made to it, which did not relate to the organization of the state mechanism (Elster, 1991).

The President of Poland, Lech Kaczyński (2005-2010), initiated the first completed constitutional amendment after Poland joined the European Union in 2004. The amendment was designed to consider the application of the European Arrest Warrant (ENA) and its implementation into national legislation, i.e., the Code of Criminal Procedure (Szymanek, J., 2015). The Sejm successfully attempted to amend Art. 55 of the Constitution. The demand for change of the Constitution arose after the judgment of the Constitutional Tribunal of Poland on April 27, 2005 (in the case P 1/05, OTK 2005 Nr 4/A). The suggested amendment aimed to prohibit the extradition of Polish citizens, subject to two exceptions (Article 55 para. 1 of the Constitution of Poland). Thus, "a Polish citizen may be extradited under the following circumstances:

- At the request of another state or an international judicial body if it results from an international agreement ratified by the Republic of Poland or an act implementing an act of statutory law by an international organization of which the Republic of Poland is a member, provided that the act covered by the extradition request was committed outside the territory of Poland and that it constituted a crime or would constitute an offense under Polish law, both at the time of its commission and at the time of submitting the extradition request (Article 55 (2) of the Constitution),
- At the request of an international judicial body (the International Criminal Court) established based on an international agreement ratified by the Republic of Poland, in connection with the crime of genocide, a crime against humanity, a war crime, or the crime of aggression falling under its jurisdiction (Article 55 (3) of the Constitution)".

Moreover, the act introduced a particular modification in the wording of Art. 55 sec. 4 of the Constitution of Poland (1997). The existing ban on the extradition of a person (Polish citizen, foreign national, stateless person) suspected of committing a non-violent crime for political reasons has been maintained. Additionally, it has been stipulated that extradition will not be carried out if it violates the freedoms and rights of humans and citizens. The constitutional amendment procedure started on September 8, 2006, when the Sejm passed the act amending Art. 55 of the Constitution. On the same day, it was referred to the Senate due to the necessity to complete the legislative process by November 5 (on that date, under the judgment as mentioned earlier of the Constitutional Tribunal of Poland, the Code of Criminal Procedure provision allowed for the extradition of a Polish citizen would expire). Summing up, the adopted amendment to

the Constitution of Poland, in line with the President's intention, removed the allegation of unconstitutionality, prevented violations of European Union law, and ensured the continuity of the application of the European Arrest Warrant issued by Polish courts. On November 6, 2006, the President of Poland signed an amendment to the Constitution officially published on November 7, 2006 (entered into legal force on the day of its publication) (Tkaczyk, 2016).

Between 1996 and 2023, Ukraine has undergone seven successful constitutional amendments. The crucial point is that the first amendment was challenged before the Constitutional Court of Ukraine in 2010 due to a change in the form of government in the semi-presidential republic. Another outcome of completed constitutional amendments on decentralization disappeared in 2015 and was renewed (only in drafting) in 2021. The parliament adopted the first constitutional amendments in December 2004 (during the 'Orange revolution'), and it entered into legal force on January 1, 2006. However, in 2010, when the political regime reversed (precisely the form of government in the semi-presidential republic changed), these amendments were recognized by the Constitutional Court of Ukraine as unconstitutional following some procedural infringement during consideration and adoption. In 2014, after the 'Revolution of Dignity', the Verkhovna Rada of Ukraine restored it (in the finalized wording of the completed constitutional amendments in 2004) since the opinion of the Constitutional Court of Ukraine is final and cannot be challenged.

The subsequent constitutional amendment in Ukraine was related to the ratification of the Rome Statute of the International Criminal Court (Sofinska, 2023). The Venice Commission (2002) suggested amending the constitution (even though it is often a 'cumbersome, complicated process and may be a politically sensitive issue') to have an essential legal basis to ratify the Rome Statute. Also, many European Union member-states faced similar constitutional problems on necessary constitutional amending following the Rome Statute ratification, and they succeeded (like France (Art. 53-2), Ireland (Article 29.9), Portugal (Art. 7), etc.). Secondly, in 2016, the draft law on amendments to the Constitution of Ukraine (1996) conformed with it. However, the ratification was delayed for three years (till 2019). Ratification of the Rome Statute is still a vital issue for Ukraine, specifically now during full-scale Russian aggression. Additionally, its ratification is prescribed in a few articles of the Association Agreement with the EU (2014) (Association Agreement, 2014). Finally, the draft law № 2689, submitted to Verkhovna Rada in 2019, was adopted on May 20, 2021. Following the legislative procedure, it was sent in time (on June 7, 2021) to the President of Ukraine to obtain a signature. However, till now, it has neither been signed by the President nor vetoed (therefore, it cannot finally enter into force).

Every constitution serves multiple objectives, including setting up, organizing, and directing public power while respecting fundamental principles and standards such as the rule of law, democracy, and human rights. It fulfills many legal and social functions and has an integrative power since it reflects the framers' constitutional understandings, aspirations, legal and historical values, and fundamental political decisions (Orgad, 2011). The 'manifesto' function is designed to express ingrained convictions and obtained experience of understanding of public power and to reflect the identity formation for the citizenry, as well as constitutional values and aspirations of self-understanding what might be found in the Preamble to the Constitution. The current preambles to constitutions have legal and non-legal purposes and express national constitutional identity. They display global diversity in design, substance, and effect: ceremonial and symbolic, therefore not really operative, interpretive, substantive, long, brief, simple, highly technical, amendable, including 'eternity clauses', etc.

The precise wording of the Preamble should determine and reveal without limits the substantive legal and political situation in every democracy, identify the historical background by recalling the responsibilities towards future generations, and frame

the realistic pathway to follow. The Preamble can unite or divide people (it refers to the people as the natural source of authority in the state) since binding legal force is granted. The Constitution's Preamble might serve as an independent source for a retrospective view of inherited political and legal values and future aspirations, i.e., the Preamble to the Constitution of Ukraine (1996), amended in early 2019 as 'confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine' (Summary..., 2018).

The European and Euro-Atlantic integration has been Ukraine's fundamental motive and primary claim since it gained sovereignty and independence in 1991. European narratives are enshrined in the preambles to constitutions of several countries like Czechia, Germany, Hungary, Latvia, and Montenegro (similar wording regarding the desire for Euro-Atlantic integration). This research sets down the primary structure of the society and its constitutional faith and confirms our pathway in 2022-2023.

First of all, the use of 'eternity' clauses seeks to secure the (un)wanted constitutional amending and is considered a good and ordinary practice of constitutional engineering worldwide (Suteu, 2021). Some researchers indicate that 'eternity' clauses are designed 'to place certain immutable elements of the Constitution beyond the limits of the amending power' (Preuss, 2017).

Above 70 countries globally possess 'eternity' clauses in their Constitutions. Thematically, 'eternity' clauses enshrined in the Constitutions of the Council of Europe member-countries are related to the following essential issues: sovereignty and territorial integrity (Armenia, Portugal, Romania, Turkey, Ukraine), human rights (Cyprus, Greece, Portugal, Ukraine), human dignity (Germany, Greece), change (abolishment) of the form of state (France, Greece, Italy, Portugal, Romania, Turkey), territorial division (Germany, Romania), state regime (Turkey), state (official) religion (United Kingdom), secularity/ laïcite (Portugal, Turkey), state (official) language (Cyprus, Romania, Turkey), the rule of law, democracy, separation of powers (Czechia, Portugal), monarch's power (Belgium), etc. (Baranger, 2011).

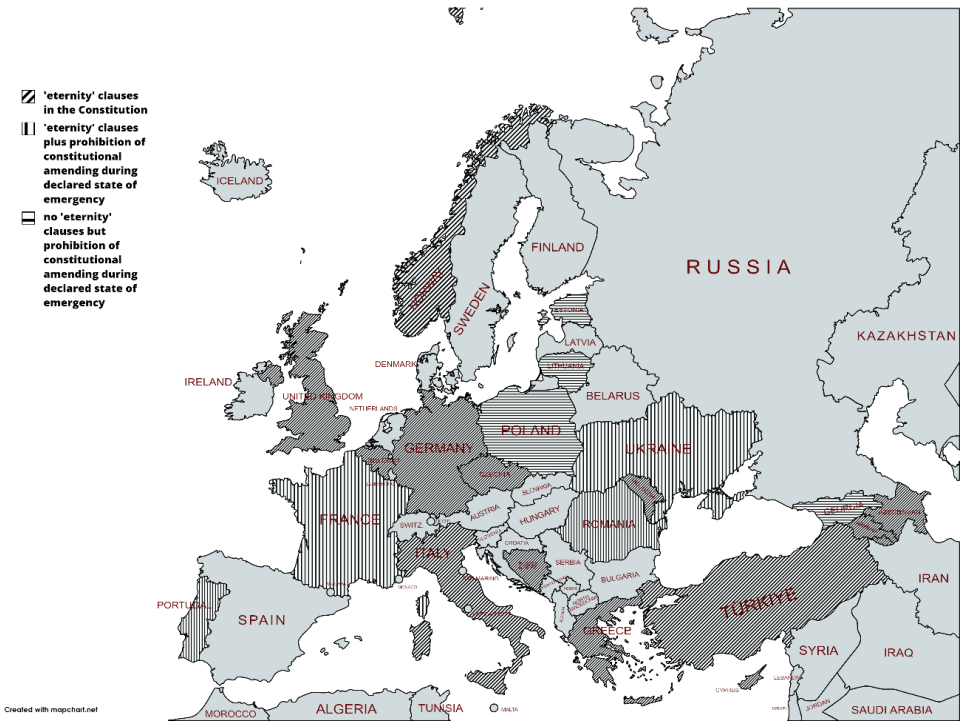

Figure 1 'Eternity' clauses in the Constitutions of member-states of the Council of Europe

Among the compared countries, the Constitutions of Ukraine (1996) and Italy (1947) determine 'eternity' clauses, which are unamendable (don't allow any profound constitutional changes), while the Constitution of Poland (1997) doesn't (Suteu, 2017).

