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Strengthening criminal liability for committing property and some other offences under martial law in Ukraine

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Abstract. The relevance of the chosen subject is dictated by the fact that countering criminal offences during the war is one of the most important problems that the legislator should respond to. Not only the level of the criminal situation in the state but also the effectiveness of the functioning of criminal law in general depends on how timely and correct decisions will be made in this area. The purpose of the study is to conduct a legal analysis of legislative initiatives to introduce new qualification circumstances, strengthen criminal liability by introducing new punishments and increasing the current sanctions for certain criminal offences. For this purpose, formal-logical, dialectical, logical-semantic, hermeneutical, comparative-legal, and other methods of scientific knowledge were used in the study. The study clarifies that legislative changes to strengthen responsibility for committing property and some other criminal offences under martial law are insufficiently justified and may lead to an excessive expansion of the current Criminal Code of Ukraine, a violation of its consistency. It is noted that this approach raises a number of doubts and requires the search for other, more effective ways of legal regulation. The expediency of applying a comprehensive approach in the formulation of criminal law norms, which provides for considering the tools of both the Special and General parts of the Criminal Code of Ukraine, is justified. The applied aspect of this scientific analysis is determined by the dynamics of lawmaking in this area and provides justification for the need to introduce appropriate legislative changes, and outlines the prospects for their application in practice. The practical importance of the study lies in the fact that strengthening criminal liability for certain criminal offences during martial law is a subject that goes far beyond purely theoretical importance

Keywords: special legal regime; punishability of the act; criminal offence; penalisation of criminal legislation; circumstances aggravating the punishment; qualification features

Introduction

The process of functioning and development of society is inextricably linked with many socio-economic, political, legal, cultural, and other factors that lead to both positive and negative changes in society. Such changes often take on signs of a crisis that requires timely regulation by state institutions. The ways of such regulation are not always evident and consist both in changing the current legislation and in introducing special legal regimes.

An example of the social crisis that has become a driving force in the search for new ways to regulate public relations is the unprecedented steps that have been taken to spread the COVID-19 pandemic around the world. Thus, for example, as some researchers note, during the COVID-19 pandemic, there was a need to develop a large number of regulations that relate to all areas of public administration, including medical care (Baratashvyly *et al.*, 2020).

However, the events of February 2022 – full-scale military invasion of the Russian Federation on the territory of Ukraine have set new challenges for the Ukrainian legislator. Introduction of the martial law as a special legal regime on the territory of Ukraine actualised the need to find new mechanisms for regulating public relations. The current Criminal Code of Ukraine can hardly be recognised as one that was ready for a full-scale war and contained all the necessary norms that would meet the requirements of wartime. Today, the current criminal legislation of Ukraine can be

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considered in conditions of "turbulence". Legislative initiatives, such as Draft Law of Ukraine No. 9112 (2023) on the introduction of new qualifying circumstances (in particular, such as "committing an act under martial law"), strengthening criminal liability by introducing new punishments and increasing existing sanctions for certain types of criminal offences are so quickly introduced into the current criminal legislation that this process is not always properly justified, which in turn entails a number of practical problems. This calls into question the desire of the legislator to make the criminal law more stringent and requires the search for such methods of legal regulation that would not only meet the requirements of today but also be as effective as possible.

Although the increase in crime is one of the most acute problems of our time, which affects almost all aspects of public life and, in particular, creates an immediate threat to economic and political transformation (a factor of social destabilisation of society), in the context of war, this problem takes on new aspects (Poltava *et al.*, 2020). The urgency of countering and combating it in these turbulent circumstances is due to the public demand for the inadmissibility of the facts of using officials of their official position for the purpose of committing criminal offences; an increased threshold of sensitivity of society to the facts of committing criminal offences related to corruption, theft, and illegal use of humanitarian aid, which gives rise to citizens' despondency in defeating the enemy; an increase in the level of public sensitivity to criminal offences related to corruption as the increase in the number of offences against property is particularly unacceptable and cynical in war conditions. Among the criminal offences that have become more frequent since the beginning of Russia's full-scale invasion of Ukraine, there are also those related to the field of land relations and encroaching on the peace and security of humanity and international law and order (Klochko & Kishinets, 2022). More than twenty thousand criminal offences are investigated on the facts of execution, murder, torture, rape, which were committed during the Russian-Ukrainian war, and on the facts of illegal deportation, eviction, or relocation of the civilian population of Ukraine to the Russian Federation (Hopkins, 2022).

In such conditions strengthening responsibility for existing criminal offences seems to be quite a logical and justified reaction on the part of the legislator to relevant socially substantial events. Intimidation of a potential criminal as a conventional method of influencing public relations is completely correlated with a heightened sense of justice in society and is generally perceived with approval. Therewith, the limit of punishability of an act in war conditions must meet the democratic standards that Ukraine sought in the pre-war period. Otherwise, there is a risk of legal degradation and a return to the times when lynching was the standard of social behaviour, which, by the way, was observed in the first days of the war in Ukraine.

Therefore, the problem of forming and implementing an adequate strategy for protecting society is becoming urgent. The central place here is occupied by the state's choice of the right vector of criminal-legal policy, which would meet the requirements of today. From the standpoint of the legislator, it is the strengthening of criminal liability for certain socially dangerous acts, which in general is quite logical and justified in war conditions.

In the scientific community, there are supporters of the tendency to increase criminal liability (Gorokh & Kolomiiets, 2022) and those who believe that in the desire to put up criminal barriers, parliamentarians have achieved an unjustified and substantial strengthening of the already repressive nature of the law on criminal liability (Orlov & Pribytkova, 2022).

Recently, many papers have appeared that are devoted to the specific features of bringing to criminal responsibility for committing criminally illegal acts during the war (Vartyletska & Sharmar 2021); legal analysis of martial law as a special regime (Kravchyk & Mykhailo, 2022), and a special procedure for resolving the issue of criminal liability during its introduction (Vozniuk, 2022); on the problem of martial law as a catalyst for criminalisation of acts (Shevchuk & Bodnaruk, 2022), issues of martial law and property regulation are widely discussed with a focus on forced seizure and compensation for damages (Prytyka *et al.*, 2022); problems of criminalisation of offences in the field of information security (Mazepa, 2022), etc.

The legislator is also involved in solving the problems covered in the papers, which in recent months has introduced a number of legislative changes regarding criminal liability for certain criminal offences to the Criminal Code of Ukraine (2001) (hereinafter referred to as the CC of Ukraine). Focusing on the latest Draft Law of Ukraine "On Amendments to the CC of Ukraine and the Code of Ukraine on Administrative offences on Strengthening Liability for Committing Property and Certain Other offences in Conditions of War or State of Emergency" (2023), it is advisable to outline general considerations regarding specifically these and similar legislative changes and additions that are designed to strengthen criminal liability for committing criminal offences during martial law.

A comprehensive disclosure of the subject of this study is achieved through the use of a system of philosophical, special scientific, and general scientific methods of cognition. Thus, in particular, the dialectical method allowed examining the dynamics of the development of the current criminal legislation on strengthening criminal liability during martial law. The study analyses legislative initiatives that later established their objectification in the norms of the CC of Ukraine. Due to hermeneutical and comparative legal methods, the difference in approaches to solving the problem of strengthening criminal liability for criminal offences committed under martial law, both in the scientific and law enforcement fields, was identified. The logical-semantic method allowed identifying the terminological imperfection of the key concepts of this study, namely, the difference in the meaning of the phrase "under martial law" and "using martial law conditions".

Criminal law policy on liability for certain acts during martial law

Criminal law policy is considered part of the national policy in the field of combating crime and is implemented through a set of criminal law tools and methods embodied in such phenomena as criminalisation and decriminalisation, penalisation and depenalisation (Cullen *et al.*, 2021; Ramadani *et al.*, 2021). Based on the above-mentioned understanding of legal policy, S. Hadpagdee *et al.* (2021) explained in detail the scope of the criminal-legal policy and defined it as a policy line outlining: a) how much it is necessary to change or update the existing criminal provisions; b) What can be done to prevent crimes; c) how the investigation, prosecution, trial, and enforcement of a court decision should be conducted.

In addition, efforts to combat crime by the adoption of criminal laws is also an integral part of social security measures.

Thus, it can be concluded that the policy of criminal law is an attempt to determine in which area to apply criminal law in the future, considering its current application (Haaland *et al.*, 2020), and the central place in it is occupied by the processes of criminalisation (decriminalisation), penalisation (depenalisation).

Criminal law refers to those branches of public law that are endowed with a large list of restrictions on human rights and freedoms. The very nature of this branch of law presupposes the possibility of interference in a person's life and is such that it gives any measure of criminal-legal influence such strength of potential legal restrictions that it should cause unwillingness to violate the criminal law prohibition by committing a criminal offence (Hazdayka-Vasylyshyn, 2021). However, to avoid unjustified interference, society and the state must guarantee the protection of human and civil rights and compliance with the standards established by the United Nations Convention against Transnational Organised Crime (2000) (Balobanova *et al.*, 2020).

The groundless establishment of a criminal ban entails its "devaluation", which can be objectified both in criminalising certain behaviour and in punishing it. When discontent is directed against individuals, it is directed at an exaggerated need for punishment or the need to create a new but completely unnecessary corpus delicti. If the dissatisfaction concerns legislative trends, the appointment and execution of punishments, then usually "exceeding the criminal law" or "excessively severe punishment" are concealed) (Hazdayka-Vasylyshyn *et al.*, 2021).

Given that criminal law is primarily designed to protect human rights, it is difficult to agree with the thesis of individual authors that the introduction of appropriate changes and additions to the current legislation, despite their quality, should be timely (Pasyeka *et al.*, 2022). The law was created not only to punish the perpetrators of crimes but should also be a substantial deterrent (Pasyeka *et al.*, 2021). Therefore, the criminalisation of acts should be assessed not only from the standpoint of the urgency of regulating certain social relations but above all – from the standpoint of their validity, and the process of penalisation must be devoid of haste.

For an adequate consideration of the subject, it is also necessary to focus on a general description of the changes that the current criminal legislation has undergone regarding criminal liability for certain criminal acts committed during the war and a legal assessment of the validity of such changes.

One of the latest attempts to bring the current criminal legislation to the military and political requirements of the time is the Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine..." (2023). Notably, this is not the first attempt by the legislator to strengthen criminal liability under martial law.

For example, the Law of Ukraine "On Making Changes to Some Legislative Acts of Ukraine Regarding the Establishment of Criminal Liability for Collaborative Activity" (2022), and also Law of Ukraine "On the Introduction of Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Improvement of Responsibility for Collaborative Activities and the Features of the Application of Preventive Measures for Committing Crimes Against the Foundations of National and Public Security" (2022) in the first months of the war, responsibility was not only established for the acts provided for in the provisions of Article 111-1 and Article 111-2 of the CC of Ukraine, namely for collaboration and complicity with the aggressor state but also a new type of punishment was introduced. With the adoption of this law, for the commission of these criminal offences, the court may impose a penalty in the form of deprivation of the right to hold certain positions or engage in certain activities for a period of 10 to 15 years.

The Law of Ukraine "On the Introduction of Amendments to the CC of Ukraine Regarding the Strengthening of Responsibility for Crimes Against the Foundations of the National Security of Ukraine under the Conditions of Martial Law" (2022) increased criminal liability for offences under Articles 111 and 113 of the CC of Ukraine, namely, high treason and sabotage committed under special conditions of the legal regime of martial law. In particular, these articles are supplemented in Part 2 by such a qualifying feature as their commission under martial law and provide for punishment in the form of imprisonment for a term of at least fifteen years or life imprisonment with confiscation of property.

Besides, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine Regarding Increased Liability for Looting" (2022) provides for a number of criminal offences against property, namely: theft, robbery, robbery, extortion, misappropriation, embezzlement of property, or taking it by abuse of official position, which are provided for in articles 185, 186, 187, 189, 191 of the CC of Ukraine, the commission of which under martial law has the consequence of increased criminal liability.

However, the result of such an active legislative process is not without drawbacks and skepticism during its critical analysis. Attention is drawn to at least two problems that may negatively affect law enforcement and require scientific expertise.

Regarding the criminalisation of an act under martial law and a state of emergency

The above-mentioned Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine..." (2023) proposes amendments to 85 articles of the CC of Ukraine in terms of strengthening sanctions that provide for liability for the commission of certain criminal and administrative offences. It is proposed to supplement the articles with new parts, which provide for qualifying signs of acts "in conditions of martial law or a state of emergency" to do this. However, the changes proposed in the draft law generally seem insufficiently justified, groundless, and cannot be implemented for a number of reasons.

First of all, the thesis that the qualifying signs of any criminal offence perform the function of differentiating criminal liability, establishing new, increased limits of standard punishment in comparison with the provided sanctions for criminal offences with the main composition is generally recognised in the science of Ukrainian criminal law. Through the construction of a qualified composition, another type of specific criminal offence is actually identified. Taking this into account, the introduction of a qualified type of criminal offence should be accompanied by weighty arguments that unquestioningly indicate the substantial public danger of the latter and the need to establish in the event of its commission such an exceptional, especially severe measure of state coercion as criminal liability and punishment. Therewith, the introduction of a new qualifying feature obliges the legislator to observe the principle of balance and avoid a casuistic approach and oversaturation of criminal law norms.

In the explanatory note to the draft law, its authors state that in the context of the introduction of the legal regime of martial law, there is an increase in quantitative indicators of the commission of a number of criminal offences, including, in particular:

1) criminal offences against property (articles 186, 187, 189, 190, 191, 192, 198 of thr CC of Ukraine);

2) criminal offences in the field of economic activity (articles 199, 200, 201-1, 201-2, 203-2, 206, 206-2, 210, 211, 212, 212-1, 213, 218-1, 220-2, 222, 222-1, 222-2, 224, 233 of the CC of Ukraine);

3) criminal offences against the environment (articles 239-1, 239-2, 240, 240-1, 246 of the CC of Ukraine);

4) criminal offences against public safety (articles 255, 256, 257, 258-5, 262, 268, 270-1 of the CC of Ukraine);

5) criminal offences against traffic safety and operation of transport (articles 278, 289, 290 of the CC of Ukraine);

6) criminal offences against public order and morality (articles 298, 303, 304 of the CC of Ukraine);

7) criminal offences in the field of trafficking in narcotic drugs, psychotropic substances, their analogues, or precursors and other criminal offences against public health (articles 305, 306, 307, 308, 310, 311, 312, 313, 314, 317, 318, 319, 320, 321, 321-1, 322, 327 of the CC of Ukraine);

8) criminal offences in the field of protecting state secrets, inviolability of state borders, ensuring conscription and mobilisation (Article 332 of the CC of Ukraine);

9) criminal offences against the authority of state authorities, local self-government bodies, associations of citizens, and criminal offences against journalists (articles 354, 355, 357, 358, 360 of the CC of Ukraine);

10) criminal offences in the field of official activity and professional activity related to the provision of public services (articles 364, 364-1, 365, 365-2, 367, 368, 368-2, 368-3, 368-4, 369, 369-2 of the CC of Ukraine);

11) criminal offences against justice (articles 371, 372, 373, 374, 376, 376-1, 388 of the CC of Ukraine).

It is these elements of criminal offences that the authors of the bill propose to supplement with qualifying features, namely, to strengthen criminal liability for their commission "under martial law."

Therewith, the authors of the draft law do not provide any arguments that would really point to qualitative or quantitative indicators of changes in crime in these areas and the direct impact of the special legal regime of martial law in Ukraine on its intensification.

In particular, the main argument for the need to introduce these legislative changes is the "unacceptability", "inadmissibility" and "cynicism" of committing the above-mentioned criminal offences during martial law. Although indeed the tolerance of public opinion to the commission of certain types of criminal offences during martial law is quite low, this in itself cannot serve as the basis for lawmaking, moreover, in the volumes proposed by the authors of this bill.

The negative dynamics of the adoption of such insufficiently justified legislative initiatives can be illustrated by the example of the recently adopted amendments to the current CC of Ukraine (2001) mentioned above, which in their content and essence are similar to those proposed by this draft law and relate to other types of criminal offences.

For example, legislative changes in the approach to strengthening criminal liability for certain criminal offences that encroach on the property of citizens during the war have not established positive feedback either in law enforcement practice or in the scientific community.

A substantial problem that the pre-trial investigation bodies had to face in connection with the adoption of the legislative changes outlined above was a substantial increase in the workload. In particular, due to the change in the severity of certain criminal offences against the property from misdemeanours to crimes, upon their commission, investigative units need to conduct a pre-trial investigation instead of an inquiry.

O. Marmura (2022) notes the legal absurdity caused by the introduction of these legislative changes in one of the papers. In particular, the author comes to the conclusion that theft committed under martial law, in terms of severity, mostly does not differ from ordinary theft. Legal analysis of court sentences adopted under Part 4 of Article 185 of the CC of Ukraine suggests that, as a rule, the value of stolen goods is relatively small and ranges from UAH 483.33 for a VCR to UAH 15,000.00 for a bicycle. Therewith, the author notes that such abductions are mostly not directly related to the war, and therefore, as the authors of this article may agree, they point to an excessive expenditure of resources of the law enforcement and judicial systems.

Another disadvantage of the introduced changes can be called the fact that during the imposition of punishment in practice, the courts have difficulties in determining the true, real degree of severity of a criminal offence, which does not depend solely on the time or situation of its commission, as in war or in war conditions, but must be really determined by the degree of public danger, which is a much broader concept and includes other additional factors. It also depends on the extent to which the court correctly determines the gravity of the criminal offence to observe the principle of proportionality of the imposition of such a penalty, which would not be too severe and which would correspond to the real gravity of the crime committed, when assigning a sentence. In practice, the courts have to apply all possible methods, among which, as O. Marmura (2022) highlights, is the imposition of a sentence in accordance with the limits provided for in the sanction article and the subsequent release of the person from serving it.

The second aspect that should be discussed is that paragraph 11 of Article 67 of the CC of Ukraine refers to circumstances that aggravate the punishment, "commission of a crime using the conditions of martial law, a state of emergency, or other extraordinary events". This circumstance, which aggravates the punishment, is common to all types of criminal offences and indicates an increased public danger of what was committed, and therefore gives the court grounds to impose a more severe punishment. Such a legislative structure is actually the lever that protects the current CC of Ukraine from a casuistic approach and excessive detail of its norms, and, accordingly, from their artificial, groundless accumulation and expansion.

Circumstances that aggravate punishment differ in their content and nature from the qualifying signs of a criminal offence in that they are a tool for increasing the scope of criminal liability and individualising punishment. Consequently, the use of such an aggravating circumstance as the commission of a crime using the conditions of martial law or a state of emergency seems to be quite sufficient and effective criminal-legal means of countering crime under martial law when the court decides on the imposition of punishment

for acts that a person commits using martial law or other extraordinary events.

Moreover, the wording proposed in Article 67 of the CC of Ukraine of such a circumstance that aggravates punishment as "using the conditions of a state of war or emergency, other emergency events" is more accurate and correct from the standpoint of criminal-legal technology than that proposed by the draft law and implemented over the past year in the already existing norms of the special part of the CC of Ukraine "in a state of war or emergency".

Logically, any criminal offence committed from the beginning of a full-scale invasion of Ukraine should be considered committed "in a state of war or emergency", because this is the state that has been introduced on the territory of state. In this case, a reasonable question arises as to why, in the opinion of the authors of the draft law, the proposed qualifying feature should be determined only in certain, selected criminal offences. Ultimately, the offences specified in the draft law are no more socially dangerous if they are committed during war than others provided for in the current CC of Ukraine. Therefore, it seems that the level of public danger of criminal offences defined in the draft law changes regardless of being "under martial law", and due to the fact that the person who commits it uses the conditions of martial law to commit a criminal offence. Only in the conditions of the use of tragic circumstances or military operations for their own profit or the satisfaction of other illegal interests, the act committed by a person becomes more socially dangerous. The proposed wording "under martial law" is appropriate and correct only for a certain category of acts – criminal offences against the established procedure for military service.

Such considerations are not new to the theory of criminal law and are supported by other researchers. In Particular, Yu. Orlov and N. Pribytkova (2022) emphasise that the mechanism for correctly assessing the degree of public danger of committing a criminal offence under martial law existed even before the introduction of the legislative changes discussed above. Researchers believe that the application of the provisions of Article 65 of the CC of Ukraine was and remains a fairly effective mechanism that can be applied to any criminal offence, while most of them remained outside the processes of criminalisation and penalisation – in a number of self-serving criminal offences, such a qualifying feature as martial law is not defined. Therefore, the exclusion of this feature from the qualified elements of individual criminal offences against property is, in the author's opinion, logical and justified.

Problems of the difference between the concept "under martial law" and "on the use of martial law conditions"

Martial law as a circumstance that affects the qualification of an act and performs the role of a catalyst for the introduction of new prohibiting norms into the current criminal legislation, is used in the CC of Ukraine in different ways. Among the main phrases that actually contain this concept are "during martial law", "under martial law", and "using martial law conditions". Questions arise: whether these circumstances are the same and do not affect the differentiation of criminal liability, and whether such a difference in terminology creates problems in judicial practice. The answer to these questions fully corresponds to the opinion of V. Navrotskyi (2022). The researcher analysed the novelties of criminal legislation, namely the addition of the list of qualifying signs of individual criminal offences against property (theft, robbery, robbery, extortion) with such a feature as the commission of relevant acts "under martial law". He stressed the need to force people to solve the riddle: "in conditions" and "using conditions" are the same thing or not.

The analysis of these concepts gives grounds to assert that these are different constructions in their content, which, although similar to each other, are not identical. Subject to a different understanding, the commission of any criminal offence during the period of martial law will form either a qualifying feature of a specific act or an aggravating circumstance provided for in Article 67 of the CC of Ukraine.

If the phrase is "using the conditions of martial law", then this construction actually means the circumstance provided for in paragraph 11 of Part 1 of Article 67 of the CC of Ukraine that aggravates the punishment. The use of martial law conditions indicates that a person who commits a criminal offence intentionally uses the peculiarity of the situation, for example, in a war zone or in the occupied territories (lack of protection or property owner, the ability to hide a criminal offence or avoid criminal prosecution), and the legal regime has been introduced for their own illegal interests.

Therefore, it is incorrect to assume that any criminal offence committed during such a special period as martial law is committed "using" its conditions. Ultimately, for example, the theft of a phone from a store in a city that is not in a war zone should be distinguished from such theft, which was committed in a store that was left without security, for example, in one of the cities of the occupied Luhansk region. In the first case, there is no use of the conditions of martial law, while in the second situation, the commission of a criminal offence was facilitated by the relevant circumstances, which the person took advantage of.