Thus, these unamendable constitutional provisions should not be a target for the enormous political rivalry between the pro-government ruling majority and the opposition in Parliament (not now, nor in the future). Secondly, for this article, it is sufficient to emphasize that the notion of extraordinary emergencies is present in the constitutions of many democratic countries, regardless of their form of government:

- in a parliamentary republic like Italy (art. 77(2)): the case of necessity and urgency) or
- semi-presidential republics like Poland (art. 228: 'situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency, or a state of a natural disaster') and
- Ukraine (art. 92 (19): the legal regime of martial law and a state of emergency, zones of an ecological emergency).

Our final claim is that it is unconstitutional to amend the Constitution during a declared state of emergency or other extraordinary regimes in those countries where it is forbidden on the constitutional level (Poland, art. 228 para. 6; Ukraine, art. 157 para. 2). However, there were no such situations before to claim (even in countries, like Italy, with no constitutional reference at all). Therefore, the Constitution of Italy (1947) neither contemplates a state of emergency nor allows any authority (parliament, President, or government) to declare a state of exception; however, due to Art. 77 the government may adopt under its responsibility a temporary measure in extraordinary cases of necessity and urgency and introduce it to Parliament for subsequent transposition into law.

CONCLUSIONS

The authors adopt a peculiar combination of selected states' domestic (national) legislation (Italy, Poland, and Ukraine) and a comparative perspective that considers international provisions and political and judicial practice beyond. This article brings forward a range of new empirical data and comparative findings on constitutional amending (i.e., during a declared 'state of emergency' or other extraordinary regime) in European countries (Revised Report ..., 2009). To secure 'founding fathers' of Constitutions in selected countries, introduce 'eternal' clauses (unamendable constitutional provisions), prohibit constitutional amending during a declared 'state of emergency' or other extraordinary regimes, and submit to the constitutional referendum.

The brief analysis of the constitutions of the selected European countries confirms the statement of the Venice Commission that a constitutional referendum as a segment of constitutional amending may be required on a mandatory basis for any amendment passed by Parliament as a reinforced procedure for amending particular provisions of the Constitution enjoying special protection or for «total revision» of the Constitution or adoption of a new one. In contrast, it might be called optional: upon demand by Parliament (its chambers), by popular initiative, by local authorities, or upon the President's decision (order). The compared countries use the constitutional referendum as an instrument for different purposes and in diverse ways: to protect constitutional values, the rule of law, democracy, and human rights, win the parliamentary or presidential elections or justify the ruling party's ambitions. Voters are not sufficiently informed; the decisions are based on partial knowledge and party preference (are easily manipulated) and often are guided not by rational arguments relating to the issues involved but by propaganda. The outcomes might demonstrate great support or deep discord inside society and cause a collapse of the pro-governmental parliamentary majority (coalition). The requirement (the Constitution explicitly provides for it) that all constitutional amendments be submitted to referendum makes it unduly rigid, and the expansion of direct democracy at the national level may create additional risks for political stability (disbalance it).

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PRIORITY AREAS OF HOUSING FOR CITIZENS IN CONDITIONS OF WAR AND POST-WAR TRANSFORMATION

Anastasiia Volkova
Candidate of Juridical Sciences,
Researcher of
economic and legal problems of urban studies,
State organization "V. Mamutov Institute of Economic and Legal Research
of the National Academy of Sciences of Ukraine"
volkova.anastasiia1710@gmail.com
https://orcid.org/0000-0002-3155-6592

Abstract. The issue of providing citizens with minimal guarantees and ensuring the observance of socio-economic human rights becomes particularly relevant in the context of war and post-war transformation. Rights such as freedom of movement, pension and social security, employment, education, an adequate standard of living, housing, equality, and protection against discrimination, among many others, have become critically vulnerable. The war has only intensified the burden and responsibility of the state in implementing effective measures necessary to achieve the goal of protecting these rights. The focus is placed on the housing sector in Ukraine, which has been in a crisis for an extended period. It is argued that the implementation of legal and practical measures by the state, necessary for the effective protection of the right to housing, has only partially occurred due to the armed conflict that unfolded in 2014 in Eastern Ukraine, leading to mass internal displacement of Ukrainian citizens within the country. The article establishes that full-scale military actions have further exacerbated the housing issues faced by citizens. In challenging circumstances, the impact of war should not only be on the basic needs of individual citizens but also on the effective functioning of the entire state mechanism. War should not lead to a reduction in the level of protection of rights recognized by the European Social Charter, both within Ukraine and beyond its borders. Monitoring the restoration of destroyed or damaged housing at the community level, assessing the housing needs of citizens, and addressing other challenges require immediate attention at the state level. The article asserts that the focus of the state should be on creating new doctrinal approaches to housing provision based on international human rights standards and taking into account the best scientifically grounded practices and experiences of European countries. It emphasizes that the current housing needs have diversified, with temporary crisis accommodation during the period of housing recovery or the search for rented housing becoming increasingly relevant.

Keywords: housing, housing policy, armed conflicts, war, post-war reconstruction.

Introduction. The internal displacement that has persisted in Ukraine for the past nine years has fundamentally altered the lives of millions of people and necessitated an increased commitment from the state to protect their rights and freedoms.

During emergencies, such as armed conflicts, safeguarding civil, political, economic, social, and cultural rights is of paramount importance. Population displacement and the destruction of social infrastructure resulting from armed conflicts often significantly undermine access to education, employment, housing, healthcare, or other services essential for maintaining a dignified standard of living and securing means of livelihood.

Neglecting economic, social, and cultural rights during conflicts and other emergencies can lead to further human rights violations and, in turn, escalate into additional conflicts (Office of the United Nations High Commissioner for Human Rights, 2023).

International armed conflicts are regulated by the Geneva Conventions of 1949. These are four independent international treaties:

1. The Geneva Convention on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (ratified on 03.07.1954, entered into force for Ukraine as an international treaty on 03.01.1955) (Organization of the United Nations, 1949a).

2. The Geneva Convention on the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea (ratified on 03.07.1954, entered into force for Ukraine as an international treaty on 03.01.1955) (Organization of the United Nations, 1949b).

3. The Geneva Convention on the Treatment of Prisoners of War (ratified on 03.07.1954, entered into force for Ukraine as an international treaty on 03.01.1955) (Organization of the United Nations, 1949c).

4. The Geneva Convention for the Protection of Civilian Persons in Time of War (ratified on 03.07.1954, entered into force for Ukraine as an international treaty on 03.01.1955) (Organization of the United Nations, 1949d).

The adoption of the aforementioned conventions took place on August 12, 1949, in Geneva, Switzerland, during the Diplomatic Conference attended by representatives of over 60 countries worldwide. Today, all countries worldwide participate in the Geneva Conventions of August 12, 1949, and the Conventions, along with their Additional Protocols, form the foundation of international humanitarian law.

Denial or disregard of the fundamental norms declared in these conventions places a state beyond the bounds of civilized society. The actions of individuals, when qualified as war crimes alongside aggression, genocide, and crimes against humanity, are considered international crimes and fall under the jurisdiction of the International Criminal Court.

The Geneva Conventions of 12 August 1949 are in force together with three Additional Protocols:

1. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 (Organization of the United Nations, 1977a).;

2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977 (Organization of the United Nations, 1977b.).

3. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (Organization of the United Nations, 1949e).

Each Additional Protocol is an independent international treaty that involves a distinct procedure for a state party to accede to it, as outlined by the participating states of the Geneva Conventions. The level of state participation in the Additional Protocols is lower than in the 1949 Geneva Conventions.

International humanitarian law is applicable in times of armed conflict and is established by states specifically to impose certain limits on violence during war, mitigate suffering, and protect the victims of war. In light of the above, by ratifying the Geneva Conventions and Additional Protocols, Ukraine assumes legal obligations under these documents not only as a “High Contracting Party” but also as a subject of customary international law. This is because, in situations of armed conflict, both international human rights law and international humanitarian law are applied.

In today’s complex circumstances, the impact of war should not only affect the livelihood of individual citizens but also the effective functioning of the entire state machinery. War should not lead to a reduction in the scope of protection of rights

recognized by the European Social Charter, both within Ukraine and beyond its borders. One such right, enshrined in the European Social Charter, is the right to housing.

Literature review. Numerous scientific works are dedicated to the overall issue of citizens' housing provision. However, the legal regulation of housing provision for citizens is addressed in these works prior to the mass internal displacement of Ukrainian citizens in 2014. Considering the foregoing, the author contends that research conducted before 2014 has become outdated and necessitates reexamination in light of contemporary events. The full-scale military actions have intensified the scholarly activity on housing provision for citizens, yet these publications often lack a comprehensive scope. The majority of these studies predominantly focus on illuminating international experiences in forming housing systems or practices of providing citizens with social housing. In light of the above, this study remains relevant and calls for further exploration in subsequent academic publications.

Materials and methods. In addition to general scientific research methods such as analysis, synthesis, analogy, generalization, and forecasting, the author employed specific methodologies, including data analysis, statistical methods, and comparative analysis. These were used to underscore the fundamental impact of full-scale military actions on the issue of citizens' housing provision. Extensive destruction or damage, including to civilian residential buildings, and as a consequence, the loss or damage of housing for a significant portion of the population, are characteristic features of any war. All these methods contribute to delineating the overall picture and the issues surrounding citizens' housing provision in the context of war and post-war transformation. The method of systems analysis facilitated the identification of the interrelationship between the right to housing, citizenship, and the state in times of war. It is established that full-scale war further exacerbates the challenges related to citizens' housing provision. Monitoring the restoration of destroyed or damaged housing at the community level, assessing citizens' housing needs, and addressing many other challenges currently demand immediate attention at the state level.

Results and discussion. With the aim of ensuring the effective realization of the right to housing, the Parties to the European Social Charter commit to taking measures focused on:

1. Facilitating access to housing of an appropriate standard;
2. Preventing homelessness and reducing it with the gradual aim of its elimination;
3. Establishing housing prices that are affordable for low-income individuals (Council of Europe, 1996).

According to the practice of the European Committee of Social Rights, the effective realization of the right to housing requires positive intervention by the state. The state must implement legal and practical measures that are necessary and correspond to the goal of effectively protecting the right. As stated in the decision in the case of the Association "Autism-Europe," the measures taken must meet three criteria: (1) reasonable timelines, (2) measurable progress, and (3) funding commensurate with the maximum use of available resources. During times of war, the rights guaranteed by Article 31 of the European Social Charter become increasingly crucial for their recipients (Smush-Kulesha et al., 2022).

The social contract between the state and society, wherein the state undertakes the obligation to create conditions under which every citizen should have the opportunity to have adequate, quality, comfortable, and, most importantly, affordable housing, has long been part of the housing policy of many developed countries worldwide. Article 47 of the Constitution of Ukraine guarantees the right of everyone to housing (Verkhovna Rada of Ukraine, 1996). It is the state's responsibility to create conditions under which every citizen can build, acquire, or lease housing. However, the crisis in the housing sector and housing policy in Ukraine necessitates a comprehensive review of the entire legal framework for citizens' housing provision. In the author's view, the state's

implementation of legal and practical measures necessary for the effective protection of the right to housing has occurred partially only due to the armed conflict in Eastern Ukraine in 2014, leading to mass internal displacement of Ukrainian citizens within the country.

No European country faces as many challenges in the field of housing provision as the state of Ukraine does currently. The effective response to these challenges is the primary task of our state. The focus of the state should be on creating new doctrinal approaches to housing provision, based on international human rights standards and taking into account the best and scientifically grounded practices and experiences of European states. This has been repeatedly emphasized by expert circles.

Mr. Maciej Yanchak, Head of the Council of Europe Office in Ukraine, during an on-site meeting of the Working Group on Improving the Basic Principles of Housing Policy (held on November 23-24, 2023, as part of the Council of Europe Project "Promoting Housing Solutions for Persons Affected by the War in Ukraine," jointly with the Ministry of Community Development, Territories, and Infrastructure of Ukraine), noted that the ongoing lack of security combined with the destruction of buildings and infrastructure could result in people remaining displaced for an extended period (C o u n c i l of Europe,2023). It is crucial to clearly understand that the realization of the right to affordable housing is closely linked to the exercise of other human rights, such as the right to freedom of movement and choice of residence, the right to protection against interference in private life and housing, the right to education, and so on. The presence of effective mechanisms for implementing state housing policy is a guarantee for addressing a range of social and economic issues for citizens.

As of mid-June 2023, Ukraine had registered 4,871,807 internally displaced persons (hereafter IDPs), with 60% being women and 40% men. Every fifth among the registered IDPs (21.6%) is a child aged under 17. The same percentage applies to individuals older than 65. The war forced even 700 people aged 100 and older to leave their homes (Ukrinform, 2023a). However, according to officials' estimates, the actual number of IDPs is significantly higher, as approximately 2 million citizens, though subjected to forced displacement, did not register as IDPs for various reasons (Ukrinform, 2023b).

The accounting number of IDPs is dynamic and does not always correspond to the real situation. According to the International Organization for Migration, as of May 25, 2023, there were 5.1 million IDPs in Ukraine. Overall, 50% of all IDPs are concentrated in just five regions of Ukraine, with the highest estimated number of actual IDPs present in the Kharkiv and Dnipro regions (approximately 689,000 and 625,000 IDPs, respectively). Seven percent of all IDPs (around 353,000 individuals) had previously left Ukraine, returned to the country, but remained internally displaced (International Organization for Migration,2023a).

Extensive destruction or damage, including civil residential buildings, and as a consequence, the loss or damage to the housing of a significant part of the population, is a characteristic feature of any war. Ukraine faced these challenges as early as 2014. The full-scale war further intensified the issue of housing provision for citizens. Monitoring the restoration of destroyed or damaged housing at the community level, assessing citizens' housing needs, and many other challenges currently require immediate resolution at the state level.

Even before full-scale warfare, one of the problems repeatedly highlighted by the author was the absence at the state level of official information on the housing needs of IDPs. Today, this issue requires a comprehensive solution, as not all citizens have acquired IDP status and are in need of housing. It is also essential to consider the housing needs of citizens whose homes were destroyed or require repair.

The figures reflecting the damages incurred by the military actions on the housing stock and infrastructure of Ukraine are staggering. As of September 1, 2023, the total amount of documented direct damages to Ukraine's infrastructure caused by full-scale

military operations has risen to $151.2 billion (based on replacement cost). The ongoing destruction of residential buildings, educational institutions, and infrastructure due to the war contributes to the increasing overall damage. Compared to June 2023, the direct damages have increased by over $700 million, from $150.5 billion to $151.2 billion (Kyiv School of Economics, 2023a).

According to the Kyiv School of Economics Institute (hereafter KSE Institute), as of the end of May 2023, the direct damages inflicted on Ukraine's housing stock due to the war amount to over $54 billion. This constitutes more than one-third of the total direct damages to Ukraine's infrastructure and assets, as calculated by the KSE Institute analytical team. Of the total direct damages to the housing stock, the lion's share—$46.6 billion—results from the destruction and damage to multi-apartment buildings. The latest data indicate that a total of 18.6 thousand such buildings were affected: 13.2 thousand were damaged, and 5.4 thousand were completely destroyed. Over $7 billion in direct damages is attributed to the destruction and damage of private houses, which now number over 144 thousand, with nearly 59 thousand being destroyed. Additionally, 345 dormitories were affected by hostilities, with estimated direct losses of $0.5 billion. The cumulative number of damaged housing objects as of June 2023 exceeds 163 thousand. The total area of damaged or destroyed objects is 87 million square meters, constituting 8.6% of Ukraine's total housing stock area. Regions most severely affected in terms of housing stock destruction are Donetsk, Luhansk, Kharkiv, Kyiv, Mykolaiv, and Chernihiv. In the capital, during the period of the full-scale invasion, 454 residential buildings were destroyed or damaged, with the damages amounting to $734 million (Kyiv School of Economics, 2023b).

Considering that the count of destroyed or damaged housing increases daily, an accurate tally of such housing is currently challenging. In June 2022, the Ministry of Community and Territory Development of Ukraine issued an order for the development of a monitoring system for damages and destruction, which should include information on residential and public structures.

Concerning legislative initiatives aimed at addressing housing issues for citizens, it is noteworthy that last year the National Council for Recovery of Ukraine from the Consequences of War, which is an advisory body to the President of Ukraine, developed the Ukraine Recovery Plan (hereafter the Plan) in accordance with the Presidential Decree of April 21, 2022, No. 266/2022 (The Cabinet of Ministers of Ukraine, 2023a). The Plan's horizon extends to the year 2032, and its implementation cost was estimated at $750 billion.