Regarding an act committed "under martial law", then the authors of this study believe that here, as in the construction "during martial law", this refers to a certain time period for which such a regime is introduced. That is, the commission of a criminal offence during the period of martial law gives grounds to believe that it was committed either "in the conditions" or "during" martial law. Therewith, it does not matter whether the corresponding legal regime is introduced on the territory of the entire state, or only in certain territories, that is, where and in what situation the act was committed.

Consequently, to acts that, although committed "in the conditions" or "during" the operation of the martial law regime, but without any use of the conditions of such a legal regime, in the opinion of the authors of this study, the application of the appropriate qualifying feature aggravating the punishment is groundless.

It is enough to leave such two constructions as "during" and "using the conditions" of martial law to avoid confusion. Given that the latter is already used to denote a circumstance that aggravates punishment, the phrase "during martial law" can serve as a qualifying feature of individual criminal offences. However, then the question arises about the validity of strengthening criminal liability only for the fact that the acts defined by the legislator were committed during the period of martial law, without using those conditions that would facilitate their commission or otherwise were beneficial for the person who committed such acts, which, according to the authors of this publication, is a negative trend.

For the commission of a criminal offence, the application of such sanctions is provided that correspond to the degree of danger of a criminal offence. However, based on the degree of public danger, for example, responsibility for theft committed during martial law, according to the type and measure of punishment can not be equated to liability for a qualified type of premeditated murder. The degree of public danger of these acts is qualitatively different, they encroach on substantially different objects of criminal legal protection, and therefore the sanction for their commission should also differ. In addition, the ability to maintain law and order and public security, preventing the commission of various kinds of criminal offences during a state of war (or emergency), is provided for in paragraph 11 of Article 67 of the CC of Ukraine.

Notably, the amendments proposed by the analysed draft law, and any other attempt to strengthen criminal liability for committing a criminal offence only for the reasons of its commission under (i.e. during) martial law, do not contribute to the formation of Ukraine as a democratic state governed by the rule of law, devoid of an excessive repressive component in its criminal legislation. Without denying the need to differentiate criminal liability for committing a criminal offence during martial law, in general, it is more appropriate to apply a comprehensive approach. In contrast to the construction of qualified compositions of an indefinite range of criminal offences and the "inflating" of the current CC of Ukraine, the use of the legal tools of the General part of the CC of Ukraine is necessary.

Conclusions

The study proves that because of the war, which is a powerful determinant of crime, there was a need to form a new legal framework and special legal mechanisms for countering crime in the context of the introduction of a special legal regime of martial law. The study supports the thesis that strengthening criminal liability in war conditions can really be one of the most effective levers of preventive influence on the commission of criminal offences and ensure compliance with the requirements of the law. Therewith, the legal analysis of recent legislative changes on strengthening criminal liability for certain criminal offences committed during the war indicates excessive, unsystematic, and often groundless criminalisation, which in turn can serve as a factor that, on the contrary, paralyses the application of criminal law in practice. The difference between such concepts as "under martial law" and "using martial law conditions", which are erroneously interpreted in the same way during the law enforcement of criminal law norms, was proved. Attention was drawn to such problems as the selectivity of criminal law norms, which are undergoing changes in terms of strengthening criminal liability and unjustified changes in the severity of individual criminal offences to crimes, which negatively affects the work of law enforcement and judicial bodies, and creates a number of controversial issues in the field of criminal-legal science. It is proposed to avoid the accumulation of criminal law norms during the differentiation of criminal liability and abandon the construction of new elements of criminal offences, instead of using already existing effective tools of criminal response in criminal law, including circumstances that aggravate punishment to resolve these problems.

The prospect of the conducted study may be the review of court sentences, which will use analytical and statistical methods to identify the main problems of law enforcement of legislative innovations related to strengthening criminal liability.

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Conflict of interest

None.

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Посилення кримінальної відповідальності за вчинення майнових та деяких інших правопорушень в умовах воєнного стану в Україні

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Анотація. Актуальність обраної тематики продиктована тим, що протидія кримінальним правопорушенням під час війни – одна з найважливіших проблем, на яку повинен реагувати законодавець. Від того, наскільки вчасними та коректними будуть ухвалені рішення в цій сфері, залежить не лише рівень криміногенної ситуації в державі, а й ефективність функціонування кримінального права загалом. Мета статті полягає в здійсненні правового аналізу законодавчих ініціатив щодо запровадження нових кваліфікаційних обставин, посилення кримінальної відповідальності шляхом запровадження нових покарань та збільшення чинних санкцій за окремі кримінальні правопорушення. Для цього під час дослідження використовувалися формально-логічний, діалектичний, логіко-семантичний, герменевтичний, порівняльно-правовий та інші методи наукового пізнання. У статті з'ясовано, що законодавчі зміни щодо посилення відповідальності за вчинення майнових та деяких інших кримінальних правопорушень в умовах воєнного стану – недостатньо обґрунтовані та такі, що можуть призвести до надмірного розширення обсягу чинного Кримінального кодексу України, а також до порушення його системності. Зауважено, що такий підхід викликає низку сумнівів та вимагає пошуків інших, більш ефективних способів правового регулювання. Обґрунтовано доцільність застосування комплексного підходу під час формулювання кримінально-правових норм, який передбачає врахування інструментів як Особливої, так і Загальної частини Кримінального кодексу України. Прикладний аспект цього наукового аналізу зумовлено динамікою законотворення у вказаному напрямі та передбачає обґрунтування необхідності запровадження відповідних законодавчих змін, а також окреслює перспективи їх застосування на практиці. Практичне значення статті полягає в тому, що посилення кримінальної відповідальності за окремі кримінальні правопорушення під час воєнного стану – це тема, яка виходить далеко за межі суто теоретичного значення

Ключові слова: особливий правовий режим; карність діяння; кримінальне правопорушення; пеналізація кримінального законодавства; обставини, що обтяжують покарання; кваліфікаційні ознаки

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Legal aspects of protection of rights to land plots that were transferred to private ownership based on the provisions of Decree of the Cabinet of Ministers of Ukraine No. 15-92

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Abstract. Due to the lack of clear regulation of the procedure for registration of land ownership on various grounds of privatisation, the Decree of the Cabinet of Ministers of Ukraine of December 26, 1992, No. 15-92 "On privatisation of land plots" has become one of the most problematic legislative acts in Ukraine. That is why there was a need to distinguish between two procedures for the privatisation of land plots: according to the above-mentioned Decree and in accordance with the Land Code. The purpose of the study is to highlight the differences in the legal procedures for privatising land plots transferred to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Land Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Land Code of Ukraine. The analysis of the practice of the Supreme Court on the application of Decree No. 15-92 and the Land Code of Ukraine in various versions, highlights the general trend in court decisions and describes individual cases that occurred in the judicial practice of higher instances. As a result of the study, it was established that the procedures for transferring land plots to the ownership of citizens based on Decree No. 15-92 and the Land Code of Ukraine differ. Privatisation based on Decree No. 15-92 is a specific simplified form of land transfer to ownership. It is noted that the legislation does not contain a clear regulation of the procedure for transferring land plots to private ownership, if privatisation was initiated based on the rules of Decree No. 15-92, there are a substantial number of legal disputes that are resolved in court. It is proved that the vast practice of the Supreme Court on privatisation issues is not always consistent, and legal conclusions are not systematised; simultaneously, the general trend towards resolving such legal disputes is consistent and understandable. Based on the conclusions of the Supreme Court, the procedure for privatisation under the rules of the Decree was systematised, the procedures for privatisation under the Decree and the Land Code of Ukraine were delineated, documents certifying the right of ownership were identified, and ways to confirm the existence of property rights/legitimate interests to land plots, the right of ownership/use to which arose in connection with the entry into force of Decree No. 15-92 were named. The practical importance of the results obtained lies in the possibility of using them to protect the rights of citizens to land plots, residential buildings and structures located on such plots in judicial and administrative procedures

Keywords: privatisation; protection of the right of ownership/use of land; legal positions of the Supreme Court; land relations; Land Code

Introduction

The Decree of the Cabinet of Ministers of Ukraine of December 26, 1992 No. 15-92 "On privatisation of land plots" (hereinafter – Decree No. 15-92) is one of the most problematic in application at present, which negatively affects land relations in Ukraine. The existence of ambiguous procedures for land privatisation: 1) transfer of land to ownership under the provisions of the Decree; 2) privatisation of land that was transferred for use under previously existing legislation,

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and 3) the general procedure for gratuitous transfer of land to private ownership, creates problems both for citizens who used land plots since the mid-twentieth century and for local self-government bodies, which after the Decentralisation Reform received more powers to dispose of communal land. Common problems are: 1) lack of clear and detailed regulation of land ownership rights and 2) problems with changing the purpose of the land plot and its re-registration. However, the greatest difficulties arise due to the lack of a properly explained land privatisation procedure in each of the above cases (especially where it is necessary to distinguish between privatisation procedures according to Decree No. 15-92 (1992) and privatisation of the land plot that was previously provided for use). Moreover, this refers to ignorance both on the part of citizens and on the part of local self-government bodies as land managers. In this regard, it is necessary to create a clear and accessible information environment that will help all interested parties understand the procedures for land privatisation and the relationship between procedures.

This problem has its impact not only on the registration of land plots for the construction and maintenance of residential buildings and outbuildings but also on the protection of ownership of real estate located on a non-privatised land plot. Since, according to the rules of Decree No. 15-92, land plots that were already in the use of citizens and on which residential and non-residential buildings were usually placed (especially those that were built in the 1940s and 50s) were transferred to private ownership, the re-registration of rights to these objects under the current legislation arose as a serious challenge. The right of ownership of old, sometimes substantially damaged structures was and is often violated due to the fact that the land plot on which they are located is often transferred to private ownership not to the owners of these structures in the order of privatisation defined by paragraph 5 of Article 17 of the Land Code of Ukraine of 1990 as amended on March 13, 1992 (hereinafter also – LC of the Ukrainian SSR) (Land Code of Ukraine, 1990) or based on Article 118 of the current Land Code of Ukraine (hereinafter also referred to as the Civil Code of Ukraine) (Land Code of Ukraine, 2001), without considering the requirements of the Decree. This situation has a double negative impact: on the one hand, the owner of real estate on non-privatised land is deprived of the rights of the owner, and on the other, buildings and structures do not receive proper maintenance.

Public relations in the field of privatisation are regulated by the norms of both civil and administrative legislation. Important in this context is not only the choice of legal norms to be applied but also the appeal to the court whose jurisdiction the dispute about the law belongs to. In the vast majority of cases, disputes arising from the transfer of land plots to private ownership or use are civil law. The land transfer body acts not as a subject of power, but as a land manager. The same rule applies to those cases when the results of consideration of land disputes regarding the determination of the size of land plots that were transferred to citizens, but were not privatised by the latter, are challenged in court. Despite the general consistency of this position expressed by the legislator and supported by the legal positions of the Supreme Court, its practical implementation is quite difficult. In each subsequent case, there is a need for a detailed analysis of the legal personality of the land manager, establishing who such a person acts as in the privatisation relationship. In civil legal relations on privatisation, the principle of equality of the parties is discussed, and in administrative relations – the principle of special permission and the limits of discretion. Relations of privatisation, despite their belonging to civil law, do not exclude the need to apply administrative norms. Given this, privatisation legal relations are twofold, which requires their examination from several angles.

Among the latest studies concerning the issue of legal regulation of privatisation processes, important scientific results are contained in the writings of N. Ilkiv and O. Ilkiv (2019). The authors investigated the legal regulation and potential ways to improve the process of gratuitous acquisition of land plots by Ukrainian citizens into private ownership. The study highlights the issue of guaranteeing the rights of Ukrainian citizens to free privatisation of such land plots by investigating and analysing various aspects of the legal regulation of this process. The paper identifies theoretical and applied approaches to determining the mechanism of gratuitous transfer of land plots of communal property to private ownership of Ukrainian citizens. The study analyses the legal nature of the powers of local self-government bodies in making a decision on granting permission for the development of a land management project and concludes that the body does not exercise discretionary powers, but only performs its tasks in the field of land relations, guided by the constitutional special licensing principle. Additionally N. Ilkiv and O. Ilkiv justified the necessity of mandatory amendments to the land legislation of Ukraine to ensure the right of citizens to free privatisation of land plots within the limits of the amounts and goals defined by the legislation.

The conclusions of N. Kovda and N. Zabarna (2020) are also similar in subject matter. The researchers identified the prospects for the implementation of land reform in the context of decentralisation, namely: (1) the return to local self-government bodies of the authority to manage the lands of local communities outside of settlements; (2) land plots that are transferred to the communal ownership of territorial communities and the right of state ownership will be transferred to communal ownership from the moment of state registration of the right of communal ownership to such land plots; (3) local self-government bodies from district state administrations will be transferred the authority to change the purpose of land plots of private ownership; (4) effective use of land by united territorial communities will provide additional revenues to local budgets; (5) open procedures and maximum transfer information in electronic form, in open access, elimination of corruption.

Issues of legal conflicts that arise in the field of land relations are discussed in detail in the collective study authored by I. Pyvovar *et al.* (2020). The paper is devoted to the issues of the inaction of the authorities in relations linked to the initiative of citizens to obtain permission to develop a land management project and transfer a land plot to ownership. The authors also consider issues of protecting the violated rights of citizens in the event of illegal inaction of state bodies. The study identifies the specific features of using the principle of tacit consent in land-permit relations, indicates possible ways to protect the rights of citizens in case of illegal inaction of the authorities, and establishes the nature of the discretionary powers of the competent authorities. Yu. Krasnova *et al.* (2020; 2022) analyse the legislation regulating land ownership in Ukraine and assess its development in this area.

As can be seen from the above, publications of recent years are devoted to improving land legislation to a greater extent, in particular, in the context of the Decentralisation Reform. However, the direct issues of the privatisation procedure, its types, and features under various versions of the Land Code of Ukraine did not become the subject of scientific interest.

In the proposed study, the authors attempt to highlight the differences in the legal procedures for privatising land plots transferred to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Civil Code of Ukraine (1990) as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine.

The proposed finding includes investigating the practice of the Supreme Court on the application of Decree No. 15-92 and the Civil Code of Ukraine in various versions, highlighting the general trend in court decisions and describing individual cases that took place in the judicial practice of higher instances.

The study was based on the analysis of scientific literature, legal sources, legislation, and documents related to the privatisation of land plots and the legal aspects of their protection. The results obtained are systematised, the legal positions of the Supreme Court and other sources are summarised, and trends in resolving legal disputes regarding the protection of rights to land plots transferred to private ownership are analysed.

Literature review

The issue concerning the application of the provisions of Decree No. 15-92 rarely becomes the subject of scientific interest. Given the complexity of the mechanisms of application of this normative document, its links with national policy in the field of land relations, legislative acts of the highest legal force, and the practice of Courts of various jurisdictions, the subject of further consideration should include a substantial array of scientific and regulatory sources. Further, such sources are conventionally divided into several groups according to their importance for the proposed study.

The first group consists of those publications that directly or indirectly address the issue of land privatisation based on Decree No. 15-92. Thus, H. Klimova (2019) mentions Decree 15-92 as one of the key documents that regulated the process of land privatisation in Ukraine. I. Salman (2009) analyses the main legal characteristics of land privatisation processes. By analysing the current legislation, the author identifies criteria for classifying various types of land privatisation, considering various entities that acquire ownership rights, procedures, methods, and other factors. Decree No. 15-92 is mentioned as a form of privatisation, but the essence of the process is not covered. A paper by H. Hrabar (2014) is devoted to relevant legal issues of the privatisation of land plots used by citizens in Ukraine. The researcher considers issues of legislative changes and proposals for improving legislation in this area. However, the publication under consideration is dated 2014, so it does not consider changes made to the current legislation and current judicial practice.

The next group of publications consists of studies devoted to legal procedures in relation to land. Important scientific conclusions in this area were made by O. Bondar (2018). The researcher examined the development of legal regulation of land ownership in Ukraine. The article examines the process of reforming property relations in Ukraine since 1991, in particular: the process of privatisation, the mechanism for acquiring ownership of real estate, registration of ownership rights and other rights to real estate, and legal regulation of the land cadastre. The legal regulation of ownership of agricultural land in certain EU countries is covered. Using the forecasting method, the researcher formulated recommendations for improving the legal regulation of land ownership in Ukraine.

A separate group includes scientific achievements of lawyers who casually touch on privatisation procedures. This includes the writings of D. Fedchyshyn and I. Ignatenko (2018), within which the specific features of acquiring ownership rights to land plots and rights to use land plots in Ukraine by foreigners are covered. Yu. Krasnova *et al.* (2020, 2022) consider the process of development of legal regulation of land ownership in Ukraine. The study analyses the main stages and areas of development of this regulation, considering the legislative changes and reforms that have taken place in recent years. The main focus is on legislative acts and mechanisms that affect the provision of land ownership rights, the management and disposal of land resources in the country. D. Sannikov (2017) analyses ways to adapt national land legislation to the requirements of the European Union. Yu. Skliar *et al.* (2021) attempt to improve the methodological approach to determining the value of agricultural land as an element of enterprise potential based on the use of fuzzy logic methods. N. Bielousova (2023) analyses the issues of regulatory regulation of the procedure for allotment of land with a change in the intended purpose for industrial needs. Theoretical and methodological issues of the procedure for drawing up land management projects, which provide for changing the purpose of a land plot on industrial land, are highlighted. N. Bondarchuk and K. Storozhuk (2019) indicate the need for further regulation of a wide range of powers related to the regulation of land relations between local self-government bodies and individuals and legal entities. A. Boyko (2018), in turn, considers the need for clear legal regulation and internal administrative control over the functioning of state authorities and their “discretionary power” in the field of land relations.

The development of legal regulation of land ownership in Ukraine and the specific features of land reform are also singled out in a separate group. I. Kostyashkin *et al.* (2020), N. Bielousova (2023) conduct a scientific analysis of the current state of land market reform in Ukraine and compares it with the experience of developing legal regulation of the land market in Europe. M. Malashevskyi *et al.* (2018; 2020) consider trends in changes in the land fund in recent years. The researcher, in particular, analysed a number of regulatory documents to highlight the main problems of modern land use and listed a number of problems in the field of land relations during the land reform period. R. Tykhenko (2022) examines the main problems related to the reform of land relations and land use in Ukraine. The study focuses on identifying and analysing complex issues that arise in the process of changing legislation and introducing new land management mechanisms. The author examines in detail the problems of land rights, insufficient transparency of land transactions, incompleteness and inefficiency of the system of land use and registration of land rights. H. Klimova (2019) analysed the history of land reform in Ukraine, identified changes in the structure of ownership and land use, and also considered relevant issues of legislative support for land reform, its principles and prerequisites.

However, the issue of applying the Decree of the Cabinet of Ministers of Ukraine 15-92 is not discussed in detail in these articles, and the content of this document is not analysed. In addition, questions about the possibility of its effective application in practice and ways to solve problematic issues that citizens face when applying the provisions of the law on land privatisation under the rules of the Decree remain unanswered.

Regulatory and legal regulation of privatisation procedures under the Decree of the Cabinet of Ministers of Ukraine No. 15-92 and the Civil Code of Ukraine in various versions

H. Hrabar (2014) identifies types of gratuitous privatisation and provides their characteristics in terms of availability and general implementation procedure. The researcher notes that after the introduction of a private form of land ownership in 1992, Decree No. 15-92 was the first act that regulated relations on the privatisation of land plots. Notably, this conclusion of the researcher is not entirely correct, since the Civil Code of Ukraine (1990) as amended on March 13, 1992, contained Article 17, which regulates the transfer of land plots to private ownership by councils of people's deputies.

The same code, in its subsequent version (dated 15 January 1993), contained changes resulting from the adoption of the Decree in question. These changes concerned the suspension of Articles 17 and 23 of the above-mentioned code in relation to land owners defined by Article 1 of Decree No. 15-92 (unlike the general requirements for registration of the right to land, privatisation based on the Decree did not provide for obtaining a State Act (documents certifying the right of ownership/use of land plots obtained in accordance with the Decree will be discussed later).

With the adoption of the new Civil Code of Ukraine (2001), any mention of the Decree was excluded from the text of the codified act. The provisions of Article 118 of the Civil Code of Ukraine concerning the free privatisation of land that was in the use of citizens, and paragraph 7 of Section XX "Transitional provisions", according to which citizens who previously received ownership of land plots in the amounts provided for by previously existing legislation, retain the rights to these plots, were subject to application.

Since October 14, 2008, in the new version of the Civil Code of Ukraine (2001), the text of the code includes paragraph 2 of Paragraph 1 of Section XX "Transitional provisions", which established that land plots transferred to private ownership based on the provisions of Decree No. 15-92 are the basis for the production and issuance of state acts on the ownership of a land plot to these citizens or their heirs according to technical documentation on the preparation of documents certifying the right to a land plot. The provisions of the Code in this part are still in force today.

Main provisions of Decree No. 15-92 and its legal nature

H. Hrabar (2014) identifies 1) a simplified model of privatisation (based on Article 118 of the Civil Code of Ukraine) and 2) the privatisation of land plots under the statute of limitations (based on Article 119 of the Civil Code of Ukraine). The author considers the privatisation of a land plot based on a Decree as a specific procedure for privatisation based on Article 118 of the Civil Code of Ukraine. However, this statement, according to the authors of this study, cannot be accepted without reservations.

The transfer of land by Decree existed simultaneously with the transfer of land to private ownership in accordance with Article 17 of the Civil Code of Ukraine (1990) as amended on March 13, 1992, as a separate specific procedure. Article 17 provided for several options for land privatisation, namely: 1) transfer of the land plot from the reserve lands (paragraph 3 of Article 17); 2) transfer of ownership of the land plot that was previously provided to a citizen (paragraph 5 of Article 17); 3) transfer to the ownership of citizens of land plots owned or used by other citizens or legal entities (paragraph 8 of Article 17); and 4) transfer of the land plot to collective ownership of collective agricultural enterprises, agricultural cooperatives, agricultural joint-stock companies, including those created based on State farms and other state-owned agricultural enterprises (Part 9 of Article 17).

The decision of the Supreme Court in case No. 746/259/19 (2021) contains a broad explanation of the need to distinguish between the rules of articles of the Civil Code of Ukraine (as amended on March 13, 1992) and Decree No. 15-92 on regulating the transfer of land plots that were used by citizens to private ownership.