The Plan envisions the post-war recovery of Ukrainian cities and villages as a comprehensive process designed to ensure modernization and further development over the next decade. New challenges related to the war, such as providing balanced resettlement for internally displaced persons, relocating businesses and enterprises across all regions of the country, and creating a socially oriented business environment as a prerequisite for community economic development, are intended to be combined with the adoption of the best and most modern global approaches and practices in urban planning, architecture, and UN Sustainable Development Goals. Human-centric approaches, rational spatial planning, ensuring a balance between resettlement and job opportunities, sustainable urban mobility, inclusivity, energy efficiency, environmental friendliness, and numerous other contemporary development trends are expected to guide this significant recovery.

Among the key principles underpinning the Plan, the following are highlighted:

- Immediate commencement and gradual development;
- Incremental development of fair prosperity;
- Integration into the EU;
- Building back better at the national and regional levels;
- Stimulating private investments (Restoration of Ukraine, 2023).

The plan consists of 23 sections developed by respective working groups. One such section is titled "Construction, Urban Development, Modernization of Cities and Regions of Ukraine" and is coordinated by the Ministry of Community Development, Territories, and Infrastructure of Ukraine. Despite the extremely critical state of the housing sector, housing as a category was not explicitly mentioned in the title of the aforementioned plan section, causing some concern for the author. Ensuring citizens' housing needs in conditions of war and post-war recovery requires a separate block and the development of a corresponding concept.

The aforementioned section of the plan includes an introductory part (general vision, key principles, overall analysis) and four chapters (each covering from four to six issues): 1) recovery and stimulation of regional development; 2) regulation in construction; 3) housing, energy efficiency, civil protection; 4) infrastructure of life support systems. For each issue, a goal is established, corresponding to objectives for three time intervals: one, three, and ten years, with defined measures and measurable indicators of achievement.

The section "Housing, Energy Efficiency, Civil Protection" outlines six issues, but the author has focused attention only on the first three, which constitute the subject of this study. Specifically: 1) destroyed and damaged housing; 2) a portion of the population lacking housing and resources for its provision; 3) inefficient maintenance and servicing of multi-apartment buildings.

In general, the aforementioned section, concerning the outlined issues, sheds light on a considerable number of questions that require resolution. However, many of these issues existed prior to the development of the Plan, and they have been emphasized in expert circles. Analyzing the mentioned problems, the following points should be noted:

- The purpose of addressing the issue of destroyed and damaged housing is its restoration or compensation if restoration is deemed impractical. The author believes that implementing this solution will be complicated by the lack of funding, especially given the significant volume of destroyed and damaged housing. The involvement of multiple ministries in the formation and implementation of housing policy today may lead to the fragmentation of housing policy. Moreover, in not all cities where housing has been destroyed or damaged, restoration may be feasible.

- The Plan's goal is to provide housing for internally displaced persons (IDPs) and individuals whose housing has been damaged, leaving aside those who had no housing and resources for its provision.

- The Plan's task for 2022 was to identify the housing needs for temporary residence of IDPs and individuals whose housing was damaged. However, these data are currently unavailable.

- The Plan also documented the need for the development of non-profit housing through the creation of stable and viable non-profit municipal housing funds and/or municipal housing enterprises in urban communities in Ukraine with effective and sustainable economic budgets. However, there is no clear plan for implementing this idea.

- There is a lack of prioritization for the restoration of damaged infrastructure objects and housing stock.

In the context of declining revenues to the state budget and the absolute unpredictability of the timeline for the conclusion of military operations, the practical implementation of the Plan's measures is particularly acute. Currently, a situation has emerged where the majority of the country's population is becoming increasingly vulnerable, and resources, including financial ones that would enable people to "survive" without external assistance, are gradually depleting. Overall, among internally displaced persons (IDPs) who were employed before the war, 60% have lost their jobs since displacement (since February 2022) (International Organization for Migration, 2023b).

We believe that housing policy in the conditions of war and post-war transformation should involve the implementation of effective and efficient housing programs. The

main goal should be the rapid restoration not only of the housing stock but also of the infrastructure, addressing social, economic, and environmental issues comprehensively.

Returning to the question of compensation for destroyed housing, it is necessary to note that significant legislative work has been done in this direction. Currently, the issue of compensation for destroyed housing is regulated by the following legislative acts: Law No. 2923-IX dated February 23, 2023, "On Compensation for Damage and Destruction of Certain Categories of Real Estate Due to Hostilities, Terrorist Acts, Sabotage, Caused by Armed Aggression of the Russian Federation against Ukraine, and the State Register of Property Damaged and Destroyed Due to Hostilities, Terrorist Acts, Sabotage, Caused by Armed Aggression of the Russian Federation against Ukraine" (hereinafter referred to as Law No. 2923) (Verkhovna Rada of Ukraine, 2023), and the Cabinet of Ministers of Ukraine Resolution No. 600 dated May 30, 2023, "On Approval of the Procedure for Providing Compensation for Destroyed Real Estate Objects" (hereinafter referred to as Resolution No. 600) (The Cabinet of Ministers of Ukraine, 2023b).

If Law No. 2923 establishes the general legal and organizational principles for providing compensation for damage and destruction of certain categories of real estate due to hostilities, terrorist acts, sabotage caused by armed aggression of the Russian Federation against Ukraine, from the date of the introduction of martial law in Ukraine, Resolution No. 600 directly approved the procedure and algorithm for awarding compensation.

Cabinet of Ministers of Ukraine Resolution No. 380 dated March 26, 2022, "On the Collection, Processing, and Registration of Information on Damaged and Destroyed Real Estate Due to Hostilities, Terrorist Acts, Sabotage Caused by Military Aggression of the Russian Federation" (The Cabinet of Ministers of Ukraine, 2022a). (hereinafter referred to as Resolution No. 380) introduced the collection and registration of information on real estate damaged and destroyed due to hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation. Resolution No. 380 also approved the Procedure for submitting informational notifications about damaged and destroyed real estate due to hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation (hereinafter referred to as Procedure No. 380) to further apply mechanisms for restoring violated property rights of individuals. Cabinet of Ministers of Ukraine Resolution No. 505 dated April 29, 2022, "On Amendments to Resolutions of the Cabinet of Ministers of Ukraine dated March 20, 2022, No. 326 and dated March 26, 2022, No. 380" (The Cabinet of Ministers of Ukraine, 2022). made changes to Procedure No. 380 and envisaged the creation of the State Register of property damaged and destroyed due to hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation, to ensure the collection, accumulation, accounting, processing, storage, and protection of information about damaged and destroyed real estate. Cabinet of Ministers of Ukraine Resolution No. 624 dated June 13, 2023, approved the Procedure for maintaining the State Register of property damaged and destroyed due to hostilities, terrorist acts, sabotage caused by armed aggression of the Russian Federation against Ukraine (The Cabinet of Ministers of Ukraine, 2023c).

As of September 27, 2023, information on 213,000 affected objects has been entered into the Register of damaged and destroyed property. The leaders in the number of registered objects are Kharkiv (26,000), Kyiv (20,000), and Donetsk (20,000) regions. The fewest applications are submitted in Ternopil, Zakarpattia, and Chernivtsi regions. According to the Chair of the Committee on the Organization of State Power, Local Self-Government, Regional Development, and Urban Planning, Olena Shuliak, the number of applications for compensation continues to increase. As of September 10, Ukrainians submitted 42,000 applications, and by September 27, it increased to 46,000. In three weeks, the number of applications increased by almost 10%. However, the processing pace of applications by commissions has significantly accelerated, and as of September 27, half of the submitted applications (23,000) had already been processed.

The number of approved compensation applications has significantly increased by 30% in almost three weeks. As of September 10, 2023, there were 13,000 approved applications, and by September 27, 2013, it had risen to 17,000. The total approved compensation amount has also grown by 23%, from 1.148 billion UAH on September 10, 2023, to 1.417 billion UAH on September 27, 2023. During the period from September 10 to September 27, 2023, the number of compensation applications for destroyed real estate increased by 27%, with 2,900 applications on September 10, 2023, and 3,685 on September 27, 2023. A total of 82 housing certificates have been issued since the beginning of the "eRecovery" (Ukrainian: "yeVidnovlennia") phase (the government assistance program for owners of damaged or destroyed housing due to hostilities). The average certificate amount, which can be exchanged for a new apartment or used for building a new private house, is 1,444,000 UAH.

However, the number of denied compensation applications has significantly increased. While there were only 12 denials as of September 10, 2023, there were 138 by September 27, 2023. As of early September 2023, the state has already disbursed one billion UAH to applicants under the compensation program for damaged or destroyed housing. This pertains to compensations for repairs to apartments and houses, where the restoration cost does not exceed 200,000 UAH (Shulyak, 2023). Despite the ongoing hostilities in Ukraine, the country's recovery process has already commenced.