The Supreme Court was convinced that the rule of Paragraph 3 of the said Decree established a special rule for acquiring ownership of land plots transferred, in particular, for personal subsidiary farming in accordance with the procedure provided for in this normative legal act. Land plots based on the Civil Code of Ukraine in the mentioned version were transferred to ownership based on a citizen's application and materials confirming its size (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.). Councils of people's deputies considered these applications and materials within one month and made appropriate decisions (similarly: Supreme Court decision in case No. 938/528/20 (2019). As to the Decree, the right of private ownership of citizens to the land plots transferred to them for the purposes provided for in Article 1 of the Decree was certified by the relevant Council of people's deputies, which was recorded in the land cadastral documents. As mentioned above, the requirement to obtain a state act to certify land ownership did not apply to privatisation by Decree (Resolution of the Supreme Court of Ukraine in case No. 6-31tss12, 2012). According to the conclusions of the Supreme Court, the moment of occurrence of ownership of a land plot under the rules of the Decree was associated with the introduction of a corresponding entry in land cadastral documents certified by the relevant Council of people's deputies (Resolution Supreme Court of Ukraine in case No. 156/370/16-ts, 2018; Resolution Supreme Court of Ukraine in case No. 635/2215/16-ts, 2018; Resolution Supreme Court of Ukraine in case No. 746/259/19, 2021). The above is also consistent with the court's position that "at the time of resolving the issue of transferring the land plot (by Decree – *I. B.*) ... the procedures and forms of the State Act were not approved, just as the regulatory act itself was not approved, which would regulate these legal relations..." (Resolution of the Grand Chamber of the Supreme Court in case 350/67/15-ts, 2019).

It is also worth mentioning the provision of the Law of Ukraine "On State Registration of Property Rights to Immovable Property and their Encumbrances" (2004), according to Part 4 of Article 3 of which rights to immovable property that arose before the entry into force of this law are recognised as valid in the absence of their state registration

provided for by this law, under the following conditions: if at the time of the emergence of rights and their encumbrances, legislation was in force that did not provide for mandatory registration of such rights. Clarification on this was also provided by the Supreme Court (Resolution of the Supreme Court of Ukraine in case No. 577/2977/15-ts, 2019).

Procedure for free privatisation of a land plot for the construction and maintenance of a residential building, outbuildings and structures based on the Civil Code of Ukraine

The procedure for privatising a land plot that was used by citizens without using the provisions of the Decree (that is, based on Paragraph 5 of Article 17 of the Civil Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine as amended until January 01, 2013) was as follows: 1) a citizen's application with attached materials confirming the size of the land plot (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.); 2) determining the boundaries of the land plot in the field; 3) approval of the boundaries of the land plot with the owners or users of adjacent land plots; 4) obtaining a state act on land in accordance with the established procedure; 5) state registration of ownership of the land plot (Resolution of the Grand Chamber of the Supreme Court of Ukraine in case 350/67/15-TS, 2019; Resolution of the Supreme Court of Ukraine in case No. 722/694/18, 2021; Resolution of the Supreme Court in case No. 338/1112/19, 2021). Since the beginning of 2013, the state acts on land ownership have not been conducted, state acts have not been issued. Ownership of land plots is registered in the Register of rights to immovable property. Instead of state acts, the new owner must register his ownership right in the State Register of rights and obtain a certificate of ownership of the land plot to confirm the emergence of the right to a land plot.

Procedure for free privatisation of a land plot based on Decree No. 15-92

By Decree No. 15-92, it was decided that the village, settlement, and city councils of people's deputies should ensure the transfer during 1993 to the citizens of Ukraine in private ownership of land plots provided to them for personal subsidiary farming, construction and maintenance of residential buildings and outbuildings (household plot), gardening, cottage and garage construction, within the limits of the norms established by the Civil Code of Ukraine.

In paragraph 7 of Section XX "Transitional provisions" of the Civil Code of Ukraine, it is stipulated that citizens and legal entities that have received ownership, for temporary use, in particular, on lease terms, land plots in the amounts provided for by previously existing legislation, retain the rights to these plots.

The current civil code of Ukraine (starting from its version on 14.10.2008), in Paragraph 2 of Clause 1 of Section X "Transitional provisions" defines, that the decision to transfer land plots to private ownership of citizens of Ukraine free of charge, taken by local self-government bodies in accordance with the Decree, is the basis for making and issuing state acts on the ownership of a land plot to these citizens or their heirs, according to the technical documentation for drawing up documents certifying the right to a land plot. Legal conclusions in this regard are made in Resolution No. 350/67/15-ts (2019).

Order of the State Committee of Ukraine on Land Resources No. 10 "On the Approval of the Procedure for the Transfer of Land Plots into Private Ownership to Citizens of Ukraine" (1993) (hereinafter referred to as Order No. 10) provides that land plots transferred to private ownership in accordance with the provisions of the Decree are transferred free of charge to private ownership based on materials confirming their size (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.), and citizens' statements (conclusions to this are made in the Resolution of the Supreme Court of Ukraine in case No. 746/259/19, 2021).

From the analysis of the position of the Supreme Court and the provisions of these regulatory documents, it can be concluded that the procedure for privatisation based on the Decree provided for: 1) the application of a citizen for the transfer of a land plot to private ownership during the Decree; 2) the adoption by the relevant council of people's deputies (or other authorised body) of a decision on the transfer of a land plot to private ownership in accordance with the Decree with strengthening on the documents based on which it is possible to establish the boundaries of such plots: land cadastral documentation, data from the Bureau of technical inventory (including plans/outlines of land plots, plans of development blocks, etc); 3) production by land management organisations of technical documentation on land management in kind (in the field) and establishment of land plot boundaries in kind; 4) coordination of land plot boundaries with adjacent landowners and land users; 5) making an appropriate entry in land cadastral documents certified by the relevant council of people's deputies (Resolution of the Supreme Court of Ukraine in case No. 6-31tss12, 2012; Resolution of the Supreme Court of Ukraine in case No. 746/259/19, 2021); 6) a note in the passport or document that replaces it that the person has registered ownership of the land plot based on a Decree.

In Resolutions of the Supreme Court of Ukraine in cases No. 746/259/19 (2021) and No. 6-31tss12 (2012), the Supreme Court noted that the lack of evidence that the land cadastral documents contained a record of ownership of the disputed land plot that had been transferred indicated that the person had not acquired ownership of the disputed land plot in accordance with the procedure established by law, but had a legally protected interest in protecting the right to use it and completing the procedure for acquiring its ownership. Similar conclusions are also provided in the Resolution of the Supreme Court of Ukraine in case No. 593/1095/19 (2021).

It is interesting to note that in some cases the courts recognised the existence of a person, not a legitimate interest in obtaining ownership of land, but the very right of ownership of a land plot transferred based on a Decree. Moreover, this happened even in the case when the person performed only part of the necessary actions from the above list, namely, received the decision of the authorised body to transfer ownership of a land plot to a person based on the Decree of the Cabinet of ministers of Ukraine No. 15-92 without further establishing borders and making an entry in land cadastral documents. For example, in Decision of the Higher Specialised Court of Ukraine on Consideration of Civil and Criminal Cases in case No. 6-10228sb11 (2011) contains a conclusion that, if there is a decision of the authorised body to transfer ownership of a land plot to a person based on Decree No. 15-92, the fact that there is no such record in the land

cadastral documents cannot indicate that the plaintiff did not have ownership of the land plot, since such a right was certified by the decision itself (Resolutions of the Supreme Court of Ukraine in cases No. 159/3742/17, 2020; Resolution № 671/86/17-ts, 2018).

This conclusion of the courts, in general, is consistent with the current legal position of the Supreme Court, expressed in Resolutions of the Supreme Court of Ukraine in cases No. 593/1095/19 (2021) and No. 746/259/19 (2021). In these decisions, the court concluded that the effect of Decree No. 15-92 extended "to citizens who already had land plots in use, that is, the condition for acquiring ownership of land plots under the rules of Decree No. 15-92 is that such plots should have been provided to such persons for use earlier, the boundaries of such a land plot have already been established in kind, and there is a certain document on the right to such a plot" (under this "certain" document, the courts partly understand their own decision of the authorised body to transfer the land plot to private ownership). Paragraph 2 of the Final and Transitional provisions of the law of Ukraine "On the State Land Cadastre" (2011) defines that land plots, the right of ownership (use) to which arose before 2004, are considered formed regardless of the assignment of a cadastral number to them.

Confirmation of property rights to the land plot, and confirmation that the land plot was formed from the moment of making the decision of the authorised body "On the transfer of land plots to private ownership", can also be confirmed by the fact that: a) the land plot was assigned a separate address; b) the person bears all expenses (including land tax) for the maintenance of the land plot; c) the right of ownership of a residential building and outbuildings on the land plot (if any) was disputed and not stopped by anyone; d) the allocation of land plots to ownership was conducted based on land and cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.

However, there is also the opposite situation: the courts refer to the norm of the Decree on the need to obtain a state act on the right of private ownership of land (after recording in land cadastral documents) and in this regard refuse to recognise the right of ownership of land (Resolutions of the Supreme Court of Ukraine in cases No. 635/7079/18, 2020; No. 635/2215/16-ts, 2020).

Conclusions

According to the conducted analysis, it is evident that the transfer of land plots to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Civil Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine are different procedures. Privatisation based on Decree No. 15-92 is a specific simplified form of land transfer to ownership. The legislation does not contain a clear regulation of the procedure for transferring land plots to private ownership, if privatisation was initiated based on the rules of Decree No. 15-92. In this regard, there are a substantial number of legal disputes that are resolved in court. The numerous practice of the Supreme Court allows correcting the situation, but it is not always consistent and legal conclusions are not systematised. Therewith, the general trend towards resolving such legal disputes is consistent and clear.

Based on the analysed conclusions of the Supreme Court, the authors of the study systematised the procedure for privatisation according to the rules of the Decree, delineated the procedures for privatisation according to the rules of the Decree and the Civil Code of Ukraine, identified documents certifying the right of ownership, and named ways to confirm the existence of property rights/legitimate interests to land plots, the right of ownership/use to which arose in connection with the entry into force of Decree No. 15-92.

The main originality of this study is the systematisation of the procedure for privatising land plots based on Decree No. 15-92 and distinguishing this procedure from privatisation in accordance with the Land Code of Ukraine. The legal positions of the Supreme Court were analysed and the necessary documents and methods of confirming ownership rights and legitimate interests in relation to land plots that were privatised in accordance with Decree No. 15-92 were determined. The study also pointed to problems related to the unclear regulation of the privatisation procedure under the Decree and the large number of legal disputes that are resolved in this area. This purpose of the study was to summarise and systematise relevant legal provisions to understand the process of land privatisation and increase legal clarity in this area.

As a prospect for further research, it is worth mentioning: 1) analysis of the procedure for transferring ownership of a land plot – both formed and not recognised as an object of ownership (unformed/non-privatised) in the order of inheritance; 2) determination of the specific features of registration of rights to a non-privatised land plot on which real estate is located, the ownership of which is not terminated; 3) determination of the boundaries of unformed land plots on which real estate is located based on state building codes; 4) differentiation of the grounds for acquiring ownership and use rights to land plots based on state building codes based on the rules of Decree No. 15-92.

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Conflict of interest

None.

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Анотація. Через відсутність чіткого регулювання процедури оформлення права власності на землю за різними підставами приватизації, Декрет Кабінету Міністрів України від 26 грудня 1992 року № 15-92 «Про приватизацію земельних ділянок» став одним з найбільш проблемних законодавчих актів в Україні. Саме тому виникла потреба розмежувати дві процедури приватизації земельних ділянок: за названим декретом та відповідно до Земельного кодексу. Мета дослідження – висвітлити відмінності в юридичних процедурах приватизації земельних ділянок, що передані у власність громадян на підставі Декрету № 15-92 та в порядку пункту 5 статті 17 Земельного Кодексу України 1990 року в редакції від 13 березня 1992 року, а пізніше – статті 118 Земельного Кодексу України. Пропонована розвідка – аналіз практики Верховного Суду щодо застосування Декрету № 15-92 та Земельного Кодексу України в різних редакціях з виокремленням загальної тенденції в судових рішеннях та описом окремих випадків, які траплялися в судовій практиці вищих інстанцій. У результаті дослідження встановлено, що процедури передачі земельних ділянок у власність громадян на підставі Декрету № 15-92 та Земельного кодексу України мають відмінності. Приватизація на підставі Декрету № 15-92 є специфічною спрощеною формою передання землі у власність. Зазначено, що законодавство не містить чіткої регламентації порядку передачі земельних ділянок у приватну власність, якщо приватизація була розпочата на основі правил Декрету № 15-92, тому існує значна кількість юридичних спорів, які вирішуються в судовому порядку. Обґрунтовано, що численна практика Верховного Суду з питань приватизації не завжди послідовна, а правові висновки не систематизовані; водночас загальна тенденція щодо вирішення подібного роду судових спорів – узгоджена та зрозуміла. На основі висновків Верховного Суду систематизовано порядок приватизації за правилами Декрету, відмежовано процедури приватизації за Декретом та Земельним Кодексом України, визначено документи, які посвідчують право власності та названо способи підтвердження наявності майнових прав / законних інтересів на земельні ділянки, право власності / право користування на які виникло у зв'язку з уведенням у дію Декрету № 15-92. Практичне значення одержаних результатів полягає в можливості використати їх для захисту прав громадян на земельні ділянки, а також житлові будинки та споруди, розміщені на таких ділянках, у судовому та адміністративному порядках

Ключові слова: приватизація; захист права власності / права користування на землю; правові позиції Верховного Суду; земельні відносини; Земельний кодекс

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Model of interaction between the government and business towards legalization of unorganized imports

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Abstract. Ukraine's economy quickly integrated into the system of shadow financial flows and used standard tools to manipulate export and import prices and financial instruments. In terms of cumulative outflows of shadow capital, Ukraine is among the top twenty countries. The research relevance is predefined by the main directions of legalization of economic processes, including in the segment of shadow imports, which involve the formation of optimal institutional strategies for the behaviour of social agents (government and business). The research aims to select the Government's strategy for legalizing unorganized imports, which will allow the establishment of effective interaction between social agents on mutually beneficial terms. Research methods include mathematical analysis and game theory, used to build mathematical models, which reveal the intrinsic rationality of individual interactions, aggregating a set of social situations into several options and reducing the uncertainty of a set of behavioural options to a clear and stable pattern of regular interaction. The results showed that the level of employees' salaries is not crucial for overcoming shadow imports, but the level of integrity of customs officers is a more important indicator. The article shows that the mechanism of legalization of shadow operations (in particular, unorganized imports) should be based not only on economic but also on social parameters: the level of moral and professional principles of customs officers. The practical value of the research results is to improve the mechanisms of legalization of unorganized imports in Ukraine

Keywords: corruption; shadow economic activities; integrity; strategies of import legalization; tax morale

Introduction

There are two main components of the modern economy: observable and invisible (unobservable). The unobserved economy is a complex phenomenon and combines qualitatively diverse activities that are not fully or partially subject to the supervision of formal economic institutions. The composition of the unobserved economy is complex and includes shadow, informal and criminal economic activities. Although all types of unobserved economic activity are a problem for the economy and social sector of the country, the most acute task from the point of view of state regulation of the economy is to bring non-criminal economic activity out of the shadows.

The shadow economy forms a significant share of the world economy and has a similar organizational and economic mechanism of operation to that which operates in the formal sector. The main difference is that economic activity carried out in the "shadow" is legal, but it is for some economic or social reasons hidden from public authorities by businesses. In the modern world, there is no country, no economy without a shadow economy, including in the field of foreign goods trade, on a larger or smaller scale. The dynamic development of international relations stimulates and diversifies the shadow economy in the field of foreign goods trade, and it is gaining regional and global scale.

Foreign trade is one of the most illegal areas of the economy in Eastern Europe. Those economies are transit economies (Prytula, 2019). The shadow economy in the field of foreign goods trade is associated with the implementation of foreign economic activity operations that are carried out in violation of applicable law to minimize economic costs, by evading the payment of mandatory taxes and fees. The shadow

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economy in the field of foreign goods trade can be divided into that associated with the activities of exporters and importers.

The study will focus on unorganized imports – informal cross-border trade – the legal import of goods into the country for resale on the domestic market. The existence of this trade leads to the loss of customs duties and taxes and other taxes: income tax and value-added tax. Potential harm to society is caused not only by unorganized imports, in terms of loss of customs duties, but also by the misuse of public resources caused by bribery.

Detailed research on the causes and size of shadow financial flows by K. Brandt (2023), proved that illicit financial flows constitute a major development challenge for low-income countries.

Despite the literature evolving rapidly, several past literature reviews are worth mentioning. These include J.P. Dobel (2022), L. Andriani *et al.* (2022). They review studies that focus on integrity and corruption have been deeply connected throughout history both as concepts and ethical realities. C. Santiso (2022) analyses the rise of integrity-tech and integrity analytics in the anticorruption space, deployed by data-savvy integrity institutions. B. Kelmanson *et al.* (2019) examined the drivers, and reestimated the size of shadow economies in Europe, with a focus on the emerging economies, and recommended policies to increase formality.

The study aims to determine the nature of shadow processes (unorganized imports within cross-border trade), the factors that stimulate the shadowing of imports, and the development of proposals to ensure the strategies of import legalization in cross-border trade.

Literature review

The study analysed the shadow economy existence theories, in particular in transitional economies, which allowed further formulation proposals for reducing the level of the shadow economy within foreign goods trade. The main goal was to find a certain deviant behaviour of economic agents in theories of the existence of the shadow economy. As a result, the following was singled out: the theory of tax morality, institutional theory, and the theory of rational behaviour.

Following the theory of tax morality, F. Carre *et al.* (2020); C. Daude *et al.* (2013); B. Kastlunger *et al.* (2013), I. Lago-Peñas and S. Lago-Peñas (2010); D.M. Kemme *et al.* (2020) determined, that the level of shadowing of the economy depends primarily not on the economic indicators of the country's development, but on what moral norms prevail in it. Empirical studies conducted by proponents of this theory have shown that for the United States and European countries, there is a statically significant negative correlation at 0.5% between the levels of tax morale and shadow economy (-0.46), for countries with transitional economies – (-0.657) at the level of 0.1% (Alm & Torgler, 2006; Koumpias *et al.*, 2020; Santiso, 2022).

Institutional theory grounds the development of the informal sector of the economy on the imbalance between the moral norms of the functioning of formal and informal institutions in the country (North, 1990; Helmke & Levitsky, 2004; Andriani *et al.*, 2022). Proponents of this theory argue about the duality of the rules governing the behaviour of economic agents. On the one hand, the rules of economic activity in the country are determined by several regulations and provisions, the implementation of which is mandatory for all institutions, and on the other hand state institutions are often guided by informal rules of conduct that contradict the declared norms and undermine trust. In the case of asymmetry in favour of the latter, the country is developing an informal sector of the economy and shadow activities. Therefore, the shadow economy is becoming a hybrid model of governance between non-governmental institutions in border regulation, creating informal cross-border trade (Titeca & Flynn, 2014).

As far as the theory of rational behaviour of participants in the informal sector of the economy is concerned, G.S. Becker (1968) determines limited resources and the desire to maximize their profits as the motive for the actions of economic entities involved in the shadow economy. According to G. Becker, and C.C. Williams (2021), an increase in public funding for the activities of control bodies in the field of fighting the shadowing of the economy in the short term leads to a decrease in the number of economic offences, and in the long term to its growth.

M.L. Morris and M.D. Newman (1989), and N. Garoupa (2014) concluded that revenues in the shadow sectors are significantly reduced due to the cost of bribes to officials, fines and other economic sanctions imposed on them if the authorities detect the fact of operations in the shadows. With the costs of shadow operations exceeding those of players in the official market for goods and services, the informal sector of the economy begins to grow rapidly. On the other hand, deviant consumer behaviour in the informal sector of the economy has been studied by I.A. Horodnic *et al.* (2021). The authors consider the time spent searching for and purchasing illegal goods as the main expenses of the consumers. The authors proved that the demand in the shadow market of goods will exist as long as these costs do not exceed the difference between prices in the official and shadow markets.

The effect of the probability to be punished for an economic offence was studied by D. Tartani and J. Gibbs (1968). According to the analysis, scientists have come to the opposite conclusions: according to D. Tartani (1970), a reduction in the probability to be punished leads to a decrease in the level of shadowing, while J. Gibbs argued that only the realization of the inevitability of punishment leads to a decrease in the informal economy.

Following the Customs Reform declared in Ukraine (Communications Department of the Secretariat of the CMU, 2021), three areas have been identified according to which it is advisable to reform the Customs Service: reduction of corruption risks; creation of high-quality and transparent services; motivating employees to work honestly.

Materials and methods

If considering the model of interaction between the state and business as a factor that generates the shadow economy, there is a need to find such patterns and properties of this interaction model that would ensure its balance. In the domestic market of import of goods, there are firms which operate in the legal and shadow sectors and their transition to the legal or shadow sector is adjusted by the actions of the Government.

Businesses which operate in the legal and shadow sectors act rationally. It is believed that the shadow sector maximizes expected profits through the payment of bribes at customs. The legal sector chooses the optimal volume of output, based on the principle of maximum profit with increasing sales, and in the absence of such an alternative, legal business partially or completely transits to the shadow sector.

The government maximizes its benefits through increased tax revenues. Under these conditions there is an exogenous parameter, the value of which depends on (1) the economic parameter: the level of wages of customs officers and (2) the social parameter: the level of integrity of the customs officer. That is, there is a function that grows for each argument (Eq. 1):

$$\mu = f(k; g), \quad (1)$$

where: μ – exogenous parameter; k – the level of wages of customs officers; g – the level of integrity of the customs officer.

The intensity of growth of shadow activity in foreign trade is influenced by the exogenous parameter, which is formed by the business: the size of the bribe and the endogenous parameter: customs rules in the country, i.e., there is a function of the intensity of the fight against illegal imports (Eq. 2):

$$F = f(\mu z; k`), \quad (2)$$

where: μ – exogenous parameter; z – the size of the bribe; $k`$ – customs rules in the country.

This function does not decrease by the arguments in the exogenous parameter in (Eq. 1) and in customs rules in the country in (Eq. 2) and does not increase by the argument: the size of the bribe (Eq. 2). That is, an increase in the salaries of customs officers, the amount of funds allocated to fight illegal imports and an increase in the level of integrity of a customs officer lead to a decrease in the size of shadow activities, and an increase in bribes, on the contrary, leads to an increase in illegal imports.

It should be noted that a bribe will not be effective if it does not reach the level of exogenous parameters. There is also an indicator factor: the lower limit of the level of moral professional principles, which does not exceed the desire to receive a bribe. But if the size of the bribe for illegal imports reaches the appropriate level – this inequality changes the sign (Eq. 3):

$$F = f(\mu g, z; k`) = f(\mu, g, k`), z < z(g), \quad (3)$$

where: g – the lower limit of the level of moral professional principles.

The interests of business and the Government are opposite. The Government's interest is to maximize the taxes paid to the budget, which is equivalent to losing a business that has to pay all taxes. It is assumed that each subject can choose only one solution from a finite set of their actions. It should be noted that each subject knows which strategy the other has chosen, i.e., has complete information about the outcome of the opponent's choice.