In the context of this study, it is essential to address certain aspects of providing citizens with temporary housing. In cases where housing is destroyed or damaged, or individuals have moved from areas of active hostilities or occupied territories, they have the right to temporary housing. However, it must be acknowledged that until 2022, there was a practical shortage of such housing for the displaced persons themselves. Despite numerous funding programs, provisions for temporary and social housing, government compensation initiatives for damaged or destroyed housing, and financing efforts, these were clearly insufficient to address the issue, considering the large number of individuals in need of such housing. Unfortunately, it is evident that Ukraine cannot currently resolve this matter independently without active involvement from international organizations and partners, both financially and in other aspects.

Today, the discussion extends to the diversification of housing needs. Temporary crisis accommodation during the period of restoring damaged housing or searching for rented accommodation has become relevant. Despite the numerous challenges currently facing the state, positive dynamics in terms of housing provision for citizens are still occurring.

To ensure housing for displaced persons, active collaboration occurs between the authorities at various levels and the State Property Fund of Ukraine (hereafter referred to as SPF). In each region, the SPF provides a list of state-owned properties that can be utilized for accommodating internally displaced persons (IDPs). For instance, in the Cherkasy region, there are 481 state-owned properties, including dormitories, hotels, sports halls, etc., with a total area of 740.8 thousand square meters. The SPF encourages local authorities to explore all possibilities for housing displaced persons, including the transfer of residential real estate objects that currently remain in state ownership and are not subject to privatization into communal ownership. Among such properties are numerous apartments that could be used for accommodating displaced persons. This action would enhance the local authorities' capabilities in addressing the housing issues of the displaced. The SPF also collaborates with charitable organizations that lease state-owned properties for accommodating displaced persons. Once the lease expires, the properties are returned to the SPF in a renovated state, making them financially attractive investments (State Property Fund of Ukraine, 2023).

Conclusions. In summary, it is essential to note that the issue of the state ensuring citizens' minimum guarantees for the observance of socio-economic human rights becomes particularly pertinent in the context of war and post-war transformation. Rights

such as freedom of movement, pension and social security, employment, education, an adequate standard of living, housing, equality, and protection against discrimination, among many others, have become critically vulnerable. The war has only intensified the burden and responsibility of the state in implementing effective and efficient measures necessary for the goal of protecting these rights.

Recommendations. The issue of housing provision for citizens in the context of war and post-war transformation presents a multitude of challenges, necessitating the refinement of existing mechanisms and the development of new ones. Today, it is crucial to legislatively establish an anti-crisis mechanism for fulfilling the state's duty to provide housing for citizens. Urgently needed is the monitoring of available temporary housing and the determination of the number of citizens in need of such accommodation. We consider it advisable to develop and implement a unified online platform regarding the availability of free and affordable housing for citizens who need it and have a right to it. Considering the developed mechanisms for compensation for destroyed or damaged houses, it is imperative to explore possible options and mechanisms for securing financial support from international donors and organizations. Given the extensive damage to housing, the involvement of civil and/or international organizations is necessary to expedite the assessment of the priority of buildings requiring reconstruction.

Monitoring the restoration of destroyed or damaged housing at the community level, facilitating access to housing solutions at the local level through needs assessments, and addressing many other tasks must be resolved at the state level. The scope of issues addressed in this scientific research is challenging to encompass within the confines of a single work. Consequently, further scientific exploration will be pursued within the framework of other research projects.

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LEGAL ASPECTS OF SPORT: A STUDY OF THE SAMBO

Assan Zholdasbay,
Asian Sambo Federation,
Tashkent, Uzbekistan
e-mail: zholdasbayassan@gmail.com
https://orcid.org/0000-0003-0071-7370

Abstract. Modern sport is a unique phenomenon that combines economic, social, cultural, political and other dimensions. Therefore, the regulation of relations arising in the field of sport, which are diverse in their content, is equally important. This study is stipulated by the need for a comprehensive understanding of the specifics of regulation of legal relations in the field of sport by studying the aspect of sambo within the framework of the theoretical and legal approach. This need is actualised by the increasing frequency of performances of Ukrainian athletes in the international arena. The importance and role of sport is gradually increasing, and the list of sport is also growing. In this regard, the need for high-quality regulation of relations and research into the prospects for the development and improvement of this area has become increasingly important. The purpose of the study is to analyse and consider legal aspects in the field of sport, with a focus on sambo, which will allow determining the legal framework and identifying areas for improving the regulation of sport in Ukraine. The main research methods are dialectical, abstract and logical, morphological analysis, analysis and synthesis, hermeneutic, systemic, and modelling methods. The study analyses international and national legislation in the field of sambo; examines the activities of certain international organisations in the field of sambo; and identifies problematic issues and ways to solve them in the regulation of sambo in Ukraine. Potential areas for future research include the analysis of the experience of other countries in the regulation sambo for the possible introduction of best practices; study of the interaction between public authorities and sport federations in the context of sambo; study of the effectiveness of anti-doping control measures in sambo and their impact on athlete health; and study of the effectiveness of measures to prevent and combat doping.

Keywords: sport, sport relations, sport law, legal relations, sambo, martial arts, sport legislation.

INTRODUCTION

Sport is one of the most important spheres of social life, one of the foundations for preserving and improving public health, and a means of increasing people's vitality, optimism and efficiency. The definition of the term «sport» is contained in the Law of Ukraine «On Physical Culture and Sport», which defines the legal, social, economic and organisational basis for the development of physical culture and sport in Ukraine, as well as the participation of state bodies, officials and enterprises, institutions and organisations in improving the health of citizens, achieving high performance and longevity through physical culture and sport.

The importance of sport for modern society, the breadth and range of problems of its regulation, the complexity of its structure, and the expansion of its functions have necessitated the formation of a new independent comprehensive branch of law, i.e., sport law. In Western European countries, since the 1990s, sport law has been recognised as an independent comprehensive branch of law, educational institutions have been training specialists in this area, and various sport courts have been established. In

Ukraine, sport law is undeveloped and is at the intersection of various branches of law, such as administrative, civil, labour, etc.

Modern sport is a unique phenomenon that combines economic, social, cultural, political and other dimensions. Therefore, regulation of relations arising in the field of sport, which are diverse in their content, is equally important because some aspects of relations in sport are not covered by regulation. It happens that public officials in the field of sport make unreasonable decisions or court decisions are not enforced due to the fact that the sport sector is considered a non-priority area. Therefore, it is possible and desirable to change approaches to the regulation of public relations, enhance the priorities for the development of physical culture and sport in Ukraine, and adopt a Sport Code as a result of the codification of legal norms in this area. The development of social relations in sport is mainly caused by situations where regulation does not keep pace with certain sport events and does not always take into account their socio-political colouring. That is why it is important to improve legislation in this area and harmonise it with international law.

The study of the legal aspects of sambo is relevant for several reasons. Throughout the historical period of sambo development, Ukraine has always been among the leading countries in this sport. Ukrainian national teams in all age categories are consistently among the top three strongest countries in the world. Sambo is constantly evolving, so the requirements for its organisation and management are changing with it. The study of legal aspects also allows to adapt the regulatory framework to the needs of modern sport.

In addition, the COVID-19 pandemic and other crises pose new challenges to sport. Studying legal aspects allows to adapt rules and regulations to unforeseen circumstances. Moreover, understanding the legal aspects contributes to creating a positive and safe sporting environment for athletes, coaches and sport organisations. It should be noted that at the initial stage of the development of sport law, the shortcomings of regulation are explained by the problem of expanding the range of such legal relations, which does not keep pace with the international legislation. However, nowadays it is obvious that the existing shortcomings are related to gaps and conflicts in the regulation of legal relations in the field of sports, while the current sport legislation does not allow to fundamentally resolve this issue. Thus, there is a need for a thorough review of existing legal provisions and their systematisation to eliminate conflicts and gaps in the mechanism for regulating legal relations in the field of sport.

Given that the Ukrainian legal literature does not have a unified vision of the place of sport law as an element of the legal system, we consider it necessary to propose that sport law of Ukraine be considered an interdisciplinary institution of sport law, a significant part of which is contained in various branches of domestic law since it does not yet have a single subject and method of regulation.

The issue of regulation of public relations in sport is the subject of research by a large number of scholars. Kobzeva and Kulish (2020) analysed domestic and foreign legislation, studied the works of scientists and developed strategies for further development of the sphere of sport and physical culture. Dmytrenko (2021) studied sport law from the standpoint of justice. Sannikova (2019) studied the current problems of regulation and legislation on physical culture and sport in Ukraine. She studied the structure of the system of regulation of physical culture and sport; objective features of sport law as a new branch of the legal system of Ukraine; general trends that have a significant impact on the development of sport law and the most significant shortcomings of regulation of physical culture and sport in Ukraine. Omelchuk (2023) studied the issue of restriction of sport rights during the period of armed aggression. Kostruba (2021) investigated the issue of codification of sport legislation in Ukraine to systematise the legal framework aimed at eliminating gaps in the regulation of professional sport relations.