That is a classic antagonistic game, which is represented by a game of two subjects with winning functions (Eq. 4):

$$u_1(s_1, s_2) = -u_2(s_1, s_2) = u(s_1, s_2), \quad (4)$$

where: u_n tax revenues.

Saddle point s^0_1, s^0_2 of the function $u(s_1, s_2)$, a point at which $u(s_1, s^0_2) \le u(s^0_1, s^0_2) \le u(s^0_1, s_2)$ for any $s_1 \epsilon S_1$, $s_2 \epsilon S_2$. Equivalent notation (Eq. 5):

$$\max_{(s1 \epsilon S1)} u(s_1, s^0_2) = u(s^0_1, s^0_2) = \min_{s2 \epsilon S2} u(s^0_1, s_2), \quad (5)$$

it becomes evident that the use of point saddles is justified as a solution to the antagonistic game.

Results and discussion

The current business environment demonstrates that a significant share of Ukrainian enterprises operates in the informal economy and are forced to adapt to several limitations. The level of uncertainty of the external conditions of an entity's activities in the shadow economy depends on the nature of the uncertain factors, i.e., there is an effect of expanding the set of uncertain factors with increasing the duration of the decision-making process. As an example, there is the situation typical for Ukraine, namely the relationship between the volume of goods legally transported across the customs border of the state, and the share of undeclared volume of goods. During 2019, the largest share was accounted for by operations on the import of goods into the customs territory of Ukraine in the amount of $50 thousand up to $150 thousand (Official website of the State Customs Service of Ukraine, n.d.).

As far as statistical research is concerned, it is advisable to focus on the main features of the general population with two random variables X and Y. Let us consider a sample set of finite volume, for example, n. Then, the elements of the sample are pairs of numbers (x, y), and the frequency of these values is denoted by n_{xy}. The sample results are conveniently recorded in the form of a table (Table 1), where the operations are given by an interval variation series with an interval of $20.000: 50-70, 70-90, 90-110, 110-130, and 130-150. To simplify the calculations, the interval series of values of the variable x_i will be replaced with a discrete variation series, choosing the middle of the intervals, and consider the share y_j of undeclared goods as a percentage of 0 % to 50%.

Table 1. The sample population of finite volume

x_i \ y_j	0	10	20	30	40	50	n_{xi}
50	4	4	3	2	3	4	20
60	5	4	2	3	2	4	20
80	4	5	5	4	5	2	25
100	3	4	5	6	4	3	25
120	2	2	3	2	3	3	15
140	2	1	2	3	3	4	15
n_{yj}	20	20	20	20	20	20	120

Therefore, the total sample size is $n = 120$.

Mathematical expectations are estimated by the formulas (Eq. 6, Eq. 7):

$$M[X]=\overline{X}=\frac{1}{n}\sum_{i=1}^{m} n_{xi}\, x_i=\frac{1}{120}(20\cdot 50+20\cdot 60+25\cdot \cdot 80+100\cdot 25+15\cdot 120+15\cdot 140)\approx 88{,}3, \quad (6)$$

$$M[Y]=\overline{Y}=\frac{1}{n}\sum_{j=1}^{k} n_{yj}\, y_j=25. \quad (7)$$

The centre of the statistical distribution of values of random variables is a point (83.3; 25). This means that the average value of goods transported over time is $ 88.3 thousand, where the share of undeclared goods is 25%.

Dispersions and standard deviations are calculated by the formulas (Eqs 8, 9, 10, 11):

$$D[X]=\frac{1}{n}\sum_{i=1}^{m} n_{xi}\, x_i^2-\overline{x}^2=\frac{1}{120}(20*50^2+20*60^2+25*80^2+ +25*100^2+15*120^2+15*140^2)-(88{,}3)^2\approx 895{,}13, \quad (8)$$

$$\sigma_{\overline{x}}=\sqrt{D[X]}\approx 29{,}9, \quad (9)$$

$$D[Y]=\frac{1}{n}\sum_{j=1}^{k} n_{yj}\, y_j^2-\overline{y}^2=\frac{1}{120}*20(10^2+20^2+30^2+40^2+50^2)-25^2=291{,}7, \quad (10)$$

$$\sigma_{\overline{y}}=\sqrt{D[Y]}=\sqrt{291{,}7}=17\%. \quad (11)$$

Therefore, the deviation of the undeclared volume can reach 17%.

The value of this indicator can be calculated in the same way based on the analysis of data differences between the partner countries. Differences (P_1; P_2) in foreign trade data are defined as the difference between the volume of exports of one partner country (EX_1; EX_2) and the volume of imports of the partner country (IMP_1; IMP_2), i.e. (Eq. 13, Eq. 14):

$$P_1 = EX_1 - IMP_2 \quad (12)$$

$$P_2 = EX_2 - IMP_1 \quad (13)$$

Table 2. The results of calculations of differences in the data of foreign trade of Ukraine and the EU and adjusted differences of data on imports of goods to Ukraine in 2019

Indicators	The value of indicators
Official import of Ukraine, thousand US dollars	25 012 187,7
Official exports from EU countries, thousand US dollars	28 741 374,5
Differences, thousand US dollars	3 729 186,8
Differences, %	13
Affreightment, %	5,1
Time lag	1
Adjusted differences, %	18,1

Source: Official website of the State Customs Service of Ukraine (n.d.)

The results of the data differences calculations of the foreign trade of Ukraine and the EU in 2019 confirm that the average level of differences concerning goods imported into Ukraine is 13%. The adjusted discrepancy indicates that during the study period, there was an underestimation of the customs value of imports of goods into Ukraine from the EU countries by 18%.

Besides, the quality of customs services and the level of corruption according to a survey by the European Business Association (Business worsened the assessment…, 2021) show that 43% of foreign trade entities are dissatisfied with the quality of services received at customs, and 78% of businesses report corruption in foreign trade operations.

Based on the calculations of illegal imports to Ukraine, it can be stated that the Government loses significant amounts of revenues from mandatory taxes and fees to the budget without ensuring the appropriate quality of customs services.

The transition to the shadow sector of the economy for the importer will depend on the strategy chosen by the state in the work of customs authorities. The government, in cooperation with importers, can formulate four strategies that will influence the rationality of the business decision: to work in the legal sector or shadow one:

- x_1 – to hire people with a high level of integrity as the customs officer and establish strict customs rules and high wages;
- x_2 – hire people with a high level of integrity as the customs officer and a low level of wages and establish loyal customs rules;
- x_3 – hire people with a low level of integrity of the customs officer and a high level of wages and establish loyal customs rules;
- x_4 – to hire people with a low level of integrity of the customs officer, low wages and establish strict customs rules.

If the value of the indicator is high, a value of (+1) will be assigned; if low then (+0)

It is determined that three functions of the Government form its strategy (Table 3).

Table 3. Matrix for forming the Government's strategy based on functions

	g	***k***	***k`***
x_1	**1**	**1**	**1**
x_2	**1**	0	0
x_3	0	**1**	0
x_4	0	0	**1**

Positions of the maximum in the columns of matrix A: (1,1), (2,1), (1,2), (3,2), (1,3), (4,3).

Importers can also choose one of four strategies for carrying out their activities:

- y_1 – to import goods and pay taxes and customs duties in full, i.e., to work in the legal sector of the economy;
- y_2 – not to carry out activities, and, accordingly, not to pay taxes, i.e., the costs of carrying out activities will be equal to 0;
- y_3 – carry out import operations and do not pay taxes and customs duties, but it is necessary to pay bribes to customs officers;
- y_4 – to carry out import operations and partially pay taxes and customs duties.

If the value of the indicator is high, a value of (+1) will be assigned; if it low then (+0)

A matrix is formed based on the selected alternatives. There are also three functions for importers, based on which the strategy is formed (Table 4):

Table 4. Matrix for forming the strategy of Importers based on functions

	c	***u***	***z***
y_1	**1**	0	0
y_2	0	0	0
y_3	0	**1**	**1**
y_4	0	**1**	0

Maxima positions in rows of matrix B: (1,1), (2,1), (2,2), (2,3), (3,2), (3,3), (4,2).

The optimal strategy for the Government is x_2 – to hire people with a high level of integrity of the customs officer and a low level of wages and to establish loyal customs rules.

If a strategy for the importer is picked, the best strategy is y_3 – to carry out import operations and not pay taxes and customs duties, but it is necessary to pay bribes to customs officers. The net strategy for the legalization of shadow imports in Ukraine for the Government is to choose one of the n rows of the payoff matrix x, and the pure business strategy is to choose one of the m columns of the same matrix.

The Government likely chooses its strategy to maximize its profits, and the business chooses its strategy to minimize the Government's profits (Table 5).

Table 5. The payment matrix for Government and business to choose the best strategy

	x_1	x_2	x_3	0_4	*min*
y_1	1	0	2	1	0
y_2	1	0	0	0	0
y_3	0	0	1	1	0
y_4	0	0	1	0	0
max	1	0	2	1	

Check whether the payment matrix has a saddle point. If so, the solution to the game in pure strategies will be recorded. The saddle point indicates the solution of a pair of alternatives $\{x_2; y_1\}$.

That is, the optimal strategy for the Government is x_2 – to hire people with a high integrity level of the customs officer and a low level of wages and to establish loyal customs rules. If such a strategy is chosen, the business will choose a strategy y_1 – to import goods and pay taxes and customs duties in full, i.e., to operate within the legal sector of the economy.

If the business operates under the strategy y_3 (carrying out import operations without paying taxes and customs duties but paying bribes to customs), then the Government has chosen strategies x_3 or x_4, since these strategies imply a low level of integrity of the customs officer and, therefore, and – the amount of revenues from mandatory taxes and fees to the budget will be lower than expected.

It is worth noting that the Strategy for the Legalization of Unorganized Imports is optimal which implies that the cost of customs officers' salaries should not be too high, and the level of customs officers' integrity should increase. This position is in line with the researchers of institutional theory, and the authors of this study sought to choose a strategy that would eliminate the imbalance between the moral norms of the functioning of formal and informal institutions in the country. The authors of this study also agree with the research of J.P. Dobel (2022) that integrity and corruption are linked.

The proposed Strategy for the legalization of unorganized imports, which balances the level of salaries and the level of integrity, can be achieved through IT transformation and the creation of a new IT system for the State Customs Service and the personnel reform of the State Customs Service. This strategy minimizes the impact of the human factor by digitizing all processes, including management. This is consistent with the study by C. Santiso (2022). The researcher emphasizes the integrity benefits of digital strategies used to prevent corruption.

Conclusions

The analysis of the Ukrainian customs authorities demonstrated a low level of integrity despite the loyal customs rules and the average level of wages. As a result, part of imports (approximately 17-18%) to Ukraine comes through the shadow schemes. This is facilitated by inefficient classification of goods, customs value, and lack of appropriate clearance monitoring.

The study established that the choice of the Strategy for legalization of unorganized imports was based on the areas identified by the Government: the level of wages, the level of integrity of employees and customs regulations. On the other hand, reasons that for businesses, it will always be

rational behaviour that will be based on minimizing their costs, including shadow activities. Business behaviour strategies were determined by tax payment indicators and duties on imports, profits from activities and the level of bribes paid. The analysis showed that businesses will operate in the legal sector if the level of integrity of customs officers is high, and if the level of integrity is low, there will always be illegal imports.

The results of the study are a continuation of research in the context of the theory of tax morality. The proposed model of interaction between business and the government in the direction of legalizing unorganized imports complements previous studies in that strategies have been formed that are based on the principle of rationality of social interactions: minimizing efforts and maximizing results, without analysing social actions with irrational content. This study also continues the research and confirms the results obtained by academics supporting the institutional theory. It is the moral norms of customs officers that become decisive in the implementation of the strategy of legalizing unorganized imports and bringing the behaviour of social agents into balance, reducing the level of unorganized imports.

Further research will be aimed at increasing the number of the exogenous parameter, which is formed by the business and the government of import strategy (in particular, it is important to study non-economic functions that influence the deviant tax behaviour of importers and customs officers), which will allow increasing the number of optimal strategies for cooperation between the government and business in the direction of legalizing unorganized imports.

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Conflict of interest

None.

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Модель взаємодії уряду й бізнесу щодо легалізації неорганізованого імпорту

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Анотація. Економіка України швидко інтегрувалася в систему тіньових фінансових потоків і використовувала стандартні інструменти маніпулювання експортно-імпортними цінами та фінансовими інструментами. За сукупним відтоком тіньового капіталу Україна входить до першої двадцятки країн. Актуальність дослідження полягає в тому, що основні напрями легалізації економічних процесів, зокрема в сегменті тіньового імпорту, передбачають формування оптимальних інституційних стратегій поведінки соціальних агентів (держави та бізнесу). Мета дослідження – обрати таку стратегію уряду щодо легалізації неорганізованого імпорту, яка дасть змогу налагодити ефективну взаємодію соціальних суб'єктів на взаємовигідних умовах. Методи дослідження: математичний аналіз і теорія ігор використовуються для побудови математичних моделей, які виявляють внутрішню раціональність індивідуальних взаємодій, об'єднуючи набір соціальних ситуацій у кілька варіантів і зводячи невизначеність набору варіантів поведінки до чіткої та стабільної моделі регулярної взаємодії. Результати дослідження виявили, що рівень заробітної плати працівників не має вирішального значення для подолання тіньового імпорту, а більш важливим показником є рівень доброчесності митників. У статті показано, що механізм легалізації тіньових операцій (зокрема, неорганізованого імпорту) має базуватися не лише на економічних, а й на соціальних параметрах: рівні моральних професійних засад митників. Практичне значення результатів дослідження полягає в удосконаленні механізмів легалізації неорганізованого імпорту в Україні

Ключові слова: корупція; тіньова економічна діяльність; доброчесність; стратегії легалізації імпорту; податкова мораль

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Settlement of scientific allowances for police officers seconded to higher education institutions

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Abstract. The discriminatory attitude towards a certain category of professionals, namely, the establishment of research and teaching staff with different amounts of research allowances, depending on the subordination and type of educational institution in Ukraine, determined the necessity to find a basis for a fair settlement of this situation. The research aims to substantiate the establishment of legally determined amounts of research allowances for police officers seconded to higher education institutions under the authority of the Ministry of Internal Affairs of Ukraine. The key research methods used are systemic and structural analysis, which was used to study and summarise the legal acts establishing the number of research allowances for academic staff who directly provide educational and research processes in higher education institutions of dual subordination. The violation of guarantees of the research and teaching staff rights of police officers seconded to higher education institutions, in particular, the establishment of a lower amount of research allowances than provided for by current legislation, is described in the article. The author argues that the content of remuneration should be determined primarily by the tasks and functions performed by an employee directly, rather than indirectly. It is proved that the amounts of additional payments for academic degrees and academic ranks established in the by-laws of the Ministry of Internal Affairs and the National Police apply to all police officers who have been awarded academic degrees and academic ranks and who serve in the police. For police officers seconded to higher education institutions with specific study conditions, such additional payments should be established considering the state minimum guarantees following the Laws of Ukraine's "On Higher Education" and "On Education". The author proves that concerning the regulation of remuneration of the latter, it is the legislative provisions that are special, and not the provisions of departmental by-laws, and therefore, departmental by-laws should not be applied in the event of competition of legal norms. The research materials provide a theoretical and practical basis for resolving disputes regarding the determination of the number of scientific allowances for police officers

Keywords: financial support; academic degree; academic title; specific conditions of study; research and teaching staff

Introduction

Police officers seconded to higher education institutions with specific learning conditions (hereinafter referred to as HEI) occupy a prominent place among academic staff in need of social protection due to the specifics of their functional responsibilities. The level of social protection of a research and teaching staff member (police officer) directly affects the level of their dedication in training future employees for the units and services of the National Police.

It was not possible to find and review any studies that would directly address the problematic issues of remuneration of police officers seconded to Ukrainian higher education institutions for research and education. This is attributed to the fact that the subject matter of the study is purely applied, and the problem itself is a consequence of non-compliance with the rule of law during the reform of central executive bodies under the authority of which the higher education institutions are located.

It is worth noting general theoretical studies, which, however, are only indirectly related to the study of the issues of material support of academic staff and police officers in the field of remuneration. At the foreign level, researchers devoted their studies to the issues of ensuring the activities of police officers: K. Vitkauskas (2013) – on the elements that directly affect the performance of a police officer in the European Union; M.K. Sparrow (2015) – on identifying the factors that significantly affect the proper performance of police officers' duties.

More studies are present in Ukraine. In particular, S. Bezpalko *et al.* (2022) summarised and analysed legislative initiatives to improve the financial support of police

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officers in Ukraine; M. Bidukova (2008) comprehensively studied the legal regulation of financial support for law enforcement officers; S. Bortnyk (2018a; 2018b) highlighted the problems of legal regulation of labour rights of police officers, including financial support; K. Buhaichuk (2019) examines the issues of legal regulation of improving the level of social protection of police officers; K. Dovbysh (2017) analyses the principles of legal regulation of remuneration of labour; M. Inshyn (2015) investigated the social security of police officers as a guarantee of professional activity; O. Kondratiuk (2022) studied the state guarantees for establishing allowances for police officers working in higher education institutions; T. Lozynska (2019) worked out the possibilities of implementing foreign practice on the protection of the rights of education workers in the legal system of Ukraine; D. Marusevych (2017) investigates the theoretical and legal foundations of administrative regulation of police salaries; T. Masalova (2021a, 2021b, 2021c) analyses the views of theorists and practitioners on the content of police salaries; O. Muzychuk (2007) identifies the essence of salaries of law enforcement officers; M. Sambor (2020; 2021) considers the possibility of additional payments to police salaries during quarantine; I. Sakhno (2021) analysed the remuneration of cadets of higher education institutions; I. Senchuk (2018) investigated the content of socio-economic guarantees of police professional activity; D. Shvets (2017) summarised and analysed the theoretical and legal aspects of the current state of legal regulation of guarantees of police professional activity.

However, many pending issues still need to be resolved due to the inconsistency of departmental regulations with legislative provisions on the regulation of remuneration of police officers seconded to higher education institutions for research and education, which makes this study relevant.

The research aims to determine the peculiarities of regulating the amount of research allowances for police officers seconded to higher education institutions.

The research objective is to identify a unified regulatory and legal approach to understanding the State guarantees regarding the mandatory payment of additional payments for academic degrees and academic rank (hereinafter - academic surcharges) in the legally established amounts to police officers appointed to the positions of research and teaching staff.

The sociological method was used to obtain primary information on existing violations in the area of financial support for police officers seconded to higher education institutions. The systemic and structural analysis method allowed to study a) Ukrainian legislation in the field of education, which must be observed by higher education institutions in Ukraine regardless of their departmental subordination; b) the legal and regulatory nature of additional payments for academic degrees and academic titles. The generalisation method was used when processing the regulations on the legal regulation of the activities of higher education institutions with specific learning conditions. Comparative legal, logical-normative, and logical-legal methods were used in the process of analysing the legal acts regulating the organisational and legal framework for establishing additional payments for academic degrees and academic ranks for police officers as research and teaching staff. The structural-functional analysis was used to study the legal framework for establishing additional payments for a police officer's academic degree and academic rank. The dogmatic method was used to reveal the content of establishing scientific surcharges in the legally determined amounts, regardless of whether the legal status of a police officer applies to a research and teaching staff member.

The problem of remuneration of police officers seconded to higher education institutions

There is a widespread thesis that staff remuneration is a key element of the structure of financial support for police units. Scholars believe that remuneration is remuneration paid for the performance of the job function stipulated by the employment contract and consists of basic payments (Muzychuk, 2007; Bidukova, 2008).

Financial support, salary, and remuneration in the scientific literature are considered synonymous (Marusevych, 2017). Police financial support is characterised by general and special (specific) features. One of the specific features of police remuneration is that it is regulated, among other things, by departmental regulations, the system of which is dominated by national ones.

The regulation of remuneration covers international legal acts with norms on remuneration, national acts on remuneration and the remuneration of police officers (of a departmental nature) (Masalova, 2021c).

Scholars argue that the regulation of police remuneration is conducted by state, local, and individual contractual methods (Marusevych, 2017). The first method means that public authorities of general competence regulate the issues of state norms and guarantees, in particular, the establishment of the minimum wage, etc. The second method establishes allowances, surcharges, bonuses, etc. that heads of police bodies and units have the right to set within the payroll fund. The last method defines the terms of remuneration with an individual employee.

After the reform of the police in 2015-2016, all academic staff with special police ranks who worked in higher education institutions switched to a new form of remuneration in terms of accrual and payment of research allowances (Order of the Ministry of Internal Affairs of Ukraine No. 260..., 2016). Compared to the number of research supplements established for academic staff without special titles working in the same HEIs, police officers are paid research supplements in a much smaller amount, and therefore the latter is in a discriminatory position, although the job descriptions (functional responsibilities) of both categories of academic staff do not differ, the salaries are the same, and at the same time, on the contrary, police officers serving in academic positions are involved in performing duties that are not typical for academic staff.

The property rights of a research and teaching employee (police officer) are directly dependent on the amount of salary (financial support), which affects the maintenance of the level of state social security of a citizen of Ukraine as defined by law. The content of remuneration should be determined by the tasks and functions performed by the employee (police officer, research and teaching staff, police officer seconded to an HEI to serve as a research and teaching staff, etc.).

The legal status of a research and teaching staff member with a special rank of police officer working in a higher education institution is currently unregulated and undefined. This so-called status is an imperfect hybrid of the models of a police officer and an academic staff member of an HEI, which has given rise to reasons and conditions for violating the rights of a police officer, in particular in terms of accrual

and payment of research allowances to the latter as an academic staff member of an HEI.

As for all police officers working in higher education institutions, there is a continuing offence, which should be understood as a misdemeanour of a long and continuous failure of the higher education institution to fulfil its statutory obligations to ensure the rights of academic staff in terms of payment of mandatory monthly allowances as part of the salary (financial support) of an academic staff member with a special rank of police officer), as provided for by the Law of Ukraine "On Higher Education" (2014).

Failure of an HEI to fulfil its obligations to ensure the rights of academic staff (police officers) is based on actions (inaction) of the HEI (specific officials), which results in continuous inaction of academic staff (police officers) and, accordingly, violation of the law concerning such police officers.

In the case under study, higher education institutions that are under the authority of the Ministry of Internal Affairs of Ukraine (hereinafter – MIA of Ukraine) are concerned. The head of such an institution will not assume this responsibility – to comply with the law in terms of ensuring the rights of academic staff – without the approval (permission, letter, order, etc.) of the MIA of Ukraine, for several subjective reasons.

This problem can be solved through state enforcement of the provisions of the Law of Ukraine "On Higher Education" (2014), Order of the Ministry of Internal Affairs of Ukraine "On Approval of the Regulations on Higher Educational Institutions of the Ministry of Internal Affairs" (2008).

Analysis of the regulation of scientific allowances for police officers

It is appropriate to try to detail the ongoing offence against a research and teaching staff member with a special rank of police officer.

Article 94 of the Law of Ukraine "On the National Police" (2015) sets out the criteria for determining the amount of police salary. In addition, the provisions of this article of the law specify that police officers seconded to other bodies (institutions) receive remuneration following the salary for the position to which they are appointed (to which they are seconded), as well as other types of remuneration specified by the Law.

Since approximately the beginning of 2016, contrary to the provisions of the Law of Ukraine "On Higher Education" (2014), such a person has been paid monthly bonuses for the degree of Candidate of Sciences in the amount of 5% of the salary, for the academic title of Associate Professor, instead of the statutory monthly bonuses of 15% and 25% of the salary, respectively (until 28. 09.2017, the amount of the monthly allowance for the academic title of associate professor was legally determined by 20% of the salary).

Paragraph 6 of Part 1 of Article 1 of the Law of Ukraine "On Higher Education" (2014) defines the concept of a higher education institution with specific conditions of study. Paragraph 4 of Article 23 of the Law of Ukraine "On Higher Education" (2014) authorises state bodies, which manage higher education institutions, to establish specific requirements for specific areas (spheres) of activity of such higher education institutions by their acts. It should be noted that this list is complete.

At the departmental level, in the context of the declared issues, following the provisions of Order of the Ministry of Internal Affairs of Ukraine no. 62 "On Approval of the Regulations on Higher Educational Institutions of the Ministry of Internal Affairs" (2008), it is determined that "higher educational institutions of the Ministry of Internal Affairs of Ukraine are state educational institutions that are subordinated to the MIA, founded and operate in accordance with the legislation of Ukraine..., in their activities they are guided by the Constitution of Ukraine, the Laws of Ukraine 'On Higher Education', 'On Education', 'On Police' (no longer in force), ... regulatory acts of the Ministry of Education and Science of Ukraine, the Ministry of Internal Affairs, as well as this Regulation".

The systematic analysis of the above legal provisions shows that the legislation provides for the establishment of higher education institutions with specific conditions of education and the peculiarity of their legal status is that the state bodies that manage such institutions may establish special requirements for certain areas of activity of such institutions, which do not include the determination of material support for research and teaching staff. At the same time, the main legal act regulating the activities of such institutions and providing guarantees to academic staff, in particular, regarding material and financial support, is the Law of Ukraine No. 1556-VII (2014).

The HEIs in the case study are under the authority of the Ministry of Internal Affairs of Ukraine. The HEIs are subject to the provisions of legislative acts on higher education, in particular, the Law of Ukraine No. 1556-VII (2014), which guarantees academic staff monthly research allowances in the amounts determined by law.

Under Article 59 of the Law, research and teaching staff of higher education institutions are entitled to additional payments for the academic degrees of Doctor of Philosophy and Doctor of Science in the amount of 15 and 25% of the salary, respectively, and for the academic titles of associate professor and senior researcher – 25% of the salary (before the amendments to part two of Article 59 were introduced by Law No. 2145-VIII of 05. 09.2017, which entered into force on 28.09.2017, the amount of additional payment for the academic title of associate professor was 20% of the salary), and professor – 33% of the salary. The HEI is authorised to set a higher amount of such additional payments at the expense of its revenues (but not less).

After the enactment on 06.09.2014 of the Law of Ukraine No. 1556-VII, the degree of Candidate of Sciences is equivalent to the degree of Doctor of Philosophy as the first academic degree.

Thus, these legislative provisions define the minimum amounts of additional payments (allowances) for a scientific degree, for the academic title of a research and teaching staff member, regardless of whether such an HEI has specific conditions of study or not.

The fact that a research and teaching staff member is also a police officer in the status of seconded to a state institution and is subject to the legal guarantees provided by the Law of Ukraine "On the National Police" (2015) does not negate the right to receive research allowances in the amounts established by Article 59 of the Law of Ukraine "On Higher Education" (2014).

To eliminate an ongoing offence against a police officer seconded to a state institution, academic staff (police officers) submit a report (memo) to the management of the higher education institution with a request to recalculate and pay a monthly allowance for the academic degree of PhD in the amount of 15% of the salary, a monthly allowance for the academic rank of associate professor in the

amount of 25% of the salary, concerning specific provisions of the current legislation.

Creation of a written response to such an appeal is either ignored by the HEI and administrative pressure is exerted on such an employee or provided on the last day after the expiry of the one month from the date of the appeal. These responses are usually standardised, without any creative understanding of the problem (offence) and a legal approach to its solution. It is a formal response without awareness and analysis of the legal norms referred to by the HEIs themselves in their response by the competent persons who prepare and sign the response. In addition, the vast majority of such officials have academic degrees and have been working in the relevant "highly specialised" departments for decades.

Higher education institutions see no reason to adjust the research allowances of academic staff with a special police rank to the amounts specified in Law of Ukraine No. 1556-VII (2014). According to the authorised representatives of higher education institutions, following the provisions of Resolution of the Cabinet of Ministers of Ukraine No. 910 "On Financial Support of Police Officers Sent to State Bodies, Institutions and Organisations" (2015) (as amended) (hereinafter – CMU Resolution No. 910), a police officer sent to state bodies, institutions and organisations is paid a salary and other types of financial support specified by law for police officers. Following the provisions of Resolution of the Cabinet of Ministers of Ukraine No. 988 "On Financial Support of Police Officers of the National Police" (2015) (hereinafter – CMU Resolution No. 988), Order of the Ministry of Internal Affairs of Ukraine No. 260 "On Approval of the Procedure and Conditions of Financial Support for Police Officers of the National Police and Applicants for Higher Education with Specific Training Conditions for Police Training" (2016) (hereinafter – Order of the Ministry of Internal Affairs No. 260), and the personal file materials, a research and teaching staff member with a special police officer rank is paid a supplement for a PhD degree in law in the amount of 5% of the salary and for an academic rank of associate professor in the amount of 5% of the salary.

Thus, the amount of these payments is justified by the competent representatives of higher education institutions by reference to the provisions of by-laws: Resolution of the Cabinet of Ministers of Ukraine No. 910 (2015), Resolution of the Cabinet of Ministers of Ukraine No. 988 (2015), Order of the Ministry of Internal Affairs No. 260 (2016).

The references of authorised representatives of higher education institutions to the above-mentioned by-laws are groundless in terms of determining the number of allowances for academic rank and academic degree for a police officer seconded to a higher education institution, appointed to a scientific and pedagogical position, who carries out scientific and pedagogical activities at the main place of employment.

The regulatory and legal justification of a unified approach to understanding the state guarantees regarding the mandatory establishment of research supplements in the legally defined amounts for police officers in higher education institutions

The HEI is under the authority of the Ministry of Internal Affairs of Ukraine and is not under the jurisdiction of the National Police. It is primarily subject to the provisions of the Law of Ukraine "On Higher Education" (2014), the Law of Ukraine "On Education" (2017), etc.

A research and teaching staff member with a special rank of a police officer who works at the main place of employment in an HEI is subject to the guarantees for research and teaching staff established by legislative acts, in particular, the Law of Ukraine "On Higher Education" (2014), the Law of Ukraine "On Education" (2017), but not by-laws (in terms of establishing and paying bonuses for academic degrees and academic ranks) referred to by HEIs.

The reference of the HEI to the provisions of the CMU Resolution No. 910 (2015) in terms of refusing to recalculate research allowances is also groundless. The provisions of the said resolution stipulate for seconded police officers that their financial support is paid based on the official salaries for the positions held by such police officers in the state institutions to which they are seconded, and other types of financial support determined by the legislation specifically for police officers.

The study does not deny the validity of this provision but only insists on the priority implementation of the requirements of the Law of Ukraine "On Higher Education" (2014) in terms of compliance with the State's guarantees to academic staff since the seconded police officer is appointed to an academic position and carries out academic activities in an HEI that is under the jurisdiction of the Ministry of Internal Affairs of Ukraine, and not the National Police.

The reference of the HEI to the provisions of the CMU Resolution No. 988 (2015) regarding the refusal to recalculate the scientific surcharges is also unjustified. The provisions of the said resolution authorise (according to clause 4) the heads of bodies, institutions, and establishments of the National Police to decide on the establishment of financial support for police officers.

The HEI is not under the authority of the National Police and is also under the jurisdiction of the Ministry of Internal Affairs of Ukraine.

A police officer, as a research and teaching staff member working at the main place of employment in an HEI, is covered by guarantees for research and teaching staff established by legislative acts, in particular the Laws of Ukraine "On Higher Education" (2014), "On Education" (2017), but not by bylaws (in terms of establishing and paying allowances for academic degrees, academic titles) referred to by the HEI.

The HEI's reference to the provisions of Order of the Ministry of Internal Affairs No. 260 (2016) regarding the refusal to recalculate research surcharges is also groundless. The said Order was adopted according to the provisions of CMU Resolution No. 910 (2015) and CMU Resolution No. 988 (2015).

According to part 18. Section I of the Order of the Ministry of Internal Affairs No. 260 (2016), police officers engaged in scientific and pedagogical, research or creative activities are paid following the current legislation.

This provision confirms the falsity of the position of the HEI, since the concept of "current legislation" includes, first of all, the Constitution of Ukraine, laws, and bylaws. The supreme legal force of the law obliges all bylaws to be adopted based on laws, which should not contradict the former by their content.

Therefore, in the case under study, the bylaws referred to by the HEI cannot narrow the scope of the legislative provisions, in particular, in terms of the state-guaranteed minimum amounts of additional payments for a scientific degree,

academic title of a research and teaching staff member. In addition, as has been mentioned many times, the HEI is subordinated to the Ministry of Internal Affairs of Ukraine and is not part of the National Police, and therefore it is subject primarily to the provisions of the laws on education, higher education, etc.

According to part two of Article 19 of the Constitution of Ukraine (1996), state bodies and their officials are obliged to act only on the basis, in the manner and within the limits of the powers provided for by the Constitution and laws of Ukraine.

When justifying the legal position on the specifics of the legal regulation of the payment of research allowances to police officers seconded to higher education institutions, it is also necessary to refer to international law and case law. The current international treaties ratified by the Verkhovna Rada of Ukraine are part of national legislation, and the case law of the European Court of Human Rights should be used as a source of law, including in the consideration of cases by the courts of Ukraine.

Therefore, Article 1, paragraph 1, of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter – the Convention) provides for the right of an individual or legal entity to peacefully enjoy his or her property. Only in the public interest and under legal conditions that comply with the principles of international law may a person be deprived of property. The state has the right to enact the necessary laws to control the use of property following the general interest or to ensure the payment of taxes or other fees or fines.

In the Judgment of the European Court of Human Rights in the Case of Sukhanov and Ilchenko v. Ukraine (2014), the Court emphasised "that in some cases 'legitimate expectations' of obtaining 'property' may be guaranteed by Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952). Nevertheless, in cases where the appeal concerns the property right, the person to whom it is guaranteed can be considered to have "legitimate expectations" if there are reasonable grounds for such expectations in national law, for example, if there is a national judicial precedent confirming such existence (see Judgment of the European Court of Human Rights in the Case of Kopecký v. Slovakia, 2004). The Court also noted "that the first and most important requirement of Article 1 of the Protocol is that any interference by public authorities with the right to peaceful enjoyment of one's possessions must be lawful and pursue a legitimate aim...". "Any interference must be proportionate to the aim pursued" (Judgment of the European Court..., 2004; Judgment of the European Court..., 2014).

According to the legal position of the Judgment of the High Court of Justice in the Case "Yvonne van Duyn v Home Office" (1974), the principle of legal certainty means that a person can rely on state obligations, even if the latter are contained in a legislative act that does not have a direct automatic effect. The aforementioned is related to another principle – the principle of state responsibility, which means that the state cannot violate its obligations to avoid responsibility. Therefore, if the state or any state body has approved a certain concept, they will be considered to act unlawfully if they deviate from the approved policy (behaviour) since the latter gave rise to reasonable expectations of legal entities or individuals regarding the state or public authority's compliance with such policy (behaviour).

Considering the aforementioned, it is possible to state that the legal position outlined in this study, as well as the legal basis for its settlement, is fully consistent with the general principles of international law.

Conclusions

The study considers the granting of different amounts of research allowances to academic staff, depending on the type of HEI, as a discriminatory attitude towards police officers who, having the appropriate academic degrees and titles and being seconded to HEIs, receive these allowances in smaller amounts than other educational staff.

The amounts of additional payments for academic degrees and academic ranks, as defined in clauses 5, and 6 of clause 5 of CMU Resolution No. 988, apply to all police officers working in the bodies and units of the National Police, while police officers seconded to higher education institutions should be subject to such payments, considering the minimum guarantees set out in Article 59 of the Law of Ukraine "On Higher Education".

Following the provisions of the aforementioned article of the law, a research and teaching staff member of an HEI, from the moment of taking up the position of a police officer, must be granted and paid monthly allowances for the degree of PhD in the amount of not less than 15% of the salary, and for the academic rank of associate professor in the amount of not less than 25% of the salary.

Regarding academic staff (police officers) serving in higher education institutions, it is the Law of Ukraine "On Higher Education" that is special, not the CMU Resolution No. 988 or the MIA Order No. 260, and, therefore, it is the legislative provisions (norms) that should be applied in the event of competition of legal norms in dispute resolution.

The research relevance is predefined by the fact that the study for the first time substantiates the mandatory extension of the provision on establishing statutory surcharges for academic degree and academic rank to police officers seconded to higher education institutions and appointed to academic positions. The author's contribution is that, as a result of systematisation and analysis of the current legal acts regulating the determination of the amounts of salary components of a research and teaching employee, it is proved that the State guarantees for establishing research supplements for research and teaching employees apply to police officers seconded to higher education institutions to ensure research and educational activities.

The research results provide a basis for settling disputes over the determination of the amount of research allowances for police officers seconded to higher education institutions. If state institutions conscientiously comply with the legislative requirements regarding state guarantees of the right of academic staff to comply with the procedure for establishing minimum amounts of research allowances, this will have the expected economic effect: an increase in the financial support of a seconded police officer by 30 per cent or more of the official salary set by the educational institution.

The research goals were achieved, and the aims were solved at the scientific and practical level. Given this, in the future, it remains to initiate with the leadership of the Ministry of Internal Affairs of Ukraine and the National Police to bring the departmental regulatory framework for the remuneration of police officers seconded to higher education institutions in line with legislative standards.

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Conflict of interest

None.

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Урегулювання розміру наукових доплат поліцейським, відрядженим у заклади вищої освіти

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Анотація. Дискримінаційне ставлення до окремої категорії професіоналів, а саме установлення науково-педагогічним працівникам різних за розміром наукових доплат, залежно від підпорядкування та виду закладу освіти в Україні, робить актуальним пошук підґрунтя для справедливого врегулювання цієї ситуації. Мета дослідження – обґрунтувати встановлення законодавчо визначених розмірів наукових доплат поліцейським, відрядженим для забезпечення освітнього процесу в заклади вищої освіти, які належать до сфери управління Міністерства внутрішніх справ України. Ключові методи наукової розвідки – системний та структурний аналіз, які дали змогу вивчити та узагальнити нормативно-правові акти, що встановлюють розмір наукових доплат науково-педагогічним працівникам, які безпосередньо забезпечують освітній та науковий процеси в закладах вищої освіти подвійного підпорядкування. У статті описано факт порушення гарантій прав науково-педагогічних працівників – поліцейських, які відряджені до закладів вищої освіти, зокрема встановлення меншого розміру наукових доплат, ніж це визначено чинним законодавством. Аргументовано позицію, що зміст грошового забезпечення повинен визначатися насамперед завданнями та функціями, які безпосередньо, а не опосередковано, виконує працівник. Доведено, що розміри доплат за науковий ступінь та за вчене звання, які встановлено в підзаконних актах Міністерства внутрішніх справ та Національної поліції, стосуються всіх поліцейських, яким присвоєно наукові ступені та вчені звання та які проходять службу у поліції. Поліцейським, відрядженим в заклади вищої освіти зі специфічними умовами навчання, такі доплати повинні встановлюватися з урахуванням державних мінімальних гарантій відповідно до Законів України «Про вищу освіту» та «Про освіту». Доказано, що стосовно врегулювання оплати праці останніх спеціальними є саме законодавчі положення, а не положення відомчих підзаконних актів, а отже, відомчі підзаконні акти не повинні застосовуватися при конкуренції правових норм. Матеріали наукової розвідки містять теоретичне та практичне підґрунтя для врегулювання спорів щодо визначення розмірів наукових доплат поліцейським

Ключові слова: грошове забезпечення; науковий ступінь; вчене звання; специфічні умови навчання; науково-педагогічний працівник

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Recognition of protected areas as legal entities as a way to stop protected area genocide

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Abstract. The definition of protected areas as legal entities is not defined at the legislative level, which significantly reduces the range of tools for protecting the corresponding territories from abuses and loopholes in the current legislation regarding the scope and methods of utilizing their natural potential. The study focuses on an analysis of the concept of the "legal personality" of protected areas in Ukraine, considering the requirements of current legislation to address the restoration and protection of the rights of the protected areas through judicial and extrajudicial procedures. For a comprehensive analysis of market dynamics with minimal variations between studies, a quantitative literature review, including meta-analysis, was conducted. The main directions of post-war market revival were identified and the feasibility of adapting these strategies to the Ukrainian economy was evaluated using a comparative method. The research asserts that granting legal personality status to protected areas would contribute to the protection of their rights, as it would enable their identification as independent participants in economic relations and provide them with the necessary mechanisms to protect their territories. The necessity of introducing the concept of "legal personality" at the legislative level for protected areas is substantiated, which would not only help identify the most violated rights of protected areas but also promote increased investments in this sector. The practical significance of the study is determined by recommendations regarding the legitimizing protected areas as legal entities and having a clear normative and legal basis would ensure the establishment of a transparent form of judicial and extrajudicial protection and restoration of violated rights of protected territories

Keywords: nature reserved territories; ecocide; postwar period; consequences of war; legitimization

Introduction

Military aggression against Ukraine resulted in significant environmental destruction, which has negative consequences for the health and well-being of people and the national economy. The ongoing bombing and shelling of cities caused a nature catastrophe that has affected both renewable and non-renewable natural resources in the country. Protected Areas (hereinafter – PAs) in Ukraine are recognized under national law as natural territories that are important not only for local communities but also for the entire country. The legal status of PAs as independent market subjects provides the opportunity to investigate their rights and responsibilities and to safeguard those rights.

In the field of Genocide Studies, the destruction of non-human beings and the natural environment is often addressed as a distinct but interconnected phenomenon known as "ecocide". Ecocide refers to the deliberate destruction of nonhuman nature. According to L. Eichler (2020), this concept is considered related to, yet separate from, the study of genocide.

R. Killean (2021) examines the evolution of so-called green approaches and considers the duty of international criminal law to respond to environmental destruction. The researcher considers whether the reparation framework adopted by the International Criminal Court offers an opportunity to meaningfully respond to environmental destruction and related human rights violations. He also states that "there are three main ways in which this might be done: (1) by introducing the concept of 'eco-sensitivity' to reparations designed to respond to other anthropocentric harms; (2) by awarding reparations that explicitly recognize the harm caused by environmental destruction when possible; and (3) by exploring the possibilities of an environmental approach towards 'transformative reparations'."

A. García Ruiz *et al.* (2022) claim that one of the most reliable key elements of the policy and practice of ending ecocide is the call to prioritize the adoption of technologies that are benign and renewable.

J.M. Herndon and M. Whiteside (2020) claim that an "international treaty is obliged to prohibit environmental warfare, but which specifically does not prohibit 'peaceful' environmental changes where 'environmental changes

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techniques' refers to any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space."

According to A. Dunlap (2021), "green" and conventional natural resource extraction is responsible for degrading human and biological diversity, thereby contributing to larger trends of socio-ecological destruction, extinction and the potential for human and nonhuman extermination. The author admits that land control was largely enforced through force, notably through "hard" coercive technologies executed by various state and extra-judicial elements, which was complemented by employing diplomatic and "soft" social technologies of pacification. Natural resource extraction is a significant contributor to the genocide-ecocide nexus, leading to discussion points.

A. Dunlap (2020) claims that "the idea of 'engineering extraction' is defined through counterinsurgency to acknowledge the extent of extractive violence, arguing that the term 'land grabbing' is indeed a more appropriate term than 'land deals'."

However, in the post-war era, the global market is undergoing significant changes due to psychological and social transformations within society. This includes the development of ethical and normative frameworks for inspection and supervision. Deviant behaviour, viewed as a social phenomenon, can have adverse effects not only on the individual but also on others and even the economic well-being of a region (Nikolaychuk, 2022).

The negative environmental impact caused by destructive activities also has adverse socioeconomic consequences, affecting the entire local community. While eco-business is typically associated with environmentally friendly practices, pollution in an area can hinder the establishment of any eco-safe business activities.

Through an analysis of the impact of the Russian invasion, a concerning phenomenon known as "PAsCide" emerges, shedding light on the deliberate targeting and destruction of protected areas (PAs). These areas play a vital role in preserving the integrity of the world's ecosystems.

Finally, the study suggests that in light of the war events leading to PAsCide, it is crucial to identify and safeguard the most critical rights of protected areas according to "legal identity". The environmental and social effects of PAsCide resulting from Russian aggression represent one of the most severe forms of war losses. The destruction of infrastructure indicators negatively impacted businesses, highlighting the need for a model or plan for the most valuable post-war tools for sustainable development.

Literature review

According to M. Crook *et al.* (2018), the definition of ecocide that applies to nature and the environment is not yet formally accepted within the body of international law.

T. Sandwith *et al.* (2001) claim that the PAs "safeguard biological and cultural diversity, help to improve the livelihoods of local communities, provide the homelands for many indigenous peoples, and bring countless benefits to society in general. As the world becomes more crowded, and as the pressures on natural resources increase, a recognition of the importance of such places to the future of humankind grows too".

A. Johnston *et al.* (2013) believe that one of the key questions is whether existing protected area networks will remain effective in a changing climate. The everyday shelling of the Ukrainian PAs might influence a changing climate, which will also produce negative consequences for Ukrainian Eco-market.

The legislative, and social state of PAs should be changed, and these changes will cause the economic and financial status. The more defined status will have PAs in the post-war Ukrainian legislative system, the high level of protection it might have, and the more attractive for investors it could be. Some counties have already considered the innovative legal state of nature objects, e.g., a New Zealand River revered by the Maori has been recognised by parliament as a "legal entity", in a move believed to be a first occurrence (New Zealand River…, 2017).