However, the regulation of legal relations in sambo has not yet been the subject of a

comprehensive legal analysis. There is still an urgent need for a deep legal reconsideration of sport legal relations and the formation of a system of regulation which would allow for an increase in the efficiency of their functioning, taking into account national legal practice and international experience. Therefore, the purpose of this study is to analyse the legal aspects of sport, with a focus on sambo, which will allow to determine the legislative framework and identify areas for improving the regulation of sport in Ukraine.

MATERIALS AND METHODS

At the initial stage of the study, the research topic was formulated. The literature review included the analysis of scientific papers and the identification of research gaps. Data was collected and analysed, including a legal analysis of the regulation of sambo. The results were presented in conclusions and recommendations aimed at improving the regulation in this area.

The study of the legal aspects of sport requires a highly organised approach, which is determined by the complexity and significance of methodological approaches. It is based on philosophical and ideological principles and various general scientific methods of scientific knowledge. The main methods of studying this important area include dialectical, abstract and logical, morphological analysis, analysis and synthesis, hermeneutic, systemic, and modelling methods. Let us consider each of these methods in more detail, focusing on their contribution to the development of scientific knowledge in the field of legal aspects of sport.

The dialectical method is used in the analysis and harmonisation of legal relations in the field of sport, with the study of the sambo aspect, both at the national and international levels. This method allows for a deeper understanding of the development of the legal environment in sport and reveals the dynamics of changes in regulation. By analysing legal relations in sport through the prism of the dialectical method, the author reveals the growing problems of the regulation of sport. This approach makes it possible to identify internal contradictions arising between different parties to legal relations in sport.

The need to move to a new qualitative level of regulation through the codification of regulatory provisions has become particularly relevant. The dialectical approach opens up opportunities for considering contradictions between existing norms, identifying trends in the development of sport law and determining a strategy for improving the legal environment in the field of sport. This view allows for a systematic response to changes in the sport sector and adaptation of regulation to new challenges and realities.

The abstract and logical method is used for theoretical generalisation and formulation of conclusions regarding the regulation of legal relations in the field of sport. This method treats various aspects of regulation as abstract concepts, helping to summarise existing norms and highlight their impact on the development of sport. It is an important tool for developing a strategy and principles for improving the legal environment in the field of physical culture and sport. The morphological analysis as a method allows to clarify the conceptual and categorical apparatus of the study, focusing on the definition of such terms as «sport» and «sambo». This makes it possible to distinguish between different aspects of sport law and their role in the legal system. The hermeneutic method is used to analyse the content of legal acts regulating sport legal relations. This method allows to interpret the content of laws and regulations, determine their significance for the development of sport and human rights guarantees for participants.

The systemic approach applied to the legal aspects of sport distinguishes two key methods: systemic-structural and systemic-functional, both of which play an important role in conceptualising and systematising the legal and regulatory provisions related to sport and its functioning in the legal dimension. The systemic-structural method helps consider the legal system of sport as a complex structure covering various

aspects, such as the rules of the game, disciplinary rules, ethical rules, administrative regulations and other normative documents. This permits to identify the internal links and interactions between the various elements of the legal system of sport, which is key to ensuring its integrity and effectiveness. The systemic-functional method determines the effectiveness of legal decisions in the field of sport and indicates ways to improve the regulation of sport, contributing to the development of a fair and efficient sport environment. This approach takes into account not only the structural aspects of the legal system but also its functional aspects, ensuring the harmonious development of sport in the legal dimension.

Last but not least, the modelling method facilitates the formulation of ways to improve sport legislation. This method is used to create concepts and strategies aimed at improving the legal environment in the field of sambo, ensuring better regulation and protection of the rights of athletes, clubs and other participants. The method of analysis in the context of the legal aspects of sport is used to coordinate and study legal relations at various levels. By studying laws and legal norms, it is possible to determine their impact on participants in sport relations, examine court decisions and legal practices aimed at resolving sport conflicts.

The synthesis method is used to develop comprehensive strategies in the field of sport law and sambo in particular. This may involve combining different aspects of regulation to develop comprehensive strategies or improve existing laws and regulations. Synthesis can also be manifested in the creation of new codes, standards and regulations on certain aspects of sport, which contributes to the systematisation and unification of regulation in this area.

These methods contribute to the study and improvement of legal aspects in the field of sport, ensuring effective protection of the rights of participants and order in sport relations. The overall integration of these methods into the study of legal aspects of sport stipulates an inexhaustible field of study and understanding of this issue. Such a comprehensive approach provides not only a deep understanding of the essence and specific features of sport law, but also identifies ways of further development and improvement of sport legislation. The result is the development of recommendations and strategies aimed at improving the efficiency of regulation of physical culture and sports, which, in turn, contributes to the sustainable development of this area in modern society.

RESULTS AND DISCUSSION

Our present day is accompanied by the existence and implementation of various projects and activities in the field of sport law, despite the lack of an appropriate legislative framework in the sport sector. Sport law is private-public since, on the one hand, the social relations that are its subject matter are based on civil law and labour contracts, and on the other hand, these are social relations in the field of sports taxation, sport management, etc.

Modern sport relations are mediated by the norms of both general international documents and special ones dedicated to the international sport movement. The process of emergence and recognition of new sport is incessant. New sport federations are being created. At each Olympic Games, new kinds of sport are added to the programme. Any international sport federation unites, organises and controls the activities of countless state federations and holds international competitions. International federations interact with government organisations. In recent years, athletes themselves have been actively involved in the development of the sport system, joining various commissions. For example, in Ukraine, borrowing from the experience of foreign countries, sport federations form commissions of athletes that discuss and recommend ways to solve problems that arise in sport.

The International Olympic Committee (IOC), established in 1894 at the Paris

Congress for the Revival of the Olympic Games on the initiative of Baron Pierre de Coubertin, deserves special attention. The IOC is engaged in the overall coordination of the activities of sport organisations in Olympic sport and the implementation of a unified sports policy in all countries participating in the Olympic movement.

The main areas of its activity, in addition to general sport issues that lie in the legal plane, are as follows:

- Unification of legislation on the organisation and conduct of sport competitions at the Olympic Games (VI Congress, 1914);
- development of amateur sport, expansion of women's participation in the Olympic Games, establishment of relations between the IOC and national Olympic committees and international sport federations (VIII Congress, 1925);
- expanding international cooperation in the field of sport (XII Congress, 1981);
- solving social, political and economic problems.

Each international sport organisation has its own rules for conducting competitions, requirements for affiliated organisations, dispute resolution, etc. Sport conflicts can arise not only within one sport but also with the participation of sport entities. Thus, a large number of conflicts of law issues arise when determining the applicable law. Acts of sport organisations are advisory, but their specific feature is that in practice the requirements of internal documents of sport organisations are binding for its participants (Darnell, 2023). Therefore, conflicts arise due to the inconsistency of regulatory documents adopted by individual sport associations to regulate pressing issues in more detail with Ukrainian law. In some sports, this problem is regulated by the internal regulations of national federations and international rules, but in other sports, the problem is much more acute.

This is not to say that contradictions between the self-regulatory acts adopted by the respective sport associations and Ukrainian legislation are frequent, but they do occur. At the same time, in many cases, it is clear that self-regulatory norms should take precedence, as the sport sector has its special features. For example, the Statute of the Football Federation of Ukraine (FFU) obliges all participants to seek protection and restoration of their violated rights exclusively from the football justice authorities: The FFU Control and Disciplinary Committee, the FFU Appeals Committee, the FFU Dispute Resolution Chamber and the Court of Arbitration for Sport in Lausanne (Switzerland). In case of violation of this provision, the subjects of Ukrainian football law are excluded from the possibility of participating in football competitions, regardless of the subject matter of the dispute (civil, labour, commercial, administrative).

Special rules of international sport law are also contained in treaties that relate directly to international sport activities. So, the following bilateral agreements that regulate social relations in sport are the main ones:

- Agreement on Cooperation between the Ministry of Defence of Ukraine and the Federal Department of Defence, Public Protection and Sport of the Swiss Confederation;
- Agreement between the State Committee of Ukraine for Physical Culture and Sport and the State Office of Physical Culture and Tourism of the Republic of Poland on cooperation and exchanges in the field of physical culture and sport.

In addition, the range of multilateral treaties (conventions) govern the sport sphere:

- Agreement on Cooperation in the Field of Physical Culture and Sport of the Member States of the Commonwealth of Independent States;
- International Convention against Doping in Sport;
- International Convention against Apartheid in Sport;
- European Convention on Violence and Misbehaviour by Spectators at Sport Events, including Football Matches (ETS N 120).