T. Boekhout van Solinge (2010) admit that exploitation of natural resources often goes hand in hand with armed conflicts and threats to wildlife and biodiversity and cannot be stopped unless the demand for natural resources can be dwindled, better regulated, and preferably be based on criteria of conservation and sustainability.

A. Brisman and N. South (2016) argue that one of the most important social issues is unequal access to natural resources, e.g., water. The scholars examined some relevant challenges and inequalities in the 21st century but also by recalling an instructive case from the history of colonialism and the human ability to turn a failure of nature into a disaster and to disregard democracy and justice to perpetuate social divisions.

Military aggression led to the amount of negative socio-lect-environmental consequences. R.A. Falk (1973) noticed that the war process is transforming militarily into making the country unfit for civilian habitation, the indiscriminateness of warfare carried out against people on the land itself.

According to T. Lindgren (2018), "ecocide is a structurally reoccurring phenomenon contributing to a serious disequilibrium in the Earth-system that buttress all planetary life. Ecocide is also a possible method of genocide if it damages or destroys vital socioecological and cultural relationships between humans and nature. Practices that inflict ecocide are hence often responsible for the destruction of ecological and social life systems that face adversities due to deteriorating ecological conditions".

The concept of genocide, coined by R. Lemkin (2008) in 1944, refers to the intentional destruction of a people, often based on ethnicity, nationality, race, or religion. However, the destruction of PAs carries profound harm not only to Ukraine but also to the entire European Union and its member states. Thus, it is necessary to differentiate the term "PAsCide" as a societal phenomenon during times of war, which has wide-ranging negative effects on the overall well-being of society.

The legislative procedure of estimating environmental damage should have a strong law backdrop. R. Mwanza (2018) acknowledges that the introduction of ecocide as the fifth crime in the Rome Statute of the International Criminal Court ("Rome Statute") aims to strengthen environmental protection through the application of international criminal law.

If adopted, this crime would be the first environmental crime under the Rome Statute. Its proponents view it as a powerful liability norm for dealing with the humanitarian, ecological and structural aspects of environmental damage that together threaten international peace and security.

R. White (2018) suggested that ecocentrism has an important influence on criminal justice, the core principles of

an ecocentric worldview are also being translated into concrete application.

U. Natarajan and K. Khoday (2014) suggested that through exploring the cultural milieu from which international environmental law emerged, an impoverished understanding of nature that is incapable of responding adequately to ecological crises is created.

M. Crook and D. Short (2021) noticed that the ecologically induced genocide suffered by such groups where environmental destruction results in conditions of life that fundamentally threaten a social group's cultural and/or physical existence. It is likely to see this form of genocide in Ukraine because the Russian unprovoked and unjustified invasion caused huge damage to the Ukrainian nation as well.

P. Higgins *et al.* (2013) argue that ecocide should be internationally recognized as a criminal offence. However, for a considerable period, there was no clear legal definition of ecocide. Despite lacking a precise legal definition, its fundamental meaning is widely understood. It encompasses various actions and practices that lead to devastating and destructive impacts on the ecological balance of specific geographic areas, resulting in harm to human life, animal life, and plant life (Fried, 1972).

According to V. Joksimovich (2000), throughout world history, numerous instances can be observed where the environment has suffered incidental damage as a result of warfare. The atomic bombings on Japan to end World War II serves as a prominent example.

For a long period protected areas were mono-functionally oriented, but it often fulfils a multitude of different tasks, not only by nature protection. Nowadays there is an expectation that PAs are likely to develop as a regional model of sustainable development (Mose & Weixlbaumer, 2007).

K. Gaston *et al.* (2008) point out that despite important legal frameworks for conservation planning, explicit quantitative goals for the representation and persistence of biodiversity are largely lacking. Assessment of the effectiveness of existing protected area systems is patchy and rather ill-developed, with a substantial gulf between the work being conducted in more academic and policy-oriented arenas.

L.N. Joppa *et al.* (2008) argue that there is a probability that global databases on protected areas are biased toward highly protected areas and ignore "fictional parks."

A. Kothari *et al.* (1995) find that ensuing conflicts, particularly when combined with industrial pressures on the different nature areas, have spurred many conservationists, social activists, and forest officials to reconsider on national and local levels the artificial divide between conservation and human rights.

S. Chowdhury *et al.* (2022) noticed that "insects dominate the biosphere and play a central role in ecosystem processes, but they are rapidly declining across the world. Protected areas (PAs) are designed to insulate biodiversity from human-induced threats, but they have been mainly designated for vertebrates and plants. Most research on insects in PAs focuses on the representation of species, and few studies assess threats to insects or the role that effective PA management can play".

The Russian military aggression caused a negative influence on the so-called insect infrastructure. PAs of Southern Regions of Ukraine, e.g., Mykolaiv, Kherson and Zaporizhzhia regions are based in the steppe zone, so the insects dominate these PAs, as a main part of the ecosystem. The destruction of insect infrastructure caused a long-term disaster not only from an ecological but also from an economic point of view. Since insects are the main part of raw materials – the production chain in Southern Ukraine is crippled. In addition to the negative environmental impact, the long-term negative side effect on eco-market should also be discussed.

J.N. Sanchirico *et al.* (2002) admit that the uncertainty stems from the fact that PAs and MPAs only treat the symptoms and not the fundamental causes of important problems, such as nature resources extraction or over-pollution of the region.

P.J. Balint (2006) points out that community-based conservation projects implemented in conjunction with protected area management often struggle to meet expectations. The researcher argues that outcomes will improve if project leaders pay closer attention to four development indicators – rights, capacity, governance, and revenue – that are often taken for granted or considered beyond the scope of local conservation projects.

M. Rao *et al.* (2002) believe that involving local communities in the management of protected areas and buffer zones; building the technical capacity of protected-area staff; implementing a comprehensive land-use plan focused on stabilizing land use; and amending existing wildlife laws to fulfil international treaty obligations.

S.A. Mukul *et al.* (2008) concluded that effective co-management, between PA managers and local user groups, which ensures clearly defined rights of various stakeholders on PAs and their active participation in decision-making processes, is necessary to secure the future of PAs.

P. West *et al.* (2006) noticed that protected areas are a form of what has been called globalization. The contemporary focus on the technological aspects of globalization (such as the rapid communication and information systems and networks, rapid transportation, and the movements of people, money, and ideas) has perhaps made globalization seem less relevant in a field where the aim appears to be the preservation of a natural state.

According to opinion, such researchers as H. Bingham *et al.* (2017) "privately protected areas (PPAs) are increasingly recognized as important conservation initiatives, as evidenced by recent developments that support recognizing and documenting them alongside protected areas under other governance types".

R. Abell *et al.* (2007) admit that declining trends in the integrity of freshwater systems demand exploration of all possible conservation solutions. Freshwater protected areas have received little attention, despite the prominence of protected areas as conservation interventions for terrestrial and more recently marine features. The scholars argue that a dialogue on freshwater protected areas has been neglected both because few models of good, protected area design exist, and because traditional notions of protected areas translate imperfectly to the freshwater realm.

Materials and methods

A comprehensive literature review was conducted to explore the relationship between the extent of the destruction of protected areas and its adverse environmental impact on society. Additionally, the potential negative effects on the national market and existing investment flows were examined, with consistent findings across multiple studies. The comparative method was used to develop key strategies for the post-war reconstruction of protected areas, transforming

them into socio-economic hubs that attract investment and are adaptable to the Ukrainian economy. To enhance the socio-economic potential of local communities, indicators of regional destruction will be utilized. These indicators will be integrated into the modelling process, envisioning protected areas as post-war environmental and socio-economic centres. By incorporating these indicators, effective methods for revitalizing the affected areas and maximizing their socio-economic benefits can be identified and implemented.

The South Region of Ukraine has 24 estuaries (Appendix A). All these estuaries are polluted due to everyday bombing and shelling by the Russian army. The Eco-oriented business couldn't be provided in such territory's conditions. Part of these estuaries do not belong in the protected areas, so the recovery process might be not urgent. Protected areas should be legislatively separated according to geographical conditions, which are relevant to the economic potential of PAs.

Post-war Ukraine is primarily PAs and other natural territories capable of self-recovery. PAs, or protected areas, can indeed be viewed as valuable assets. They represent areas of significant ecological importance, harbouring diverse plant and animal species, and providing vital ecosystem services.

PAs contribute to the conservation of biodiversity, help maintain ecological balance, and offer opportunities for research, education, and sustainable tourism. Recognizing and appreciating PAs as assets emphasizes their inherent value and the need to protect and manage them effectively for present and future generations: unique ecosystems capable of self-reproduction; access to clean natural resources; resourced-packed territories, the start-point of environmentally oriented business development in the local communities; tourist and recreational zones, which has not lost its properties due to destroyed infrastructure and logistics chains; a restoration hub of the ethnic and cultural traditions of the regions (local communities) (see Table 1).

Table 1. The main indicators of PAs economic efficiency

№	Indicator type	Reference indicators (in percentage terms)	Indicators attribution of negative and positive influence
1	Distance indicator from large cities, urban agglomerations (P1)	≤ 64%	Too high; classified as negative impact indicators (In)
2	The destruction degree of economic and civil infrastructure (P2)	≥ 31%	Normal, classified as indicators of positive influence (Ip)
3	The preservation state indicator of the PAs and other nature areas (P3)	≥ 75%	Normal or high, classified as indicators of positive influence (Ip)

Source: authors' development

The indicators will be calculated according to the geo-economic location and special characters of each PA and the level of destruction (e.g., region, territorial community).Considering the method of expert evaluations, the indicators cannot be comprehensive and have a division into mandatory and auxiliary, as a formal calculation criterion. It is necessary to consider the properties and measures of the pre-war period and the existing vectors of economic and ecological restoration (see Table 2).

One example is when measuring the distance between cities or urban areas with low to moderate degrees of destruction. However, it's important to also consider the level of destruction in each city or urban area. This is determined by a settlement located closer may have a higher level of destruction and lower economic and social indicators compared to a settlement located further away but with a lower degree of destruction.

Table 2. The destruction indicators, which hurt PAs

№	The name of the destruction indicator	Measure	Quantity/ volumes
1.	Population of the settlement	thousand people	
2.	The area of the settlement within the city strip, including:	hectares	
3.	Area of agricultural territories:	hectares	
4.	Total area of production areas	hectares	
5.	The total area of green spaces	hectares	
6.	Area of reserve territories	km	
7.	The length of the trunk network of the settlement, including: – city trunks: – district trunks:	km	
8.	The density of the main street network Indicator of the destruction of infrastructure:	km/km2	
9.	Civil Economic (production) Strategic Indicators of urbanization of the territory	km/km2	

Table 2, Continued

№	The name of the destruction indicator	Measure	Quantity/ volumes
10.	Indicator of the compactness of the urban area	km	
11.	Indicator of destruction (degradation) of the housing stock	km2	
12.	The cost of construction (based on the cost per 1 m^2 of housing stock	million hryvnias	
13	The migration rate is general working population The number of the population at the time of enumeration, considering internal migrants and migrants abroad	thousands of people	
14	Indicator of the destruction of logistic connections (destruction of road surfaces, logistics facilities such as stations, ports, airports, etc.)	km/km^2	
15	Level of access to social services: Basic services Other types of services	people /day	
16	Indicators of ecological and sanitary safety of the settlement (including radiation level, the level of chemical or biological contamination of groundwater, land, air, etc.)	reference indicators	
17	Indicators of economic activity on the territory of the settlement: The number of private entrepreneurs, in them legal entities: individual entrepreneurs environmentally-oriented entrepreneurs dynamics of work indicators (registered/ceased activity)	units	
18	Indicators of financial activity within the settlement, including: Banks Credit unions Factoring institutions Other financial institutions	units	
19	Indicators of innovation support and development The number of public-private partnership agreements in the field of innovation and business Number of start-ups	units	
20	Investment indicators International programs Business support organizations Attracting funds to provide grants (principle of re-granting) Indicators of business entry into new markets, launch of new products Indicators of promotion of the region	reference indicators	
21	Indicators of the development of scientific and educational activity The number of institutions of higher education Number of research institutions The number of professional (vocational and technical) education institutions	units	

Source: authors' development

The main economic and social indicators of a settlement (urban agglomeration) that form the coefficient "Degree of destruction of economic and civil infrastructure" (P2) include the following:

The distance from the settlement (urban agglomeration) according to the remoteness indicator is planned to be calculated as follows (see Eq. 1):

$$\text{Lser} = \sum \text{P2}\,\frac{\text{P2}_1+\text{P2}_2+\text{P2}_3+\text{P2}_4+\cdots\ldots\ldots\ldots+\text{P2}_{12}}{\text{L1+L2}}, \qquad (1)$$

where, Lser – the distance of the population from the settlement, taking into account the two most logistically and economically advantageous routes, considering the post-war situation, km; P2 – the degree of destruction (degradation) of the settlement, which will take into account a set of basic economic and social indicators; L1, L2 – the distance to the 1st and 2nd conditional lines, from which the administrative-territorial unit begins – the settlement (if the geo-infrastructural conditions are to be determined), km;

The Lser indicator, which is within 1.5-2.4 km, characterizes the territory of the city as compact.

Each indicator is calculated separately, considering the features of the location, economic-social and economic-ecological development of the settlement. That is, exceeding certain indicators may be critical for one region, but be acceptable for another region. It is a valid perspective that the level of development of a settlement can have an impact on the investment potential of a nearby nature reserve. In post-war times, the nature reserve in Ukraine can be seen as having a direct investment correlation with the surrounding settlement.

As the settlement experiences growth and development, it can potentially attract more investments towards the nature reserve, recognizing the economic opportunities and benefits that the protected area can offer. This symbiotic relationship between settlement development and the adjacent nature reserve underscores the potential for mutually beneficial outcomes in terms of economic and environmental sustainability (see Fig. 1).

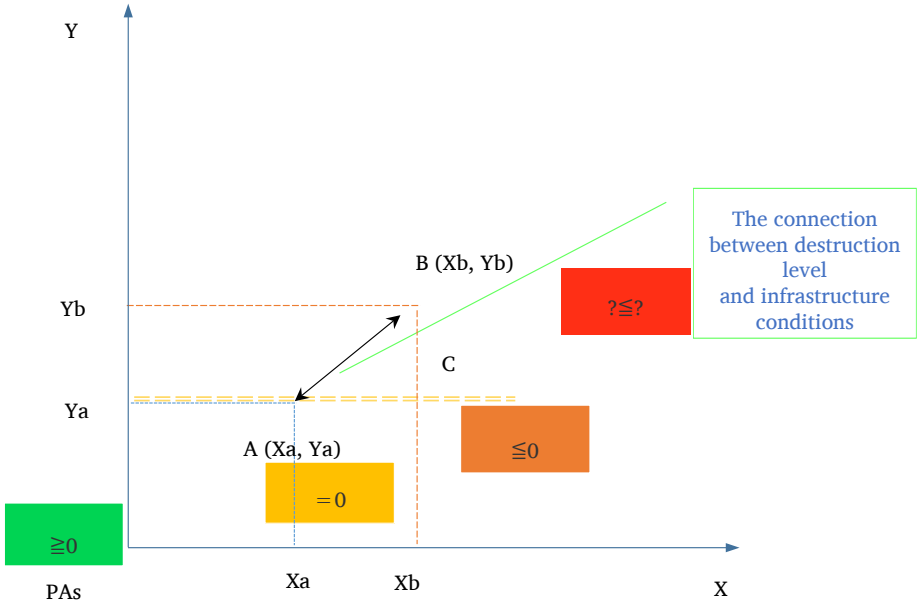

Figure 1. The Connection line between destruction level and infrastructure conditions
Note: A (Xa, Ya) – the destruction level of the local community (region); B (Xb, Yb) – the infrastructure environment in the local community (region); AB – indeed, there is a correlation between the extent of destruction caused by the Russian invasion and the infrastructure of the local community
Source: compiled by the author

To better understand this suspected connection, a thorough analysis is required. This analysis should examine how the destruction of infrastructure, such as residential buildings, roads, utilities, and public facilities, impacts the community's ability to recover and rebuild. It is crucial to assess the level of damage inflicted on the local infrastructure and its subsequent effects on the community's socioeconomic well-being, access to basic services, and overall resilience. By conducting a comprehensive analysis, we can gain insights into the interplay between destruction and infrastructure and identify strategies for post-war recovery and rebuilding efforts (see Eq. 2).

$$AB = \sqrt[2]{(Xb - Xa)^2} + \sqrt[2]{(Yb - Ya)^2}, \quad (2)$$

where AB – is the correlation between the extent of destruction and the infrastructure of the local community (The protected area (PA) is located in this local community);

$$AC = Xb - Xa, \quad (3)$$

$$BC = Yb - Ya, \quad (4)$$

$$AB = \sqrt{AC^2 + BC^2}, \quad (5)$$

$$PAs \geq 0. \quad (6)$$

Equation 5 means, that the natural resources of PAs and socioeconomic potential are not destroyed, and the territory is not under occupation (Fig. 2, Table 3).

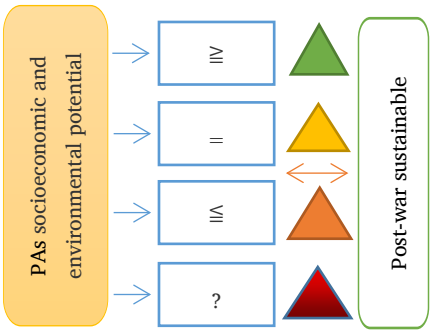

Figure 2. The colour scale of PAs of socioeconomic and environmental potential
Source: compiled by the author

Table 3. The scale of PAs of socioeconomic and environmental potential

Scale PAs	Level of environmental destruction	Level of socioeconomic potential
≧0	Natural resources are in satisfactory condition. Renewable resources can replenish their potential within the next 2-3 years	The socioeconomic potential of a nature reserve can meet the interests of the local community (region). The territory is not under occupation and was not under occupation

Table 3, Continued

Scale PAs	Level of environmental destruction	Level of socioeconomic potential
= 0	Natural resources have been negatively affected, and it will take at least 5 years and investment to restore the resources	The socioeconomic potential requires the development of a clear business plan and a system of measures for ecosystem restoration. The territory was under occupation (the whole PAs or part)
≦0	Natural resources require restoration and a 3–5-year investment and financial plan. The level of degradation of natural resources is very high. Non-renewable natural resources have been almost destroyed	The socioeconomic potential is unclear, a high level of infrastructure destruction. Potential forms of entrepreneurship require planning and sources of financial restoration. The territory was under occupation for a long time
?≦?	The level of degradation of natural resources is unknown or critically high	The socioeconomic potential is unknown or low, which is linked to a high level of infrastructure destruction. The territory is under occupation (the whole local community or PAs)

Source: authors' development

Results and discussion

According to the Laws of Ukraine, specifically the "On Environmental Protection" (1991) and "On the Nature Reserve Fund of Ukraine" (1992), protected areas (PAs) are not categorized based on the distinction between surface-based, marine, or freshwater areas. The legislative framework does not explicitly consider the specific issues that may arise when managing two similar PAs, one being surface-based and the other freshwater-based. This lack of differentiation in the legal system may present challenges when addressing the unique characteristics and management requirements of these distinct types of protected areas (see Fig. 3).

Figure 3. The pollution level of Tiligulskiy estuary, 2022 (Mykolaiv region)
Source: Photo by the author

As of the beginning of 2022, there were 8,633 territories and objects of the nature reserve fund in Ukraine - this is 6.8% of the country's area. The nature reserve fund includes 5 biosphere reserves, 19 nature reserves, and 53 national natural parks. Some protected areas are in a zone of humanitarian crisis; other protected areas are deprived of funding (e.g., the Mykolaiv Zoo) (Fig. 4) (Nature Reserve Fund of Ukraine, n.d.).

For example, the Mykolaiv region has a huge potential for economic, tourism and recreational development. In the post-war period, the Mykolaiv region can become a multitask socio-cultural-economic hub of the region (Fig. 5).

The establishment of a "legal personality" for protected areas in the Ukrainian legislative system can provide numerous benefits, not only in terms of ecology but also in safeguarding the socio-economic potential of these areas.

One of the values of having a "legal personality" in law is that such status automatically confers certain rights, although not all so-called legal persons have the same rights. For instance, estuaries can be considered freshwater PAs, which means another category of PAs according to the national legislative system.

Based on the information provided in Table 2, it can be inferred that the category "estuary" can be examined from socio-economic, normative, and eco-geographic perspectives. This classification aligns with the criteria outlined in the Law of Ukraine "On Geographical Names" (2005), which mandates the consideration of various factors when assigning geographical names. Therefore, considering the socio-economic, normative, and eco-geographic aspects is following the requirements outlined in the aforementioned law:

- geographical names are proper names of geographical objects used for their recognition and differentiation from other objects;
- geographical objects are integral and relatively stable formations of natural or anthropogenic origin on the Earth that exist or have existed in the past and are characterized by a certain location: orographic – continents, mountains,

ridges, rocks, gorges, glaciers, plains, lowlands, gullies, islands, spits, volcanoes, caves, etc.;

- hydrographic – oceans, seas, bays, straits, estuaries, lakes, swamps, reservoirs, rivers, canals, etc. Considering the category "estuary" from an eco-geographic point of view, it is expedient to distinguish the main characteristic feature that is typical for this group of water bodies, namely, the absence of a permanent connection with the sea. The main elements of the "estuary" category from a geographic approach include (Fig. 6).