Let us consider the legal regulation on the example of the sport of sambo. Sambo is one of the most popular martial arts that originated in the USSR and is now widely cultivated in the international sport arena. This choice is because, throughout the history

of sambo in the world, Ukraine has always been among the leading countries in the development of sambo. The National Sambo Federation of Ukraine has been actively involved in the activities of the International Sambo Federation since the very first day. Ukraine is the second largest country in the world in terms of sambo development. Ukraine's sambo teams in all age groups are consistently ranked among the three strongest countries in the world (Baddeley, 2020).

In international law, sambo as a sport is regulated by several international sport organisations and documents that establish the principles and rules of this sport. The International Sambo Federation, formerly known as FILA, has a long history of regulating combat sports, including sambo. However, in 2015, an important change took place when FILA was renamed United World Wrestling (UWW). This reorganisation marked the expansion of the federation's competence, which now includes not only sambo but also other wrestling sports such as Greco-Roman wrestling and freestyle wrestling.

UWW acts as a global organisation that coordinates and normalises the development of wrestling at the international level. It establishes and enforces the rules for international sambo and other wrestling competitions. These rules cover the technical aspects of combat, the evaluation of athletes' actions, scoring procedures and other aspects of the competition. The Federation promotes the development of the competition structure, forms a system of registration of athletes and controls their participation in events.

The UWW defines and updates the rules of sambo, including throwing techniques, fights and other aspects. These rules are aimed at ensuring the safety of participants, fairness and stimulating the development of a highly professional sport. The UWW is responsible for planning and organising international sambo competitions. This includes defining the categories, formulating the draw rules, and overseeing the preparation and provision of events.

The Federation carries out anti-doping control by the standards of the World Anti-Doping Agency (WADA). This is an important element to ensure honesty and fairness in sport. UWW also actively cooperates with national federations and other sport organisations to develop sambo and wrestling. The Federation promotes sport and ensures interaction between wrestlers from different countries. These roles and functions of the UWW are key to ensuring the effective and high level of development of sambo and other martial arts on the international stage.

Anti-doping standards (WADA) are also important in the international regulation of sambo. Thus, athletes participating in international sambo competitions are subject to anti-doping control according to the standards of the World Anti-Doping Agency (WADA). This includes the identification of prohibited substances and testing procedures (Zaborovskyi & Berch, 2023).

The Rules of Sambo Refereeing define the procedures and standards by which situations and disputes are assessed and resolved during competitions. These rules establish decision-making criteria, define the responsibilities and capabilities of the referees, and establish the procedure for appealing their decisions. Such disputes are often resolved through arbitration bodies. One of the most important arbitration bodies in the world of sport is the Court of Arbitration for Sport (CAS) that resolves disputes related to sport, including sambo.

The CAS resolves disputes arising between athletes, federations, competition organisers and other participants in the sport process. Its decision is final and binding. This court guarantees independence, objectivity and prompt resolution of disputes in the sport environment. Disputes submitted to CAS are considered by internal procedures. Cases are decided by arbitrators with extensive experience in sport and law. CAS can be involved in disputes related to anti-doping rules violations, unlawful suspensions, non-compliance with the rules of the game and other sport conflicts. CAS is recognised as an important tool for conflict resolution and intra-sport justice. Its decisions have an impact

and serve as an example for other judicial bodies and federations. The International Court of Arbitration for Sport plays a key role in resolving disputes in the world of sambo and other sports, ensuring objectivity and fairness in the consideration of sport cases (Fastovets, 2023).

Considering the domestic legislation on sport, it should be noted that it is valid only in Ukraine and is the result of the implementation by state bodies of the rule-making function that realises the interests of civil society in the field of sport. Moreover, the procedural rules of sport law are established by self-governing sport organisations, unlike the vast majority of other branches of Ukrainian law. The national legislation of Ukraine on sport is represented by the Constitution of Ukraine, the Laws of Ukraine «On Physical Culture and Sport», «On Support of the Olympic, Paralympic and High-Performance Sport Movement in Ukraine» and several other regulatory legal acts in this area.

The Constitution of Ukraine is the main law of the state, which enshrines the foundations of the state and social system. Thus, it contains two articles that are related to sport. For instance, Article 3 defines human life and health as the highest social value in the state. Besides, Article 49 enshrines the state's duty to take care of the development of physical culture and sport.

Since contractual regulation in the field of professional sport has become increasingly important, and the vast majority of legal relations arising between entities are contractual, it is necessary to define the Civil Code of Ukraine and the Labour Code of Ukraine as forms of sport law in Ukraine. of Ukraine. The activities of sport agents are based on civil law contracts, such as the provisions of the FIFA Regulations on the Activities of Football Agents of Players, which define the duties of sport agents and guide them in their activities. not only by regulatory legal acts but also by national legislation.

In turn, the legal relations arising directly between the subjects of sport legal relations, namely, professional athletes, amateur athletes, coaches and other subjects of sport law, are determined exclusively by labour law, fall within the scope of its regulation and are manifested in labour relations. contracts. It is necessary to highlight the expediency of adopting a single codified act as the only fundamental source of sport law in Ukraine. However, not only contractual relations in the field of sport are subject to civil and labour law because it is also possible to distinguish several non-contractual relations regulated by civil law, in particular, the application of civil liability for damage caused to the life and health of athletes (Slavko, 2022).

Due to the absence of a single codified act in the field of sport activities, the Law of Ukraine «On Physical Culture and Sport» is one of the fundamental legal acts in this area. It defines the legal, social, economic and organisational basis of physical culture and sport in Ukraine, participation of state bodies, officials, enterprises, institutions, and organisations, regardless of ownership, in improving citizens' health (Porohnyaviy & Lastovkin, 2020). According to this Law, citizens have the right to engage in physical education and sport regardless of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language and other characteristics. This right is ensured by the free choice of physical culture and sport services, accessibility and safety of physical culture and sport, protection of the rights and legitimate interests of citizens, and the establishment of physical culture and sport institutions.

The Law defines the basic principles of the state policy in the field of sport. Thus, it recognises physical culture and sport as a priority area of the state's humanitarian policy. Moreover, physical culture and sport is defined as an important factor in the comprehensive development of the individual and the formation of a healthy lifestyle, ensuring a humanistic orientation and the priority of universal human values, justice and mutual and gender respect for equality (Stefanovskyi, 2022). In addition, the Law establishes the mechanism for state management of physical culture and sport by the

central executive body for physical culture and sport and other executive bodies, defines the scope of their authorities and the list of subjects of sport law, namely: sport clubs, children's and youth sport schools, specialized sport educational institutions, school of higher sports skills, student sport centres of higher educational institutions, physical culture and health centres of higher educational institutions, physical education and health centres of higher educational institutions, sport clubs and sport bases of higher educational institutions, sport clubs.

The Law of Ukraine «On Olympic, Paralympic and High-Performance Sport in Ukraine» is aimed at regulating relations that promote the development of the Olympic and Paralympic Movement in Ukraine and guarantees state support for its participants. The Law regulates the procedure for appointing, engaging and using training facilities for national teams of Ukraine to participate in the Olympic and Paralympic Games, and provides support for Olympic and Paralympic training facilities.

The Law of Ukraine «On Anti-Doping Control in Sport» provides that the organisation and implementation of anti-doping control in sport in Ukraine is carried out in accordance with the requirements of the Anti-Doping Olympic Movement Code. The fulfilment of these requirements is entrusted to the National Anti-Doping Centre with the Anti-Doping Control Laboratory attached to it, which is established by the Cabinet of Ministers of Ukraine. According to the requirements of the Anti-Doping Code of the Olympic Movement and the competent authorities of sport organisations, the establishment of the fact of doping by an athlete entails the application of sanctions, which may be in the form of a warning, invalidation of sport results, confiscation of sport medals or prizes, temporary or lifetime ban from participation in sport competitions, etc (Konstantinov, 2023). In addition to the above-mentioned laws, the sources of sport law include the Laws of Ukraine «On Ratification of the Anti-Doping Convention», «On Ratification of the Additional Protocol to the Anti-Doping Convention», «On Ratification of the International Convention against Doping in Sport», etc.

Describing the decrees of the President of Ukraine as sources of sport law, the Decree of the President of Ukraine «On the National Doctrine of Physical Culture and Sport Development» should be analysed. According to its provisions, sport activities are one of the main directions of the state policy on physical culture and sport, which orient Ukrainian society towards the gradual formation of an effective model of physical culture and sport based on democratic and humanistic principles. The Doctrine is based on the idea of meeting the needs of every citizen of the state in creating appropriate conditions for physical culture and sport because physical culture is an integral part of the general culture, physical education and mass sport which should be considered social manifestations. It is recognised as an important factor in a healthy lifestyle, disease prevention, organisation of meaningful leisure, formation of humanistic values and creation of conditions for comprehensive harmonious human development.

In addition to codified acts, presidential decrees and laws, the source of Ukraine's national legislation on sport is departmental regulations, namely: the Order of the Ministry of Ukraine for Family, Youth and Sports «On Approval of the Procedure for the Use of Funds Provided for the Development of Certain Sport and Methods of Training Athletes», which regulates the organisation and conduct of research work in the field of physical culture and sport, the publication of scientific and methodological materials, etc. (Palyukh, 2020).