Figure 4. Mykolaiv Zoo, 2022, May-June
Source: Telegram channel News Mykolaiv

Figure 5. The ecological potential of Mykolaiv Region: Arbuzynsky Canyon & Tiligulskiy Estuary, 2022
Source: Photo by the author

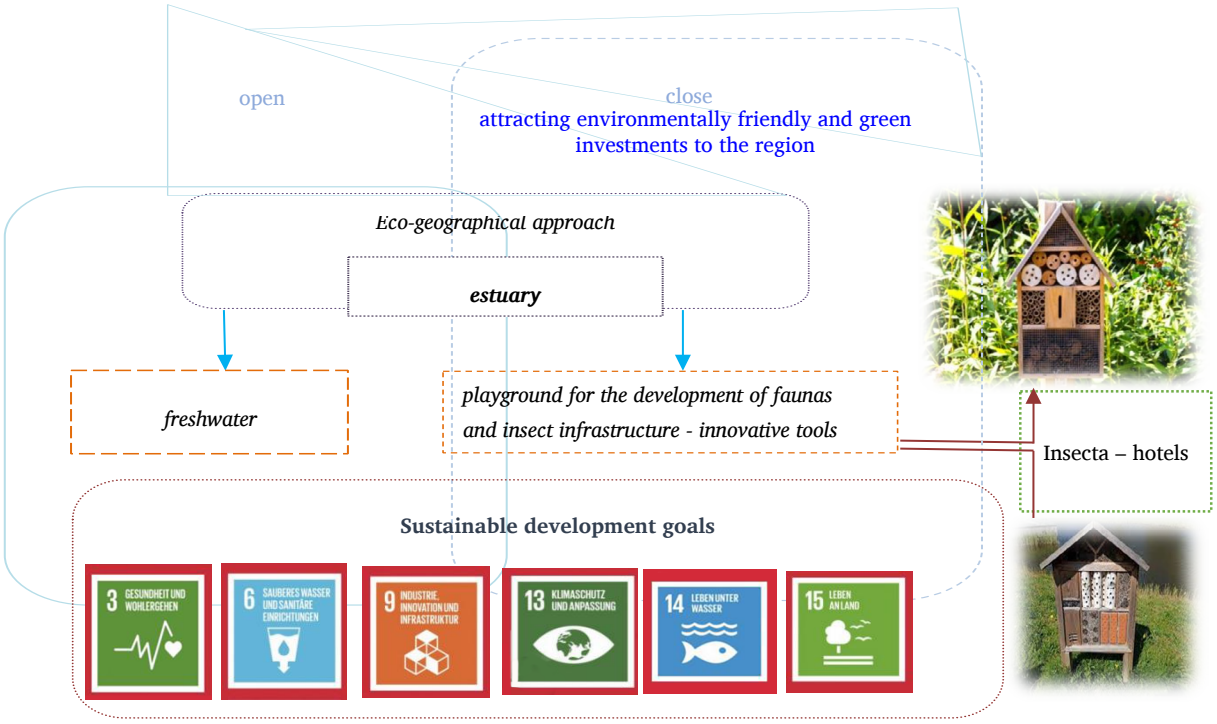

Figure 6. Ecological-geographical approach to the development of estuaries
Source: compiled by the author based on 17 Sustainable Development Goals (SDGs) (Resolution adopted by the General Assembly…, 2015)

- determination of morphological features of the Liman and diagnostics of the boundaries of the water body;
- determination of morphometric characteristics of water bodies;
- diagnostics of watercourse systems of water bodies;
- analysis of historical names of water bodies and their watercourses to create a unified system of geographical terms;
- definition of the "group of estuaries" as part of the conceptual-categorical apparatus of the industry (Fig. 7).

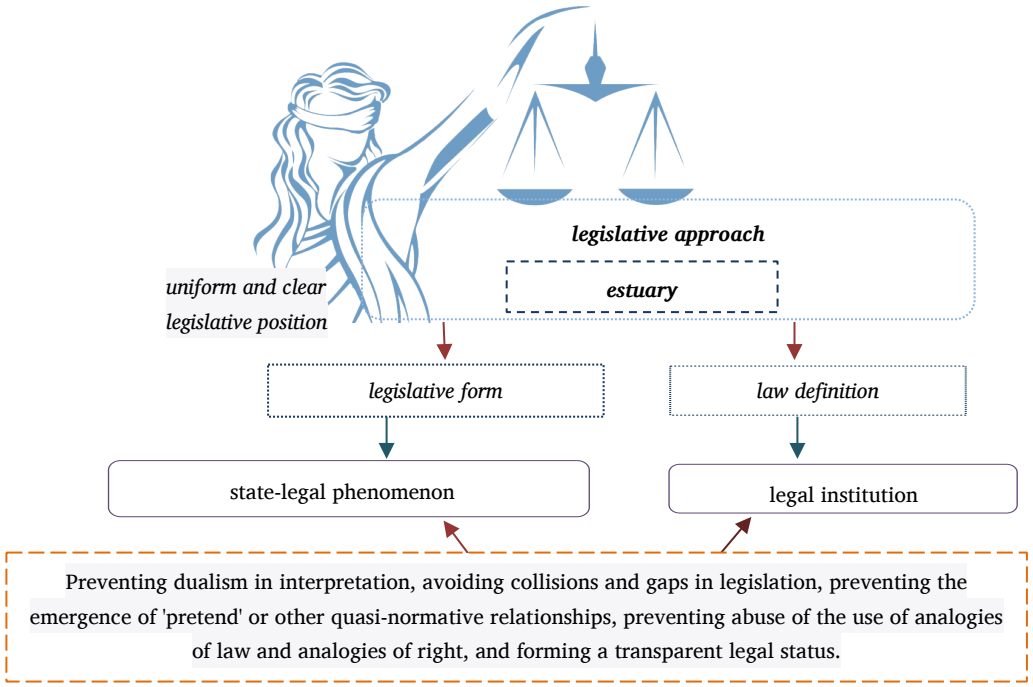

Figure 7. Legislative approach by estuaries essence
Source: authors' development

Analysing the category of "estuary" from the perspective of a normative approach, it is necessary to distinguish between estuary as a legal term and a definition. A legal term is a word or phrase used to designate a specific legal concept that reflects the specificity of state-legal phenomena (Legal term, n.d.). Therefore, estuary as a legal term should define the essence of a state-legal phenomenon, for example, estuaries as part of the macro-region "Azov-Black Sea". A legislative definition is defined as follows:

- a term requiring translation denotes a legal institution that is analogous to a legal institution in the legal system of the language in which the translation is made. At the same time, these institutions have the same normative regulation;
- a term requiring translation denotes an analogous legal institution that has different legal regulations;
- the corresponding legal institution denoted by a term requiring translation exists in one legal system, but no longer exists in another;
- the corresponding legal institution exists in one legal system and is not characteristic of another (Khvorostiankina, n.d.). An example of a legislative definition is the relationship between the terms "estuary" and "river mouth", which is used as an analogue in Western European and Latin American countries. The domestic legislator does not use the term "river mouth" in official documents (Official website of the Verkhovna Rada..., n.d.)

Essentially, the emphasis is placed on the significance of maintaining consistency and clarity in the interpretation and implementation of laws. It is crucial to avoid situations where conflicting or ambiguous legal frameworks exist, as they can lead to confusion and undermine the effectiveness of legal systems. Additionally, the misuse of legal tools, such as inappropriate analogies, should be prevented to uphold the integrity of the legal process. Transparency and understanding of legal status are essential for all parties involved to ensure fairness and promote a just legal environment.

From the socio-economic perspective, "estuaries" represent an economic category and a socio-economic phenomenon. An economic category is a generalized abstract (theoretical) expression of objectively existing economic relationships and their manifestations, aspects, and means of knowledge acquisition. They are the means of cognition of the objective economic reality, its result, and means (Artomova, 2009). An example of a socio-economic approach to estuaries is their consideration as a part of the water management system to meet the needs of the population and the national economy sectors for water resources, preservation and restoration of water resources, and implementation of an integrated water resource management system (Law of Ukraine No. 4836-VI..., 2012) (Fig. 8).

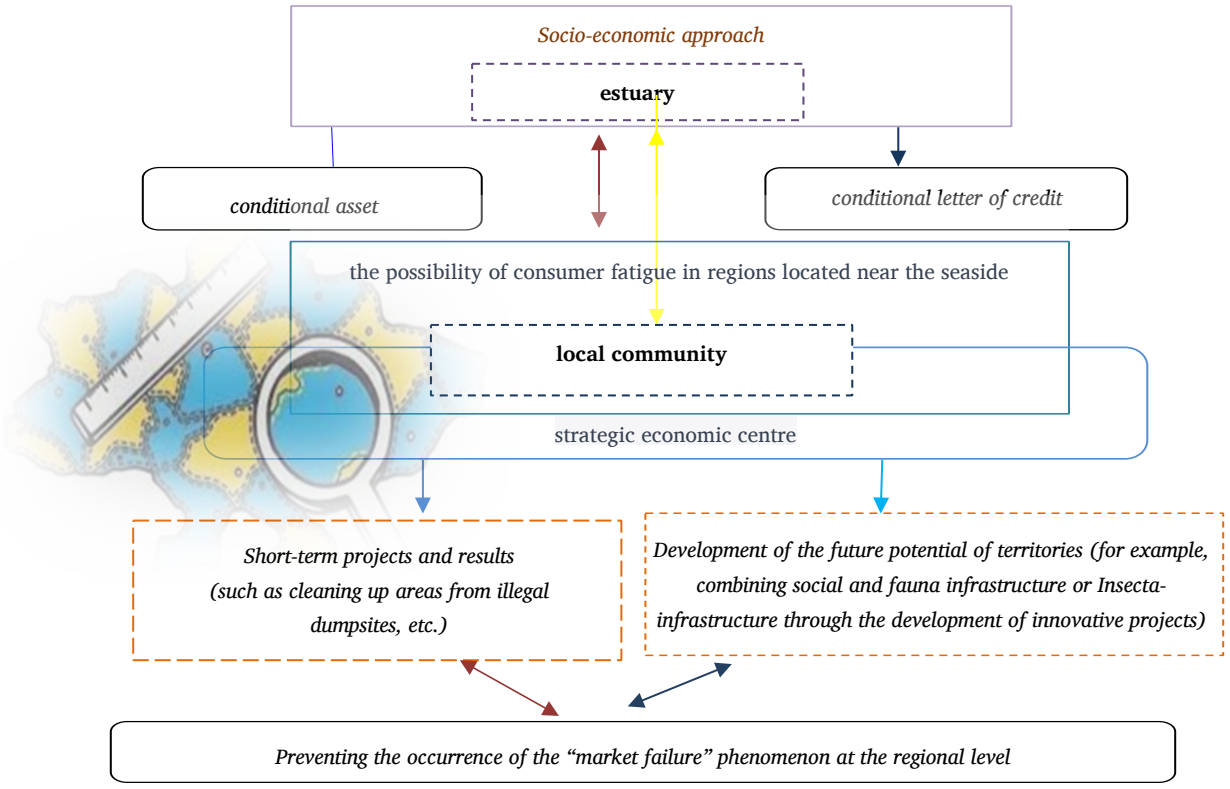

Figure 8. Socio-economic approach by estuaries essence

Source: compiled by the author

There is no statistical data available on the ecological, socio-economic, economic, and other indicators of the use of estuaries as natural resources and regional assets. This is primarily because many territorial communities do not see estuaries as centres of infrastructure and economic development, as well as conditional assets of the community. Among the potential consumers of services that can be provided using the resource potential of estuaries, the coastal zone and the area of passive recreation are identified.

In the Southern part of Ukraine there are a lot of freshwater objects (especially in Mykolaiv and Kherson Regions), which are part of existing PAs, but should they have the same protected state and economic potential. Possibly, it is necessary to distinguish so-called Freshwater protected areas (FPAs) as a separate category of PAs (Fig. 9).

Figure 9. Different kinds of PAs according to their qualities

Source: compiled by the author

Many scholars have researched the concept of granting legal personality to natural entities, such as rivers. C.J. Iorns Magallanes (2018) asserts that granting legal personality or similar rights to rivers aims to reinforce human responsibility and enhance protection against degradation. The intention is to recognize the intrinsic value and rights of these natural objects, acknowledging the need for responsible stewardship and conservation efforts. By attributing legal personality to rivers, there is an attempt to promote a more comprehensive and effective approach to environmental protection.

According to V.A.J. Kurki (2022), the Rights of Nature movement has achieved notable successes by employing legal personhood as a means of environmental protection. One prominent example is the Whanganui River in Aotearoa New Zealand, which was granted legal personhood in 2017. The case of the Whanganui River exemplifies the direct legal personhood model, where legal rights are purportedly bestowed directly upon the river itself. In contrast, some jurisdictions have established legal persons to oversee rivers without declaring the rivers as legal persons, following the indirect legal personhood model. This study presents legal-philosophical arguments to contest the attribution of direct legal personhood to rivers. It critically examines the rationale behind granting rivers legal personhood and challenges the notion that rivers can possess legal personhood in and of themselves.

M.J. Lynch *et al.* (2021) argue that a lot of studies examine the intersection of genocide-ecocide, which can be linked to production arguments and related approaches in environmental sociology. Specifically, these scholars suggest that "the ecocide-genocide nexus is useful for understanding how the destruction of people and ecosystems by states and corporations intersect throughout the history of capitalism, with evidence that many contemporary genocides are driven by ecocide and efforts to expand raw material resource withdrawals controlled by the capitalist treadmill of production".

J. Jiménez-López and M. Mulero-Pázmány (2019) suggested, that only innovative, but unusual technologies might be a way for PAs development, e.g., "park managers call for cost-effective and innovative solutions to handle a wide variety of environmental problems that threaten biodiversity in protected areas. Recently, drones have been called upon to revolutionize conservation and hold great potential to evolve and raise better-informed decisions to assist management".

M. Ito and M. Montini (2018) put forth the argument that the concept of rights to Nature holds little meaning unless Nature itself is recognized as having a right to its existence. They contend that the rights to Nature and the rights of Nature are inherently interconnected. They highlight a fundamental flaw in the current legal framework, which treats living beings such as ecosystems and other species as mere property while granting legal personality and rights to entities in the form of corporations. To address the environmental crisis, they suggest acknowledging and addressing this flaw in the legal system. This would involve moving away from the perspective that treats Nature as property and towards a framework that recognizes the rights and intrinsic value of the natural world. By rectifying this flaw, there is potential for a more sustainable and harmonious relationship between humans and the environment.

If nature and its entities were recognized as legal subjects rather than legal objects, it could profoundly influence the way humans interact with and perceive them. Objects in human everyday lives that could be granted legal subjectivity include rivers, forests, and even animal species. Endowing these elements of nature with legal rights would empower them to have a voice and agency in their ecological well-being and biodiversity. By granting legal subjectivity to nature, these entities would have the right to protect and defend themselves against environmental degradation. They could be represented in a court of law, allowing for legal actions to be taken on their behalf. This shift in legal perspective would contribute to the paradigm of preserving and protecting biodiversity for the benefit of present and future generations. Recognizing the legal subjectivity of nature would signal a deeper understanding and respect for the interconnectedness and intrinsic value of the natural world. It would encourage a more responsible and sustainable approach to human interaction with the environment, fostering a harmonious coexistence between humans and nature (Beebeejaun, 2021).

This study indicates the need to reconsider the legal system and the status of protected areas in the post-war period. Recognizing PAs as valuable resources and leveraging

their potential can significantly contribute to the economic development of regions in Ukraine. By reevaluating and updating the legal framework governing PAs, it becomes possible to unlock their economic potential and capitalize on the benefits they offer. Protected areas can serve as catalysts for economic growth, attracting investment, and generating employment opportunities. They provide opportunities for ecotourism, sustainable resource management, and the development of nature-based industries. By ensuring that the legal system supports and enables the sustainable use of PAs, Ukraine can harness their economic value and foster regional development. Changing the law system and enhancing the status of PAs in the post-war period can provide a solid foundation for sustainable economic growth, while simultaneously preserving the natural environment and its ecological functions. It requires a comprehensive approach that considers the socio-economic, environmental, and legal aspects to create a conducive environment for the economic development of PAs in Ukraine.

Conclusions

The research proposes the introduction of a "legal personality" status for protected areas within the Ukrainian legislative system, highlighting the numerous advantages this approach can offer. Granting legal personality to protected areas not only provides ecological benefits but also protects their inherent socio-economic potential.

By endowing protected areas with legal personality, they are granted specific rights that can vary depending on the entity. For instance, estuaries may have a distinct classification within the national legislative framework due to their freshwater PA designation. This research not only provides a theoretical approach but also suggests amendments to the existing law system to accommodate the changes in the market and society.

Adopting eco-oriented management approaches within protected areas allows for economic activities while promoting both economic and ecological development in the region. This approach facilitates the establishment of sustainable investment flows and helps maintain a balance between state authorities, local communities, and private sector representatives.

Numerous studies support the notion that granting legal personality to PAs simplifies the procedure of defending their rights. Treating PAs as independent subjects with their rights enables the identification and protection of the full range of their rights. The necessary changes to the legislative system in Ukraine should align with market needs, ensuring the acceptance of legal personality has both long-term perspectives for the Ukrainian and international markets.

Indeed, further research should focus on analysing the advantages and disadvantages of granting legal personality to different types of protected areas, such as freshwater PAs or traditional PAs. By examining the specific characteristics and needs of each type of PA, researchers can assess how the implementation of legal personality can impact their management, conservation, and socio-economic potential.

Additionally, developing a comprehensive framework for legislative amendments in this area is crucial. This framework should consider the specific requirements and challenges of different types of PAs, while also considering the broader legal, social, and economic context. It should address issues such as the recognition of rights, responsibilities, and decision-making processes for PAs with legal personality.

By conducting this research and developing a comprehensive framework, policymakers and stakeholders can make informed decisions about the implementation of legal personality for PAs. This can contribute to the effective management, protection, and sustainable development of protected areas, ultimately benefiting both the environment and society.

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Conflict of interest

None.

Appendix A. List of estuaries by relevant local communities of the North-Western Black Sea Region (2022)

№	The name of the estuary	Region	Local community	The length of the coastline estuary or lagoon area	Protected territories and objects located on adjacent territories or included in the composition
1	Tuzlovski estuaries:	Odesa Region	Tyzlivska local community	206 km^2	National Park "Tuzlovsky lymani"
1.2	Solone	Odesa Region	Tyzlivska local community	3,7 km	National Park "Tuzlovsky lymani"
1.3	Khadjider	Odesa Region	Tyzlivska local community	4,0 km	National Park "Tuzlovsky lymani"
1.4	Karachaus	Odesa Region	Tyzlivska local community	76 he	National Park "Tuzlovsky lymani"
1.5	Kyrydiol	Odesa Region	Tyzlivska local community	2,4 km	National Park "Tuzlovsky lymani"
1.6	Buduri	Odesa Region	Tyzlivska local community	0,6 km	National Park "Tuzlovsky lymani"
1.7	Martaza	Odesa Region	Tyzlivska local community	50 he	National Park "Tuzlovsky lymani"
1.8	Magala	Odesa Region	Tyzlivska local community	76 km	National Park "Tuzlovsky lymani"
1.9	Djantshei	Odesa Region	Tyzlivska local community	6,92 km^2	National Park "Tuzlovsky lymani"
1.10	Maliy Sasik	Odesa Region	Tyzlivska local community	2,36 km	National Park "Tuzlovsky lymani"

Appendix A, Continued

№	The name of the estuary	Region	Local community	The length of the coastline estuary or lagoon area	Protected territories and objects located on adjacent territories or included in the composition
1.11	Sasik	Odesa Region	Lymanska silska local community	35,0 km	National Park “Tuzlovsky lymani”
1.12	Burnas	Odesa Region	Tyzlivska local community	7,0 km	National Park “Tuzlovsky lymani”
1.13	Alibey	Odesa Region	Tyzlivska territorial community	15,0 km	National Park “Tuzlovsky lymani”
1.14	Shagani	Odesa Region	Lymanska local community	9,0 km	National Park “Tuzlovsky lymani”
5	Budakskiy (Shabolatskiy) estuary	Odesa Region	Lymanska local community	17,0 km	
6	Tiligulski estuary	Odesa Region, Mykolaiv Region	Koblivska local community Vizirska local community Berezivska local community Dobroslavska local community	61,2 km	Regional landscape park “Tiligulsky” Ornithological reserve of national significance “Kosa Strilka” Landscape reserve of local importance “Kairivskyi” The botanical reserve of local importance “Kalynivskyi” Landscape reserve of local importance “Novomykolaivskyi” Ornithological reserve of local importance “Tiligulsky Peresyp” Order “Kalynivskyi” Order “Salt Lake”
78	Kuyalnytsky estuary (Andriivskiy)	Odesa Region	Krasnosilska local community	28,0 km	National park Kuyalnytsky
9	Khadjibeivskiy estuary	Odesa Region	Local community Usativska Village Council	31,0 km	Novomykolaiv Landscape Reserve
10	Dniester estuary	Odesa Region	Shabivska united territorial community Marazliivska village united territorial community	41,0 km	“Nizhnyodnistrovsky NPP” Reserve tract “Dniester floodplains” Landscape reserve of local importance “Lymansky”
11	Dry (Klein-Liebenthal) estuary	Odesa Region	Tairov united the local community	14,0 km	
12	Small Ajalytskyi (Gryhorivskyi) estuary	Odesa Region	Lymansk rural local community	12,0 km	
13	Great Ajalytskyi (Daufinivskyi) estuary	Odesa Region	Lymansk rural local community	8,0 km	
14	Karabush estuary	Mykolaiv Region	Berezan local community	4,2 km	
15	Sosytsky estuary	Mykolaiv Region	Berezan local community	24,0 km	
16	Berezansky estuary	Mykolaiv Region	Berezan local community	73,0 km	
17	Baykus estuary	Mykolaiv Region	Ochakiv city community	6,0 km	
18	Buzky estuary	Mykolaiv Region	Ochakiv city community Halytsyniv Territorial Community of Vitovskyi region Mykolaiv City local community	110,0 km	Reserve “Olvia” National Park “Buzky Gard”
19	Dnipro-Buz estuary	Mykolaiv Region, Kherson Region	Ochakiv city community Belozersk community Bekhter community Holoprystan city community	71,0 km	National Park “Biloberezzhya Svyatoslav” Black Sea Biosphere Reserve National Park “Buzky Gard” Pervomaisky Island – 1.3 km
20	Karabush (Karabash)	Mykolaiv Region	Berezan united territorial community	1,0 km +2,0 km	

Appendix A, Continued

21	Dnipro estuary	Kherson Region	Stanislavska United local community Ochakiv city community	55,5 km
22	Kalancha estuary	Kherson Region	Kalanchatka local community	12,0 km
23	Sivash (Rotten Sea)	Kherson Region	Prisyvaska rural local community	35,0 km
24	Utlyutsky estuary	Kherson Region, Zaporizhiya Region	Kirillivska rural united local community Henicheska local community Yakymivska United local community	60 km

Source: State Statistics Service of Ukraine (2022)

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Визнання заповідних територій юридичними особами як інноваційний спосіб припинення геноциду заповідних територій

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Анотація. Поняття правоздатності об'єктів природно-заповідного фонду не визначено на законодавчому рівні, і це суттєво зменшує обсяг інструментів для захисту відповідних територій від зловживання прогалинами в чинному законодавстві щодо обсягів та методів використання їхнього природного потенціалу. Наукове дослідження зосереджено на вивченні поняття «правоздатність» об'єктів природно-заповідного фонду України з урахуванням вимог чинного законодавства з метою відновлення та захисту прав заповідних територій у судовому та позасудовому порядку. Для всебічного вивчення динаміки ринку з мінімальними варіаціями між дослідженнями проведено кількісний огляд літератури, зокрема метааналіз. За допомогою порівняльного методу визначено основні напрями відродження післявоєнного ринку та оцінено доцільність адаптації цих стратегій до української економіки. У дослідженні стверджується, що надання природоохоронним територіям статусу юридичної особи сприяло б захисту їхніх прав, оскільки це б дало змогу ідентифікувати їх як самостійних учасників господарських відносин і забезпечило б їм необхідні механізми для захисту своїх територій Обґрунтовано необхідність запровадження на законодавчому рівні поняття «юридична особа» для об'єктів природно-заповідного фонду, що не лише допоможе визначити права заповідних територій, які найбільше порушуються, але й сприятиме збільшенню інвестицій у цей сектор. Легітимізація заповідних територій як юридичних осіб, наявність чіткого нормативно-правового підґрунтя забезпечить формування прозорої форми судового та позасудового захисту й відновлення порушених прав заповідних територій, стане інструментом зниження надмірного використання їх природного потенціалу, латентного антропогенного навантаження від господарської діяльності. Практичне значення дослідження полягає в тому, що його рекомендації щодо легітимізації заповідних територій як юридичних осіб дають можливість як українським, так і міжнародним інвесторам залучитись до відповідного сектору національної економіки, орієнтованого на екологізацію усіх сфер виробництва, що призведе до підвищення прибутковості та диверсифікації ризиків

Ключові слова: природно-заповідні території; екоцид; післявоєнний період; наслідки війни; легітимізація

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Ruscism as a variant of the fascist form of state-legal regime

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Abstract. The relevance of the paper lies in the emergence of a new type of fascism in the Russian Federation – ruscism, which in the 21st century returned humanity to the understanding that the revival of the most dangerous forms of the state-legal regime is possible. The purpose of the study is to define ruscism, analyse its origin as a separate phenomenon and the development of constituent elements, and identify similar and distinctive features with classical fascism and its varieties. Methods of dialectics, analysis, synthesis, induction, deduction, generalisation, and analogy are used as methodological tools. Historical and comparative approaches allow investigating the evolution of the origin and development of ruscism, identifying its common and distinctive features with classical fascism and its varieties. There are clear signs of fascism and its varieties. The paper examines the convergence of fascism with the Russian world, Russian imperial chauvinism, and criminal practices of the communist regime of the Union of Soviet Socialist Republics. It is established that the result of the ruscist regime was the creation of a totalitarian repressive militaristic state in Russia, which unleashed aggressive wars against Georgia and Ukraine. The study highlights the systematic violations of international law, human rights, and fundamental freedoms inherent in the ruscist regime, and the implementation of the policy of genocide of the Ukrainian people. The definition of ruscism is formulated and the history of the development of both its individual constituent elements and it as an integral phenomenon is considered. The practical value of the study is to unify the use of the definition of ruscism both at the scientific and legislative levels to condemn and prohibit it as a criminal, misogynistic ideology and a form of state-legal regime

Keywords: Nazism; Russian world; war; genocide; Russian orthodoxy; terror

Introduction

The beginning of the 21st century was marked by the global dominance of the democratic state-legal regime, which led to the social development of humanity and was designed to establish a stable world order based on the generally accepted principles of international law.