Considering domestic legal customs as a form of sport law, it should be noted that they are used alongside legislation and, where necessary, fill its gaps. The legal significance of customs lies in the fact that they are applied in turn after regulations and contracts. Art. 2 and part 2 Article 7 of the Civil Code of Ukraine defines a custom as a rule of conduct that is not enshrined in acts of civil legislation but is established in a certain area of civil relations. Usually, this can be recorded in a relevant document. In the field of professional sport, many documents set out business customs. Some of

them have been in force in Ukraine for a long time, while others have yet to be ratified. The most well-known legal customs include fair play, competition, and equality. At the same time, a striking example of legal custom as a source of sport law in Ukraine is the Football Rules adopted in 1997 by the International Football Association Board (IFAB) (Tkalych, 2020).

The next component of the national sources system of sport law is the acts of national sport organisations involved in the regulation of sport relations. Such acts regulate sport legal relations at the level of sport organisations and are adopted by their founders or the organisers themselves (for example, charters, regulations and rules governing the conduct of championships and other competitions). The documents adopted at the time of establishment should regulate the activities of sport organisations, including their international legal activities. These include charters of national Olympic committees, and regulations of professional leagues, unions and clubs. One example of such sources is the Charter of the National Olympic Committee of Ukraine.

According to the Charter, the purpose of the National Olympic Committee of Ukraine is to develop, strengthen and protect the Olympic movement in Ukraine, promote the spiritual enrichment of people, and spread the exchange of national cultural values in the context of the ideas and principles of Olympism in cooperation with state, public and other organisations based on independence and goodwill in the interests of sport and the Olympic movement and to protect the interests of its participants. In addition, the Committee has the exclusive right to represent Ukraine at the Olympic Games, and regional, continental and global integrated competitions (Frantz-Yakovets & Nigrutsa, 2023).

Another example is the Statute of the Ukrainian Sambo Federation, approved by the decision of the extraordinary conference of the Ukrainian Sambo Federation on 15 November 2010. This document defines the goals, objectives, and activities of the federations, establishes the system of governing and management bodies, the procedure for joining and membership in the federation, and sets out the rules of competition.

Sambo is organised and developed in Ukraine by the National Sambo Federation of Ukraine (NSFU). In 2013, sambo was included in the list of priority non-Olympic sports in Ukraine and was ranked second in the All-Ukrainian ranking of non-Olympic sports by the Ministry of Youth and Sports based on the results of its activities and performances in the international arena. On 15 July 2014, sambo was recognised as a national sport in Ukraine, and the Ukrainian Sambo Federation received the status of the National Sambo Federation. The NFSU adequately represents Ukraine at international competitions of various levels and promotes its international authority in the world community (Birch, 2023).

Nowadays, sambo is going through a new stage of development. The International Sambo Federation (FIAS) comprises 88 countries, 36 of which are members of the European Sambo Federation. In addition to the annual world, European, continental championships, and traditional international tournaments among athletes of different age categories, many new sambo competitions are held on all continents of the world. The organisation level of these events has increased significantly. The popularisation of our sport in the world is progressing: cooperation with international media is rapidly developing (in almost all FIAS countries, world and continental championships are broadcast on television, and in 24 countries - online), the number of state, public and commercial entities actively involved in the development of sambo in the world and official sponsors of the International Sambo Federation has increased (Frantz-Yakovets & Nigrutsa, 2023).

Given the above, as well as the fact that Ukraine is working to adapt its legislation to the EU one, we believe that several changes to legislation on sport are urgently needed. The Law of Ukraine «On Physical Culture and Sport» should be revised to reflect modern approaches to the development of physical culture and sport, the club system, and the

support of the national teams of Ukraine. Apart from that, it is important to provide a clear regulatory definition of missing or incompletely disclosed concepts: sport NGO, sport agent, sport manager, children's sport club, amateur sport club, professional sport club, sport facility, sport spectator, sport service, etc.

Furthermore, to regulate legal relations in the field of professional sport in Ukraine, which are not regulated at the legislative level, it is necessary to amend part 2 of Article 38 of the Law of Ukraine «On Physical Culture and Sport», which enshrines that professional sport activities are regulated by civil law. The Labour Code of Ukraine states that professional sport activities of athletes, coaches and other specialists, which consist of training and participation in sport competitions, are the main source of their income. At the same time, only one small article in the Law is dedicated to professional sport, and the Labour Code of Ukraine does not take into account the specifics of social relations in the field of sport.

It is also necessary to make appropriate changes in physical culture and sport management authorities in Ukraine, granting responsibilities for sport development to sport federations, and delegating the representation functions of top sport performances on the world stage to the National Olympic Committee of Ukraine. Moreover, it is imperative to bring the terminology of the Law in line with the Law of Ukraine «On Public Associations», adopt the regulation of sports clubs; and raise the status of physical culture and sport associations and sport federations. In addition, it is important to ratify international legal acts, treaties, and regulations that bridge gaps in legislation and provide new perspectives and opportunities for the development of the sport sector. We also consider it expedient to systematise the norms of sport legislation into one modified legal act for a comprehensive view of the norms governing sport legal relations, for example, the Sport Code of Ukraine.

Concerning sambo, the shortcomings and prospects of sambo regulation in Ukraine can be seen in various aspects, such as legislative gaps, funding, infrastructure, development of the sambo base and promotion of sambo. The lack of clear and comprehensive regulation can create uncertainty in the organisation and development of sambo. For example, it is important to define the status and legal standards of the National Sambo Federation and other sport organisations. The absence of provisions defining the competence and authorities of the National Sambo Federation may lead to inconsistencies in management and allocation of funds. Insufficient funds may limit the development of sambo, including support for coaches, sport infrastructure and competitions. Inadequate sport infrastructure, such as gyms and training facilities, may make it difficult for athletes to train. Besides, since sambo is no so popular as other sports, it is necessary to work actively to promote sambo among the population, in particular among young people, to ensure broad interest in this sport.

The development and improvement of special legislation regulating the functions and responsibilities of organisations responsible for sambo can help clarify the legal status and bring clarity to organisational issues. In our opinion, to overcome the above-mentioned problems, it is also necessary to create a National Sambo Development Programme. Therefore, a working group should be set up with the representatives of the National Sambo Federation, coaches, and sport development experts. They should work on defining specific goals of the programme, such as improving infrastructure, raising the level of professionalism of coaches, and attracting new athletes. The National Sambo Development Programme in Ukraine should include a comprehensive approach to ensure the sustainable and full development of the sport. The programme should also contain infrastructure development, including the construction and modernisation of training grounds and gyms. Significant attention should be paid to coaching staff, providing them with competitive remuneration and a system of professional development.

In addition, financial support involves the allocation of significant budgetary funds for the sambo development, aimed at the federation, support for athletes and

the organisation of competitions. Mass popularisation can be achieved through the organisation of tournaments and competitions, as well as the introduction of sambo programmes and sections in schools and universities. The programme also envisages partnerships with the private sector for additional funding and advertising. It is important to develop a media strategy to effectively promote sambo through television, the Internet and social media. International cooperation, participation in international competitions and ensuring integrity and ethics in the sporting environment through anti-doping control are also important elements of the programme. Together, these measures should ensure the sustainable and successful development of sambo in Ukraine, attracting the attention and support of the sport community and the public. Thus, these measures can improve the sambo regulation in Ukraine and create favourable conditions for the development of this sport.

CONCLUSIONS

The study of the legal aspects of sport, especially sambo, is relevant for adapting legislation to the needs of modern sport. The conditions of the crisis and pandemic emphasise the need for flexibility of rules and ensuring a safe sport environment. Improving legislation is an important step to eliminate conflicts and shortcomings in the regulation of sport. We insist on the need to review the system of legislation governing sports in Ukraine. We recommend amending the Law «On Physical Culture and Sport» to reflect modern approaches to the development of physical culture, including the club system and support for national teams. Moreover, it is necessary to define such terms as sport NGO, sport agent, sport manager, etc. Particular attention should be paid to professional sport, which is currently hardly regulated at the legislative level. It is important to amend Article 38 of the Law «On Physical Culture and Sport» to define a clear framework for activities in this area. It is also necessary to review the competences of physical culture and sport management, giving more authority to sport federations and representation on the world stage to the National Olympic Committee.

In the context of sambo, it is important to define the status and funding of the federation, as well as to improve infrastructure and promote the sport. The proposed National Sambo Development Programme should include plans for infrastructure, coaching, financial support and mass promotion. Moreover, national support for sambo could be strengthened by ratifying international rules, which would facilitate the exchange of experience and promote development. Finally, the Sport Code could simplify the understanding and application of sport legislation. In general, these measures are aimed at improving the legal environment and development of sport in Ukraine, ensuring its sustainability and popularity among the civil and the sport community.

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