The Russian Federation had imperial plans that a priori contradicted not only the basic principles of international law but also the established norms of modern civilisational development of mankind. Starting with the aggressive war against Georgia in 2008, the intervention of Russia in Syria, the initiation of a hybrid war against Ukraine in 2014, and in 2022, a full-scale conventional war with constant threats of using nuclear weapons – Russia actively pursues its geostrategic policy. Such a policy followed from the ruscist ideology, which became the basis for the state-legal regime of Russia and managed not only to revive the basic postulates of fascism and Nazism but also to enhance them in the 21st century.

It is vital to define the concept of ruscism (Makarchuk, 2022) or rashism (Snyder, 2022a), analyse the history of its origin as a separate phenomenon and its constituent elements, and identify similar and distinctive features with classical fascism and its varieties. What is most important is to condemn and prohibit ruscism as a criminal, misanthropic ideology and form of the state-legal regime.

Some aspects of ruscism were studied and partially disclosed by this concept. Snyder (2022a) considered the term ruscism, the similarity of its features with fascism, and noted the expediency of identifying Russian fascism as ruscism. V. Makarchuk (2022) covered the legal aspects of the development of ruscism and indicated the multi-nationalism and polyreligion of ruscism. R. Hula (2016) made an attempt to analyse such a basic component of ruscism as the Russian world from civilisational, historical-mental, geocultural, geopolitical, network-globalist, socio-communicative, state-instrumental, and religious-clerical perspectives. S. Plokhy (2017) revealed the historical aspects of the development of the Russian world as the basis of ruscism, disclosed the evolution of this phenomenon in various formations of the Moscow-Russian state. V. Horbulin (2017) systematically

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determined the role of ruscism in the context of the hybrid war unleashed by the Russian Federation against Ukraine long before 2014.

Despite the achievements of the above-mentioned authors, ruscism is a fairly new phenomenon that has not been sufficiently studied from the historical and legal side. Given the fact that ruscism fully acquired the characteristics of fascism after the beginning of Russia's full-scale war against Ukraine on February 24, 2022, it is obvious that there is a need for a comprehensive approach to ruscism as a form of state-legal regime, which will allow it to give a formal legal assessment.

The purpose of this study is to disclose the meaning of ruscism and follow its connection with such phenomena as Nazism and fascism.

The study is based on the dialectical method, which discloses ruscism as objectively and comprehensively as possible in a rational discussion with other researchers.

Using general scientific methods of analysis, synthesis, induction, deduction, generalisation, and analogy, it was possible to break down ruscism into its constituent parts for in-depth examination, integrate the elements of ruscism into a unified whole, draw preliminary and final conclusions, and identify the similarity of studied objects based on certain characteristics, enabling the justification of their similarity based on other attributes as well.

Historical and comparative approaches allow investigating the evolution of the origin and development of ruscism, identifying its common and distinctive features with classical fascism and its varieties. Using the formal legal method, attention is focused on the textual analysis of the law of Ukraine "On the use of the ideology of ruscism by the political regime of the Russian Federation, condemnation of the foundations and practices of ruscism as totalitarian and misanthropic" (2023), the Statement of The Verkhovna Rada of Ukraine "On the use of the ideology of ruscism by the political regime of the Russian Federation, condemnation of the foundations and practices of ruscism as totalitarian and misanthropic" (2023), Declaration 482 of the NATO Parliamentary Assembly "United and Decisive Support for Ukraine" (2022), which define and evaluate ruscism. Within the framework of the structural and functional method, the signs of ruscism are determined.

The classical concept of fascism

Fascism in the classical concept is considered a reactionary, right-wing extremist movement aimed at establishing an open terrorist dictatorship, brutal suppression of democratic rights and freedoms, and the opposition (Shemshuchenko *et al.*, 2004). The central ideology of fascism is the theory of a corporatist state and totalitarianism, with compromises with monarchy and the church, significant socialist influence, the absence of racism and anti-Semitism (Halusko, 2013).

In the 1930s-1940s in Germany, the most well-known variant of fascism was created – Nazism. It is defined as a totalitarian movement based on the ideas of German expansionism and revanchism, leadership cult (Führerprinzip), extremist nationalism, xenophobia, anti-Semitism, and the ideology of the "Aryan race" (Halusko, 2013). The characteristics of a fascist regime were inherent in Francoist Spain, the Balkan regime of the Ustaše, Portugal during the time of Salazar, and certain Latin American countries. Yet the advantages of a democratic rule of law regime proved to be so evident that fascist states eventually embarked on the path of building democracy.

U. Eco (1995) established a list of features of this ideology to determine whether a particular state and legal regime belong to fascism. The list includes: the cult of tradition, which involves rejecting modernism; the concept of "action for action's sake", without reflection and critical thinking; identifying dissenters from the official position of power as traitors; racism; appealing to the dissatisfied middle class; radical nationalism; creating the image of enemies; propagating war as a way of life; disdain for the weak; propagating heroism and heroic death in defence of fascism; machoism, cultivating contempt for women and intolerance and condemnation of non-traditional sexual habits; selective populism; restricting complex critical reasoning through newspeak – a reduced vocabulary and elementary syntax.

Development of ruscism as a variant of fascism

By tracing the development of the Russian state from the late 20th century to the present day, one can observe how, due to ideologues of Russian nationalism like Alexander Prokhanov or Alexander Dugin, foundational components of fascism were adopted and deliberately integrated into Russia's state and social structure under the concept of Russian world. Starting with the cult of traditions in Russia, the persecution of dissenting opinions, the superiority of Russians and all things Russian, the cultivation of the idea of a hostile West, the glorification of Soviet crimes and the imperial past, and culminating in the formation of a cult of the leader embodied in Putin. All of the above is accompanied by radical racism, which after a full-scale invasion of Ukraine turned into a blatant genocide of Ukrainians.

Consequently, all the criteria of fascism have received priority in their development in Russia, are implemented in state policy, and are actively popularised by ruscist propaganda. Thus, a single concept of ruscism was developed.

In the 21st century, fascism, modernised in Russia under the guise of the Russian world, is opposed to the classical Western liberal-democratic regime (Rudyi *et al.*, 2021). It is proposed as an alternative to the "imperfect" democratic state-legal regime.

Timothy Snyder, a professor at Yale University and a recognised authority on the history of Eastern Europe, was one of the first to draw attention to this. In an article for the New York Times (Snyder, 2022b), he noted that today's Russia meets most of the criteria used by researchers to define fascism. In Russia, the cult of a single leader – Vladimir Putin – has been developed. The cult of the dead around the Second World War has also been developed. The myth of the glorious imperial past that needs to be restored through a deadly war against Ukraine is propagated. Official use of symbols Z and V, rallies, the prevalence of manipulative propaganda, interpreting and promoting war as a purifying act of violence are observed. The war against Ukraine is not only seen as a return to traditional fascist battlegrounds but also a return to traditional fascist language and practices. T. Snyder (2022b) proposed the term ruscism to identify Russian fascism, suggesting to use ruscism in English, which does not change its meaning.

Russian fascists, in establishing ruscism, have given it a national hue by incorporating the so-called "bonding" of the Russian world. In the classical scheme of the Minister of

National Education of the Russian Empire, Sergei Uvarov, autocracy, Orthodoxy, and nationality are the foundations of the Russian world (Hula, 2016). Modern-day ruscists have slightly modified their ideology by adding Russian language and culture to Orthodoxy, presenting autocracy (i.e., dictatorship) as shared historical memory and shared views on social development (Melnyk, 2015). This bonding of the Russian world allowed the ruscists to rewrite their own history, in which, for example, the Second World War is absent, or one of the largest European nations – the Ukrainian nation – is denied, while the crimes of the communist Soviet totalitarian regime are portrayed as heroic deeds, etc. Thus, the glorification of the criminal imperial past, described in the "correct" ruscist history, sanctified by Russian Orthodoxy, makes Russian culture and language instruments that are sacred and superior to other languages and cultures.

The main goal of the Russian world is to unite all "Russians" into one large state, which is an exact copy of the concept preached by A. Hitler and A. Rosenberg in the 1920s-30s regarding the unification of the disconnected German nation. The "Russians" include three categories of the world's population: ethnic Russians, regardless of where they reside; Russian-speaking population, regardless of nationality; compatriots who have ever lived in the territory of the Russian Empire, the USSR, and other state entities, including their descendants. Therefore, the ideology of the Russian world essentially projects the idea that conscious Ukrainians are natural enemies of the "Russians" (Horbulin, 2017).

The ruscists, without any conscience, despite their pseudo-fight against fascism, use classic Russian fascist ideologists like Ivan Ilyin (whom Putin often cites in his speeches). According to Ilyin's views, the Russian nation, which is called for a constant war against spiritual threats, becomes a divine being (Snyder, 2018). Based on this statement, Russians (it is unclear who specifically belongs to them: "Russians" themselves or all ethnic groups and nationalities residing in Russia) are God's chosen people, and thus, any of their actions are justified and sanctified by divine providence. It is not surprising why the ministers of the Russian Orthodox Church bless the servicemen of the Russian army for an aggressive war against Ukraine. The government at the legislative level not only decriminalises war crimes committed by its servicemen in Ukraine (Russians will not be punished..., 2022) but also confers the honorary title "guards" on the 64th Brigade, which occupied Bucha in Kyiv Oblast in March 2022 and was involved in war crimes (Putin gave an honorary title…, 2022). As human rights activist O. Matviychuk noted, Russia uses war crimes as a method of waging war (Russia uses war crimes..., 2022). This is one of the most disgusting forms of ruscism in action, when the top political leadership of Russia encourages and supports crimes that have all the signs of genocide.

Another characteristic feature of ruscism is branding their opponents as fascists or Nazis without any reason. Calling others fascists while being a fascist is Putin's main practice. J. Stanley, an American philosopher, calls this "undermining propaganda", and T. Snyder – "schizofascism" (Snyder, 2022b). In their racist policy, ruscists have surpassed even the Nazis, who divided races into "creators", "carriers", and "parasites" but acknowledged their existence. Ruscists, in the person of their "Führer" Putin, have denied the very existence of Ukrainians (there are only "Little Russians"), and they interpret the Ukrainian state as artificially created and, accordingly, one that has no right to exist (Putin, 2021). Anyone who disagrees with this position is labelled as a nationalist, fascist, or Nazi, and they must be destroyed or reeducated. This was set as the main goal of the so-called special military operation, which was, in fact, a full-scale aggressive war against Ukraine with elements of genocide against the Ukrainian nation.

In his paper, Professor V. Makarchuk (2022) highlighted the specific features of Russian fascism, such as multi-nationalism and multi-religiosity, pseudo-multi-party system, ultra-chauvinism, the corrupt-mafia structure of the state, and dishonest and deceptive rhetoric of its leaders. It is hard to disagree with the arguments presented in the paper, as it is evident that the ideologists and creators of ruscism, given its apparent primitiveness, tried to fill the gaps with lies, propaganda, and total fear. These components can explain the multi-national and multi-religious nature of ruscism, as finding other arguments to justify the desire of over 200 nations and nationalities residing in present-day Russia, who practice not only aggressive Russian Orthodoxy but also peaceful 21st century religions such as Islam, Buddhism, Protestantism, Catholicism, etc., to fight for the Russian world is impossible (Rudyi, 2023).

The historical origins of ruscism as a cohesive phenomenon and its individual elements remain open questions. The term ruscism was first used in the paper "Ordinary ruscism" in 1990 as a critical response by M. Andreev to the militaristic views of Karim Rash. Historian A. Shubin (2006) even compared the "warlike conservatism of Rash" with Nazism. However, the term did not gain widespread use, probably due to the Yeltsin-era Russia's attempts to build something resembling democracy.

Modern understanding of ruscism began to take shape after the Russian-Georgian War in 2008 and the start of the Russian-Ukrainian War in 2014. Yet it can be hypothesised that the development of individual elements of ruscism occurred long before these events.

Despite Italian fascism being fully formed in the 1920s, certain elements of this harmful ideology were embedded in Russia as early as the 15th-16th centuries when Moscow started positioning itself as both the New Jerusalem and the New Rome, known as the Third Rome. The Roman Church was destroyed by heresy, while the Church of the Second Rome, which inherited the imperial and spiritual power after the fall of the First Rome, was captured by Muslims (Plokhy, 2017). According to the authors' intentions, the concept of "Moscow – the Third Rome" bestowed sanctity and greatness upon the Muscovite, and from 1721 onwards, the Russian state, as it preserved the only "correct" religion within this state. The Moscow monarchs received unlimited power within the country and the ability to conduct an aggressive foreign policy to expand the Empire. Due to autocracy and Orthodoxy, the Muscovite state was transformed from a principality into a kingdom and, from the 18th century, into the Russian Empire, greatly expanding its territories through aggressive wars and the subjugation of nations.

In the 20th century, after transforming the Russian Empire into the Soviet Union (under the guise of the USSR), an important component of modern ruscism was formed – the secret service, which, under various names like Cheka (All-Russian Extraordinary Commission for Combating Counter-Revolution and Sabotage), GPU (State Political Directorate), NKVD (People's Commissariat for Internal

Affairs), MGB (Ministry of State Security), and KGB (Committee for State Security), ensured the dictatorship of the Communist Party within the country and implemented the policy of external expansion of the communist ideology worldwide.

The Orthodox religion (it was first banned and then made an instrument of state policy) was replaced by the ideology of the so-called dictatorship of the proletariat, which, according to the Bolsheviks, gave legitimacy to their power. Neither the proletariat nor the peasantry ever had real power in the USSR; it was completely concentrated in the hands of the Communist Party and the secret services. Until 1991, these two organizations, under the guise of the utopian idea of building communism, pursued aggressive foreign and domestic policies, resulting in the deaths of millions of people, total terror, and one of the most horrific crimes of the 20th century – the Holodomor. These crimes did not receive a proper international legal assessment, and the trial of the Communist Party and the KGB did not take place. Moreover, representatives of the Soviet secret services not only avoided accountability but also preserved their criminal organisation under the name of the FSB (Federal Security Service of the Russian Federation).

Despite attempts to democratise Russia, starting from 1991, the descendants of the Soviet secret services began a process of seizing power, culminating in the election of Putin as the president of Russia on May 7, 2000. From this date onwards, Russia effectively started developing a fascist dictatorship of the Italian type, where a junta composed of officers from the secret services took control of top state, political, administrative, economic, and business positions (Felshtynskyi & Popov, 2022). By destroying the Russian opposition, independent media, and establishing a powerful propaganda machine, ideal conditions were created for the development of ruscism. In just 100 years, Russians managed to surpass Italian fascists, supplementing their ideology with elements of the Russian world and Russian imperial chauvinism, accompanied by aggressive wars, militarisation, repression, torture, and another attempt to commit genocide against the Ukrainian people.

Thus, it can be concluded that modern ruscism combines various elements developed during the formation of the Moscow-Russian state. The fact of the creation of the ideology of ruscism in Russia in the 21st century and its introduction as a form of state-legal regime is also obvious and undeniable.

An important problem is the inconsistent use of the term ruscism, often replaced by other definitions, which can lead to confusion in the identification of the Russian criminal regime. Yu. Felshtynskyi and M. Stanchev (2022) note that as of 2022, a completely fascist state and a fascist ideology called the Russian world have been established in Russia. The Russian world is an integral part of ruscism but in its essence a narrower phenomenon. Ukrainian legislators, in the Law of Ukraine "On the Prohibition of Propaganda of the Russian Nazi Totalitarian Regime, Armed Aggression of the Russian Federation as a Terrorist State Against Ukraine, Symbols of the Military Invasion of the Russian Nazi Totalitarian Regime in Ukraine" (2022) from May 22, 2022, defined the Russian regime as Nazi. Nevertheless, in May 2023, in the Resolution of the Verkhovna Rada of Ukraine "On the use of the ideology of ruscism by the political regime of the Russian Federation, condemnation of the foundations and practices of ruscism as totalitarian and misanthropic" (2023), legislators used the term ruscism and, for the first time on the legislative level, proposed a list of its characteristics and consequences. Therefore, there is a need for Ukrainian legislators to unify the identification of the Russian regime, primarily at the national level, as a separate type of Russian fascism – ruscism, to further lobby for the creation of an international court for its condemnation and prohibition. At the international legal level, the term ruscism is also used, namely in Paragraph 20 of the Declaration 482 of the NATO Parliamentary Assembly "United and Decisive Support for Ukraine" (2022).

In summary, to achieve a clear identification of ruscism, it can be defined as a form of non-democratic totalitarian state and legal regime established in the Russian Federation in the 21st century based on radical Russian imperial chauvinism, fascism, and the practices of the communist regime of the USSR, manifested in the form of the Russian world, violations of international law, human rights, and fundamental freedoms, militarism, and the execution of aggressive wars and policies of genocide against the Ukrainian people.

Conclusions

The paper defined the concept of ruscism, explored the historical retrospective of its origin and development, and highlighted similarities and differences with classical fascism and German Nazism. The Ukrainian and international legislation regarding the use of the term ruscism were analysed, and a unified approach to its usage in official documents was proposed.

To summarise, it can be stated that ruscism combines the most inhumane manifestations of fascism, Nazism, and communism. The glorification of the "Russian" race, genocidal policies in Ukraine, discrimination against neighbouring countries and peoples, including the indigenous peoples of the Russian Federation sanctified by the Russian Orthodox Church, leaderism, and manipulations of propaganda are combined with total lies and, as a result, the unleashing of the largest conventional war on a planetary scale since World War II. Considering the threats and negative consequences caused by ruscism, humanity needs to draw adequate conclusions, which will be embodied in the condemnation and prohibition of ruscism as an ideology and form of state and legal regime at the international and national levels. An integral part of the fight against ruscism should be bringing its creators and leaders to criminal responsibility.

There is an urgent need for in-depth further studies on ruscism to specify the stages of its creation, provide a clear international legal evaluation of both the phenomenon and its consequences, and develop mechanisms to counter and prohibit ruscism. This will allow understanding the reasons for the emergence of another variety of fascism, which seemed to have received international condemnation and should only be perceived as marginal by individuals and organisations in the 21st century.

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Conflict of interest

None.

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Рашизм як різновид фашистської форми державно-правового режиму

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Анотація. Актуальність статті зумовлено виникненням у Російській Федерації нового різновиду фашизму – рашизму, який у XXI ст. повернув людство до розуміння того, що можливе відродження найнебезпечніших форм державно-правового режиму. Мета статті – дати визначення поняття «рашизм», проаналізувати історію його зародження як окремого явища та формування складових елементів, виділити схожі та відмінні риси з класичним фашизмом та його різновидами. З методологічного інструментарію використано методи діалектики, аналізу, синтезу, індукції, дедукції, узагальнення та аналогії. Історичний та компаративістський підходи дали змогу дослідити еволюцію зародження та формування рашизму, виокремити його спільні та відмінні ознаки з класичним фашизмом та його різновидами. Визначено чіткі ознаки фашизму та його різновидів. Досліджено конвергенцію фашизму з концепцією «русского міра», російським імперським шовінізмом та злочинними практиками комуністичного режиму Союзу Радянських Соціалістичних Республік. Установлено, що результатом рашистського режиму стало створення тоталітарної репресивної мілітаристської держави в Росії, яка розв'язала агресивні війни проти Грузії та України. Наголошено на притаманних рашистському режиму систематичних порушеннях принципів міжнародного права, прав та основоположних свобод людини, реалізації політики геноциду українського народу. Сформульовано визначення поняття «рашизм» та розглянуто історію формування як окремих його складових елементів, так і як цілісного явища. Практичне значення дослідження полягає в уніфікації використання визначення «рашизм» як на науковому, так і законодавчому рівнях з метою засудження і заборони рашизму як злочинної, людиноненависницької ідеології та форми державно-правового режиму

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